

Collective Bargaining Manual



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Preface

The New Jersey Education Association was founded on December 28, 1853, as the New Jersey State Teachers Association. Today, NJEA is the largest and the most effective school employee organization in New Jersey. NJEA has more than 200,000 active and retired professional and educational support personnel members and nearly 900 local affiliates.

NJEA and its local associations have more than 40 years of bargaining experience in school districts across the state. This experience, coupled with extensive training opportunities, helps make NJEA local leaders skillful effective bargainers.

As public sector collective bargaining continues to grow more complicated, so do the challenges at the bargaining table. This manual is designed to help local association bargaining teams achieve a fair and equitable contract for their members.

Whether you are bargaining your first contract, or are fine-tuning one that was bargained by previous teams, we caution you to keep three important points in mind:

1. This is a resource guide. Its use and application are driven by local circumstances. You may find that parts are relevant, while others may not be appropriate for your situation or may need to be modified to meet your specific needs.
2. Negotiations are influenced by state law, administrative code, and regulations. These must be considered in the negotiations process.
3. Bargaining is an ongoing process. It does not begin when you exchange negotiations packages, and it does not end at the ratification meeting. The bargaining process is affected by the total relationship that exists

between the local association and board of education. How you and your local board of education relate to each other and how the local association relates to the community at-large will directly impact on the activities at the bargaining table.

Remember, no manual contains all the answers, and no sample language meets the needs of every local. The NJEA Collective Bargaining Manual is only one of the bargaining resources available to local association leaders. The most effective bargaining always begins with a phone call to your local NJEA UniServ office for assistance.

A History of Public Sector Collective Bargaining in New Jersey

New Jersey has been a leader in the establishment of rights for school employees throughout the twentieth century. NJEA and its local affiliates have been at the forefront in the fight for employee rights, school funding, and support for schools and school employees.

One of the first school employee strikes in the nation occurred in New Jersey when Paterson teachers withheld their services in 1946. This strike took place in the midst of a wave of private sector strikes.

As workers in the private sector made gains in wages, benefits, and job security during the 1950s and 1960s, school employees felt they were left behind. The social unrest of the 1960s spread to school employees, who took to the streets with their grievances. School strikes occurred in various locations throughout the country.

Since 1947 the New Jersey State Constitution, in Article I, Section 19, has recognized the right of persons in private employment to bargain collectively. It further recognized the right of public employees to organize, present to and make known to the State, or any of its political subdivisions or agencies, grievances and proposals through representatives of their own choosing.

After a veto of the proposal for a bargaining law for school employees in 1965, dissatisfaction with the lack of a sanctioned bargaining process reached a boiling point. In 1966 teachers struck the schools in both Newark and Woodbridge, and the union leadership of both locals was sent to jail. Some teacher associations closed down

schools with massive sickouts, such as in Camden in 1967.

Another approach instituted during that time was the imposition of “professional sanctions” against specific school boards. A tool originated by the National Education Association, the imposition of “sanctions” meant that a local association would notify every state and local association affiliated with NEA to inform them that the local employer was “unfit to work under.” In addition, current employees would seek to terminate their employment in the district, and the local association would discourage applicants for new positions.

After a legal challenge to the imposition of such sanctions, the New Jersey Supreme Court determined that:

- any form of concerted activity for the purpose of thwarting the workings of government is a violation of the common law;
- strikes by public employees are not prohibited by the state constitution;
- the enacted PERC (Public Employment Relations Commission) statute did not permit strikes (Board of Ed., Union Beach v. NJEA, et al., 53 N.J. 29 (1968)).

Throughout this turbulent era, NJEA continued its efforts to pass a bargaining law for school employees. In 1965 Governor Richard Hughes vetoed a bill that would have allowed negotiations on behalf of school employees.

In 1966 the Legislature, with the support of the Governor,

established the Public and School Employees Grievance Procedure Study Commission. That commission presented a report to the Legislature in January 1968. In June, a collective bargaining bill based on that report was passed by both houses of the Legislature, but vetoed by the governor. Then, at a special session of the Legislature on September 13, 1968, the New Jersey Employer-Employee Relations Act became law, over the veto of Governor Hughes.

The new Act created the Public Employment Relations Commission (PERC) and recognized the right of employees to organize into exclusive bargaining units represented by a majority representative.

The Act provided for a tripartite commission of seven members to determine policy for the agency. The seven members would include two management members, two labor members, and three public members, one of whom would be the chairperson. The Commission assumed jurisdiction over labor relations disputes concerning recognized or certified majority representatives of employees of all public employers in the state.

The purpose of the Act was to fulfill the public policy of the state by preventing or promptly settling labor disputes. The Commission was not to intervene in the absence of a dispute. It was to resolve disputes on representation issues and disputes over those topics which were mandatorily negotiable. The Commission was to involve itself in negotiations disputes as the source for mediators and fact finders to aid parties in the bargaining process. It established a panel of

arbitrators available for use by management and labor to resolve grievances. Since it was modeled after the private sector National Labor Relations Act, the Commission structured itself to process unfair practice charges.

The leadership of NJEA had encouraged local affiliates to negotiate comprehensive agreements even if S-746 did not become law. Some local associations had already negotiated contracts with their boards of education. The Newark Teachers Association (1965), the Willingboro Education Association (1966), and the Black Horse Pike Education Association (1967) were among several associations that had developed real contracts with their employer boards prior to September 1968.

In anticipation of the move toward collective bargaining, NJEA established the position of Field Representative for Negotiations in September 1967 and developed the first NJEA Sample Agreement. NJEA then ordered more than 250,000 "authorization and designation" cards printed. These A&D cards were used by local associations to seek voluntary recognition from local boards of education as the exclusive majority representative in the district.

In the summer of 1968, the Association hired 20 local association leaders as part-time negotiations consultants to supplement the 10 full-time field representatives as they helped local associations negotiate their first collective bargaining agreements.

After the passage of the collective bargaining law in 1968, training sessions were held in every county. The Sample Agreement and A&D cards were distributed and explained.

During the 1968-69 school year, more than 400 bargaining units were recognized and negotiated their first contracts.

In 1971, NJEA and its county and local associations unified membership with each other and with the National Education Asso-

ciation. As a result of unification with NEA, the NEA/NJEA UniServ Program was initiated. In conjunction with a staff expansion in 1969, unification resulted in the doubling of the number of full-time field representatives and part-time negotiations consultants.

By 1975, almost 1000 local associations had been recognized and were negotiating contracts. In the first test of the new PERC law, the New Jersey Supreme Court upheld the constitutionality of collective negotiations and the principle of exclusive representation rights of a majority representative.

The court also drew a distinction between the concepts of "collective bargaining" in the private sector and "collective negotiations" in the public sector. By its use of the latter phrase, the Court established that the Legislature had intended to recognize inherent limitations on the bargaining authority of public employers and employees.

During its early years, PERC determined many questions on the appropriateness of bargaining units. In general, the Commission favored broad-based units over more specialized units.

Scope of negotiations disputes have prompted the most judicial and legislative activity over the years since the original establishment of the Act.

Although the Commission had assumed the power to enforce the statute through the determination of unfair labor practice (ULP) charges, the State Supreme Court determined that the Commission lacked the statutory authority to determine such charges.

The Act said that public employers were required to negotiate over "... grievances and terms and conditions of employment." In 1973, the Court restricted the category of mandatory subjects for negotiations to those subjects which intimately and directly affect the employees' work and welfare, but do not significantly interfere with the public employers' determination of governmental policy.

Pressure to strengthen the bargaining law began after the Court said the Commission lacked authority to settle unfair practice charges. That spurred the Legislature to amend the statute in 1974 to specify the right of the Commission to determine and enforce unfair labor practice charges.

The Act now states that employers and employee organizations, their agents and representatives, are prohibited from engaging in certain coercive and discriminatory activities, including refusing to negotiate in good faith.

NJEA believed that the 1974 amendments also modified the scope of negotiations through changes to language in the act. However, in 1978, the Court determined that the Legislature had not changed the test for determining if a subject was mandatorily negotiable.

During the 1970s, negotiations between local associations and boards of education were often difficult. School employees were determined to make up for years of being unable to negotiate their terms and conditions of employment. At the same time, school boards were concerned that their power to run the schools would be eroded through negotiations.

In some of the most difficult situations, school employees shut down the schools as a way of generating pressure to get a contract. Strikes in a number of districts resulted in many association leaders being jailed, locals being fined, and various legal precedents being established.

Later court decisions further narrowed the scope of negotiations. Subcontracting was held to be nonnegotiable while disciplinary disputes were found to be non-negotiable and non-arbitrable.

In 1980, the Court established a test to determine negotiability. Specifically, a subject is negotiable if:

- it intimately and directly affects the work and welfare of the employees

- it has not been partially or fully preempted by a statute or regulation, and
- a negotiated agreement would not significantly interfere with the determination of governmental policy.

With a few specific statutory exceptions, this is the test used by the Commission today when it determines scope of negotiations cases.

While the courts' determinations had continually narrowed the scope of negotiations from 1970 through 1982, the trend began to reverse with action by the Legislature to amend Section 5.3 of the Act. The passage of Ch. 103 P.L. 1982, which made disciplinary disputes and review procedures mandatorily negotiable, is a notable example.

A major exception to the narrowing trend of the 1970s was the passage of Ch. 477 P.L. 1978, which permitted the negotiations of an agency shop provision which could require a non-member to pay a representation fee of up to 85 percent of the dues paid by a member.

During the 1980s, the negotiations between school boards and local associations began to mature in many districts. While there were some strikes, most were of shorter duration. The contract gains made by local associations during the 1970s continued at a brisk pace into the 1980s.

A further expansion of the scope of negotiations for school employees came with the passage of Ch. 269 P.L. 1989 which:

- requires negotiations on all aspects of extra-curricular activities except for the establishment of qualifications for a position

- allows arbitration over the withholding of a salary increment for predominantly disciplinary reasons
- allows negotiation of a schedule of offenses and penalties for minor discipline
- prohibits disciplinary transfers between work sites
- requires that arbitration determinations on disciplinary issues be binding, with the burden of proof on the employer.

During the 1990s, a combination of factors converged to create a harsh negotiations climate for public employees. Private sector layoffs, a reduction in manufacturing jobs, a tax squeeze, and governmental agencies hostile to public employees led many schools boards to negotiate for reductions in benefits and minimal salary increases while threatening reductions in force if local associations did not capitulate.

Historically, employees have lobbied for an expansion of the scope of negotiations. More recently management has worked to modify or repeal laws that guarantee certain economic or job security benefits for employees. In the climate of the 1990s, employers believed that they should be able to negotiate those issues locally rather than comply with state mandates.

One example of this attitude was the action of the State Health Benefits Commission in the fall of 1995 to eliminate the requirement that a full-time employee must work 20 hours per week to qualify for benefits under the State Health Benefits Program. Under the action of the Commission, a local employer may set the minimum at any level it chooses so long as the

change is negotiated. In this situation the scope of negotiations has been expanded to the disadvantage of the employees.

In addition, passage of the Charter School Program Act of 1995 by the N.J. Legislature added a new aspect to bargaining.

The Act provides the establishment of charter schools as part of the state's program of public education.

Section 14b of the Act mandates that charter schools and their employees are subject to the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, C.100 (C.34:BA-1, et seq.), thereby providing bargaining rights to all charter school employees.

School employees have made great gains in the negotiations process since the passage of the Act in 1968. These gains were made because of the courage, commitment, and sacrifice of association members to establish decent working conditions, salaries, and benefits.

In order to maintain past gains and achieve future goals, all association leaders and members must recommit themselves to the task of strengthening local and county associations, NJEA, and NEA through the negotiations process.

We all do well to remember and live by the words spoken by NJEA Field Representative Jim George at the 1967 Asbury Park Rally: *"A new order is at hand. A new generation has been conceived. And we are not afraid!"*

Is it Negotiable?

The New Jersey Public Employer-Employee Relations Act controls those items that have been deemed mandatory topics and illegal topics of negotiations. The following list summarizes what is commonly referred to as the “scope of negotiations” under New Jersey public sector labor law.

NOTE: The following lists are not exhaustive.

Mandatory Topics

School boards are required to negotiate with an employee representative over the following topics.

- Advisory arbitration for the application of management prerogatives to individual employees.
- After school teacher-only workshops.
- Agency shop.
- Commencement date of negotiations.
- Committees on non-negotiable topics that have merely advisory authority.
- Compensation – all forms.
- Discipline procedures consistent with applicable statutes.
- Discipline of school employees in accordance with applicable statutes.
- Duration of the collective bargaining agreement – subject to statutory limit of five years.
NOTE: County Colleges are an exception to this limitation.
- Duty-free lunch. No minimum guaranteed.
- Permitting staff to leave building during lunch.
- Employee rights clause.
- Evaluation procedures that do not contravene statute or administrative code.
- Number of evaluations above minimum set by state rules and regulations
- Extracurricular assignments – certain aspects.
- Fair dismissal procedures that do not interfere with the nonrenewal of nontenured teachers.
- Flex time.
- Fringe benefits, including benefits for RIFed employees if incorporated into the contract.
- Grievance procedures. (Binding arbitration of school employees’ grievances over minor discipline, however, is statutorily mandated and is, therefore, not negotiable.)
- Health and safety issues.
- Hiring procedures.
- Holidays – number of.
- Hours of work.
- Insurance, including disability income.
- Job security for employees not covered by statutory tenure provisions.
- Leaves of absence in excess of statutory guarantees.
- Maintenance of benefits clause.
- Management rights clause.
- Merit pay – including evaluation criteria.
- No-strike provision.
- Overtime provisions, rotation, pay rate.
- Payment for unused accumulated sick leave.
- Past practice/savings clause.
- Personal leave.
- Personnel file – access to.
- Physical facilities and working conditions.
- Posting procedures.
- Pre-employment Incentives
- Preparation periods – length and number of and use of.
- Promotion procedures.
- Recognition clause.
- Reduction in Force (RIF) – notice provisions and compensation for remaining staff if there is a significant increase in workload.
- RIF procedures if NOT covered in statutes, as such as:
 - seniority
 - recall
 - bumping rights.
- Release time. Compensation/ release time for ScIP team members.
- Sabbatical leaves.
- Safety issues.
- Salary guide initial placement, credit for experience, education.
- School Nurses can be required to remain onsite.
- Seniority/recall procedures for employees not covered by specific statutes or regulations.

- Shifting unit work from unit employees to employees outside the unit.
 - Sick day bank.
 - Sick leave:
 - above the statutory minimum.
 - payment for verification.
 - Summer session – procedures for filling positions.
 - Teacher-pupil contact time.
 - Teaching periods – number of.
 - Transfer and assignment procedures.
 - Union business – time off for; use of prep period.
 - Tuition reimbursement.
 - Use of sick leave for family members. NJFLIA.
 - Vacations.
 - Workload.
 - Workday – length of.
 - Work schedule including creation of new shift(s).
 - Work year – length of (for teachers this is mandatory only in regard to those days in excess of the 180 student-day minimum required for state aid).
 - Zipper clause.
 - Class size.
 - Curriculum.
 - Decision to assign bus, cafeteria, corridor, and playground supervision. Compensation is, however, negotiable.
 - Decision to reschedule snow days during teacher vacation period. (Impact is negotiable.)
 - Decision to go to split sessions.
 - Design of students' school day.
 - Dress code.
 - Evaluation:
 - selection of evaluator.
 - advance notice of observation.
 - application of criteria.
 - Facilities relating to the education process.
 - Impact of non-negotiable decisions.
 - Instructional materials.
 - Lesson plans:
 - format of.
 - scheduling of submission.
 - Number of employees and deployment of personnel.
 - Paraprofessionals – use of.
 - Parent-teacher conferences:
 - decision to schedule.
 - changes in number of evening conferences for policy reasons (subject to negotiations over compensation).
 - Productivity studies.
 - Qualifications for:
 - employment.
 - increment.
 - promotion.
 - Sick leave – verification of.
 - Staffing – number of employees.
 - Student-related issues:
 - discipline.
 - grading.
 - grievance procedure.
 - safety.
 - testing.
 - Subcontracting – decision to.
 - Supervision of employees by department chairperson.
 - Tenure-certificated employees.
 - Transfer – decisions and criteria (other than disciplinary transfers of school employees).
- These items have been determined to be illegal topics of bargaining because they contravene specific statutes or regulations.**
- Composition of the bargaining team.
 - Decision to RIF.
 - Early retirement incentives.
 - Evaluation criteria.
 - Extended sick leave.
 - “If/When” clause.
 - Impact of RIF on remaining teachers and on RIFed teachers when there is no significant increase in work load.
 - Maintenance of membership clauses.
 - Nonrenewal of nontenured teachers.
 - Parity.
 - Pensions. (Although you may negotiate employer contributions to a 403(b) plan and 45, subject to legal requirements.)
 - Religious leave – paid (if not charged to general personal leave or vacation).
 - Seniority provisions inconsistent with Title 18A.
 - Sick leave:
 - unlimited blanket.
 - use of for other than statutory purposes.
 - Smoking in school buildings.
 - Student grievance procedures.
 - Sunshine bargaining as a precondition to negotiations.
 - Withholding of increments – procedures established by statute or regulation.

Illegal Topics

These items have been determined to be illegal topics of bargaining because they involve matters of educational policy or inherent management prerogatives.

Call your UniServ office if you have any questions about these topics.

- Absenteeism and tardiness policies.
- Academic calendar.
- Affirmative action plans.
- Assignment – other than extracurricular.
- Audio-visual equipment – use of.
- Budget formulation.

Landmark Decisions

Many aspects of collective bargaining by public school employees are governed by court and PERC decisions as well as administrative code and regulations. The following landmark decisions address the subject of collective negotiations:

Constitutionality of Bargaining Law

Lullo v. Int. Assn. Firefighters 55 N.J. 419 (1970)

The New Jersey Supreme Court established the constitutionality of collective negotiations and the principal of exclusive representation. It drew the distinction between the private sector term “collective bargaining” and “collective negotiations” to recognize inherent limitations on the bargaining power of public employers and employees.

Broad Units Preferred

State of New Jersey v. Professional Association of N.J. Department of Education, 64 N.J. 231 (1974)

PERC’s approach to defining appropriate broad based bargaining units was upheld.

Scope of Negotiations

Dunellen Bd. of Ed. v. Dunellen Ed. Assn. 64 N.J. 17 (1973); *Burlington County College Faculty Assn. v. Bd. of Trustees, Burlington County College* 64 N.J. 10 (1973); *Bd. of Ed. of Englewood v. Englewood Teachers Assn.*, 64 N.J. 1 (1973)

The **Dunellen Trilogy** further explained the Supreme Court’s perception that private sector bargaining and public sector negotiations were different. The Court narrowly interpreted “terms and conditions

of employment” under Section 5.3 of the PERC Act and broadly interpreted the preemptive effect of “other statutes” under Section 8.1.

P.L. 1974, Ch. 123 was adopted as the Legislature’s response to the Dunellen decisions.

Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 156 (1978) *banned the permissive category of negotiations.*

In *State v. State Supervisory Employees Assn.*, 78 N.J. 54, 80-82 (1978), the Court interpreted P.L. 1974, Ch. 123, holding that the insertion of the word “pension” in Section 8.1 required modification of Dunellen. Negotiations are not preempted on employment conditions covered by statute unless such statute or regulation speaks in the imperative and specifically sets a term or condition of employment.

In *Woodstown-Pilesgrove Reg. Bd. of Ed. v. Woodstown- Pilesgrove Reg. Ed. Assn.*, 81 N.J. 582 (1980) the Supreme Court recast Dunellen’s basic negotiability formula into a balancing test: a proposal’s effect on the employee’s work and welfare must be balanced against a proposal’s interference with the employer’s prerogatives.

Under the *Dunellen* standards, negotiability determinations had generally been made by category; under Woodstown-Pilesgrove, negotiability determinations are to be based on the circumstances of each case.

The Court recognized in *Hunterdon County and CWA*, 116 N.J. 322, 328-329 (1980) the Commission’s “broad authority and wide discretion in a highly specialized area of public life” and confirmed

that the Commission’s decision should stand unless it is clearly demonstrated to be arbitrary.

In 1977, *Paterson Police PBA v. City of Paterson*, 87 N.J. 78 (1981), interest arbitration for police officers and fire fighters was added to the statute (NJSA 34:13A-14 et seq.). The Legislature expressly created a permissive category of negotiations for police and fire-fighters only. The Supreme Court, however, established a narrow view of what is permissively negotiable.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) consolidated the balancing test and preemption standards into one tripartite test:

[A] subject is negotiable between public employers and employees when:

- (1) the item intimately and directly affects the work and welfare of public employees;
- (2) the subject has not been fully or partially preempted by statute or regulation; and
- (3) a negotiated agreement would not significantly interfere with the determination of governmental policy.

To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government’s managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect

employees' working conditions.

In 1990, the scope of negotiations was expanded under the provisions of NJSA 34:13A-22, et seq. The provisions applied only to school board employees and dealt with "minor discipline" and extracurricular activities. The Act requires that all discipline disputes must be submitted to binding arbitration. Increment withholdings for performance are excluded from arbitration.

In *Scotch Plains-Fanwood Bd. of Ed. v. Scotch Plains-Fanwood Ed. Assn.*, 139 N.J. 141 (1995), the Supreme Court affirmed the negotiability of the "just cause" standard and found that when parties have not negotiated a standard for the imposition of discipline, it is reasonable for an arbitrator to apply a just cause standard in assessing the merits of discipline, including the withholding of a salary increment.

Unfair Practices

In *Burlington County Evergreen Park Hospital v. Cooper*, 56 N.J. 579 (1970), the Supreme Court determined that PERC lacked the statutory authority to determine unfair labor practice charges. The 1974 amendments to the Act defined unfair practices by both employers and employee representatives and established the authority of the Commission to determine if an unfair practice has been committed and direct a remedy.

NJSA 34:13A-5.4 (a)(1) prohibits public employers from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." An employer violates this subsection if its actions tend to interfere with an employee's right and lack a legitimate and substantial business justification. *Commercial Twp. Bd. of Ed.*, PERC No. 83-25, 8 NJPER 550 (3/25/82), Aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83)

The Supreme Court in *Bridge-water Twp.*, 95 N.J. 235 (1984) set a two-step test for appealing violations of NJSA 34:13A-5.4(a)(3),

which prohibits an employer from "discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

The Commission determines whether the charging party has proved that hostility towards protected activity was a substantial and motivational factor in the personnel action which prompted the charge. If so, the burden shifts to the employer to prove that it would have taken the same course of action, absent an illegal motive.

An employer's refusal to negotiate in good faith over a contract or to process grievances violates NJSA 34:13A-5.4(a)(5) *State of New Jersey*, E. D. No. 79; NJPER 39 (1975), Aff'd 141 N.J. Super. 470 (App. Div. 1976)

In *Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn.*, 78 N.J. 25 (1978), the Court addressed a second type of violation under NJSA 34:13A-5.4(a)(5) when an employer unilaterally changed employment conditions during negotiations for a successor agreement. In *Galloway* the board refused to pay automatic salary increments during negotiations for a successor contract. The Court sustained the Commission's determination that the salary increment must be paid.

In *Saginario v. Attorney General*, 87 N.J. 480 (1981), the Court held that arbitrary, discriminatory, or bad faith conduct on the part of an employee representative violates NJSA 34:13A-5.4 (b)(1)

In *Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn. of Ed. Secs.*, 78 N.J. 1 (1978), the Court accords the Commission great discretion in choosing remedies designed to make victims whole.

Payment of increments upon the expiration of a contract was addressed by the Supreme Court in *Board of Education of Township of Neptune v. Neptune Township Ed. Assn.* 144 N.J. 16 1996

The Court determined that under NJSA 18A:29-4.1, school boards are prohibited from paying increments to employees covered by either a "teacher-only" or "all-inclusive" bargaining unit after the expiration of a three-year contract. While the Court did not indicate any intention to overrule *Galloway*, it held that the legislative changes made in 1986 to section 18A:29-4.1 modified the impact of *Galloway* on those employees upon the expiration of a three-year contract.

This prohibition does not apply to contracts covering only supportive staff (ESP) employees.

In *Lumberton Twp. Board of Education v. Lumberton Education Assn.*, Unfair Practice Charge (CO-H-99-229), the Lumberton Education Association filed a charge against the Lumberton Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, NJSA 34:13A-1, et seq., when it adopted a Family/ Medical Leave Policy and when it applied that Policy to an employee who took disability leave immediately followed by a Leave pursuant to the Family Medical Leave Act, 29 U.S.C.A. §2601 et seq. In addition, the Board allegedly refused to negotiate with the Association concerning this subject.

In this case, PERC ruled that the Board could not require an employee to exhaust his or her sick time concurrently with FMLA leave, without contract language or a past practice in lieu of contract language. Additionally, they ruled that the Board had a requirement to bargain with the Association over policies affecting leaves of absence including the Board Policy on Family/Medical Leave.

Representation Fee

In 1979, the Legislature enacted NJSA 34:13A-5.5 - 5.9 to the Act, allowing the majority representative to negotiate the right to receive a representation fee in lieu of dues from non-members in the negotiations unit, provided it offers all

unit members “membership on an equal basis.” Such fees are capped at 85 percent of the union dues.

In *Boonton Bd. of Ed. v. Kramer*, 99 N.J. 523 (1985), Cert. Den. 106 S. Ct. 1388 (1986), the Court agreed with the Commission that the appeal board has sole jurisdiction over challenges to the amount of a representation fee. In 2002, NJSA 34:13A-5.5(a) was enacted by which if a demand for bargaining is made relative to representation fee, if no agreement is reached, the majority representative may petition the Commission to conduct an investigation. If the Commission determines during the investigation that a majority of the employees in the negotiations unit are voluntary dues-paying members of the majority representative and that the majority representative maintains a demand and return system as required by subsection c. of this section and section 3 of P.L.1979, c. 477 (C.34:13A-5.6), the Commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the employees in the negotiations unit who are not members of the majority.

Grievance Arbitration

In the private sector, the “Steelworkers Trilogy” assumes that grievance arbitration will be the end of contract litigation. *United Steelworkers of America v. American Mfg. Co.* 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Steel and Car Corp.*, 363 U.S. 593 (1960)

In *Bloomfield Bd. of Ed. v. Bloomfield Ed. Assn.*, 126 N.J. 300 (1991), Affl. 251 N.J. Super. 570 (App. Div. 1990), the Court adopted the Appellate Division’s embrace of the “Steelworkers Trilogy” and the strong public policy favoring arbitration of labor relations grievances.

In *State of New Jersey v. Local 195, IFPTE*, 169 NJ 505 (2001), the N.J. Supreme Court abolished the “no work, no pay” doctrine when it upheld an arbitration award which ordered payment for work which should have been assigned in accordance with standard overtime rotation language.

Certification & Subcontracting

In *Guttenberg Ed. Assn. and Zenaida Franqui v. Leo Klagholz and Guttenberg Bd. of Ed.*, 1999 S.B.D.(Decided March 3, 1999), the State Board of Education held that a substitute certificate is not equivalent to a teaching certificate. It affirmed the certification requirements for teaching staff members employed in the public schools throughout the state.

Discipline

Disciplinary issues are constantly being affected through court agencies and appellate decisions. Following is a judicial and legislative history.

1968-1979 Disciplinary disputes are routinely submitted to binding arbitration under generic “just cause” provisions of collectively negotiated agreements.

1981-1982 Disciplinary disputes are not negotiable and cannot be submitted to binding arbitration.

Jersey City v. Jersey City Police Officers’ Benevolent Association, 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J. 433 (1982) (matter of discipline of members of municipal police department was subject of essential inherent managerial prerogative; mandated statutory procedures for review of members of municipal police department could not be supplanted, modified or change in any respect such as by submitting to grievance reasonableness of penalty imposed by municipality).

1982 The New Jersey Employer-Employee Relations Act (“Act”)

is amended to overturn Jersey City. See P.L. 1982, c. 103.

L. 1982, c. 103 amends Section 5.3 of the Act to state:

“Public employers shall negotiate written polices setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws.”

1984 The Appellate Division favorably interprets P.L. 1982, c.103.

Communications Workers v. PERC, 193 N.J. Super. 658 (App. Div. 1984), certif. den. sub nom *Willingboro Bd. of Educ. v. Willingboro v. Employees’ Ass’n of Willingboro Schools*, 99 N.J. 169 (1984); certif. den. sub nom. *County of Atlantic v. JNESO, New Jersey State Nurses Association*, 99 N.J. 190 (1984) (consolidated cases involving public employees represented by CWA, JNESO, NJEA, and NJCSA statute governing the rights of public employees to organize permits binding arbitration in disciplinary actions not subject to review under civil service or other tenure law; statute was clearly ameliorative and curative, and gave parties right to bargain for more expeditious and inexpensive method of resolving disciplinary proceedings than instituting action in Law Division in lieu of prerogative writs).

1989 The Act is amended as to school employees only to cover negotiability of assignment to extracurricular activities, imposition of minor discipline and arbitration of salary increments withheld for disciplinary reasons. See L. 1989, c. 269, eff. January 4, 1990.

1995 The NJ Supreme Court decides that the “just cause” standard for disciplinary disputes is inherent in collectively negotiated agreements.

Scotch Plains-Fanwood Bd. of Ed. v. Ed. Ass’n., 139 N.J. 141, 156 (1995). Therein, the contract did not contain a just cause provision for the imposition of disciplinary actions. Citing Local No. 153 OPEIU v. Trust Company of New Jersey, 105 N.J. 442, 452 (1987), the Court noted that it is the role of the arbitrator to fill in gaps in the collective bargaining agreement. Consequently, the Court held:

“We believe that the arbitrator properly applied a just-cause standard of review, which collective-bargaining agreements and arbitrators generally adopt as the appropriate standard for resolving disciplinary disputes . . . in fact, [t]he weight of arbitral opinion is that a standard of just cause may be imposed upon disciplinary actions even though such a standard is not spelled out in the agreement.”

1995 - 2004 The Appellate Division tampers with the arbitrability of disciplinary disputes.

Hunterdon Central Reg. H.S. Bd. of Ed., P.E.R.C. No. 94-75, 20 NJPER 68 (¶25029 1994), aff’d 21 NJPER 46 (¶26030 App. Div. 2005), *certif. den.* 140 N.J. 277 (1995) (issue of whether board had just cause to terminate school bus driver was arbitrable; inasmuch as there are no statutorily mandated tenure requirements or appeal procedures for bus drivers, board was free to negotiate over how it would exercise its discretion under NJSA 18A:11-1 to regulate “conduct and discharge of its employees”).

Marlboro Tp. Bd. of Ed. v. Educ. Ass’n., 299 N.J. Super. 283 (1997),

certif. den., 151 N.J. 71 (1997) (board’s decision not to renew bus driver’s contract was not arbitrable where collectively negotiated agreement and board policy expressly incorporated by agreement indicated bus driver’s employment could be ended without cause, board merely exercised its clearly enunciated contractual right not to renew her contract, and board did not purport to discipline driver; tenure provision would not be judicially inserted into collectively negotiated agreement where such provision was not negotiated by the parties; Hunterdon Central distinguished).

Cresskill Bd. v. Cresskill Ed. Ass’n., 362 N.J. Super. 7 (2003), *certif. den.* 181 N.J. 546 (2004) (nonrenewal of custodian was not arbitrable, where custodian’s initial term of employment had expired, and decision not to renew the contract occurred subsequent to board’s prior attempt to terminate custodian for disciplinary reasons and was independent of the disciplinary matter; Hunterdon Central distinguished).

Governor McGreevey’s Conditional Veto Message to Senate Bill No. 514 -P.L. 2003, ch. 95, “Uniform Arbitration Act.”

Governor McGreevey conditionally vetoes S-514 in order to “carve out” traditional public and private sector labor arbitration and allow such arbitration to continue under the Arbitration and Award Act, NJSA 2A:24-1 et seq. In his Conditional Veto Message, Governor McGreevey specifically emphasizes that the principles of the *Steelworkers Trilogy* apply to the public sector:

“Although the *Steelworkers Trilogy* originated in the private sector, the same principles have been applied to the public sector. New Jersey has embraced and applied the *Steelworkers Trilogy* principles of favoring arbitration in public sector labor relations. In the public sector, arbitration is also favored and is commonly utilized to settle labor-management disputes . . . This system of industrial justice has

meaningfully evolved to reach the current status of maintaining labor stability through collective negotiations.”

The Legislature responds to Governor McGreevey’s Conditional Veto Message by enacting the Uniform Arbitration Act, NJSA 2A:23B-1 to govern all arbitration matters except traditional public and private sector labor disputes, and by amending the Arbitration and Award Act accordingly. See NJSA 2A:24-1.1 (“Applicability to collective bargaining agreements”): “N.J.S. 2A:24-1 through N.J.S. 2A:11 shall only apply to an arbitration or dispute arising from a collective bargaining agreement or collectively negotiated agreement.”

2004 The NJ Supreme Court ignores Governor McGreevey’s Veto Message in deciding *Camden Bd. of Educ. v. Alexander*, 181 N.J. 187 (2004).

The New Jersey Supreme Court, split 3-3, brought up a judge from the Appellate Division to be the deciding vote. The Court ruled 4-3, with the Appellate Division judge in the majority, that:

- (1) a board had a right under NJSA 18A:27-4.1 to renew, or not, a fixed term employee for non-arbitrary and noncapricious reasons without being subject to review of that decision by an arbitrator where the collectively negotiated is silent about whether the parties intended the board to give up that statutory right; and
- (2) the presumption of contractual arbitrability did not apply to the public sector. Justice Zazzali, joined by Justices Albin and Long, dissented, noting in part that the Court’s ruling ignored the history of public sector labor relations in New Jersey and Governor McGreevey’s Conditional Veto Message to Senate Bill No. 514.

2005 Section 5.3 of the Act is amended to restore the presumption of arbitrability. See L. 2005, c.380, §1, effective January 12, 2006.

“In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.”

2006 The Supreme Court acknowledges that the presumption of arbitrability in the public sector has been restored.

Board of Education v. Alpha Educ. Ass’n., 188 N.J. 595 (2006):

“The dissent . . . criticizes our decision for tacitly dismantling the holding reached in *Camden Bd. of Educ. v. Alexander* . . . ‘in which we explained that we have not endorsed a presumption in favor of arbitrability for the public sector . . .’ The dissent, however, fails to note that the Legislature overruled the above conclusion when it amended NJSA 34:13A-5.3, effective January 12, 2006 . . .”

2007 The Supreme Court ignores the amendment to NJSA 34:13A-5.3, L. 2005, c.380, §1 in deciding Pascack Valley and Northvale.

Chief Justice Zazzali recused himself from participating in these cases. The Court chose not to bring up a judge from the Appellate Division to be the deciding vote. In inherently inconsistent rulings employing tortured logic, the Supreme Court, 6-0, permitted the Pascack Valley grievance to proceed to binding arbitration but refused, 3-3, to allow the Northvale grievance to be arbitrated. See *Pascack Vall. Bd. of Ed. v. Support Staff*, 192 N.J. 489 (2007); *Northvale Bd. of Ed. v. Educ. Ass’n*, 192 N.J. 501 (2007). In these cases, the Supreme Court ignored two cardinal principles of labor law in the public and private sectors:

- (1) the presumption of arbitrability established by the history of public sector labor relations in New Jersey and expressly stated in L. 2005, c. 380, §1; and
- (2) the primacy of collectively negotiated agreements over

the terms of individual contracts which is firmly entrenched in labor relations law in the public and private sectors - See *Troy v. Rutgers*, 168 N.J. 187 (2001) (noting collective agreements prevail over individual agreements and, when there is conflict, individual agreements may not be enforced).

2007-2008 The aftermath of Camden, Pascack Valley and Northvale.

The Appellate Division does not know how to interpret these cases:

Lenape Regional H.S. Dist. Bd. of Ed. v. Educ. Ass’n, Dkt. No. A-5095-04T1 (July 12, 2006), *certif. den.* 193 N.J. 223 (2007). The panel allows the case of a non-renewed custodian to proceed to arbitration where contract language states: “Dismissal for job performance shall follow [just cause] procedure. It is specifically understood that the Board has the right and responsibility to take any action deemed necessary in retention and/or non-retention matters other than job performance.”

Ocean City Bd. of Ed. v. Ocean City Educational Supportive Staff Ass’n. and Dean Spencer, App. Div. Dkt. No. A-2838-06T2 (March 27, 2008). Referring to the outcomes in *Pascack Valley* and *Northvale*, the Ocean City panel states that they “are arguably disharmonious, but potentially reconcilable, and may raise further questions of law that ultimately may be resolved by a fully-constituted Supreme Court.” The Appellate Division remands the case to the trial court to consider: “

- (1) the shared intention of the parties to the CNA and any ambiguities within its provisions;
- (2) the general practices and customs of the parties to the CNA; and
- (3) the CNA’s intended relationship to the individual contracts of employees in the school district.”

2009 The Supreme Court reconsiders the 2005 amendment to NJSA 34:13A-5.3 (“presumption of arbitrability”) and its Pascack Valley and Northfield decisions.

In *Mt. Holly Tp. Bd. of Educ. v. Mt. Holly Tp. Ed. Ass’n. and Juan Gonzalez*, 199 N.J. 319, 2009 WL 1766154 (2009), the Supreme Court restored the presumption of arbitrability that the 2005 amendment to NJSA 34:13A-5.3 was enacted to reestablish. The Court restored meaning to the two cardinal principles of labor law undermined by the *Pascack Valley* and *Northfield* decisions. It held that to the extent provisions in an individual employment contract conflict or are inconsistent with rights provided by a CNA, the language in the individual contract must yield to the CNA. The decision also “reaffirms the principle that ‘[a]rbitration is a favored means of resolving labor disputes.’”

A word of caution

Legal issues are constantly evolving. New laws are passed and new cases are decided which impact on school employees and the collective bargaining process. Always consult with your local UniServ office to obtain the most accurate and up-to-date information on legal matters.

Statutory Basis for School Employee Negotiations in New Jersey

In 1947 the New Jersey State Constitution was amended to include the following language:

Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

Article I, Section 19

In 1968, the State moved to implement this constitutional guarantee by adopting the New Jersey Employer-Employee Relations Act (NJSA 34:13A-1 et seq.).

The Act defined certain rights and obligations for public employers and employee organizations:

- The employer has the obligation to recognize an employee organization claiming to represent the majority of employees in an appropriate bargaining unit as the exclusive representative of those employees.
- The employer is required to negotiate with the employee representative over grievance procedures and terms and conditions of employment. The employer must negotiate any proposed changes in work rules before they are established.
- Both parties are required to meet at reasonable times and negotiate in good faith regarding grievances, disciplinary disputes, and other terms and conditions of

employment. Any agreements reached must be reduced to writing and signed by both parties.

- Employees have and are protected in the right to form, join, or assist the employee organization without fear of penalty or reprisal.
- The employee organization must act for and represent the interests of all unit personnel without regard to organization membership.
- Employers are required to negotiate a grievance procedure through which employees or representatives of employees may appeal the interpretation, application, or violations of policies, agreements, and administrative decisions, including disciplinary determinations affecting them. Such procedure may provide for binding arbitration as a means to resolve disputes.

The Public Employment Relations Commission (PERC) was created to make determinations when disputes arose regarding appropriateness of the bargaining unit and to aid in the resolution of negotiation and grievance issues. In addition, PERC regulates the negotiations process, supplies mediation and fact-finding services, and administers grievance arbitration disputes.

With the enactment of amendments in 1974, PERC was also granted the power to enforce the statute. PERC may make determinations on the negotiability of issues, decide charges that either

party violated the law (Unfair Labor Practice - ULP) and to seek help from the courts to have its directives enforced.

Prohibited Practices

NJSA 34:13A-5.4 provides that:

- 1. a. Employers, their representatives or agents are prohibited from:**
- (1) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by this Act.
 - (2) Dominating or interfering with the formation, existence, or administration of any employee organization.
 - (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.
 - (4) Discharging or otherwise discriminating against any employee because he/she has signed or filed an affidavit, petition, or complaint, or given any information or testimony under this Act.
 - (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to

process grievances presented by the majority representative.

- (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.
- (7) Violating any of the rules and regulations established by the Commission.

b. Employee organizations, their representatives or agents are prohibited from:

- (1) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by this Act.
- (2) Interfering with, restraining, or coercing public employers in the selection of their representative for the purpose of negotiations or the adjustment of grievances.
- (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit, concerning terms and conditions of employment of employees in that unit.
- (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.
- (5) Violating any of the rules and regulations established by the Commission.

In 1980 the Act was modified to provide:

- The right of a majority representative to negotiate a requirement that non-members pay a fee in lieu of dues. That fee may not exceed 85 percent of dues, fees, and assessments.
- The obligation of the majority representative to provide a demand-and-return system and to provide a review of the fee if questioned.

- The requirement of the establishment of an appeal board for fee payers to pursue complaints on issues related to representation fees.

In 1982, the act was again amended to make disciplinary disputes and review procedures mandatorily negotiable.

The Act was further amended in 1990 to require of school boards:

- Negotiations on all aspects of extracurricular activities except for the establishment of criteria for appointment to a position.
- Negotiations on procedures and penalties for the imposition of "minor discipline."
- A prohibition against using transfers between worksites for reasons of discipline.
- Binding arbitration of all disciplinary disputes including the withholding of salary increments for disciplinary purposes with the burden of proof borne by the employer.

In 2003 the following amendments were added: 34:13A-33. Terms, conditions of employment under expired agreements

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

In 2003, the following amendment was added: 34:13A-34. Participation in mandatory fact finding; report; appointment of super conciliator

- a. In any case in which collective negotiations between an employer and a majority representative have failed to result in the parties reaching agreement on the terms of a negotiated agreement and the commission's mediation procedures have been exhausted with no final agreement having been reached, the parties shall be required to participate in mandatory fact finding, which shall be conducted by a fact finder under the jurisdiction of the commission, subject to procedures established by the commission pursuant to regulation. The fact finder shall be appointed no later than 30 days after the last meeting between the parties and the mediator in connection with the mediation pursuant to this act.
- b. Following completion of such fact finding, the fact finder's report shall be made available to the parties immediately after its issuance, and to the public 10 days thereafter.
- c. If the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact finder's report, the commission shall appoint a super conciliator to assist the parties, based upon procedures and subject to qualifications established by the commission pursuant to regulation.

Organizing & Planning

One of the most important roles of the local association is to bargain a strong contract. Those negotiations (which typically occur every 2-3 years) should not be viewed in isolation from the rest of the association's activities. In fact, there should be a high degree of integration between negotiations and other association activities on an on-going basis. A knowledgeable and well-trained negotiations team schedules adequate time for research, engages in detailed planning prior to beginning bargaining, participates in regional coordinated bargaining training and is committed to following through on the association's goals – even in years when no actual negotiations are taking place.

Although every NJEA local association has its unique characteristics and goals, no local exists in a vacuum. As part of the NJEA family, each local should be aware of the overall NJEA philosophy toward collective bargaining. See *Collective Bargaining Best Practices*, for a complete discussion.

For further information about these – or any other NJEA services and programs – contact your local association president or UniServ regional office.

Successful bargaining depends upon many factors. Understanding the current agreement and recognizing its strengths and weakness are among the most important. One way that a bargaining team can get a strong handle on the current agreement is to review the grievances initiated under its terms and conditions. These grievance files may provide the team with insights into problem areas with

respect to implementation and ambiguous contract language. Likewise, the team should request input from a committee assigned to monitor health benefits in order to review problem areas, changes in plan administration, co-payments, deductibles, and other relevant areas.

Most associations begin their preparation early in the final year of the current agreement. Being organized is important to the success of any project, and it's even more important for successful bargaining. One approach to being organized is to break the prebargaining process into its major components:

- Contact the regional UniServ office for assistance.
- Identify role, responsibility, and authority of team.
- Survey members.
- Obtain current salary, health insurance, and other cost information.
- Review grievances under current contract language.
- Review problems with health insurance under current contract language.
- Meet with members.
- Review resources
- Draft the proposal
- Set priorities.
- Scrutinize and test the proposal.

Well-trained negotiations teams recognize the interrelationship between bargaining, communications, and organizing. And successful associations integrate all three

early in the process – not just when a crisis arises.

The Responsibility, the Role, & the Authority

The local association, as the majority representative, is responsible for negotiating terms and conditions of employment for its members. This authority is vested in the association by the New Jersey Employer-Employee Relations Act (NJSA 34 Chapter 13A). The law permits the local association to act on behalf of its members and requires the parties (school board and association) to meet at reasonable times and, finally, to reduce a negotiated agreement to writing.

Accordingly, the association must empower and authorize its negotiations team with the responsibility to agree to a tentative agreement, subject to ratification by its membership. Specifically, this means that the team will have the sole authority to present proposals, react to counterproposals, make compromises, accept or reject board offers, and ultimately reach an agreement for the members it represents.

Certainly, within this framework, there should be ongoing communication between the team and the association's leadership. Such interaction and the exchanging of ideas will broaden the team's perspective of the membership's needs and help move toward the goal of achieving a successor agreement that provides the best possible terms and conditions of employment for the association as a whole.

Negotiation is fundamentally a delicate relationship between members of the local association and their school boards. Every public activity and position of the association during negotiations can affect this relationship. Therefore, the team should authorize all such activities in consultation with association leadership. The team must have the authority to make decisions regarding the distribution of information about negotiations.

A breach in this relationship, or too many people in the association attempting to control this relationship, can seriously damage the outcome of negotiations by sending conflicting or confusing messages to the school board. When it is time to negotiate and settle a contract, the board must realize that the message from the association is direct, straightforward, and can be relied upon with certainty. Placing a great deal of authority in the hands of the team is necessary to make negotiations a workable process.

Surveying Members

To prepare for bargaining, the team must acquire information from the membership. There are several ways to accomplish this, but one of the most effective methods is a written survey of the membership in conjunction with small group meetings during or after the survey process.

The survey is an example of the coordination between bargaining, communications, and organizing. Using association reps to distribute and collect the survey establishes the A/Rs as the communication link to the members. A negotiation survey might be the Association's first organizing activity related to bargaining. The information obtained from these surveys helps the bargaining team recognize and consider the expectations and desires of the membership. Drafting a useful survey requires a great deal of thought and the members chosen to work on that project should be well suited for the assignment.

Always contact your UniServ Rep prior to planning a survey. An NJEA Research staff member will assist in creating a tool that is as helpful as possible.

Meetings with Members

Too often bargaining teams think that once a survey of the membership is done, no further input is needed. Nothing could be further from the truth. A good local association should schedule meetings with its membership after the survey is conducted. There are at least four reasons why meetings should be conducted, and all of these assist the team in educating the membership.

- Meetings allow the bargaining team to interact with the membership and build credibility and trust.
- They allow an opportunity for the members to clarify their understanding of the issues, ask questions, and better understand the bargaining process.
- They allow the membership and the bargaining team to reexamine bargaining priorities and determine if time and circumstances have altered these priorities.
- They allow the bargaining team to determine to which extent the membership is willing to pursue the unresolved issues.

Remember ... the purpose of association meetings is to bring members together and educate them about the process. Think about a schedule that is convenient for the members – not just for the bargaining team or other leaders. Think about the location and time of the meeting. Consider multiple building meetings instead of a mass membership meeting. Building meetings are generally more convenient and may be better attended if they are promoted correctly.

Every meeting should have a clear agenda to help ensure that members get the information they need.

The agenda should include:

- reviewing the results of the survey and connect them to objectives
- soliciting comments, perceptions, and feelings
- answering questions that arise.

Drafting the Proposal

The primary responsibility for developing the proposal belongs to the negotiating team. Drafting a comprehensive proposal is more than just a writing project. The team must understand the issues, comprehend the rationale for the proposal, and recognize the priorities of the membership. In preparation for drafting the proposal, the negotiations team should follow certain steps. A logical starting place is a review of resources.

Review of Resources

First: Bargaining should be viewed as an ongoing process for the association. Therefore, discussions with members of previous bargaining teams regarding outstanding objectives from previous negotiations should be part of the process.

The successor contract should build upon previous contract proposals and settlements in order to continue the gains made and to further the local association's long-range objectives.

Second: All grievances should be reviewed.

- Are there sections or articles in the current contract which have led to grievances?
- Are there problems arising from unclear language?
- Are there problems with interpretation?
- Are there new issues which were not anticipated prior to present agreement which now need to be addressed through contract language?

If repeated problems which harm association members crop up from certain provisions, work to change them.

Third: The team should review general “gripes” about the contract in general or working conditions in particular.

- Is there an issue that is not adequately addressed by a provision but should be?
- Are members unhappy about anything that could be addressed in your bargaining proposals?

These issues can be addressed by utilizing the survey process and holding meetings with members.

Fourth: The team needs to research other districts’ contracts to determine their comparability regarding salary, benefits, and working conditions. This information is available to your president and negotiation chairperson through the contract search application at njea.org.

Fifth: The team must review the contract to determine areas that may need clarification or enhancement.

Developing & Writing Your Proposals

One of the most difficult tasks for any local association bargaining team is to actually formulate written proposals on contract items.

It is **extremely important** that contract language be carefully drafted. Many contract disputes arise because language is ambiguous.

When drafting contract language, remember that every word has a purpose or it should not be there! Do not simply copy entire sections from other contracts and make them part of your bargaining proposal without careful review. After all, those “borrowed” contract provisions may have been poorly drafted; may pertain specifically to another local’s situation which is different from yours; or may contain ambiguous language as a part of a compromise that only works in that local.

Borrow ideas & concepts, but draft your own language.

Your contract proposals must be reviewed by people who have a strong command of written English and contract construction. When they take a red pen to your hard work – don’t be defensive. Hopefully, they are adding precision and clarity to your proposals.

Consider including proposals to strengthen your association such as representation/agency fee, association leave days, payroll deduction, and exclusive equipment and building utilization rights.

- Write rough drafts of proposals and then check them for errors with the entire committee.
- As the committee works to draw up the proposal, some rationale for proposals can be worked out, priorities may be established, and some areas of potential compromise identified.

However, care should be taken so that the group is not “locked into” positions at this point. These matters can be discussed along with the writing of the proposals.

- Consider including proposals dealing with educational improvements aimed at benefiting students and the general operation of the schools, even though they may not be related to association members’ personal welfare.

Make sure the proposal is carefully proofread.

The process of negotiating requires careful research and use of data if contract proposals are to be effectively presented and successfully negotiated. Remember that your ultimate goal is to achieve the best possible contract settlement.

NJEA’s Sample Agreement contains boiler plate language to assist negotiations teams in the drafting of proposals. (See *NJEA Sample Agreement* at the end of this manual.)

Setting Your Negotiations Priorities

Every negotiating team must establish its priorities. Those priorities will vary from local to local. Keep in mind that all proposals and items are not equally important. Value judgments about the importance of the bargaining items should be made by the bargaining team using the input from the members through the survey and membership meetings conducted prior to going to the table.

One method of determining priorities is to rate all proposals as either A, B, or C.

“A” = very important (high-priority or “must” items).

“B” = moderately important (medium-priority items submitted with the expectation of obtaining the proposal in some form, but with room for compromise).

“C” = least important (low-priority items submitted as a matter of record in hopes of obtaining a “foot-in-the-door” agreement or softening resistance for the future. Such low-priority proposals could also be used as throw-away proposals when making concessions to the school board in exchange for board concessions on matters of greater importance to the association.

This approach can help to clarify your position so that during the bargaining process you won’t agree to drop an “A” proposal in exchange for an agreement on a “C” proposal. The ranking of the proposals should be done by the team and not released to the general membership or the public.

Scrutinizing & Testing the Proposed Package

The proposed package should be scrutinized and tested before it is presented to the school board.

Here are some questions the bargaining team should ask itself when reviewing the proposed package.

Language considerations

- Does the language accomplish your purpose?
- Is the language clear?
- Does the language exclude anyone or anything that should be included?
- Does the language include anyone or anything that should be excluded?
- Is the meaning of words in the proposal different from the meaning of the same words in other sections of the contract?
- If the list concludes with a general “catch-all” phrase, is it too broad?
- Does this language move the association closer to its ultimate goal for this concept?

- Has the association taken every opportunity to clearly define important terms?
- If possible, is the proposal worded in a manner to avoid any hostile or suspicious reactions by the school board?

In deciding what items are to be incorporated in the proposal, remember that the team represents all members of the association, not just themselves.

Content considerations

- Are you proposing anything in conflict with the law?
- Is the proposal operationally feasible?
- Does the proposal truly solve the problem or concern of the association?
- Does the proposal reflect an ethical, responsible, and knowledgeable stance by the association?

- Does the proposal make reasonable allowance for eventual compromise?
- Is the proposal subject to validation by argumentation or documentation?
- Is the proposal consistent with other positions of the association?

Scrutinizing and testing your proposed package is in your self-interest.

It is difficult to estimate how long it will take to prepare a comprehensive proposal, but experience shows that the time invested in preparation pays big dividends at the negotiating table. The team's position at the negotiating table is strengthened when its careful preparation is obvious to the board's negotiating team.

Selecting a Bargaining Team

Preparation for bargaining begins with selection of the negotiating team. The negotiation of a successor agreement is the single most important responsibility of the association. Selecting the team through appointment by the local president, with confirmation by the local's executive committee, is an effective approach. The selection should be based on personal strengths and commitment to the process. The members of the negotiation team should have the ability, knowledge, and willingness to complete this task. Although some locals elect their negotiations chairperson and/or team members, this is not always the best method. Before making any decisions, however, be sure to review your constitution and by-laws.

Desirable personal characteristics include:

Integrity – The ability to sit down at the table and convey integrity to others – both by action and by reputation.

Leadership – The ability to make sound decisions, sometimes quickly, under the pressure of events. The ability to inspire confidence and derive maximum efforts from your team.

Ability to listen – The ability to absorb, interpret, and remember what occurs in negotiations. The ability to really “hear” what the membership is saying helps the association avoid discord and dissatisfaction.

Creativity – The ability to analyze a problem and devise alternative solutions.

Verbal Skills – The ability to communicate the association's positions and attitudes. Verbal persuasion can influence the thinking, attitudes, and decisions of others.

Interpersonal Skills – The ability to communicate with others at their own level. Ability to talk as an equal to the superintendent or the board's legal counsel, and adapt personal style to different situations. Ability to communicate in a nonthreatening manner with association leaders and the general membership.

Loyalty to the team and the membership.

Commitment to advancing the professional and economic welfare of members.

Willingness to take risks for a cause or a principle.

Dedication to a high level of professional competence.

Commitment to preparing and devoting the necessary time.

Knowledge of the process and all relevant issues.

It is important to establish continuity on the team. Sending an entirely inexperienced team into bargaining is not wise. Bargaining should be an ongoing process with the team aware of what has transpired in the past and able to plan for the future.

Team Size

The number of team members is not as important as their dedication and competence. In general, the team should have an odd number of members to avoid tie votes, although every effort should have made to reach decisions by consensus. Teams ideally vary between three and seven members. Fewer than three may create problems by not having enough people to work efficiently and not having enough people to adequately represent constituencies within the local association. A team that exceeds seven members can become unwieldy unless team roles are carefully defined and maintained.

Team Composition

The team should be composed of members who are well known and well respected in both the local community and the association. Every association consists of identifiable constituent groups. These might include different work categories, work schedules, responsibilities, grade levels, shifts, duties, etc. The local association must be aware of the potential differences in aspirations, needs, and problems among the groups. The team must be large enough to represent these constituency groups. This does not mean that each group must have a representative on the team. Any team member might represent a number of subgroups.

You need the best negotiators. Some associations have met the challenge of representing constituent subgroups by creating a bargaining council. This group helps

with preparation, discusses positions during negotiations, provides a confidential sounding board to the team, and helps the team throughout the process. However, the sole responsibility and authority for reaching an agreement rests with the negotiations team.

Team Roles

- **Spokesperson** – This person must be the team leader at the table and during caucus sessions. The spokesperson must advocate the entire group's position at the table. The spokesperson may be an association member, an NJEA field representative or an NJEA consultant.
- **Chief Negotiator/Bargaining Chair** – This person leads the negotiations team, and serves as the liaison between the bargaining team and the NJEA regional office
- **Recorder** – This person takes notes or minutes at bargaining sessions regarding the parties' positions on proposals, as well as the order in which proposals and counterproposals are discussed. The notes should be as thorough as possible. It is important that each side keep its own notes. Recording the

sessions is not recommended because it tends to suppress the free flow of ideas, positions, and discussion.

It is important to keep copies of all proposals submitted by either side in chronological order. After the agreement is ratified, the parties may have questions, disagreements, or even grievances on certain sections. When attempting to determine intent, the parties' notes and earlier proposals can prove that intent. Many arbitrators will accept negotiating notes to determine the intent of a contract article. These bargaining notes may not be determinative in deciding an arbitration case, but may help in proving the intent of contract language.

These notes can be very helpful in enforcing the contract once it is negotiated, and also for establishing future bargaining strategies. It is wise to note each side's basic arguments and positions on each issue in dispute.

- **Statistician** – This "numbers" person specializes in researching economic proposals. It is important to cost out both the school

board's economic offers as well as the association's economic demands. Not everyone has a knack for numbers, and some people are uncomfortable in the areas of school finance, school budgets, and the many aspects of costing out packages and salary guides. The person selected for this role should be well organized, be able to clearly explain the "numbers," and know where to find the necessary data.

- **Observer(s)** – These people are to note the reactions of the school board's team members to the association's proposals, counterproposals, and dialogue. The reactions can be an invaluable aid when determining whether, in fact, the board is serious about its rejection of proposals.
- **Communicator** – (Negotiations Update) – Once the bargaining team has written and approved the negotiation update, this person prepares the update for distribution to the membership at the conclusion of each bargaining session. For assistance in developing a negotiation update, contact your UniServ rep.

Data for Negotiations

Sample List of Cost Items

All too often, negotiations committees fail to examine cost items beyond the obvious salaries and health benefits. This failure tends to give association negotiators the appearance of being naive. Since bargaining agreements contain many items that involve indirect costs to the board, an effective negotiations committee should understand the impact they can have on the bargaining process.

Cost items found in association or board proposals include, but are not limited to:

- Binding arbitration
- Bus run rates
- Clothing allowances
- Contract printing
- Facilities for members (lunch rooms, lounges, bulletin boards, telephones, air conditioners)
- Field trips
- Holidays
- Insurance – Health/Liability/Disability – (*see also Health Benefits Scattergram*)
- Length of the workday
- Length of the work year
- Meal reimbursement
- Orientation programs
- Overtime
- Payment for unused accumulated sick leave

- Perfect attendance bonuses
- Personal leave
- Physical exam
- Preparation periods
- Reimbursement for license fees
- Reimbursement for traveling between worksites
- Release time for association leaders
- Sabbaticals
- Safety bonuses
- Salaries – (*see also Developing a Salary Scattergram*)
- Sick leave
- Stipends
- Substituting in higher positions
- Tuition reimbursement/professional development
- Vacations
- Work materials/tool reimbursement
- Workload

Access to Information

Negotiation teams may find it necessary to obtain information from the District in order to complete preparations for bargaining. The N. J. Public Employer-Employee Relations Act (NJSA 34 Chapter 13A) entitles local association bargaining teams to receive information pertinent to bargaining.

Requests for specific information (*see sample list of cost items above*) from the school district should be made in writing. Should the district fail to comply in a timely manner, contact your UniServ field rep.

Open Public Records Act (OPRA)

Some information, not directly related to bargaining, may prove useful to the Association. Some examples include: administrative salaries/contracts, Board legal costs and Board specifications/costs for subcontracting. The Open Public Records Act (OPRA) (NJSA 47 Chapter 1A-1 et. Seq.) provides citizens access to most public documents. The Association should ask the school district for a copy of the OPRA Document Request Form. Should the Association obtain documents through OPRA, the district may charge the Association a fee.

Research is essential to the development of supportive data on the items selected for inclusion in the contract proposal. Additional research may be necessary during negotiations to strengthen a position or refute board arguments. Initially, however, sufficient data should be gathered to impress upon the board and administration the team's degree of preparation and commitment.

Collective Bargaining Best Practices

Successful collective bargaining begins with a well thought-out plan designed to meet organizational goals. The following “best practices” will help local association bargaining teams develop such a plan and will help keep the bargaining focused.

Salary

- Seek teacher salary settlements in excess of the “going-rate” of settlements with a greater percentage increase for ESP units.
- Keep both teacher and ESP salary guides strong and short.
- Aim for higher entry-level salaries for teachers and competitive beginning salaries for ESP staff. Current rates of increases and starting salaries may be obtained by calling your UniServ regional office or by reviewing the most recent NJEA Trend Setter.

No Givebacks

- Givebacks in bargaining are a disservice to the association membership. Years of hard bargaining by previous association advocates to attain the best benefits and the finest working conditions should not be “given back” in one successor agreement just to reach an agreement.
- Avoid language that includes two-tiered benefit packages, e.g., the limitation of health benefits based on class. One such example is when new employees are denied full benefits prior to completing 1, 2, or 3 years of employment.

Health Benefits.

- Association negotiators should review their health packages with an aim towards maintaining and improving health benefits.
- Many of our affiliates are enrolled in the School Employees Health Benefit Plan

(SEHBP). Maintaining a high enrollment level in the SEHBP will help maintain a level of quality of benefits and stability of rates. Every effort should be made to remain in, or return to, the SEHBP

Subcontracting.

- Include language to curtail and protect against subcontracting.

Critical Contract Clauses every contract should have:

- appropriate professional development provisions.
- just cause protection for all employees
- binding arbitration as the final level in the grievance procedure
- representation fee language that allows for collection of a “fair share” fee from those choosing not to join the association.

The Bargaining Process

Pre-Planning

Prior to actual bargaining, the association team must plan carefully. Its first assignment is to review all stages of preparation for bargaining with the leaders of the association. The items identified below should be carefully considered in this process.

Preliminary Checklist

The needs, desires, wants, and frustrations of members have been surveyed and evaluated to determine frequency and relative priority.

- Alternative solutions and strategies to address potential problems have been formulated.
- Proposals have been designated as a “must have,” “would like to have,” or “throwaway,” and then assigned a priority within its group.
- Proposals have been clearly written, and properly placed in the body of the agreement.
- Comprehensive proposals have been carefully edited to correct inadequacies.
- Proposals with economic implications have been researched and costed-out to determine their dollar value.
- Language proposals have been scrutinized and tested to determine potential impact on current and future staff.
- Bargaining team members have a comprehensive understanding of the agreement, the proposals, the

weight of each proposal, and all relevant data pertaining to the process.

- All association members have been made aware of the procedures to be utilized during the bargaining process, as well as the roles and responsibilities that have been placed on various individuals.
- The association leadership has properly assessed and reassessed the support of the members for whom they speak.
- A stable core of workers has been identified and is ready to be assigned specific tasks (i.e. research, leg work, writing).
- The team has been trained in the bargaining process and is cognizant of the roles and responsibilities of each team member.
- The team has had sufficient meetings regarding the significance of each proposal and the concepts surrounding each line and clause of every proposal.
- The team is familiar with board policies that pertain to employees.
- The comprehensive proposal has been checked and rechecked by the negotiating team and NJEA UniServ field rep.
- Resources from NJEA have been identified for immediate and future use.
- The association has sent a letter to the Board indicating its intention to bargain a successor agreement.

Once the review has been completed, the negotiating team can begin organizing for its work at the bargaining table.

Presenting the proposed package

The best method to deliver the proposed package to the board of education is a subject for debate among negotiators. However, it is generally agreed that there are two effective strategies:

- Preliminary submission of proposals, including a synopsis of the rationale for the proposal, forwarded by mail or hand delivered to the board of education prior to the initial meeting.
- Proposals are presented at the first bargaining session.

Associations often reject transmittal of the proposals to the board prior to the initial meeting, feeling that to do so will give the board undue advantage in the process. In some instances, delivering copies of the proposed package to the board before the first bargaining meeting has resulted in a more productive first meeting.

The delivery of the proposals to the board is a matter of preference and should be determined before commencement of bargaining.

The initial meeting with board of education representatives

Ground Rules

The need for ground rules for the negotiating process varies with every situation. However, the general rule on ground rules is “as few ground rules as possible.” If a

local finds it necessary to negotiate ground rules, the following points should be paramount in your thinking:

- Do not agree to restrictions that limit your right to communicate with your members or the public.
- Do not agree to controls that may limit association activities or your ability to represent your members.
- Do agree to sign-off on tentatively agreed upon items.

Physical Arrangements

- A neutral meeting place is ideal, but not vital, provided a table with equality of status is used.
- Set up comfortable seating arrangements for everyone at the table.
- If possible, the association spokesperson should sit opposite the board spokesperson. The two groups often face each other across the table. Nontraditional forms of bargaining often lend themselves to team members sitting amongst each other “around the table.” Such an arrangement in traditional bargaining tends to impair communication with team members and threaten the confidentiality of notes.

Using a computer to assist in the process

As you will read later on, signing off on individual proposals as they are agreed upon is important to the bargaining process and avoids misunderstandings down the road.

- Prepare contract proposals on your computer.
- Designate a separate page for each article in the contract that contains changes of any kind.
- Include the current language and the proposed changes.
- Bring your flash drive or laptop computer to bargaining

sessions. Remember that district computers are not confidential. Use a private computer owned by the association or a bargaining team member.

- When agreement is reached on individual items, print out the necessary number of copies of the article, have the chief negotiators of both teams sign all copies, and give the board its own copy.

The above process makes final compilation of the tentative agreement simple and accurate, and eliminates last-minute disagreements on items that were agreed to earlier in the process.

Introduction of the team

It is the responsibility of the chairperson of the team to make introductions at the first session. To keep the first meeting more relaxed, it is not unusual for members to introduce themselves, including their respective positions in the district and in the association.

The initial meeting between the negotiating team and the board’s negotiating team will set the tone for negotiations. It is vital that this first meeting be handled properly.

The opening gambit by the spokesperson

Begin with a positive approach.

Talk about the past good relationship and desire to build on it. Emphasize that you want the negotiations to be constructive. If the past relationship has been bad, articulate how you are going to strive to “build new bridges.” The spirit is one of problem-solving for the benefit of all school employees, students, and residents of the school district.

Explain the manner in which proposals have been drawn:

- “We prepared these proposals from the expressed desires of the members we represent.”
- “We stand ready to justify every position we take.”

- “We know the board will have some proposals of its own. We are also ready and willing to discuss whatever the board proposes.”

Key Points on Conduct of Negotiations

On communicating with the public – It is usually not productive to conduct negotiations in the newspapers. However, each side has the right to communicate with the public as it sees fit.

On the power of each negotiating team – Each negotiating team must have the authority to make decisions which will be brought back to its respective constituencies. Each side must have the authority to make proposals and counter-proposals; consider proposals and counter-proposals; and to arrive at an agreement.

On meeting dates – Dates must be set aside to work out the agreement. Establishing meeting dates for several months in advance is recommended due to the hectic schedules of both parties.

On caucuses – Under normal circumstances, both sides should be able to utilize caucuses without time limits. If it appears that the board is using caucus time for its work session, it is recommended that the association insist on time limits.

On resource people – Both sides are able to use experts as they deem necessary.

On ground rules – No ground rules, or as few as possible.

Review the proposed package

The association should take control of the meeting by initiating discussion on each item. Each proposal should be reviewed with an explanation of its significance, an assertion of the members’ strong feelings for its need, and supporting data where applicable.

This presentation must be carefully designed to elicit a response from the board. It should lead

to a discussion of the respective positions of the parties and an exchange of counterproposals. Each reply can be placed into one of the categories listed below:

- Acceptance “Yes”
- Rejection “No”
- Needing further clarification/information “Hold”
- Provide counterproposals (usually a modification of association proposal)

The association team must assess the board’s response carefully so that counter arguments are effective. Often a restatement of the demand will lend itself to compromise. Association negotiators must persist in their demands, watch for a signal that progress is possible, and then capitalize on that signal.

Helpful Hints For Negotiators

- Do your homework! Prepare well for all meetings. Anticipate questions. Be prepared with answers.
- Do not make hasty agreements. Use the caucus or adjournment to relieve the pressure of trying to reach a quick settlement.
- Do not reject proposals abruptly. Demonstrate interest and concern.
- Don’t get sidetracked – keep control of the meetings.
- Do not respond emotionally. Emotion deters reason. Careless responses can spell disaster.
- Do not substitute wild guessing for factual information.
- Do not demonstrate fear. Project confidence.
- Do not lose sight of your objectives.
- Do not assume that the board will safeguard the interests of association members.
- Remember that the tentative agreement reached is subject to ratification by the members.

- Remember that your objective is an agreement that your members will ratify.
- Remember that the unity in the association is the source of your power.

Basic Table Procedures & Techniques

Agreement On Total Package Versus Agreement On Individual Items

Whenever possible, the signing of each proposal as it is agreed to by the parties is recommended. It should be clearly understood that all agreements are tentative.

All items tentatively agreed to are closed and “off the table.” Generally they are not subject to further consideration. These tentative agreements will eventually become part of the total, agreed-upon package which will then be presented to the membership for ratification.

When final agreement is reached on all proposals, it should be clearly and concisely stated in the memorandum of agreement that the agreement is tentative pending ratification by the parties.

Use of the Caucus

- Plan this as part of a regular practice for negotiations. The caucus must not be used as a work session.
- Use the caucus to reunite forces. Avoid letting the other side detect disagreement among your team members.
- Use the caucus as a strategy move. Make the other side think an issue is more difficult to accept than may be the case.
- Use the caucus when you need to regroup or give serious consideration to a proposal, counterproposal or statement made by the board.
- Use the caucus when you want the other side to consider a position you have put forth, but they won’t call a caucus. Do it for them.

- Use the caucus as a cooling-off period for people or discussions. This technique can be used by the association not only to cool off members of their team but also in an effort to cool off board members.

Use of NJEA Staff

As a local NJEA affiliate, you are entitled to call upon NJEA for a host of different services before, during, and after the bargaining process. Your membership relies upon you to be expert at the bargaining table, and you should rely upon NJEA to provide you with that expertise.

- Never waive the right to use the resources of NJEA staff.
- Seek advice from NJEA and know your rights and your responsibilities.
- Use the expert! Outside assistance will probably be needed.

Mediation

“Settlement is the name of the game.”

Under the mediation process, a third party neutral assists the parties in moving closer together on the unresolved issues.

Part of the function of the neutral is to stimulate counterproposals, compromises, and concessions. The mediator will use a variety of techniques while dealing with the respective parties.

Remember . . . The mediator is a facilitator, assisting the parties as they move toward agreement on a contract. The mediator will not protect your interests or the board’s. The mediator will push for a settlement regardless of long-term implications for the taxpayers or to your members.

Initiating Mediation

In the event the parties cannot reach an agreement, the deadlock must be recognized as an impasse situation. Impasse may be declared by the board, the association, or by the parties jointly, pursuant to

NJAC 19:12-3.1(a).

The parties may secure the services of the Public Employment Relations Commission (PERC) or an ad hoc mediator. When using an ad hoc mediator, the costs are generally shared equally by the association and the board. There is no cost when using a mediator from PERC.

Remember... call your UniServ field rep before filing for mediation. Your UniServ office should prepare the necessary paperwork required to file for mediation with PERC.

Scheduling meetings. Mediation is an intense process and is not generally concluded in one day. The association that anticipates a successful mediation must be careful in choosing the time for declaring impasse.

The mediator will find a mutually acceptable mediation date. It is not uncommon for a lapse of time to occur between meeting dates. In the judgment of the mediator, if not enough pressure has been exerted on the parties, or if a cooling off period is necessary, a date will be scheduled at some time in the future.

There may be times when the mediator will want to meet with small groups from each side or even with the spokesperson alone. This is just another approach to reaching settlement.

Recessing meetings: Timing is crucial to successful mediation. The mediator will assess the climate at the session and determine the chance for settlement at that time. If the meeting is quickly concluded by the mediator, he/she is sending a message to the parties that:

- someone is not serious about settling
- it is the wrong night to expect a settlement
- additional time spent that evening would be wasted
- continuing to bargain at this time might entrench the parties more deeply in their positions.

Tactics & Techniques of Mediation

It is impossible to write a script for any mediation process. However, it can be expected that discussions will be confidential and that the mediator will be impartial in dealing with the parties. Although each mediator has his/her own style, listed below are some general tactics and techniques used by local bargaining teams.

Produce a favorable climate for negotiations:

- a patient, impartial listening style
- obtain agreement on easy issues early
- avoid attacks or early challenges
- control tempers, manage anger.

Maintain control and effective, accurate communications:

- establish ground rules and set agenda
- identify the leader
- group and manage issues
- produce pertinent data and data source.

Pace the negotiations:

- importance of timing cannot be overemphasized
- every move of the mediator is carefully timed and thoughtfully orchestrated
- know what, when, and whether to propose
- prioritize and package issues
- know that instinct and experience drive timing and pace.

Maintain the sanctity of negotiations:

- disclosures to the media fix positions prematurely
- “blackouts” may be imposed concerning the media.

Prioritize the issues:

- know what you want to settle;
- know what you need to settle.

Education on the collective bargaining process is important:

- prior to mediation, educate the team through extra training for new and inexperienced team members
- stress compromise
- remember... the neutral is a mediator not a negotiator.

Face the facts:

- look at all options
- assess the alternative to settlement
- share information on trends in other districts
- evaluate the strength of the other side with the community. When the association and the board maintain hard-line positions, mediation holds little promise for resolving the dispute.

Fact-Finding

Fact-finding may be invoked when there is a failure to resolve the impasse through the mediation process. The parties are encouraged to mutually agree on the appointment of a fact-finder. The objective of the fact-finder is to develop a settlement which is *acceptable* to both parties. Therefore, it is imperative that the fact-finder be cognizant of the fact that any agreement must be ratified by both the school board as a whole and the local association's membership as a whole.

Fact-finding, although advisory in nature, has proved to be helpful in resolving negotiation impasses especially when the political needs of one or both parties must be accommodated. In this process each team presents its case to a neutral third party, or fact-finder.

The fact-finder shall make “findings of fact” and shall recommend in a report the terms of the settlement as soon as possible after the conclusion of the hearings. The cost of the fact-finder's services, including per diem and travel expenses, is shared equally by the parties to the dispute.

While the fact-finder's report is not binding on the parties, they must meet after the report is delivered. The fact-finder's report shall be made available to the parties immediately after its issuance and to the public 10 days later.

Super Conciliation

The 2003 amendment to the PERC Law established a new procedure to be used when the association and the board are still unable to reach an agreement within 20 days after the issuance of the fact-finder's report. PERC shall appoint a super conciliator to assist the parties.

The super conciliator shall promptly schedule investigatory proceedings to:

- investigate and acquire all relevant information regarding the dispute;
- discuss the differences with the parties and utilize means and mechanisms, including, but not limited to, requiring 24 hour per day negotiations until a voluntary settlement is reached and provide recommendations to resolve the parties' differences;
- modify or amend the fact-finder's report for reconsideration by the parties and
- institute any other non-binding procedures deemed appropriate by the super conciliator.

If there is no resolution of the dispute following these actions the super conciliator shall issue a nonbinding final report which shall be provided to the parties promptly and made available to the public within 10 days.

Ratifying the Negotiated Agreement

Getting from the bargaining table to ratification

Ratification of the new contract by the membership is the final stage of the bargaining process. Prior to beginning bargaining, the bargaining team should establish procedures it will utilize to reach a tentative agreement with the board. Team members should agree that they will use consensus to reach agreement on issues. Once a memorandum is signed, every member of the team has a legal responsibility to support the tentative agreement at ratification.

Ratification of the tentative agreement is one of the most important aspects of the negotiations process. Too often ratification procedures are not given proper consideration. This has resulted in rejection of tentative agreements by the membership and organizational problems caused by dissension and/or dissatisfaction.

Members in general do not always understand the negotiations process. Therefore, they have no knowledge of the hard work of the negotiators or the personal sacrifices they have made.

While ratification is an exercise in democracy, it is also requires thoughtful persuasion. It is, therefore, the responsibility of the leadership to sell the tentative agreement.

A positive attitude is the key to success in obtaining ratification of a tentative agreement. The team must stand together and indicate a **VICTORY** if they are to obtain overwhelming approval of the agreement and bring proper credit to the association. Members vote

“yes” for many reasons. Often times the victory is the fact that there has been a settlement. Sometimes the victory will be that we kept what we had or we minimized our losses. Members also vote “no” for many reasons. Anticipation of those reasons can help the association minimize the number of “no” votes.

Planning & Procedures

Each local association should develop and refine procedures for ratification based upon its constitution and bylaws. Make certain that the association leadership is well-versed in the procedures outlined in these official documents. Remember, ratification procedures should be reviewed periodically. NJEA is always available to provide assistance should a local association's constitution and/or bylaws be in need of revision.

A ratification strategy should be developed long before a tentative agreement is reached. Every detail of the ratification meeting must be considered. Drastically changing your ratification procedures may give rise to suspicion or distrust; yet you must not be afraid to make changes when necessary. Weigh the pros and cons and decide accordingly. Once a ratification procedure has been put in place, be sure to adhere to its rules.

The main objective of the ratification meeting is to secure an overwhelming affirmative vote. The methods used in presenting a tentative agreement can make the difference between success and failure.

Following are some things to be considered in planning the ratification meeting. Most can be arranged well in advance. The larger the local, the more you may need to consider obtaining the following:

- An accurate membership list for recording attendance.
- Registration desk at the entrance to the room.
- Membership forms and payroll deduction authorization cards available for new members.
- Head table and lectern.
- Microphone for head table/lectern.
- Microphone(s) for general membership.
- Chalkboard, flip chart, overhead projector.
- Copies of local constitution and bylaws.
- Copies of Robert's Rules of Order or a well-versed parliamentarian.
- Preprinted ballots.
- Blank ballots for unexpected motions.
- Supportive data.
- Extra copies of tentative agreement packets.
- People selected to count hands and/or ballots for votes.

Decisions regarding seating should be made in advance...

- The entire team and the local president should be seated at the head table facing the membership.

- Members of the executive committee should sit as a group in some visible spot in the room near or at the head table.
- Will members sit randomly as they arrive, or by worksite?
- If you are going to seat members by worksites, you may need signs with worksite names.
- If by worksite, where do traveling employees sit?
- If nonmembers attend, where are they to sit?
- Are all nonmembers going to sit together or are other arrangements going to be made?
- Assign specific responsibilities to association supporters in the audience. Leave nothing to chance. Station applause starters, motion makers, questioners, and others throughout the room. Make sure each person knows what is to be done and when.
- A worksite facility is often chosen because it is usually free, spacious, handy to the membership, and has sufficient parking.
- Some locals feel it best to hold their meetings off board property. Churches, movie theaters, firehouses, social clubs, hotels, and restaurants are also possibilities.
- Try to obtain a room or hall that will barely hold the number of members you have. A room or hall that is too large makes it more difficult to conduct the meeting.
- In selecting a location, give consideration to distances to be traveled, parking, and the availability of public transportation if necessary.
- Avoid locations with poor acoustics and/or ventilation.
- Make sure everything is set at least an hour before the meeting begins.

Tentative Agreement Packets

More and more locals are distributing tentative agreement packets to their membership for review in advance of the ratification meeting. If possible, the packets should be distributed at least 24 hours in advance at an informational meeting. Remember, your constitution and/or bylaws may have specific rules for this aspect of the process.

Before packets are distributed to the general membership, they should be presented to the executive committee and representative council for approval. If the ratification meeting is conducted as an end to a work stoppage, advance distribution becomes more difficult and should not be allowed to extend the work stoppage.

The packet should be neatly typed and professionally reproduced. All tentative agreements should be included. Use a consistent approach when presenting language changes in the docu-

ment. A simple approach is to put changed and/or deleted language in brackets [], while all new language is underlined.

Every effort should be made to include salary guides in the ratification packet. If there are any modifications to standard guide movement, the packet should include a clear explanation of the changes. No member should leave the meeting without a clear understanding of his or her salary for each year of the agreement.

Getting Out the Vote

Make a real effort to encourage positive voters and association supporters to attend. Ratification meetings usually attract discontented and dissatisfied members. It is more difficult to get satisfied members to attend simply because they can't imagine the possibility of the contract being rejected.

Make certain every member has been notified of the meeting. Use phone chains, mail, email, building announcements, or any other available communications vehicle. A flyer in each member's mailbox stressing the importance of attendance can stimulate interest. The written word, however, is not enough – person-to-person communication is essential and always more effective! This is a good opportunity to engage your A/Rs in the process.

It is very important to get “yes” votes to the meeting. Establish a telephone network to contact association leaders and key supporters at each worksite. Stimulate positive talk about the settlement over the telephone and in employee lounges, cafeterias, members' homes – everywhere members congregate.

A “victory” psychology and spirit can make the difference between resounding endorsement and bitter rejection.

Conducting the Meeting

Prepare a detailed agenda for the meeting. Also prepare a

Timing of the Meeting

Don't be pressured into on-the-spot ratification meetings. Allow enough time for adequate preparation.

Simultaneous ratification by the board and the association has psychological value. If simultaneous meetings are not possible, the association usually ratifies first and the board soon after. An agreement accepted too readily by the board becomes suspect in the minds of some members. In turn, a well-run association ratification vote puts pressure on the board.

It is very difficult to select a time of day that is best for everyone. Obviously, the optimal time is during work hours. In any case, a firm judgment must be made regarding the best timing strategy.

Location

Considerations when choosing a facility for ratification:

CONFIDENTIAL AGENDA for key leaders. All key leaders should know exactly what is going to take place.

- The president should preside.
- The president should introduce the negotiating team. Leaders should be prepared to lead the membership in applauding.
- Indicate that the team, officers, representative council, etc. recommend approval of the package.
- Review of the tentative agreement packet should be presented by the negotiations chairperson.
- Problems which have been overcome throughout the process should be reviewed. Member unity should be pointed to as part of the victory.
- Emphasize benefits won or maintained.
- Questions should be limited to the agreement under consideration.
- Anticipate difficult questions and give explanations in advance – a devil's advocate session prior to the meeting can be helpful.
- Do not argue with comments made by rank-and-file members.
- Call for a motion to ratify. Several members should be prepared to make and second it. When the motion is made and seconded, begin the general discussion.
- Have members of the team speak on various aspects of the agreement. Praise from militant members is helpful.
- Maintain firm control of the meeting. Questions and answers should be submitted through the president. Success or failure will depend to a large extent on how well the meeting is managed.
- Assure the proper timing for calling of vote. Make sure

questions have been answered satisfactorily. A designated person should move the question of voting to accept the tentative agreement at the appropriate moment.

Voting

Hand votes provide a simple, quick voting method. If the proper climate is established, members usually want to get on with the vote and leave.

Sometimes association procedures require, or members insist, on a secret ballot. Preprinted ballots should be available for this eventuality. Plan for their swift and efficient distribution and counting. Make sure official action of the association is recorded in the minutes of the meeting.

Only association members belonging to the unit should be allowed to vote. Eligibility to vote can be one of the most controversial issues faced by association leaders. Some association members believe all members of the unit should vote and that democracy demands equal treatment for nonmembers. The association should have very specific procedures regarding the issues of nonmembers voting if a minority organization exists.

The association is the exclusive bargaining agent. The association won the privilege and responsibility to negotiate with the board. It is a free and open organization. Any member of the unit may join and have his or her voice heard. Ratification is a policy decision and only association members should act on policy. If nonmembers are allowed to make policy, why should they bother to join?

Fee payers/nonmembers are not guaranteed the right to vote. They are by law, however, entitled to information regarding the settlement.

The Media

The news media should be barred from the meeting. No constructive purpose is served with the

press present. A press conference can be held after the meeting to announce the results of the vote.

After Ratification

Once the agreement is ratified, leadership should capitalize on the association's victory. Remind members through fliers and the press that the new agreement was reached because of the association's strength and unity. Celebrate the association's successful negotiation of a new contract.

Copies of the entire contract should be distributed to members as soon as possible. An association cannot do a good job for its members unless the members appreciate and feel good about what the association has done for them. The ratification procedure and the distribution of the printed contract are two ways in which to build support for the association and its accomplishments.

Many associations are beginning to use electronic means to provide members with this information. Consult with your UniServ field rep before utilizing technology in this way. Most importantly, take time after the ratification to evaluate the process. This evaluation should be done by the leadership and the negotiating team and should also involve input from the membership. Evaluate the association's performance in the following areas:

- **Goals:** Did we achieve our goals? Why? or why not?
- **Leadership:** How did the leadership perform?
- **Communications:** How successful was our communications program?
- **Membership:** Was membership loyalty and solidarity maintained throughout?
- **Retrospective:** What would we do differently? Why? How?

Planning should begin for the next round of bargaining.

Alternatives to Traditional Bargaining

What is Traditional Bargaining?

Bargaining representatives in both the public and private sectors usually rely upon the traditional method of bargaining to arrive at collective bargaining agreements. This traditional method has usually adhered to the following process:

- Board and association representatives develop their own bargaining positions in total isolation from each other.
- The parties exchange bargaining positions and set dates for future meetings.
- The parties exchange proposals and counterproposals, defend their positions, and refute the other side's position.
- Strategies and posturing are employed in order to gain an advantage.
- Conflict and an adversarial relationship may result.
- The parties may be required to call upon a third party – a mediator and/or fact-finder – to facilitate the process.
- The association often involves the membership in a variety of activities in an effort to put pressure on the board to reach a settlement.

What is the Alternative to Traditional Bargaining?

Over the years, some board and association representatives have begun to recognize that bargaining which is characterized by too much conflict and an intense adversarial relationship is not always effective in developing positive long-term

relationships or in achieving desired bargaining goals. Some associations have determined that it is in their self-interest to explore alternative methods of issue resolution in order to arrive at a contract.

The search for alternatives to traditional bargaining has not had a shortage of critics because many associations deal with competing concepts. Is bargaining like an armed conflict or like an exercise in diplomacy? If it is like an armed conflict, you organize your troops and go out to take as much territory for your side as you can. If it is like an exercise in diplomacy, you explore your needs as well as the needs of the other side, you search for equitable ways to meet those needs, and you use your interactions to create a healthy climate for further negotiations.

Some critics of the more collaborative model of negotiations believe that association leaders who explore alternatives to the traditional bargaining model are afraid of conflict and think that they will trade substantive contract gains for “good feelings” and “good will.” On the other hand, alternative bargainers believe that traditional bargainers are often overly aggressive and more focused on fighting short-term battles over narrow contract issues than they are in building long-term relationships to solve complex and long-term educational issues.

Which approach should a local association take?

Bargaining is sometimes conflict ridden, and sometimes it is an exercise in diplomacy. It may

be a bitter conflict followed by an exercise in diplomacy, or it may be a failed exercise in diplomacy followed by a conflict.

Which one works best? No one approach works best all of the time. The approach should be determined by the situation, not by preconceived judgments about the effectiveness of a particular course of action.

Alternatives to Traditional Bargaining

“Interest-based bargaining” is an umbrella term used to identify a number of distinct approaches to bargaining that rely upon group techniques and problem solving to craft agreements between boards of education and local associations.

To understand the growth of interest-based bargaining, it is necessary to understand the forces that are behind its growth. Many local associations that have used traditional bargaining for many years feel some type of pressure to explore new approaches to bargaining.

Several factors may cause associations to consider alternative approaches to bargaining:

- **A hostile labor relations climate.**

Local associations that have been embroiled in confrontational relationships with their board for an extensive period of time often feel a need to explore ways in which they can create a less hostile relationship.

- **New personnel at the top of the school district or local association.**

Many interest-based bargaining efforts start out with new school board members, a new superintendent, and/or a new association president who is interested in finding a new method by which to relate to the association/ board. The orientation of the leadership of both the association and the school district is an enormously important factor in establishing the approach to bargaining.

If there is no commitment or support for a new bargaining approach at the top, there is little likelihood that it will ever be proposed, much less succeed. Personnel changes are not always necessary to prompt a change in orientation. These changes may also occur when existing leaders change their minds about how they have been relating to each other, particularly if existing approaches have not been working. However, personnel changes are one of the most frequent sources of change in the labor management relationship.

- **A change in the attitude of new members.**

Many association members are raising concerns regarding professional issues such as curriculum, class size, and professional development. In addition, an increasing number of members are more interested in cooperation and professional relationships with the administration.

More experienced members are likely to remember past struggles in bargaining contracts, the difficulty encountered in protecting those gains, the battles to improve working conditions, experiences with unreceptive administrators and failed reforms, and the strain of fiscal belt tightening.

Younger employees are more likely to regard labor-management cooperation as an opportunity to explore mutual concerns. Senior employees, particularly if they have experienced a hostile relationship with the board, are more likely to

see labor-management cooperation as a threat to the gains that they have already made. They may worry that management will view cooperation as weakness.

Before committing to participate in any alternate method of bargaining, the local association leadership should do the following:

- Contact your UniServ field representative.
- Affirm that board/ administration and association leaders fully support the change.
- Thoroughly inform the local association membership about the new process.
- Ensure that board/ administration/ association teams will be jointly trained.

The Alternatives

This section will introduce two of the most often used of these alternatives. The materials provided are not intended to equip the reader to engage in these bargaining forms but rather to introduce the basic concepts upon which each is grounded.

Each alternative would have the participants view the collective bargaining process as a problem-solving exercise. Negotiating then becomes an attempt to persuade others to help you achieve the goal of solving the problem. In addition, the processes and techniques associated with these methods lend themselves to wide application in the following areas:

- grievances
- site-based decision making
- educational reform initiatives
- strategic planning
- disputes within the local association.

Interest-Based Bargaining

Interest-based bargaining focuses on direct local leader and member involvement in the bargaining process. All of the team members have equal involvement

in the bargaining process. One of interest-based bargaining's selling points to both local associations and boards has been the promise that the parties will be able to reach a settlement within a short period of time, such as 30 days.

While one can scarcely object to the goal of reaching a settlement within a short period of time, how this settlement is accomplished should be considered. The association needs to use caution that the timelines and the process do not interfere with meaningful dialogue and a quality settlement.

This process views school board members, administrators, and education employees as members of the school family. This family is bound together by the concern that its members have for the welfare of the children entrusted to their care. While all parties are deeply interested in the welfare of children, the parties may have very different ideas about how to best provide for the welfare of children.

Trust is essential to the interest-based bargaining process. In the traditional bargaining process, open discussions between all of the members of the association's bargaining team would only have taken place away from the members of the board's bargaining team. However, in the interest-based bargaining process every association member involved in this process is an equal participant. Therefore, this approach necessitates greater levels of preparation and training of all team members prior to the onset of the process.

All members of both bargaining teams are all of equal importance on their respective bargaining teams as well as to the total bargaining process, and all members of each team are encouraged to express their views on any given subject openly and freely. The members of both bargaining teams act more as members of a committee than as members of a "traditional" bargaining team.

Trust is a Prerequisite of this Process!

If during this process a school board member or an administrator violates a confidence of the association by publicly revealing an association member's misstatement or disagreement with other members of the association's team, or by taking an association member's statement out of context in order to gain an advantage, it will damage both the relationship and the process. So, the stakes involved in beginning the process from a position of trust are enormous.

The Process:

The interest-based bargaining process usually includes some variation of the following nine steps.

1. A facilitator is selected by both sides to act as a neutral, not an advocate. It is the facilitator's responsibility to keep the process moving.
2. The parties agree on a set of rules for the process. Rules may be modified if both sides and the facilitator agree.
3. Under the guidance of the facilitator, each side articulates its interests in the form of questions.
4. All participants and the facilitator participate in a communications workshop (often over a weekend) during which there is joint training and a sharing of concerns. The facilitator is often the trainer.
5. Following the workshop, the issues are usually assigned to four subcommittees:
 - compensation and benefits;
 - rights and responsibilities;
 - working conditions;
 - miscellaneous articles.
6. The subcommittees meet as often as necessary over the next three weeks to deal with the issues assigned. Agreements are recorded and differences are delineated.
7. Both teams and the facilitator

participate in a final resolution workshop (usually a weekend) to report on resolved issues and attempt to reach agreement on the unresolved ones.

8. Both teams and the facilitator review and finalize the written documents and recommend the contract for ratification.
9. Normal ratification procedures are followed. The success of this process hinges on the level of trust that exists and is maintained between the parties. Any breach of confidence by either side will damage the relationship and impact negatively on the process.

Principled Negotiations – The Harvard Negotiation Project

Getting to Yes, by Roger Fisher and William Ury of the Harvard Negotiation Project (a Harvard University research project intended to develop and disseminate improved methods of negotiation and mediation), is one of the most influential contributions to the literature of collective bargaining. Most of the successful examples of interest-based bargaining in public education represent some derivation of the “principled negotiations” process outlined by Fisher and Ury. This process begins with the question, “What is the best way for people to deal with their differences?” The main purpose of this process is to help the parties craft solutions in which both sides benefit.

Unlike every other discussion of collaborative approaches to bargaining, **Getting to Yes** espouses basic principles and not a specific process. There are four principles:

- **Separate the people from the problem.** The human dimensions of negotiations can be a great help or a virtually insurmountable obstacle to getting a good agreement. Three major areas of concern are identified: perception,

communication, and emotion. The perceptions of both parties play a key role in both producing conflict and opening the way to agreement.

- **Focus on interests, not positions, in order to deal with a problem on its merits.** The primary issue here is to get behind the respective positions of each party and identify the interests that generated them. For each interest, there are probably several positions that will satisfy it. Focusing on interests rather than specific positions gives each party more flexibility in coming to an agreement.
- **Invent options for mutual gain.** This principle is intended to help the parties create options to satisfy both shared and separate interests. As cumbersome as this may sound, it offers a more precise way to define the problem(s) which negotiators face in reaching an agreement. Negotiators often get hardened into their positions, assume that a bargaining concept is fixed and not flexible, or maintain that it is the other party's responsibility to break a deadlock. The way out of this stalemate is to have both parties work together to explore options that could satisfy everyone's needs and interests.
- **Evaluate options with standards, not power.** If negotiation issues are not judged on the basis of mutually agreed-upon objective standards, they will be judged by the willpower of the parties, which can be costly and destructive. During bargaining, both parties have an equal responsibility for establishing both the standards which they will use in negotiations and the way in which they will use them. Such standards might include the following:
 - going rate
 - Prelative standing in state/

county/factor groupings
vis-a-vis

- length of school day
- length of school year
- salary minimums and maximums
- career earnings.
- community ability to pay
- outside criteria – CPI, market value, researchbased data. Standards help both parties justify the agreement to their respective constituents. They will serve as a basis for how the agreement was reached should conditions change and as useful precedents in future negotiations. In addition to these basic principles, the process outlines seven elements the authors see as “key” in working through any negotiations. These elements include:

- understanding the alternatives to not getting an agreement
- identifying the interests behind each party’s positions
- developing/creating options for meeting interests
- legitimacy
- making commitments as to what each party will or will not do
- maintaining communications
- developing a strong working relationship.

Each party must have a clear understanding of its “best alternative to a negotiated agreement” or a “BATNA.” Thus, each party has a benchmark by which to measure the various options developed in the course of the negotiations. If the option under discussion is not better than the party’s BATNA, it should not be acceptable.

The downside to this process is that even if one of the negotiating teams make a serious effort to fol-

low these principles, negotiations can still go awry, just as they do in conventional bargaining. One party to the negotiations could abuse the trust of the other party.

One party may view efforts at conciliation as a weakness and attempt to exploit this perceived weakness. One party could have a much clearer sense of its objectives leading to a lopsided agreement. The parties may become so involved in collaborating that they lose sight of their constituents.

As with interest-based bargaining, trust is an important element in this process. The abuse of trust by one party can destroy the process.

Remember, call your UniServ field rep if your association is considering interest-based bargaining.

Pros & Cons

Potential benefits of interest-based bargaining models.

When an interest-based bargaining process works, it has the potential to produce some important benefits for local associations.

- **The use of collaborative approaches to bargaining can lead to significant changes in the way schools are organized and governed.** Collaborative approaches to bargaining foster problem solving and encourage the frank discussion of complex issues between the association and the board. Associations are becoming increasingly interested in these educational reform issues, and interest-based bargaining approaches may help open the door to these discussions with the board.
- **Interest-based bargaining approaches improve public confidence in the education system.** If the school district and the association are always at loggerheads, public perceptions about the education system will steadily deteriorate. This is one reason local associations have

adopted various nontraditional bargaining concepts and problem-solving techniques.

- **Interest-based bargaining approaches can improve a local association’s relationship with the board.**
- **Interest-based bargaining approaches encourage creative solutions to complex problems.** Issues related to education reform and school restructuring are complex issues. The implications of educational innovations for existing programs and practices within a school district are even more complex. Unless a forum is created within which associations and boards can explore those issues together, it is difficult to conceive how a satisfactory resolution of the issues could ever be achieved.
- **Interest-based bargaining approaches permit the development of a long-term vision.** In addition to encouraging creative solutions to existing problems, interest-based bargaining approaches can help the association and the board craft policies designed to lead the school district into the future.
- **Interest-based bargaining approaches permit discussion of, and agreement to, areas currently not permitted under the New Jersey bargaining law.**

Potential problems with interest-based bargaining models.

If the interest-based approaches to bargaining do not work the way they are intended to work, several significant problems can result.

- **Interest-based bargaining approaches can fail to deal with member interests.** These problems can occur when the association places too high a value on creating and maintaining harmonious relationships with the board and fails to press aggressively for member interests.

- **Interest-based bargaining approaches can conflict with members' perceptions of advocacy.** Some members have a deep distrust of any kind of collaborative approach. Local association leaders must take pains to explain why such an approach is being adopted and what the association hopes to gain from its use.
- **Interest-based bargaining approaches can lead to a worsened labor-management relationship.** When the process does not work, it can generate rather than eliminate distrust and conflict. Whether this occurs depends in part on the integrity of both parties in the process. If one or both parties are trying to exploit the process for their individual ends, it increases the chances that association/board relations will worsen rather than improve.
- **There is a possibility that interest-based bargaining approaches will emerge as a substitute for, rather than a supplement to, the collective bargaining process.**
- **It is possible that, while the association will continue to exist, it may no longer have any real authority.** In such a situation, association members may increasingly identify more strongly with the school administration rather than with their own association. The administration will have enhanced its own power at the expense of the association.
- **Non-bargainable issues reduced to writing may be scoped and removed from the agreement when there is a change in the board and/or superintendent.**
- **The leaders who are in charge of the employee participation programs may come to think more like school administrators and fail to be advocates for their members' interests.**
The need for financial support from the board, insufficient association input into the program, insufficient accountability on the part of the member participants, and administration co-opting can all contribute to the "conversion" of association facilitators.

Bargaining Glossary

Bargaining Agent – An association that is named as the exclusive representative for all of the people covered, or who will be covered, by the agreement. The bargaining agent may be determined voluntarily by an employer as a result of a written request by the association, or as the result of an election conducted by the Public Employment Relations Commission (PERC).

Bargaining Team – The association negotiators who attend bargaining sessions and are actively involved in the bargaining of a contract.

Bargaining Unit – All employees represented by the bargaining agent, whether they are members of that association or not.

Boilerplate Language – Contract clauses which the employer and/or the association want included in the contract. These boilerplate clauses strengthen the contract. Examples of boilerplate language include: Complete Understanding Clause, No Strike/ Lockout Clause, Savings Clause, Zipper Clause, Maintenance of Standards Clause, Union Security Clause, Management's Rights Clause, and Parity Clause.

Collective Bargaining – A process whereby employees or their representatives meet with the employer to negotiate in good faith regarding the terms and conditions of their employment, for the purpose of reaching a mutually acceptable agreement, and the execution of a written document incorporating any such agreement.

Collective Bargaining Agreement or Contract – A written contract arrived at through the process of negotiations between a board of education and an association,

usually for a definite term, defining conditions of employment (wages, hours, vacations, holidays, overtime payments, working conditions, etc.), employee rights, association rights, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Exclusive Negotiating Rights – The right and obligation of an association, designated as the majority representative, to negotiate collectively for all employees, including feepayers/nonmembers, in the negotiating unit.

Fact-Finding – An advisory process in which a PERC-appointed neutral recommends a settlement to a negotiations dispute or a contract interpretation dispute.

Impasse – A point reached in the process of negotiations where one or both parties determine that they can go no further in the bargaining process without assistance from a neutral third party.

Mediation Conciliation – When a neutral third party attempts to assist the parties in resolving their dispute by suggesting possible areas of compromise, bringing a different point of view, clarifying issues, and other techniques designed to move the parties toward an agreement. The function of mediation is to assist the parties in finding areas of agreement and compromise to reach final resolution of an impasse.

Mediator/Super-Conciliator – Third party neutral, assigned by PERC, whose role is to bring the parties to a voluntary agreement.

Negotiations – The process by which representatives of the board of education and the local association bargain to set wages, hours, terms and conditions of employ-

ment, and the machinery for handling grievances.

Negotiating Rights Bargaining Rights – Legally recognized right to represent employees in negotiations with employers.

Past Practice – A reasonable uniform response to a recurring situation over a substantial period of time which has been recognized by the parties – implicitly or explicitly – as the proper response even in light of contradictory contract language.

Ratification – A process whereby all of the members of the association or the board of education vote on a tentative agreement, usually following a detailed discussion of the terms of the agreement. A new contract can only be signed and become effective following ratification by both parties.

Recognition – Employer acceptance of an organization as authorized to negotiate for a specified group of employees.

Super Conciliation – A post procedure to be used when the Association and Board are still unable to reach an agreement within 20 days after the issuance of the fact-finder's report.

Tentative Agreement – An agreement reached by both parties' bargaining teams pending ratification by the parties' members. Also referred to as the "Memorandum of Agreement," it outlines all proposed changes to the collective bargaining agreement. A tentative agreement can also refer to individual bargaining proposals to which there has been mutual agreement. All items are referred to as "tentative" agreements because the changes cannot be instituted until both parties officially ratify the new document.

Salary Compensation

All members deserve strong competitive professional salaries. This section addresses the role salary guides play in this effort. Here are some points to remember:

- Salary is the monetary compensation for one's work. While the work of an educator is priceless, salary is measure of the time, skill, effort, responsibility, education, training, and expertise required to do that job.
- Although NJEA members enjoy strong salaries compared to public school employees across the United States, studies have shown that when compared to the wages earned by private sector workers with comparable education and skill, their pay lags behind.
- Members' satisfaction with and feeling of commitment to their association is influenced by their satisfaction with their level of pay, and, importantly their sense that the process used to determine their pay is fair and just.
- From one district to another the salaries for comparable jobs vary: the base salary, the experience or training differentials, the career rate or maximum salary, and the length of the path to the career rate. There are multiple benchmarks for comparing salaries across districts – minimum and maximum salaries, average salaries, cumulative earnings. Take a critical look at your salary guides across these multiple measures.
- While the process for developing salary guides is somewhat mechanical – a tough math problem – don't lose sight of the fact that to members, the salary guide measures their worth. Take the time to explain the goals set by the Association, the considerations that drove the distribution of raises, and the long-term philosophy that guided the process.
- Like other parts of the contract, the salary guide can create "special interests" depending on where one's salary is located. It's important to use strategies that are fair throughout the guide and that enhance the likelihood that a successful ratification will occur. Members must be convinced that a "healthy" guide – strong minimums and maximums, a strong average salary, high cumulative or lifetime earnings – benefits every member at every step.
- This chapter will also deal with other compensation such as extra pay for extra work, overtime, stipends, etc.

Compensation Checklist

Before you start to bargain compensation issues, the following should be part of your arsenal of information.

Financial information about the district:

- Official, signed copy of the district's budget with supporting documentation required by the state.
- A copy of the most recent audit. *Together, the budget and audit provide information about enrollment, expenditures, revenues, and balances over a three-year period.*
- State-aid entitlement notification.
- State-imposed district budget and/or tax levy cap percentage and allowable budget increase.

Note: See Appendix A – Financial documentation check list

Successful salary bargaining requires:

- Current salary costs (**See Salary Guide Negotiations Preparation checklist in this section of the manual.**)
- Verified information about staff placement (the scattergram) on current guides to ensure settlement percentages are accurately spent.
- Analysis of existing pay system, including guides, stipends, and extra-pay agreements.

- Development of sample salary guides prior to negotiations to help the team determine strength or weakness of current guides. Contact UniServ for assistance with sample guides.
- Never update scattergrams after they have been agreed to by the parties. Doing so after a memorandum of agreement has been signed will negatively affect salary guide construction
- Comparative rankings of your district vs. other districts in the county, state and DFG relative to average salary, minimums, maximums, tax rates, etc.
- Review of salary settlement calculations from the two previous rounds of bargaining (*See Breakage in this section of the manual.*)

Note: See Appendix B – Sample Rankings

Maintaining and expanding health benefits requires:

- Premium data for current health benefits.
- Premium increases, if known.
- Coverage status of the membership – single, family, and other levels.
- Information about participation rates in insurance options – traditional, HMO, PPO, POS, EPO, and HDHP.
- Information about all aspects of coverage contained in insurance master contracts.

Master contracts may be requested from the Business Administrator.

- An in-depth review of the issues surrounding insurance proposals can be found in the *Insurance Health Benefits* section of this manual.

Improving other benefits in the contract requires:

- utilization data for time off provisions, including sick leave, personal leave, sabbatical leave, vacation time, holidays, etc.
- unused sick leave accrual and payment data
- tuition reimbursement data, including college rates, utilization patterns, etc.
- substitute pay rates when proposing time-off improvements
- current overtime pay, stipends, differentials, premium pay, etc. costs to board of education
- any other data necessary to cost-out monetary improvements to the contract.
- Remember that many “language” areas of the contract have related costs.

See “Special Topics” section for additional information.

Salary Guides

Any discussion of salary compensation must include a discussion of salary guides, why they exist, when and how they started, how they are developed, why they are different from district to district, what preparation and information are needed to negotiate salary guides, who decides what they will look like and cost, and how they will operate.

Question: Why do salary guides exist?

Answer: Salary guides exist to attract top-quality staff, to retain existing staff, to reward staff, to provide incentives to staff to increase their training, to provide a logical progression to move to the maximum salary, to provide for annual increases for increased experience, to provide a minimum hiring salary, and to show staff what they can expect their salaries to be in the future.

Question: Why should there be a salary guide?

Answer: If there is not a salary guide, employees would only receive a negotiated raise. There would be no built-in annual increases for increased experience and no way to progress to the highest salary. The board could set the initial salaries of staff and there would be no way to determine what future salaries might be.

Question: What is the history of salary guides and what events have impacted on them?

Answer: The issue of salary schedules for public school employees was first addressed in 1954 in *Title 18*, the statute governing teachers' salaries.

A single column guide was included in the statute. It started at \$3,000 and had a maximum of \$5,400 in 17 steps with equal increments of \$150. It was increased in

1957 and again in 1963. The 1963 law included a masters and masters +30 column \$300 higher than the preceding column.

EDUCATION SALARY NJSA 18A:29-7

This is the 1963 salary guide included in Title 18A.

This law was repealed with the adoption of the Teacher Quality Employment Act of 1985.

A major change occurred in 1978 when the N.J. Supreme Court ruled that a school board must pay increments during the negotiations of a successor agreement (*See Landmark Decisions, Galloway*)

On September 9, 1985, the Teacher Quality Employment Act was passed by the State Legislature. Often referred to as \$18,500 – “eighteen-five” – this law requires that all full time certificated staff members must be paid a minimum yearly salary of \$18,500. This

Salary Guides

Advantages

- attract top quality staff
- reward staff
- retain staff
- help predict career earnings and pensions
- provide incentive to obtain additional academic training
- provide step progression to maximum salary
- reward experience
- avoid subjective pay for merit or productivity

- flexible and sensitive to demographic shifts
- force dealing with a group of employees and not individuals
- provide extra pay for different job classifications

Disadvantages

- difficult – at times – to develop
- create special interest groups such as:
- employees at maximum
- employees in middle of guide

- employees going through balloon increments
- do not always seem fair to individual employees
- incremental cost (movement through steps) is normally charged to negotiated increase
- difficult – at times – to provide acceptable salary increases at maximums and other sections of the guide perceived by members to be in need of improvement

act removed many of the original 1954 provisions. This shortened and changed many teacher guides throughout the state.

The N.J. Supreme Court, in May of 1996, issued its decision in *Neptune Twp.*, reversing the automatic step increases authorized by the *Galloway* decision, but only for teachers and only after the expiration of contracts of 3 years' duration, if no new salary guide has been ratified by the parties.

In 1999, PERC ruled (*East Hanover*) that boards are not compelled to pay increments to support staff included in a bargaining unit with teachers upon the expiration of a three-year agreement.

In the *Middletown* decision (1999), PERC ruled that boards are not authorized to pay longevity after the expiration of a teaching staff's three-year agreement.

In the *Green Township* decision (1999), PERC ruled that horizontal movement on the guide is not an

increment. However, PERC ruled that a board is not authorized to pay increases based on educational advancement upon the expiration of a three-year agreement covering teaching staff.

So, when must an increment be paid? An increment must be paid after the expiration of a one-(1) or two-(2) year teacher agreement or upon the expiration of a separate support staff agreement of any length.

Historical Note: Source: C.18:13-13.2(L1954, c.240, 2, amended L1957, c153, 2, 6; L1963, c.164,2,3).

Question: Why are salary guides different from district to district?

Answer: In most cases, a salary guide is constructed for each year of the agreement. The guide is developed by the negotiating teams of the association and the board and then must be accepted by the membership of both parties. In developing a salary guide, the following factors can affect or change

the structure of the guide:

- structure of current guide
- amount of money in the settlement
- incremental cost of current guide
- number of years to reach maximum for existing staff versus new hires
- politics – always count the votes on the scattergram!
- number of employees at maximum
- number of employees who are not at maximum
- number of employees in the middle steps of the guide
- number of employees who will receive balloon increments
- the salary guide philosophies of the association and the board
- individual self-interest

Years of Employment	Employment Increment		C	D	E	
	A	B				
1		\$4,400	\$4,400	\$4,700	\$5,000	\$5,300
2	\$250	4,650	4,650	4,950	5,250	5,550
3	\$250	4,900	4,900	5,200	5,500	5,800
4	\$250	5,150	5,150	5,450	5,750	6,050
5	\$250	5,400	5,400	5,700	6,000	6,300
6	\$250	5,650	5,650	5,950	6,250	6,550
7	\$250	5,900	5,900	6,200	6,500	6,800
8	\$250	6,150	6,150	6,450	6,750	7,050
9	\$250	6,400	6,400	6,700	7,000	7,300
10	\$250	6,650	6,650	6,950	7,250	7,550
11	\$250	6,900	6,900	7,200	7,500	7,800
12	\$250	–	–	7,450	7,750	8,050
13	\$250	–	–	–	8,000	8,300
14	\$250	–	–	–	–	8,550

A – School Nurse w/o Bachelor's Degree
 B – Teacher w/o Bachelor's Degree
 C – Teacher or Nurse w/Bachelor's Degree

D – Teacher or Nurse w/Master's Degree
 E – Teacher or Nurse w/6th year or Doctor's Degree

- salary guides are part of an overall package

Question: What if the board proposes an alternative compensation program (merit pay, pay for performance, etc.)?

Answer: If confronted with this type of proposal, contact your UniServ field rep. NJEA policy on merit pay is clear:

... that NJEA is categorically opposed to any plan, whether designated a merit pay plan, a master teacher plan, differentiated staffing, a career ladder plan, or by some other name, in which the method of compensation above the established salary schedule is linked to performance rating and evaluation.

Motion to amend sent to committee, NJEA Delegate Assembly, September 15, 1984.

... that NJEA, in all its publications and statements, will unequivocally condemn and reject “merit” pay and “pay for performance” proposals, and stop issuing statements that “we will take a look at” or “keep an open mind on” the question.

11/13/1999

For more information on Alternative Compensation see Appendix C

Recognizing the importance of strong competitive salary guides to every member, NJEA’s Delegate Assembly adopted as its policy a Best Practices for Salary Guide Development. The policy includes these key elements:

1. **Starting salaries should be increased by the same amount as maximums and never be decreased.**

If the starting salary does not keep up with the other steps on the salary guide, the gap between minimum and maximum keeps increasing. This makes it more difficult to fund the increment cost – the share of the settlement that is needed to move everyone on the guide one step per year.

2. **Increments should be paid without devaluing steps or adding steps.**

The salary guide reflects the value of an employee’s experience and education. When the value of a step is decreased, the employee’s experience is devalued. For example, if an eight-year employee (on Step 8) is paid \$45,000 this year, but next year’s salary guide reduces Step 8 to \$44,000, the value of eight years’ experience in that district is reduced by \$1,000. Adding steps to the salary guide can affect members’ career earnings because it increases the number of years required to reach maximum.

3. **Increments should be uniform throughout the guide.**

Almost everyone has heard the term “bubble” – an unusually large jump between two steps in a salary guide. People look forward to reaching the bubble, but they may be underpaid in the years it takes them to get there. Uniform increments provide more steady salary growth for all members.

4. **There should be as many training/educational columns as possible with uniform differentials.**

The salary guide should not only reflect the value of members’ experience, but should also compensate them for additional training and education. This is particularly important as teaching staff are affected by state continuing education requirements. But it is just as important for ESP members, who may complete training or licensing requirements related to their jobs. The value of any pay differential for education and training should be uniform across the salary guide. For example, if a master’s degree is worth \$4,000 more than a bachelor’s at Step 4, it should

be worth \$4,000 more on every other step.

5. **Employees should reach maximum as quickly as possible.**

The quicker a member reaches maximum, the more years he or she will be paid at maximum, increasing career earnings as well as pension earnings. Adding steps or failing to move members through the salary guide each year lengthens the time it takes to reach maximum.

Principles of Salary Guide Development

These principles apply to all public school employees and are consistent with the Best Practices.

- There should be a guide.
- All employees should be on guide.
- Guides should be developed consistent with the Best Practices.
- Guides should have high starting salaries.
- Guides should have as few increments as possible.
- Increments should always be paid.
- Before making a salary proposal, the association and board should reach an agreement on the scattergram, base cost, and increment cost.

Salary guide goals should be discussed during the negotiations process and guides should be created before a settlement is reached.

- Guide revisions should be among the initial negotiation proposals.
- Starting salaries should be increased by at least the same amount as maximum salaries and should never be decreased.
- There should be as many advanced training/ educational differentials as possible.
- If longevity is used, it should be tied to years of experience, not guide placement.

- Breakage should go to the association for guide improvement.
- Balloon increments are inconsistent with the Best Practices.

Question: What is an ideal salary guide?

Answer: An ideal salary guide is one that treats everyone – or certainly a majority of members – fairly, and yields salaries and raises that adequately reflect the important work of school employees.

Obviously, since salary guides have evolved over time, they often are perceived as failing that goal for certain groups of employees at specific times in their careers. The changing demographics of members and the changes to guides over time make it difficult to describe how guides “should” look.

However, a list of attributes of an ideal salary guide may be helpful in a process of setting goals for future salary guides or in diagnosing problems with current guides. (See *Best Practices for Salary Guide Development and Principles of Salary Guide Development* in this section of the manual.)

Application of these Best Practices and Principles will facilitate the development of the most ideal salary guides.

Salary guide structures: Traditional guide

The original teacher salary guides in NJSA 18A:29-7 (see 1963 guide) had a fixed number of steps on each column, but higher training columns had additional steps. All increments were the same size or dollar amount. Move-



ment on this guide was one step each year until the maximum step was reached. An individual salary increase was composed of the annual increment from the guide and a raise on each step of the guide. Employees who were at the maximum steps only received the negotiated raise since there were no increments at maximums. This type of guide is called the “Traditional Guide” and satisfies all Best Practices.

Add a step to the guide

The traditional guide does not provide, in many cases, enough of a salary increase to satisfy employees at the maximum steps. In those cases, a step may be added to the guide to give employees at maximum an increment. However, there are a number of disadvantages to adding a step:



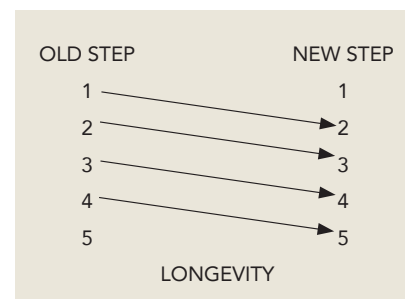
- the longer the guide, the lower the potential career earnings
- employees who are not at maximum will need another year to reach maximum
- future average salary of the employees in the job category will be negatively affected.

Moving one step higher on the guide, but also moving maximum one step higher on the guide, means that employees not at maximum get no closer to maximum. Adding a step to the guide is not normally acceptable to employees who are not at maximum. It must be remembered that adding a step also adds an increment that may increase the incremental cost. Members want to reach maximum

because that is where the highest salaries are.

Adding a step to a salary guide contradicts Best Practices 2 and 5.

Longevity



Since adding a step to the salary guide normally only satisfies employees at maximum, longevity increases are often added instead. The theory of a longevity increase is to reward long-time employees for years of service.

Although not always understood, longevity is simply an additional step on the guide. It is not an annual step like other steps, but a step nonetheless, and may increase the incremental cost.

Most longevity steps have a lapse of time between them of three to five years. Longevity steps, in some districts, may be reached only by counting actual work experience in the district. In these instances, work experience in another district is not counted toward longevity.

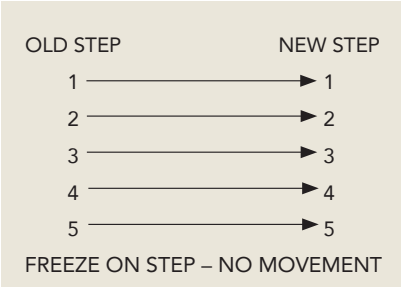
In calculating the cost of moving to longevity, data that indicates the number of years each individual employee has been employed in the district is needed. This information is not normally shown on the scattergram.

To simplify the development of salary guides, some boards and associations ignore the cost of moving to longevity steps and such costs are not counted in the increased cost of salaries due to their complexity and the many changes that occur from retirements and movement into longevity. Clearly, such an approach is to the association's advantage.

A positive aspect to longevity awarded for district experience is that it helps overcome problems with the salary guide when, for example, staff with more than one year of experience are together on a step, or in an effort to boost salaries for experienced staff often at maximum.

Adding longevity payments contradicts Best Practices 2 and 5.

Freeze on step



In some districts, the incremental cost is higher than the agreed upon salary increase. In such cases, boards and associations have, at times, agreed to freeze employees on their current steps of the salary guide. This means that there is no movement to the next higher step on the guide and that the increments are not paid. The guide is increased and employees are given a raise that constitutes their entire salary increase.

Freezing employees at their steps is normally unacceptable to employees and should be avoided, if possible. Employees who are not at the maximum step expect to move one step closer to maximum each year. Freezing them on their steps prevents this movement.

Freezing individuals on a step contradicts Best Practices 2 and 5.

Compression of steps

In some cases, after years of adding steps to guides, the guides became quite long. That means that it takes more years to reach maximum and reduces the potential career earnings. This situation often results in complaints from members who were at steps toward the beginning of the guide.



To attempt to satisfy these members, steps are eliminated and members who were at those eliminated steps are compressed on a new step. Such compression does reduce the length of the guide, and for some members make their movement to maximum shorter. It may increase the incremental cost by giving some members more than one increment in a year or by creating balloon increments within the guide.

For these reasons, steps should not be arbitrarily removed from a salary guide simply because no employees are currently on those steps.

Compression also puts members with different years of experience on the same step. This often leads to complaints from members that their experience is not being rewarded adequately.

Although compression may be used, and may cause complaints, one way of reducing some complaints is to avoid putting current members on the first step of the guide. Current members strongly believe that they should be paid more than new employees with no experience. The passage of the Teacher Quality Employment Act of 1985, which set the minimum salary for teaching staff members at \$18,500, resulted in the compression of several steps on salary guides since 1985-86 salary guides had in some cases 9 or 10 or more steps that were lower than \$18,500.

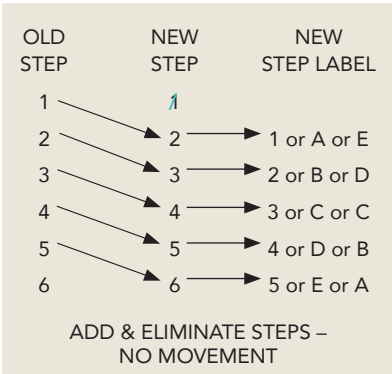
Salary step compression supports Best Practices 2 and 5.

Add & eliminate steps

Some salary guides have been structured by adding a step so that employees at maximum receive an increment and a bigger salary increase than just a raise. At the same time, to keep the structure of the new guide looking like the old guide, a step is deleted from the bottom of the guide. This has the same effect as freezing employees on their steps.

This effect has been disguised, at times, by renumbering the steps to look like the old guide, changing the step labels to letters, and even reversing the order of the letters. No matter how this structure is masked, it is still freezing employees on steps. Employees who are not at maximum move no closer to maximum.

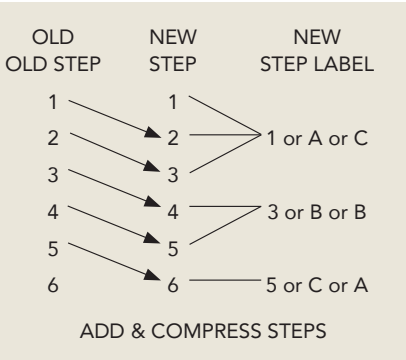
Adding some steps while eliminating the same number of steps contradicts Best Practices 2 and 5.



Add & compress steps

Compression has been used at times in conjunction with adding steps to the salary guide. This has a similar effect as the “Add and Eliminate” approach. It has also at times been disguised by changing the label on the steps to letters and even by reversing the lettering. No disguise will hide the fact that a step has been added to the guide.

Adding some steps while compressing other steps contradicts Best Practices 2 and 5.



Split Guides

Probably one of the least understood and the most confusing guide structures is the approach known as “split guides.” This structure involves being paid on multiple salary guides during a single year. A guide is developed that is in effect at the beginning of a year and then an additional guide takes effect later in the year. In effect, one guide is developed that includes one raise effective in the beginning of the year and an additional raise at a later date in the year. It can even be broken into more than two guides. This structure has been used to develop a salary guide that is acceptable to the association at a cost that is acceptable to a board.

The cost of the guides can vary depending upon the effective dates. For example, a salary guide that provides a salary increase of 4 percent in the beginning of the year, and a second guide that provides another 4 percent increase that takes effect halfway through the year would cost 6 percent for the year. Although the final guide would be an 8 percent guide (when you simply add 4 percent + 4 percent), it would not cost 8 percent since it was only in effect for part of the year.

The first guide would be effective for half a year at a cost of 2 percent (1/2 of 4 percent) and the



second guide would be effective for half a year at a cost of 4 percent (1/2 of 8 percent). Normally in this type of structure, the final guide is used as the base guide upon which calculations are made for the subsequent year. Calculations are based upon the final guide (i.e., 8 percent guide), and not the aggregate cost of the split guides (i.e., 6 percent). There is a cost in this type of guide that is passed through (or rolled-over) to the following year. In the above example, the pass-through would be 2 percent. Without agreement between the association and the board to use the final guide as the base guide, there is no advantage to the split guide structure.

A split guide in the final year of an agreement will have a detrimental effect on the first year of the next agreement if the final guide is not used as the salary base.

Split guides can become even more complex when they include balloon or bubble increments. When these balloons become too large, or when there are several employees who are entitled to receive these large increments, they have been split to reduce their cost.

In these cases, there is only one salary guide for the year, but it may take numerous jumps to move through the balloon increment. For example, if a balloon increment is \$10,000, those employees entitled to the balloon could be given \$5,000 in the beginning of the year and another \$5,000 halfway through the year.

Since the second \$5,000 was only paid for one-half of the year, the total cost to move through the balloon for each employee would only be \$7,500.

If the second payment of \$5,000 was delayed until the last month of a ten-month workyear, the total cost to move through the balloon would be \$5,500.

The salary guide on which the salary base is calculated for the next round of negotiations must be clearly understood between the parties.

** For 12-month employees, the dates would be July and January.*

Salary Guide Profile

By answering the following questions, your negotiation team can determine the type of salary guide that is most acceptable for your local association. Certain questions are mutually exclusive and cannot both be answered with a yes since it would be impossible to develop such a guide. NJEA strongly suggests that your negotiations team complete this profile and resolve disagreements at the earliest stage of negotiations over a successor agreement. See the Salary Guide Profile Answer Sheet for an explanation of what a yes answer would mean.

YES NO

- | | | |
|--------------------------|--------------------------|--|
| ☐ | ☐ | 1. Should there be a salary guide? |
| ☐ | ☐ | 2. Should all employees, who are not already at maximum, be able to move one step closer to maximum each year? |
| ☐ | ☐ | 3. Should all employees receive the same dollar increase? |
| ☐ | ☐ | 4. Should all employees receive the same percent increase? |
| ☐ | ☐ | 5. Should all employees receive the increment that they are entitled to plus the same dollar raise? |
| ☐ | ☐ | 6. Should all employees receive the increment that they are entitled to plus the same percent raise? |
| ☐ | ☐ | 7. Should steps be added to the guide? |
| ☐ | ☐ | 8. Should the maximum steps increase by a larger dollar amount than other steps? |
| ☐ | ☐ | 9. Should the maximum steps increase by a larger percent than other steps? |
| ☐ | ☐ | 10. Should all employees below maximum receive lower increases to raise maximums? |
| ☐ | ☐ | 11. Should employees receive lower increases while they progress through the guide and then receive huge increases when they reach maximums? |
| ☐ | ☐ | 12. Should employees be frozen at their present steps? |
| ☐ | ☐ | 13. Should, after a number of years, all employees be paid at the same maximum? |
| ☐ | ☐ | 14. Should the most experienced employees always be paid more than employees with less experience? |

Salary Guide Profile Answer Sheet

A “Yes” Answer Means:

1. There should be a salary guide. Otherwise the board could set salaries.	
2. Employees receive their increments. No added steps.	Best Practice No. 2
3. A step must be added. The higher an employee’s salary, the lower the percent increase.	Contradicts Best Practices Nos. 2 & 5
4. A step must be added. The higher an employee’s salary, the higher the dollar increase.	Contradicts Best Practices Nos. 2 & 5
5. Employees receive their increments plus the dollar raise. Employees at maximums receive only the dollar raise unless a step is added.	Best Practices Nos. 1, 2, & 5
6. Employees receive their increments plus the percent raise at the next step. Employees at maximums receive only the percent raise unless a step is added.	Best Practices Nos. 1, 2, & 5
7. This is the opposite of #2.	Contradicts Best Practices Nos. 2 & 5
8. This increases or creates a bubble (or balloon) increment.	Contradicts Best Practices Nos. 1 & 3
9. This increases or creates a bubble (or balloon) increment.	Contradicts Best Practices Nos. 1 & 3
10. This increases or creates a bubble (or balloon) increment. Employees not at maximum receive less than they otherwise would.	Contradicts Best Practices Nos. 1 & 3
11. Employees would receive less for several years, then receive huge increases when they go through the bubble increments.	Contradicts Best Practices Nos. 1 & 3
12. Employees do not move on guide, employees do not get their increments. This is the opposite of #2.	Contradicts Best Practices Nos. 2 & 5
13. Guide would have a fixed number of steps. After a fixed number of years, years of experience no longer affect salaries.	Best Practice No. 5
14. This would mean adding a step to the guide each year or adding a maximum each year (multiple maximum salary guide).	Contradicts Best Practices Nos. 2 & _____

Salary Guide Negotiations Preparation

The following information should be collected for every bargaining unit. This information is necessary to bargain salary increases and to distribute the settlement on salary guides.

- 1. Salary guide
- 2. Staff distribution (scattergram)
- 3. Guide cost
- 4. Longevity cost*
- 5. Other salary costs (summer stipends, 11th month, etc.)
- 6. Increment cost (dollars and percent)
- 7. Percent of staff at maximum
- 8. Percent of staff on each column
- 9. Vertical increment pattern (dollars and percent)
- 10. Horizontal differential pattern (dollars and percent)

- 11. Largest single increment (dollars and percent)
- 12. Extracurricular costs (total cost, number of staff, increment cost)
- 13. Other differentials (Black seal, night differential, head custodian, total cost, number of staff)
- 14. Average salary, minimum salary, maximum salary, value of 1 percent

* It is important to establish if longevity will be included in the salary base and if new people eligible for longevity will be charged against the settlement. Including longevity in the salary base almost always benefits the school board.
This information must be agreed to and verified by the board and association prior to commencing salary negotiations.

A settlement without an agreed upon salary base at the start of negotiations will likely result in confusion and conflict between the parties when they seek to agree on new salary guides. Note: Below is an example of teacher salary guide information prepared for a sample district.

A **scattergram** is a chart of all fulltime equivalent (FTE) employees on each step of the salary guide as of a specific date. This information should be verified by the association and agreed to by both parties at the beginning of the bargaining process. The scattergram is not modified or changed at any time during the bargaining process, unless by mutual agreement. To determine the scattergram for each successive year of the agreement, employees – not at maximum – are advanced one (1) step on the guide until they reach maximum.

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	1.50		1.00	3.25			
2	2.00	1.00	3.00	3.00	1.00		1.00
3	1.00	2.00	1.00	3.00		1.00	
4	2.00	1.00	2.00	2.00	1.00	1.00	1.00
5	1.00		1.00	2.00	1.00	1.00	
6		2.00			1.00	1.00	
7	2.00			1.00		2.00	
8	1.00				1.00		
9							
10		1.50			1.50		1.10
11	1.25				3.00		3.00
12							
13		1.00	1.00	1.00	2.00	0.90	
14	1.00			1.00			1.00
15	1.50		1.00	3.25			

This guide is included in the current agreement. It is used with the scattergram to calculate the current salary and incre-

ment costs. For further information about an individual's paycheck see Appendix D

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	50,000	51,000	52,000	53,000	54,000	55,000	56,000
2	51,000	52,000	53,000	54,000	55,000	56,000	57,000
3	52,000	53,000	54,000	55,000	56,000	57,000	58,000
4	53,000	54,000	55,000	56,000	57,000	58,000	59,000
5	54,500	55,500	56,500	57,500	58,500	59,500	60,500
6	56,000	57,000	58,000	59,000	60,000	61,000	62,000
7	57,500	58,500	59,500	60,500	61,500	62,500	63,500
8	59,000	60,000	61,000	62,000	63,000	64,000	65,000
9	60,500	61,500	62,500	63,500	64,500	65,500	66,500
10	62,000	63,000	64,000	65,000	66,000	67,000	68,000
11	63,500	64,500	65,500	66,500	67,500	68,500	69,500
12	65,000	66,000	67,000	68,000	69,000	70,000	71,000
13	66,500	67,500	68,500	69,500	70,500	71,500	72,500
14	68,000	69,000	70,000	71,000	72,000	73,000	74,000
15	70,000	71,000	72,000	73,000	74,000	75,000	76,000

For accuracy at the bargaining table, calculate the number and percentage of employees on each column and each step of the guide, including the maximum step.

In this example, 28 percent of the staff are at maximum and 72 percent are below maximum.

Scattergram

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45	Total	Percent
1	1.50		1.00	3.25				5.75	5.75%
2	2.00	1.00	3.00	3.00	1.00		1.00	11.00	11.00%
3	1.00	2.00	1.00	3.00		1.00		8.00	8.00%
4	2.00	1.00	2.00	2.00	1.00	1.00	1.00	10.00	10.00%
5	1.00		1.00	2.00	1.00	1.00		6.00	6.00%
6		2.00			1.00	1.00		4.00	4.00%
7	2.00			1.00		2.00		5.00	5.00%
8	1.00				1.00			2.00	2.00%
9								-	-
10			1.50			1.50	1.10	4.10	4.10%
11	1.25				3.00		3.00	7.25	7.25%
12								-	-
13		1.00	1.00	1.00	2.00	0.90		5.90	5.90%
14	1.00			1.00		1.00		3.00	3.00%
15	5.00	2.00	3.00	4.00	4.00	2.00	8.00	28.00	28.00%
Total	17.75	9.00	13.50	20.25	14.00	11.40	14.10	100.00	100.00%
Percent	17.75%	9.00%	13.50%	20.25%	14.00%	11.40%	14.10%		

The **cost of the salary guide** is calculated by multiplying the number of FTEs (full-time equivalents) on each step by the salary at that step. The salary base cost is calculated by adding the cost of each step.

The average salary is calculated by dividing the salary base by the total number of FTEs. One percent of the cost is calculated by dividing the salary base by 100. This figure is often used to ascertain the cost of each 1 percent increase on the guide.

Guide Cost

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	75,000	-	52,000	172,250	-	-	-
2	102,000	52,000	159,000	162,000	55,000	-	57,000
3	52,000	106,000	54,000	165,000	-	57,000	-
4	106,000	54,000	110,000	112,000	57,000	58,000	59,000
5	54,500	-	56,500	115,000	58,500	59,500	-
6	-	114,000	-	-	60,000	61,000	-
7	115,000	-	-	60,500	-	125,000	-
8	59,000	-	-	-	63,000	-	-
9	-	-	-	-	-	-	-
10	-	-	96,000	-	-	100,500	74,800
11	79,375	-	-	-	202,500	-	208,500
12	-	-	-	-	-	-	-
13	-	67,500	68,500	69,500	141,000	64,350	-
14	68,000	-	-	71,000	-	73,000	-
15	350,000	142,000	216,000	292,000	296,000	150,000	608,000
TOTAL							6,316,275
AVERAGE SALARY							63,163
1%							63,163
1% / PERSON							632

It is always helpful to determine the **location and cost of balloon increments** included in a salary guide. This is accomplished by calculating the increment as a percentage of the salary at each step: divide the increment by the salary at each step and multiple by

100. If a multi-year agreement is being considered, the association should calculate the incremental cost for each succeeding year of the contemplated agreement by using the current guide and the scattergram for each succeeding year.

Increments are determined by calculating the dollar difference between consecutive steps on the same column of the salary guide.

Increments

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	1,000	1,000	1,000	1,000	1,000	1,000	1,000
2	1,000	1,000	1,000	1,000	1,000	1,000	1,000
3	1,000	1,000	1,000	1,000	1,000	1,000	1,000
4	1,500	1,500	1,500	1,500	1,500	1,500	1,500
5	1,500	1,500	1,500	1,500	1,500	1,500	1,500
6	1,500	1,500	1,500	1,500	1,500	1,500	1,500
7	1,500	1,500	1,500	1,500	1,500	1,500	1,500
8	1,500	1,500	1,500	1,500	1,500	1,500	1,500
9	1,500	1,500	1,500	1,500	1,500	1,500	1,500
10	1,500	1,500	1,500	1,500	1,500	1,500	1,500
11	1,500	1,500	1,500	1,500	1,500	1,500	1,500
12	1,500	1,500	1,500	1,500	1,500	1,500	1,500
13	1,500	1,500	1,500	1,500	1,500	1,500	1,500
14	2,000	2,000	2,000	2,000	2,000	2,000	2,000
15	1,000	1,000	1,000	1,000	1,000	1,000	1,000

The **incremental cost at each step** of the guide is calculated by multiplying the FTEs at each step by the increment for that step. The **total incremental cost** of a guide is calculated by adding the incremental costs at each step. The **incremental cost as a percent of the sal-**

ary base is calculated by dividing the incremental cost by the salary base and multiplying by 100. The scattergram, salary base, and incremental cost should always be agreed upon and signed off by both parties early in the bargaining process.

Increments

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	1,500	-	1,000	3,250	-	-	-
2	2,000	1,000	3,000	3,000	1,000	-	1,000
3	1,000	2,000	1,000	3,000	-	1,000	-
4	3,000	1,500	3,000	3,000	1,500	1,500	1,500
5	1,500	-	1,500	3,000	1,500	1,500	-
6	-	3,000	-	-	1,500	1,500	-
7	3,000	-	-	1,500	-	3,000	-
8	1,500	-	-	-	1,500	-	-
9	-	-	-	-	-	-	-
10	-	-	2,250	-	-	2,250	1,650
11	1,875	-	-	-	4,500	-	4,500
12	-	-	-	-	-	-	-
13	-	1,500	1,500	1,500	3,000	1,350	-
14	2,000	-	-	2,000	-	2,000	-
15	-	-	-	-	-	-	-
Total							97,125
							% of base 1.54%

Horizontal differential indicates additional compensation at each step for various levels of educational advancement or job categories. Horizontal differential as a percent of the salary at each step is calculated by dividing the dollar differential by the salary on the preceding column.

Movement across the guide need not be restricted to simply graduate or undergraduate credits. Negotiations for equivalencies such as continuing education units (CEU), inservice programs, or presentations can be bargained.

Horizontal Differentials (Difference between columns at each step)

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	1,000	2,000	3,000	4,000	5,000	6,000	
2	1,000	2,000	3,000	4,000	5,000	6,000	
3	1,000	2,000	3,000	4,000	5,000	6,000	
4	1,000	2,000	3,000	4,000	5,000	6,000	
5	1,000	2,000	3,000	4,000	5,000	6,000	
6	1,000	2,000	3,000	4,000	5,000	6,000	
7	1,000	2,000	3,000	4,000	5,000	6,000	
8	1,000	2,000	3,000	4,000	5,000	6,000	
9	1,000	2,000	3,000	4,000	5,000	6,000	
10	1,000	2,000	3,000	4,000	5,000	6,000	
11	1,000	2,000	3,000	4,000	5,000	6,000	
12	1,000	2,000	3,000	4,000	5,000	6,000	
13	1,000	2,000	3,000	4,000	5,000	6,000	
14	1,000	2,000	3,000	4,000	5,000	6,000	
15	1,000	2,000	3,000	4,000	5,000	6,000	

Horizontal Differentials as a percent

Step	BA	BA+15	BA+30	MA	MA+15	MA+30	MA+45
1	2.00%	4.00%	6.00%	8.00%	10.00%	12.00%	
2	1.96%	3.92%	5.88%	7.84%	9.80%	11.76%	
3	1.92%	3.85%	5.77%	7.69%	9.62%	11.54%	
4	1.89%	3.77%	5.66%	7.55%	9.43%	11.32%	
5	1.83%	3.67%	5.50%	7.34%	9.17%	11.01%	
6	1.79%	3.57%	5.36%	7.14%	8.93%	10.71%	
7	1.74%	3.48%	5.22%	6.96%	8.70%	10.43%	
8	1.69%	3.39%	5.08%	6.78%	8.47%	10.17%	
9	1.65%	3.31%	4.96%	6.61%	8.26%	9.92%	
10	1.61%	3.23%	4.84%	6.45%	8.06%	9.68%	
11	1.57%	3.15%	4.72%	6.30%	7.87%	9.45%	
12	1.54%	3.08%	4.62%	6.15%	7.69%	9.23%	
13	1.50%	3.01%	4.51%	6.02%	7.52%	9.02%	
14	1.47%	2.94%	4.41%	5.88%	7.35%	8.82%	
15	1.43%	2.86%	4.29%	5.71%	7.14%	8.57%	

The following is an example of ESP annual guide.

Anytown Custodial Salary Guide

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	24,999	30,000	35,000	31,500
2	25,416	30,500	35,500	32,000
3	25,832	31,000	36,000	32,500
4	26,249	31,500	36,500	33,000
5	26,666	32,000	37,000	33,500
6	27,499	33,000	38,000	34,500
7	28,332	34,000	39,000	35,500
8	29,166	35,000	40,000	36,500
9	30,415	36,500	41,500	38,000
10	32,082	38,500	43,500	40,000

Scattergram

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds	Total	Percent
1	2.00	4.00			6.00	11.11%
2	1.00	3.00		1.00	5.00	9.26%
3	3.00	1.00	2.00		6.00	11.11%
4		1.00		2.00	3.00	5.56%
5		1.00	2.00		3.00	5.56%
6					-	-
7		1.00			1.00	1.85%
8	1.00	2.00	3.00	2.00	8.00	14.81%
9	1.00	4.00			5.00	9.26%
10		9.00	5.00	3.00	17.00	31.48%
Total	8.00	26.00	12.00	8.00	54.00	100.00%
Percent	14.81%	48.15%	22.22%	14.81%		

Guide Cost

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	49,998	120,000	-	-
2	25,416	91,500	-	32,000
3	77,497	31,000	72,000	-
4	-	31,500	-	66,000
5	-	32,000	74,000	-
6	-	-	-	-
7	-	34,000	-	-
8	29,166	70,000	120,000	73,000
9	30,415	146,000	-	-
10	-	346,500	217,500	120,000
Total				1,889,492
Average Salary				34,991
1%				18,895
1% /person				350

Increments

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	417	500	500	500
2	417	500	500	500
3	417	500	500	500
4	417	500	500	500
5	833	1,000	1,000	1,000
6	833	1,000	1,000	1,000
7	833	1,000	1,000	1,000
8	1,250	1,500	1,500	1,500
9	1,667	2,000	2,000	2,000
10	417	500	500	500

Increment Costs

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	833	2,000	-	-
2	417	1,500	-	500
3	1,250	500	1,000	-
4	-	500	-	1,000
5	-	1,000	2,000	-
6	-	-	-	-
7	-	1,000	-	-
8	1,250	3,000	4,500	3,000
9	1,667	8,000	-	-
10	-	-	-	-
Total				34,9165
% of base				1.85%

Increment as a percent

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	1.67%	1.67%	1.43%	1.59%
2	1.64%	1.64%	1.41%	1.56%
3	1.61%	1.61%	1.39%	1.54%
4	1.59%	1.59%	1.37%	1.52%
5	3.13%	3.13%	2.70%	2.99%
6	3.03%	3.03%	2.63%	2.90%
7	2.94%	2.94%	2.56%	2.82%
8	4.29%	4.29%	3.75%	4.11%
9	5.48%	5.48%	4.82%	5.26%
10	-	-	-	-

A 10-month employee normally receives 83.3% of a 12 month employee's (10/12ths) salary or a 12-month employee receives 120% of a 10-month employee's salary. This assumes the same work hours

and job description. Additionally, support staff columns may indicate different job descriptions with a mathematical relationship to the base column.

Horizontal Differentials

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	5,001	10,001	6,501	
2	5,084	10,084	6,584	
3	5,168	10,168	6,668	
4	5,251	10,251	6,751	
5	5,334	10,334	6,834	
6	5,501	10,501	7,001	
7	5,668	10,668	7,168	
8	5,835	10,835	7,335	
9	6,085	11,085	7,585	
10	6,418	11,418	7,918	

Horizontal Differentials as a percent

Step	Cust 10 Mo	Cust 12 Mo	Maint.	Grounds
1	20.00%	40.01%	26.01%	
2	20.00%	39.68%	25.91%	
3	20.00%	39.36%	25.81%	
4	20.00%	39.05%	25.72%	
5	20.00%	38.76%	25.63%	
6	20.00%	38.19%	25.46%	
7	20.00%	37.65%	25.30%	
8	20.00%	37.15%	25.15%	
9	20.00%	36.44%	24.94%	
10	20.00%	35.59%	24.68%	

Anytown Paraprofessional Salary Guide (Hourly)

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1	10.00	10.50	11.50	12.00	14.00
2	10.25	10.75	11.75	12.25	14.25
3	10.50	11.00	12.00	12.50	14.50
4	11.00	11.50	12.50	13.00	15.00
5	11.75	12.25	13.25	13.75	15.75
6	12.50	13.00	14.00	14.50	16.50
7	13.50	14.00	15.00	15.50	17.50
8	14.50	15.00	16.00	16.50	18.50
9	15.50	16.00	17.00	17.50	19.50
10	17.00	17.50	18.50	19.00	21.00
11	19.00	19.50	20.50	21.00	23.00
12	21.00	21.50	22.50	23.00	25.00

Scattergram (Hours/Year)

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA	Total	Percent
1	3,240					3,240	7.69%
2				1,080		1,080	2.56%
3						-	-
4	2,160					2,160	5.12%
5		2,160				2,160	5.12%
6						-	-
7		3,240		1,000		4,240	10.06%
8					1,080	1,080	2.56%
9					1,080	1,080	2.56%
10	1,080				1,200	2,280	5.41%
11						-	-
12	5,400	3,240	10,800	3,240	2,160	24,840	58.92%
Total	11,880	6,480	12,960	5,320	5,520	42,160	100.00%
Percent	28.18%	15.37%	30.74%	12.62%	13.09%		

Guide Cost

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA	Total	Percent
1	32,400	-	-	-	-	-	-
2	-	-	-	-	13,230	-	-
3	-	-	-	-	-	-	-
4	23,760	-	-	-	-	-	-
5	-	-	28,620	-	-	-	-
6	-	-	-	-	-	-	-
7	-	45,360	-	-	15,500	-	-
8	-	-	-	-	-	19,980	-
9	-	-	-	-	-	21,060	-
10	18,360	-	-	-	-	25,200	-
11	-	-	-	-	-	-	-
12	113,400	69,660	243,000	-	74,520	54,000	-
					Total	798,050	-
					Average Salary	20,443	-
						1%	7,981
						1% /person	204

Increments

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1	.025	0.25	0.25	0.25	0.25
2	.025	0.25	0.25	0.25	0.25
3	.050	0.50	0.50	0.50	0.50
4	.075	0.75	0.75	0.75	0.75
5	0.75	0.75	0.75	0.75	0.75
6	1.00	1.00	1.00	1.00	1.00
7	1.00	1.00	1.00	1.00	1.00
8	1.00	1.00	1.00	1.00	1.00
9	1.50	1.50	1.50	1.50	1.50
10	2.00	2.00	2.00	2.00	2.00
11	2.00	2.00	2.00	2.00	2.00
12	-	-	-	-	-

Increment Cost

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1	810	-	-	-	-
2	-	-	-	270	-
3	-	-	-	-	-
4	1,620	-	-	-	-
5	-	-	1,620	-	-
6	-	-	-	-	-
7	-	3,240	-	1,000	-
8	-	-	-	-	1,080
9	-	-	-	-	1,620
10	2,160	-	-	-	2,400
11	-	-	-	-	-
12	-	-	-	-	-
Total					15,820
% of Base					1.98%

Increment as a percent

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1	2.50%	2.38%	2.17%	2.08%	1.79%
2	2.44%	2.33%	2.13%	2.04%	1.75%
3	4.76%	4.55%	4.17%	4.00%	3.45%
4	6.82%	6.52%	6.00%	5.77%	5.00%
5	6.38%	6.12%	5.66%	5.45%	4.76%
6	8.00%	7.69%	7.14%	6.90%	6.06%
7	7.41%	7.14%	6.67%	6.45%	5.71%
8	6.90%	6.67%	6.25%	6.06%	5.41%
9	9.68%	9.38%	8.82%	8.57%	7.69%
10	11.76%	11.43%	10.81%	10.53%	9.52%
11	10.53%	10.26%	9.76%	9.52%	8.70%
12	2.50%	2.38%	2.17%	2.08%	1.79%

Horizontal Differentials

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1		0.50	1.50	2.00	4.00
2		0.50	1.50	2.00	4.00
3		0.50	1.50	2.00	4.00
4		0.50	1.50	2.00	4.00
5		0.50	1.50	2.00	4.00
6		0.50	1.50	2.00	4.00
7		0.50	1.50	2.00	4.00
8		0.50	1.50	2.00	4.00
9		0.50	1.50	2.00	4.00
10		0.50	1.50	2.00	4.00
11		0.50	1.50	2.00	4.00
12		0.50	1.50	2.00	4.00

Horizontal Differentials as a percent

Step	Para	Para +48	Assoc. Deg.	A.D. +30	BA
1		5.00%	15.00%	20.00%	40.00%
2		4.88%	14.63%	19.51%	39.02%
3		4.76%	14.29%	19.05%	38.10%
4		4.55%	13.64%	18.18%	36.36%
5		4.26%	12.77%	17.02%	34.04%
6		4.00%	12.00%	16.00%	32.00%
7		3.70%	11.11%	14.81%	29.63%
8		3.45%	10.34%	13.79%	27.59%
9		3.23%	9.68%	12.90%	25.81%
10		2.94%	8.82%	11.76%	23.53%
11		2.63%	7.89%	10.53%	21.05%
12		2.38%	7.14%	9.52%	19.05%

Salary Guide Construction

The bargaining team's plans for successor salary guides should occur after a thorough study of current guides is undertaken. (See *Salary Guide Negotiations Preparation*) Input from members improves this process. Such input can be gathered from surveys, workshops, or informal meetings between members and the committee. (See *Salary Guide Profile*)

Concerns about the structure of guides and the distribution of negotiated increases should be discussed with the board throughout the bargaining process through written proposals and the exchange of proposed guides.

The bargaining team is charged with the responsibility of proposing the association's desired guides. To arrive at the preferred distribution, a series of decisions must be made by the team, including: what raise is required at maximum, what structural changes are needed, etc. The salary guide planning worksheet included in this manual is a tool for the planning process.

A number of options for distributing raises to the base year guide are available to the bargaining team.

Step advancement is equivalent to members moving one step closer to max each year of the settlement. Once a member reaches maximum

they have reached the career rate in their districts. The sooner that happens the greater one's lifetime earnings.

Salary Distribution Methods

Once the settlement has been reached, new salary guides are created which spread the newly-negotiated increase over the existing salary base.

Methods for distributing the new money over the previous guide include:

1. Step advancement plus guide improvement.

Supports Best Practices

Staff are advanced to reflect an added year of experience. This incremental cost is subtracted from the settlement. Remaining new money is distributed to the guide in equal dollars or percentages. (A person's increase is the sum of their increment plus the raise received by the new step.)

** Increment is the dollar difference between two steps of a salary guide.*

2. Maximum adjustment, step advancement, plus guide improvement.

First, the raise at maximum is established. The remaining money

is then spent to advance staff for a year's experience and to give raises to the other steps of the guide.

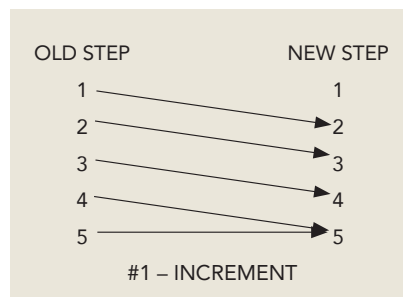
One disadvantage to this approach becomes apparent if a larger increase is allocated to maximum than to other steps, thereby creating new balloon increments or increasing existing balloon increments.

3. Across-the-board increases.

Contradicts Best Practices

All salaries of the guide are increased by the same percent or dollar amount.

Unless employees are frozen on step (which has the same effect as adding a step for all current employees not at max), this approach results in the addition of a new step on the guide. Both approaches prevent employees from moving closer to maximum.



This example shows the impact of adding a step to the salary guide. It assumes 5 percent across-the-board increases over a five year period.

Contradicts Best Practices

ANYTOWN EDUCATION ASSOCIATION

Step	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5
1	25,000	25,750	26,538	27,364	28,233	29,144
2	26,000	26,250	27,038	27,864	28,733	29,644
3	27,000	27,300	27,563	28,389	29,258	30,169
4	28,000	28,350	28,665	28,941	29,809	30,720
5	29,000	29,400	29,768	30,098	30,388	31,299
6	31,000	30,450	30,870	31,256	31,603	31,907
7	33,000	32,550	31,973	32,414	32,819	33,183
8	35,000	34,650	34,178	33,571	34,034	34,460
9	37,000	36,750	36,383	35,886	35,250	35,736
10	39,000	38,850	38,588	38,202	37,681	37,012
11	41,000	40,950	40,793	40,517	40,112	39,565
12	43,000	43,050	42,998	42,832	42,543	42,117
13	45,000	45,150	45,203	45,147	44,974	44,670
14	47,000	47,250	47,408	47,463	47,405	47,222
15	49,000	49,350	49,613	49,778	49,836	49,775
16		51,450	51,818	52,093	52,267	52,328
17			54,023	54,408	54,698	54,880
18				56,724	57,129	57,433
19					59,560	59,985
20						62,538

Difference between Salary & Maximum						
	14,000	14,700	15,435	16,207	17,017	17,868
<i>Difference grows by \$3,868</i>						

# of Steps to Maximum						
	7	7	7	7	7	7
<i>Distance remains constant</i>						

Disadvantages

- During this five-year period, the staff member has not moved any closer to the maximum salary on the guide.
- The difference between his/her salary and the maximum salary has widened by \$3,868.

Note: The disadvantages of this approach far outweigh any benefits. This approach should be avoided whenever possible.

Salary Guide Length

The length of the salary guide is important for several reasons. Generally, a shorter guide has several advantages:

1. Because shorter guides usually include more employees at the maximums, they have higher **base** costs. This means that the settlement percentage yields more dollars to spend on raises.
2. Shorter guides tend to have more people on the maximum steps. This reduces the **increment** cost and frees up more dollars to spend on raises and at the maximums.
3. A person reaches the maximum step on the guide sooner and earns the higher salary for the longer period. This leads to higher **career or cumulative earnings**.

The following salary guides share these characteristics:

- identical starting and ending salaries
- 10, 15, and 20 steps
- equal increments (dollar differences between steps)
- 85 people on each guide
- staff have same experience (maximum has more staff on the shorter guides).

Sample Base Cost

GUIDE A

Step	Salary	Staff	Cost
1	\$50,000	2	\$100,000
2	53,500	1	53,500
3	57,000	6	342,000
4	60,500	2	121,000
5	64,000	1	64,000
6	67,500	2	135,000
7	71,000	2	142,000
8	74,500	1	74,500
9	78,000	1	78,000
10	81,500	67	5,460,500
Totals		85	\$6,570,500

GUIDE B

Step	Salary	Staff	Cost
1	\$50,000	2	\$100,000
2	52,250	1	52,250
3	54,500	6	327,000
4	56,750	2	113,500
5	59,000	1	59,000
6	61,250	2	122,500
7	63,500	2	127,000
8	65,750	1	65,750
9	68,000	1	68,000
10	70,250	2	140,500
11	72,500	3	217,500
12	74,750	5	373,750
13	77,000	3	231,000
14	79,250	4	317,000
15	81,500	50	4,075,000
Totals		85	\$6,389,750

GUIDE C

Step	Salary	Staff	Cost
1	\$50,000	2	\$100,000
2	51,658	1	51,658
3	53,316	6	319,896
4	54,974	2	109,948
5	56,632	1	56,632
6	58,290	2	116,580
7	59,948	2	119,896
8	61,606	1	61,606
9	63,264	1	63,264
10	64,922	2	129,844
11	66,580	3	199,740
12	68,238	5	341,190
13	69,896	3	209,688
14	71,554	4	286,216
15	73,212	4	292,848
16	74,870	5	374,350
17	76,528	3	229,584
18	78,186	4	312,744
19	79,844	3	239,532
20	81,500	31	2,526,500
Totals		85	\$6,141,716

Sample Increment Costs

- The cost of advancing staff one step (increment cost) is lower on the shorter guide.
- When the settlement percentage includes the cost of increments, this leaves more money available for raises within the guide and at maximums.

GUIDE A

Step	Salary	Increment	Staff	Cost
1	\$50,000	\$3,500	2	\$7,000
2	53,500	3,500	1	3,500
3	57,000	3,500	6	21,000
4	60,500	3,500	2	7,000
5	64,000	3,500	1	3,500
6	67,500	3,500	2	7,000
7	71,000	3,500	2	7,000
8	74,500	3,500	1	3,500
9	78,000	3,500	1	3,500
10	81,500	0	67	0
		Totals	85	\$63,000
		Inc. Cost	0.96%	

Base Cost – \$6,570,500

GUIDE B

Step	Salary	Increment	Staff	Cost
1	\$50,000	\$2,250	2	\$4,500
2	52,250	2,250	1	2,250
3	54,500	2,250	6	13,500
4	56,750	2,250	2	4,500
5	59,000	2,250	1	2,250
6	61,250	2,250	2	4,500
7	63,500	2,250	2	4,500
8	65,750	2,250	1	2,250
9	68,000	2,250	1	2,250
10	70,250	2,250	2	4,500
11	72,500	2,250	3	6,750
12	74,750	2,250	5	11,250
13	77,000	2,250	3	6,750
14	79,250	2,250	4	9,000
15	81,500	0	50	0
		Totals	85	\$78,750
		Inc. Cost	1.23%	

Base Cost – \$6,389,750

GUIDE C

Step	Salary	Increment	Staff	Cost
1	\$50,000	\$1,658	2	\$3,316
2	51,658	1,658	1	1,658
3	53,316	1,658	6	9,948
4	54,974	1,658	2	3,316
5	56,632	1,658	1	1,658
6	58,290	1,658	2	3,316
7	59,948	1,658	2	3,316
8	61,606	1,658	1	1,658
9	63,264	1,658	1	1,658
10	64,922	1,658	2	3,316
11	66,580	1,658	3	4,974
12	68,238	1,658	5	8,290
13	69,896	1,658	3	4,974
14	71,554	1,658	4	6,632
15	73,212	1,658	4	6,632
16	74,870	1,658	5	8,290
17	76,528	1,658	3	4,974
18	78,186	1,658	4	6,632
19	79,844	1,656	3	4,968
20	81,500	0	31	0
		Totals	85	\$89,526
		Inc. Cost	1.46%	

Base Cost – \$6,141,176

Sample Career Earnings

GUIDE A				GUIDE B				GUIDE C			
Step	Salary	Career \$	\$ over "C"	Step	Salary	Career \$	\$ over "C"	Step	Salary	Career \$	\$ over "C"
1	\$50,000	\$ 50,000	\$ -	1	\$50,000	\$ 50,000	\$ -	1	\$ 50,000	\$ 50,000	\$ -
2	53,500	103,500	1,842	2	52,250	102,250	592	2	51,658	101,658	592
3	57,000	160,500	5,526	3	54,500	156,750	1,776	3	53,316	154,974	1,776
4	60,500	221,000	11,052	4	56,750	213,500	3,552	4	54,974	209,948	3,552
5	64,000	285,000	18,420	5	59,000	272,500	5,920	5	56,632	266,580	5,920
6	67,500	352,500	27,630	6	61,250	333,750	8,880	6	58,290	324,870	8,880
7	71,000	423,500	38,682	7	63,500	397,250	12,432	7	59,948	384,818	12,432
8	74,500	498,000	51,576	8	65,750	463,000	16,576	8	61,606	446,424	16,576
9	78,000	576,000	66,312	9	68,000	531,000	21,312	9	63,264	509,688	21,312
10	81,500	657,500	82,890	10	70,250	601,250	26,640	10	64,922	574,610	26,640
	81,500	739,000	97,810	11	72,500	673,750	32,560	11	66,580	641,190	32,560
	81,500	820,500	111,072	12	74,750	748,500	39,072	12	68,238	709,428	39,072
	81,500	902,000	122,676	13	77,000	825,500	46,176	13	69,896	779,324	46,176
	81,500	983,500	132,622	14	79,250	904,750	53,872	14	71,554	850,878	53,872
	81,500	1,065,000	140,910	15	81,500	986,250	62,160	15	73,212	924,090	62,160
	81,500	1,146,500	147,540		81,500	1,067,750	68,790	16	74,870	998,960	68,790
	81,500	1,228,000	152,512		81,500	1,149,250	73,762	17	76,528	1,075,488	73,762
	81,500	1,309,500	155,826		81,500	1,230,750	77,076	18	78,186	1,153,674	77,076
	81,500	1,391,000	157,482		81,500	1,312,250	78,732	19	79,844	1,233,518	78,732
	81,500	1,472,500	157,482		81,500	1,393,750	78,732	20	81,500	1,315,018	78,732

Educational Support Professional Salary Topics

Columns

Educational columns should be established on all ESP career categories. Employees should be able to move to them by district in-service, professional development training, conferences, workshops, assessments, college credit hour courses* and CEU credits. The columns should be equal dollar values and the same for all job categories.

- One college credit hour usually equals 15 clock hours. These credits are often described as continuing education units (CEUs).

Example: Non-Degree

ND + 15	= +\$600
ND + 30	= +\$1,200
ND + 45	= +\$1,800
ND + 60	= +\$2,400
ND + 75	= +\$3,000
ND + 90	= +\$3,600
ND + 105	= +\$4,200
BA degree	= +\$6,000

Settlement Percentage

Since ESP salaries are normally lower than certified salaries, a higher settlement percentage may be necessary in order to provide adequate raises. As with all salary issues, thorough preparation will help you determine this in advance of reaching a settlement.

Market Conditions

Public sector comparisons are easier to make with ESP positions than with certified staff. These

types of comparisons can either work for or against association members. Before making comparisons of one employee classification with private sector salaries make sure that you are not opening other employee groups to negative comparisons with their private sector counterparts.

Living Wage

What is a living wage? A living wage pays for food, housing, transportation, utilities, childcare, taxes, healthcare. A living wage is higher than a minimum wage or a poverty-level wage. For additional information on living wage go online to the Economic Policy Institute (EPI) at www.epinet.org.

Reclassifications

Reclassifying specific groups or individual positions within a bargaining unit can lead to dissention if consensus has not been obtained. Before pursuing reclassification at the bargaining table make sure it is something that the membership truly wants.

Stipends

Position differentials are normally a better approach than creating a separate guide for specific positions. An example would be creating a stipend or differential of \$1,000 for a head custodian instead of producing a separate guide for head custodians. However, in order to guarantee that a differential for a license is pensionable, care should be taken to include the amount on the salary guide whenever possible.

Different work years

It is common for employees with different work years to be paid on a ratio basis compared to other employees with the same classification. An example would be 10-month secretaries that are paid 10/12ths or 83.33 percent of the 12-month secretary guide. No universal method can be applied because other provisions may affect the ratio that is used. For instance, 83.33 percent may not be used in a district because of differing number of vacation days or some other provision that was used to set the ratio in the past. (See columns above)

Bubbles

Increment costs can be much higher on ESP guides than on certified guides because of the perception of bubbles, or large increments. A \$2,000 increment may not be out of place on a teacher guide, but the same \$2,000 increment could easily be over a 10 percent increase on a teacher assistant guide. Again, thorough preparation will help in identifying these types of problems early on.

Special Topics in Salary Compensation

Why does starting salary matter?

The objective of a starting salary is to attract new employees. The starting salary should be high and competitive. All salaries on a guide will be higher than the starting salary. “A rising tide lifts all boats.” In fact, starting salaries have risen to \$40,000 and higher in most districts.

As members retire, they are replaced by new employees at the starting salary. The difference between the retiree’s salary and the starting salary lowers the base cost. This base cost is the amount from which salary increases are negotiated. Therefore, the smaller the difference the less impact on the base.

What is the importance of the horizontal differentials?

Columns on guides to the right of the base column provide additional compensation to members. They usually are obtained by acquiring additional training. On ESP guides, columns represent the various job categories, levels, and time worked.

These columns give members higher salaries and also improve the overall base for future negotiations. The cost of movement does not come out of the negotiated settlement amount.

The column value should be as high as possible and logical in form. If they are in percent value, the value will grow automatically. The column headings should

offer more than one possibility to advance through them, such as equivalencies, e.g., BA+30 or MA; BA+45, or MA+15.

Support staff guides can also offer added columns. In addition to college courses, district training and in-service training can be offered as credits on a voluntary basis.

The value of this movement, in addition to increasing career earnings, is an increase in the value of a member’s pension.

What about additional compensation?

Stipends or bonuses should be avoided since they are not usually considered pensionable income. Therefore, all compensation for additional work should be added to an employee’s base salary for pension purposes.

How do you negotiate extra pay for extra work?

The topics listed below are just some of the items that can be considered for additional compensation. When possible, association negotiation teams should strive to have the agreed upon compensation be paid as part of the normal pay periods. Contact your UniServ field rep for additional information about these items if they become issues in your negotiation process:

- 6th period course
- number of course preparations
- National Board Certification
- overtime

- comp time
- extra pay for extra work
- impact of non-negotiable issues
- mentoring
- home bound instruction
- curriculum writing
- field trip
- class coverage
- duty assignments.

Should you be concerned about bubble or balloon increments?

Bubbles occur in salary guides for several reasons. One is that the settlement does not provide enough money to improve all steps at the same dollar amount or percentage. Therefore, more dollars, or a higher percent, are used at the maximum step than the step preceding it, causing a large increment, or bubble.

A second reason for a bubble is that a step was removed between two steps. Compression of steps increases the increment by the value of the removed step.

A third reason for a bubble is the artificial freezing of a step. This usually occurs when a district freezes its starting salary at the same time the other steps continue to increase.

Other bubbles may form in a guide due to illogical formation of the guide, such as placing money only on steps where members reside.

Is there an easy solution to a bubble or balloon step?

There are only a few solutions to a bubble. Increasing all steps to equalize the increments is the ideal solution. Depending on the scattergram, the cost can be very low or very high. This might require the board to include additional money over and above the settlement. This can be done over several years if the total funds are not available immediately.

Another solution is the insertion of a step or steps into the bubble or bubbles. This elongates the guide and adds additional steps for members to pass through depending on their position on the guide.

Slowing the increase of the maximum salary will allow the lower steps to catch up sooner.

Bonuses do not increase the base for the next year. They last for only one year and recur only if negotiated.

Why should you care about retroactive pay?

Retroactive pay is the money owed to members who did not receive a raise during the time period between the contract expiration and the eventual settlement. It is paid once the settlement is reached to make members whole to the new salary guides.

As settlements take longer and longer, be careful of the retroactive payment once it extends beyond one year. It may even be useful to attach these examples or one of your own into the memorandum of agreement. This applies when the settlement is more than a year overdue.

The following are examples of districts applying retroactive pay incorrectly and to the disadvantage of our members on the left and the correct calculations on the right.

Example: Contract expired on June 30, 2006; settlement reached April 1, 2008 with the retroactive amount to be paid June 30, 2008.

Base Salary 2005 – 06 - \$40,000	Salary Paid	Settlement
2006 – 07 –	\$40,000	\$42,000
2007 – 08 –	\$40,000	\$44,000

The typical Business Administrator would pay \$4,000 in retroactive pay (\$44,000 - \$40,000).

However, that member is owed \$6,000. Why?	Amount Paid	Should have been paid
2006 – 07 –	\$40,000	\$42,000
2007 – 08 –	\$40,000	\$44,000
	\$80,000	\$86,000
		Difference \$6,000

If it was exactly mid-year, then the amount would be \$4,000:	Amount Paid	Should have been paid
2006 – 07 –	\$40,000	\$42,000
Mid 2007 – 08 –	\$20,000	\$22,000
	\$60,000	\$64,000
		Difference \$4,000

Added to the above, it might be useful, if appropriate, to indicate that all people will move a step a year or two steps from their base step. New hires for 2007-08 will also need to be addressed.

Items that Should Be Considered When Bargaining Around Health Benefits Issues

1. Define the benefit year (start and end dates) for all benefit plans offered so that premium deduction amounts can be accurately calculated.
2. Know whether the health insurance plan has a carry-over provision which allows the insured to carry over any amount they paid towards a deductible in the last quarter of a benefit year. All SEHBP plans have this, but private plans can vary.
3. Waiting periods for benefit eligibility in non-SEHBP districts are negotiable and should specify that coverage begins with the first day of work. When employees return from a leave of absence, benefits should commence the day the employee returns to work.
4. Bargain language so that coverage for ten-month employees and their dependents will continue during the succeeding months of July and August.
5. In SEHBP districts, Boards are currently required to retain coverage for one month after the retirement date. Employees shall not be responsible for any premium deductions past their retirement date since they no longer have any earnings.
6. All insurance plans should have four levels of coverage: Single, Parent/Child(ren), two Adult, and Family. , each with discrete, actuarially-valid premium amounts.
7. For prescription coverage provided through the medical plan, all coinsurance payments made by employees shall count towards the out-of-pocket annual maximums.
8. The number of dental cleanings per year can be negotiated above two annual cleanings.
9. In no instance can the premium deductions exceed the cost of the coverage received.
10. Employees only contribute towards benefits that they actually receive and for the cost associated with that level of benefit (mid-year hires or terminations).
11. When employees are on an unpaid leave of absence and still covered by health insurance plans, the method of payment towards health benefit deductions during the leave must be mutually agreed to between the individual and the employer.
12. Employees should be provided with an annual report with the first paycheck at the start of the new benefit year on the cost of each insurance plan, their contribution, and the basis of that contribution. This report should provide, at a minimum, the salary used to calculate the contribution, the insurance plans provided to employees, the level of insurance (S, 2A, P/C, or F) and the Chapter 78 percentage or other basis for the deduction). Additional reports should be provided in response to any changes in premiums, providers, or levels of coverage.
13. FSA (flexible spending account), DCA (dependent care account), HSA (health savings account), HRA (health reimbursement account) and difference card participation and administrative fees are to be paid by the employer.
14. Employees should not be charged retroactive health benefit deductions (following expired contract.) It is negotiable.
15. Negotiate procedures in the event of an over/underpayment of insurance deductions.
16. Procedures for a change in the carrier should be established.
 - a. Procedures should include provider disruption reports and claims utilization reports.
 - b. Timelines for notification to the association.
 - c. Strennis Report (network comparison.)
 - d. Rules for plan administration.
 - e. Medical loss ratio.
17. Waiver language should not be removed when moving into SEHBP.
18. Section 125 plans are not subject to federal tax, but are subject to state tax.
19. The association should be provided an annual report

with all data related to health benefit coverage and cost (employee roster, see sample letter), medical loss ratio, and data regarding any insurance company rebate or premium holidays.

20. Broker and consultant fees should not be included in premium costs for purpose of determining employee contributions.

Bargaining Comprehensive Benefits

The Challenge of Bargaining Health Benefits

The mission of the New Jersey Education Association is to advance and protect the rights, benefits, and interests of members, and to promote a quality system of public education for all students.

NJEA members, public employees in New Jersey, and workers across the nation have long identified the maintenance of high quality employer-provided health insurance as a top concern. Within local associations, members generally identify two top priorities:

1. “Guarantee the board maintains at least the same level of coverage, regardless of increases in premium costs” and;
2. “Maintain all insurance coverage at board cost to the degree permitted by law.”

Surveys conducted by NJEA Research to prepare for bargaining find this to be a consistent response for members across the state.

NJEA must meet this challenge head-on. We must protect, maintain, and expand the health benefits we have gained for our members through collective bargaining. That challenge has been complicated by the passage of P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78, the laws that requires employees to contribute significantly towards the cost of health and other insurance programs. In accordance with P.L. 2010, Chapter 2, employees must contribute 1.5% of salary towards health benefits. Under P.L. 2011, Chapter 78, the level of employee

premium share is not mandatorily negotiable until the completion of the four-year phase-in, and then is negotiable only after the expiration of the contract during which the fourth year of Chapter 78 occurs.

As a result of Chapter 78, most members have experienced a significant reduction in their net take home pay in each year of the four-year phase-in of this law.

While collective bargaining will be NJEA’s priority in addressing the financial impact of health care contributions, NJEA will continue to pursue legislative remedies that protect and enhance the quality and cost of our members’ health insurance benefits.

Bargaining at the local association level is the best strategy for success. Our success will be measured not only by the security enjoyed by our members and their families, but also by the strength of the connection members feel to their local association.

Advocacy for comprehensive health care for members has another advantage – it builds loyalty and commitment among members and future leaders.

Ensuring that NJEA members have employer paid, comprehensive health insurance requires an organization-wide effort. To meet the challenge, local associations must send a clear message to members, elected officials, policy-makers, and the public at large that comprehensive health coverage for all school employees is a priority. This message is most clearly sent at the bargaining table.

Success at the Bargaining Table

The current environment is marked by a sense that employer-provided benefits are unsustainable. That perception must be countered in bargaining by association negotiators. Successful negotiations depend greatly on educating each local bargaining team and equipping team members with a solid understanding of the challenges they face.

Training for negotiators prepares them to understand the complex and evolving health insurance environment. Training expands content knowledge and provides guidance about strategies and tactics. Local associations, in addition to local and county training opportunities, should seek to take advantage of statewide training opportunities for negotiators, such as the Summer Leadership Conference, Winter Leadership Conference, and the Jim George Collective Bargaining Summit.

Organizing with Information

Your bargaining strategy should be based on information that is solid, persuasive, and accessible to staff and leaders.

Prior to bargaining, your team may wish to assemble the following information in conjunction with your local health benefits committee and your UniServ office:

1. Current contract language and master contracts for all existing plans.

2. A “salary and health benefits roster” containing compensation and member insurance information by coverage level and plan type (*See subsection “Costing Out Health Insurance.”*) A sample letter to the school district is also provided in this section.
3. Results of member surveys regarding bargaining priorities. These surveys typically support your team’s contention that health benefits are a top priority of the members.
4. Analysis of recent board proposals from districts throughout the county and state.
5. Bargaining trends locally and statewide, particularly with respect to Chapter 78 modifications.
6. County and state rankings that promote positive trends.
7. Updates on recent negative proposals and trends.
8. Updates on recent PERC and court decisions related to health benefits.

Bargaining the Essential Elements of Comprehensive Health Coverage

Comprehensive health insurance coverage includes medical, prescription, dental, and optical benefits for members, their eligible dependents, and/or their domestic partners with the employer paying the highest amount permissible by law.

In addition to any premium share required by law, board proposals requiring the employee to pay an increasing portion of the premium or to accept a lesser quality insurance plan are routinely made by a board of education. The proposal can come in many forms. The most dangerous form is a cap on the board of education’s cost, which transfers the liability for future premium increases from the board to the employees. Such a proposal places the com-

plete financial responsibility for all future premium increases on to the employees. All such proposals should be rejected.

Prescription: The most common board proposal in private prescription plans is to demand an increase in the dollar co-pay or percentage per prescription. These co-pays are generally divided into distinct co-pays for generic and brand name prescriptions. Brand name drugs can be further divided into preferred (formulary) and non-preferred (non-formulary) drugs. In the School Employees Health Benefits Plan (SEHBP), dollar co-pays or percentages are not negotiable.

Dental: Unlike other insurance, dental insurance will generally have an annual cap per insured person (i.e. \$2,500.) The cap does not automatically increase with inflation, so your team should make consistent efforts to increase the cap. In addition, most plans pay only a percentage of expenses for each coverage type. Teams may also seek to increase these percentages. Finally, some plans do not include orthodontic coverage for dependents. Very often, any or all of these benefits can be added at relatively low cost to the Board.

Optical: Currently, optical plans are not offered in most locals. However, in the current climate, many locals are seeking to add this benefit, as it can be added at a relatively low-cost to the Board. However, your team should investigate the optical coverage available under the existing medical coverage before negotiating a separate optical plan.

Under current law, all premium sharing is made on a federal pre-tax basis. The school district is required to establish, maintain, and pay any fees associated with an I.R.S. Section 125 plan.

Also under current law, Flexible Spending Accounts (FSA) for non-covered medical expenses shall be established. The school district is required to maintain and pay any fees associated with this

plan. Flexible Spending Accounts (FSA) for dependent care may be negotiated. The fees associated with maintaining the plan are negotiable. Employee and/or employer contributions (which are negotiable) to both plans are on a federal pre-tax basis. The maximum contributions are governed by law. Such accounts include a “use it or lose it” provision of which members should be aware.

The law also provides that employees may not be charged more than the cost of the benefit. So, for example, if an employee waived medical insurance but still kept the dental plan, the employee’s Chapter 78 deduction could not exceed the cost of the dental plan. For example, if the dental plan cost \$800 and 1.5% of the employee’s salary was \$1200, the employee could only be charged for the cost of the dental plan and no more.

Non-tiered benefit levels that are available on an equal basis for all members

All forms of tiering should be avoided. Tiering usually involves differentiation of benefits based on date of hire or classification of employee. For example: newly hired members may have a more limited choice of plans, with or without an option to purchase a more expensive plan; newly hired members may have only single coverage with or without an option to purchase additional coverage. These lower benefits may be for a designated period (until tenured, for first five years of employment, etc.) or may be permanent. These tiers may apply to all benefits, to medical only, to prescription only, etc. The relative impact of tiering is even more severe for our ESP members due to their lower average salaries. It also threatens to weaken the Association, particularly in all-inclusive locals.

Boards may attempt to negotiate different benefit levels for different categories of employees (i.e. ESP members have fewer plan options or higher co-pays than certificated members). Boards may seek to take advantage of the vulnerability

of ESP members by threatening privatization. Regardless, teams should avoid agreeing to unequal benefits. Again, not only does this have a detrimental economic impact on the individual members, it also threatens to weaken the Association, particularly in all-inclusive locals.

Availability of a choice of plan types

The main types of plans are: PPO, POS, HMO, EPO, and HDHP.

Preferred Provider Organization (PPO) plan – A plan where coverage is provided through a network of selected health care providers (such as hospitals and physicians). The enrollees may go outside the network, but will incur higher costs in the form of deductibles, coinsurance, or balance billing. Referrals from a primary care physician are not required for in-network or out-of-network services.

Point of Service (POS) plan – Like a PPO, a POS has in-network and out-of-network coverage. Unlike a PPO, referrals are usually required and the deductible and coinsurance for out-of-network services are often at a higher rate than a PPO.

Health Maintenance Organization (HMO) – A health care system that provides all services within a limited network of providers and hospitals. Referrals and primary care physicians are usually required. There are no out-of-network benefits.

Exclusive Provider Organization (EPO) – An Exclusive Provider Organization (EPO) is a health care system that provides all services within a network of providers and hospitals that is usually larger than an HMO. Unlike an HMO, referrals and a primary care physician are not required. There are no out-of-network benefits.

Any of the above plans can be modified to be a High Deductible Health Plan (HDHP) by increasing deductibles and out-of-pocket maximums. In order to

be a “qualified” HDHP, the plans minimum deductibles and out of pocket maximums must meet IRS standards. A qualified HDHP may be attached to a Health Savings Account (HSA). Nonqualified plans may be attached to a Health Reimbursement Account (HRA, i.e. Difference Card).

A **Health Savings Account (HSA)** is a federal tax deferred account that can be used to pay for unreimbursed medical expenses covered by the plan. Funding of the account is negotiable and may include contributions by the employee, the employer, or a combination of the two. Unused funds in the account carry over from year to year and remain with the employee regardless of employer.

A **Health Reimbursement Account (HRA)** is a federal tax deferred account that can be used to pay for unreimbursed medical expenses covered by the plan. Funding of the account is made entirely by the employer and the amount is negotiable without any cap or limitation. Unused funds in the account may carry over from year to year subject to negotiations. Upon separation of employment, unused funds return to the employer.

Benefit waiver (Opt-out) programs – School boards sometimes offer cash incentives to employees who waive their health insurance benefits. In private insurance programs, such waiver payments are negotiable. In the SEHBP, the decision on whether to offer an opt-out program, and the level of payment, if any, is a unilateral decision for the board and is not negotiable. If the board elects to make an opt-out program available, the amount is capped, by law, to 25% of the cost of the benefit or \$5,000, whichever is less. If you are in the SEHBP and have existing language in the contract which provides a better benefit than provided by law, maintain the existing language in the event that the school district moves back to a private insurance carrier.

The board has the exclusive right to choose the carrier pro-

vided that the new carrier/plan is consistent with your Collective Bargaining Agreement. In the event of a change of carrier, it will be the Association’s burden to demonstrate that there is a change in the new plan with regard to the schedule of benefits, the network of providers and hospitals, and the administration of the plan. Any change in carrier should be examined to ensure that the coverage lives up to contract language and existing coverage.

Any change in plan design should be avoided without a full analysis of the proposed plan to the existing plan.

Coverage must provide comprehensive access to doctors, providers, and hospitals. In choosing a plan, careful consideration should be given to the network of providers as they vary widely from one plan to another. A larger group of in-network providers helps to limit the member’s out-of-pocket expenses.

For example, in a POS or PPO, choosing an in-network provider will limit the member’s out-of-pocket expense, but all out of network providers are accessible. If an HMO or EPO is one of the plan options, your members should be aware that only network providers are covered except for emergent care situations. Members should also be aware that specific provider’s membership in the network is at the discretion of the carrier and the provider. However, in the event of a change in carrier or action by the current carrier, significant changes in size of the network may be negotiable or grievable.

Defining benefit levels in the collective bargaining agreement

Coverage levels should be tied to a specific level of benefits as of a specific date to establish the basis of comparison in case the carrier is changed. If no anchor date exists, the current insurance programs serve as the basis of comparison.

In a private insurance plan, you should list the schedule of benefits, including but not limited to,

co-pays, deductibles, co-insurance, out-of-pocket maximums, and the network plan and carrier.

SEHBP benefits are dictated by law. However, there are various plans available, offering different levels of coverage. The decision about what plans and options will be available to the members is negotiable.

Do not remove existing language that would provide better benefits, even if currently prohibited by law.

If your CBA does not currently have clear language describing benefit levels, and you are seeking such language, be sure to word the proposal as an effort to memorialize the current benefits. Avoid language that could be interpreted as proposing a new benefit. Should the board reject the proposal, an improperly worded proposal could undermine your current benefits in future disputes.

Buying up to more costly coverage

Occasionally, the association and board will agree to move to a less costly, and therefore lesser quality insurance plan. For example, the parties may agree to move from a Direct 10 plan to a Direct 20/35 plan, which has higher office co-pays and deductibles. The plans cost less because they provide lower quality insurance coverage.

In a few cases, the parties have agreed to allow employees to maintain the higher level of coverage, provided the employee pays the entire difference in cost between the two plans. For example, if the Direct 10 cost \$35,000 and the Direct 20/35 cost \$25,000. The employee could maintain the Direct 10 by paying the additional \$10,000, plus the Chapter 78 deduction already being paid.

Cost of Direct 10	\$35,000
Cost of Direct 20/35.....	\$25,000
Difference	\$10,000
Ch. 78 requirement for	\$ 7,500
D-20/35 at 30%	
Total employee cost	\$17,500

A note of caution: In a few cases, district business administrators have charged the Chapter 78 deduction against the difference between the two plans.

Cost of Direct 10	\$35,000
Cost of Direct 20/35.....	\$25,000
Difference	\$10,000
Ch. 78 requirement for	\$ 7,500
D-20/35 at 30%	
Ch. 78 requirement for	\$ 3,000
the additional cost at 30%	
Total employee cost	\$20,500

This methodology is wrong and should not be permitted. If an employee elects to “buy up” to better coverage, the employee is already paying 100% of the cost of the coverage and no additional deduction or payment is warranted.

Costing Out Insurance Benefits

Before a local bargaining team can present a complete package to a board or be prepared to respond to the board’s package of proposals, the association must accurately calculate the full cost of insurance premiums to the district and to each employee.

Local association negotiators should secure a salary and health benefits roster from the board of education. The roster should include information on the following areas:

- Each employee’s first and last name;
- Employee’s identification number;
- Job classification;
- Term of employment (i.e. 10 months, 11 months, 12 months);
- Percentage of Full-Time Employment (FTE);
- Step and column on the salary guide;
- Base salary;
- Longevity;
- Any other pensionable adjustments to salary;

- Medical, prescription, dental, and vision plans selected by the employee and the level of coverage (single, parent/child(ren), 2 adults, family) for each plan;
- Number of months the employee is/was covered by insurance benefits in which insurance deductions were taken;
- The cost of each plan for the current contract year and any projected increases;
- The employees premium share towards each plan; and
- The names of employees opting out of coverage and the compensation paid to each employee.

This information should be provided electronically in an Excel spreadsheet

The local association may survey its membership to verify the board’s information. This health care roster information should become a permanent part of the association’s records regarding insurance costs in the district.

Your UniServ field rep can assist you in developing a cost out formula for your benefits.

School Employees’ Health Benefits Plan (SEHBP)

The SEHBP offers insurance through two providers: Horizon/Blue Cross-Blue Shield of New Jersey and Aetna each offer ten different medical plans, five Preferred Provider Organization (PPO) plans, four Health Maintenance Organization (HMO) plans and one High Deductible Health Plan (HDHP).

There are three options for prescription coverage in the SEHBP. The coverage can be provided as part of the DIRECT medical plan with 90 percent reimbursement or there can be a free standing prescription card purchased through the SEHBP or through a private broker. The SEHBP prescription card co-pays vary based on the medical plan chosen.

Aspects of the SEHBP

- Benefit levels are set by the SEHBP Plan Design Committee and not subject to change or supplementation through local negotiations. Benefit changes by the SEHBP Plan Design Committee may not conform to a school district's contract.
- Experience ratings are based on the entire state and are not subject to wide swings.
- Benefits are uniform statewide.
- Most plans offered through the SEHBP for active employees are available as part of the retirement benefits to all TPAF, PERS, and Alternate Benefit Program members with 25 years of creditable service in the pension systems, or those who retire with a disability pension.
- The SEHBP offers a choice of plans.
- The SEHBP provides a statewide plan to compare rates and benefits.
- The SEHBP provides an option for locals to consider when facing dramatic increases in costs or copayments.

Basic claims data are available once every two years.

Self-Insured Health Benefits

There are two primary ways employers provide health benefits coverage for employees: fully-insured and self-insured plans. Employers who provide fully-insured benefits transfer the risk to an insurance company. In a fully-insured plan, when claims come in less than what was paid in premium, the insurance company reaps the profits (within limitations per the ACA). Self-insured plans have the benefit of lower administrative costs and the employer, rather than the insurance company, reaps the benefit if claims come in lower than expected.

If an employer decides to self-insure, there are two primary ways to do this: by joining a Health Insurance Fund (HIF)/Joint Insurance Fund (JIF) or by self-insuring on its own. Health Insurance Funds are a consortium of employers that pool their risks in providing health benefits for their employees. Entities typically have to be accepted into a HIF or JIF. Large employers can self-insure on their own.

Self-insurance health benefits are governed by the Employee Retirement Income Security Act (ERISA), which is a federal law. This means that self-insured plans do not have to follow New Jersey state mandates with regards to specific guaranteed benefits, provider reimbursements, and levels of coverage. In addition to the state mandated benefits, K-12 non-SEHBP districts in New Jersey also must allow retirees under age 65 to purchase benefits through the district (P.L. 1987, c. 386). A list of state mandated benefits can be found on the Division of Banking and Insurance website:

https://www.state.nj.us/dobi/division_insurance/mhbab/mandatedhbac.htm#1

As a result, the self-insured plans may not conform to Associations' contractual right to "equal to / better than" benefits if a district moves to a self-insured plan. Equal to / better than has historically been understood to mean that any change in insurance carriers will provide coverage that is at least as good in every respect as the prior plan regarding the schedule of benefits, the list of health care providers, and the administration of the plan. If the board is claiming that a self-insured plan is "equal to or better than" the existing fully-insured plan, then all state mandates, as well as the other elements of the prior plan, should be covered by the self-insured plans and they should be following P.L. 1987, c.386.

Regardless of the mechanism for self-funding, you should request additional information regarding the cost and administration of benefits if your district self-insures any or all of your health benefits.

Additional information requests for self-insured plans:

Page 78 of this manual includes a list of items to request related to health insurance. For districts whose plans are self-funded, the following should also be requested:

- Premium/rate renewal report (and any other supporting documents) from the broker outlining how the premium/funding rates were set for the

[YEAR(S)] school year(s) for each self-funded benefit provided (medical, RX, dental, and vision).

- Medical utilization (loss ratio) report for each self-funded benefit for the [YEAR] school year for each self-insured medical plan (medical, RX, dental and vision).
- Expected claims and actual claims for each benefit self-insured as of the end of each plan year for the past three (3) plan years.
- Amount of attachment point for both individual and aggregate stop-loss policies.
- Total **annual** cost for the [YEAR] school year to the Board of Education (not including employee contributions) prior to rebates for the self-funded benefits broken down as follows
 - Payments for claims
 - Payments for claims administration
 - Payments to the insurance broker/consultant
 - Cost of each reinsurance/stop loss policy
 - Cost of any other medical management/supplemental vendor (i.e. wellness program)
- Total rebates received by the board of education for the [YEAR] school year, if applicable, for each self-insured plan (medical, RX, dental, vision)
- Results from any claims audit performed.

- Total balance of any reserve account(s) for self-insurance as of the end of each plan year for the past three (3) plan years.
- Total balance of any surplus account(s) for self-insurance as of the end of each plan year for the past three (3) plan years.

Those joining a HIF/JIF should also request:

All governing documents of the HIF/JIF such as constitution, bylaws, etc.

Additional language for self-insured districts:

Examples of language related to the excess surplus/reserves include but are not limited to the following:

Applies to an employer self-insured on their own:

In any plan year in which the self-insurance reserve surpasses a funding level of X (i.e. 3 months' claims, specified dollar amount), X% of any funds above that level will be distributed among Association members in a manner to be solely determined by the Association. Funds will be distributed within [insert time frame].

Applies to employer self-insured through a health insurance fund (HIF):

In any plan year in which the employer receives a refund or dividend from the [insert name of HIF], X% of the refund or dividend will be distributed among Association members in a manner to be solely determined by the Association. Funds will be distributed within [insert time frame] of the district receiving the refund or dividend.

Examples of the manner through which the excess funds can be distributed include, but are not limited to:

- Direct reimbursement to employees in proportion to their insurance contribution.
- A premium holiday for one or more months, depending on the size of the excess funds.

- Use the excess funds to offset insurance costs in the next benefits year.

Note: *The Association must determine in which manner funds will be reimbursed. The following should be considered:*

- Will retirees be reimbursed if they were on the benefits for the plan year?
- How will you handle people on the benefits for a partial year? Those who changed level of coverage mid-year?
- Will everyone receive the same reimbursement, or will it vary based on how much they have contributed?

Questions to ask if a school district changes from a fully-insured to a self-insured plan

1. Will the new plan be "equal to or better than" the previous plan? "Equal to or better than" means that any change in insurance carriers will provide coverage that is at least as good in every respect as the prior plan regarding the schedule of benefits, the list of health care providers, and the administration of the plan.
 - a. Will the plan cover all Benefit, Provider, and Person Mandates in the State of New Jersey as found on the NJDOBI website?
 - b. Does it follow c. 386, P.L. 1987?
 - c. Does it cover all Essential Health Benefits per the New Jersey Benchmark Plan?
2. The Association needs to review the following:
 - a. Claims utilization report for most recently completed plan year.
 - b. What has been the medical loss ratio over the last three completed plan years?
3. Who will be the brokers for the plan? What will their role be?
4. Who will be the third-party administrator (TPA)?
5. Will the TPA be audited, and how frequently? Who will be doing the audit?
6. What type of stop-loss coverage will there be (individual and aggregate) and what are the attachment points (i.e. \$300k per individual/\$10 million for the group)?
7. How is the district going to determine the premiums in the first year and subsequent years?
 - a. If the district collects more in premiums than is paid in claims, what happens to the excess premiums?
 - Will members receive a portion of their c. 78 deductions returned?
 - Will the premiums be reduced the following year?
8. From where will money come from to establish the reserve?
9. How will the adequate reserve balance be determined?
10. What will the Out-of-Network reimbursement be based upon (90% of Usual and Customary Rate, 150% Medicare, etc.)?
11. Will there be at least four coverage levels (Single, 2 Adults, Parent/Child(ren), Family)?
12. How will the run-in and the run-out of claims be covered?
13. Will the plan follow SEHBP administrative practices? (If leaving SEHBP)
 - a. Employees beginning in September will not have to wait for coverage.
 - b. Coverage includes July and August when employed the entire year.
 - c. Coverage remains in effect until the end of the month in which coverage ended.

Additional question when district joins a HIF/JIF or other joint purchasing arrangement:

1. The Association needs to review the following:
 - a. Governing documents for the HIF/JIF (i.e. Constitution & Bylaws).
 - b. Meeting minutes for the prior 12-month period.
 - c. List of other districts/entities in the HIF/JIF.

Self-Insurance Glossary

Administrative Services Only (ASO) contract – The contract between the self-insured entity and the third part administrator.

Aggregate stop-loss/attachment point – Insurance for claims that exceed a pre-determined threshold for a group. This provides protection against catastrophic claims. Sometimes referred to as specific stop loss.

Claims audit – Self-insured plans should have periodic audits to ensure that the Third-Party Administrator (TPA) is correctly paying claims – both in terms of the amount they are paying and what services are covered.

Claims utilization report – Report detailing claims activity with employee information redacted.

Employee Retirement Income Security Act (ERISA) – Federal law governing the minimum standards for self-insured plans (health and retirement).

Expected claims – The estimated cost that claims will come in during a plan year. This is how the plan actuary sets the premium/funding rate.

Fund surplus – Excess cash above an adequate reserve account.

Health Insurance Fund (HIF)/Joint Insurance Fund (JIF) – A governmental entity that is formed when at least two entities join to provide health insurance benefits.

As governmental entities, HIFs/JIFs must follow N.J. Department of Banking and Insurance regulations.

Incurred But Not Reported (IBNR) – Due to the time it takes to process claims, there is often a lag between when a claim is incurred and when a bill is actually received and paid.

Individual stop-loss/attachment point – Insurance for claims that exceed a pre-determined threshold for an individual. Also referred to as specific stop-loss.

Lasering – When a specific individual has a higher specific deductible set before the individual stop loss insurance kicks in. This is often used in cases of high-cost claimants who can drive up the cost of reinsurance policies.

Maximum liability – The is the most amount that an employer/entity will pay in claims before the stop-loss kicks in. This is the expected claims plus the risk corridor.

Medical loss ratio – The ratio of dollars paid in premium versus dollars paid out to claims.

Plan Document – This document details administrative issues of the plan, such as what is covered by the plan and what exclusions are made.

Reinsurance – Reinsurance policies provide a self-insured entity protection against catastrophic claims, either at the individual or group level.

Reserves – Money designated to cover the cost of expected claims plus the risk corridor.

Risk corridor – This is the difference between the expected claims and where the stop-loss kicks in.

Run-in – Claims that are paid that were incurred in the previous plan year.

Run-out – Claims that are paid after the year in which they were incurred.

Schools Health Insurance Fund (SHIF) – Founded in 2016, the SHIF provides medical, prescription and dental benefits for school districts across New Jersey, mostly in the southern part of the state.

Self-insured/(funded)self-insured healthcare – In a truly self-insured healthcare plan, the employer takes on 100% of the risk of the cost of claims. Most self-insured plans are partially self-insured because there is some level of stop-loss insurance (reinsurance) to protect from catastrophic claims. Self-insured and partially self-insured plans are typically much cheaper than fully-insured plans because they are exempt from state premium taxes and have lower administrative costs. Self-insured plans are also not required to cover all state-mandated insurance benefits, such as infertility treatment.

Specific stop-loss – Insurance for claims that exceed a pre-determined threshold for an individual. Also referred to as individual stop-loss.

Stop-loss insurance (reinsurance) – Many self-insured entities purchase insurance coverage to guard against catastrophic claims. Stop-loss insurance can be purchased at the individual (specific) and aggregate level.

Summary Plan Description (SPD) – Summary of the coverage provided by the plan in a format that makes it easy for plan participants to understand. It is similar to a “Summary of Benefits and Coverage” (SBC) provided for fully insured plans.

Surplus – If claims come in less than the maximum liability in a plan year once an adequate reserve has been established, the fund will begin acquiring surplus.

Third Party Administrator (TPA) – Outside party that administers the claims in accordance with the benefits covered per the Summary Plan Description.

Best Practices for Assessing Self-Insurance Plans

1. Immediately notify your NJEA Field Representative. They will be able to assist and provide all the necessary resources available from NJEA, including health benefits specialists.
2. Begin collecting information to analyze the new plan and weigh the pros and cons of the change. A sample letter is available to send to the school district requesting the specific data required.
3. Treat this as you would any other insurance change being proposed by the district. The “equal to / better than” standard applies to the schedule of benefits, the network of providers and the administration of the plan. Reductions in any of these areas, would constitute a violation of the “equal to / better than” standard and may result in a grievance or unfair labor practice charge.
4. Establish a committee to review all the information you receive and negotiate with the district on the proposed change.
5. Establish a committee to monitor any meetings the district has regarding self-insurance, including meetings with the broker and/or meetings of the HIF/JIF.
6. Annually request all documents related to self-insurance as outlined in the Collective Bargaining Manual.
7. Negotiate language related to any excess reserves/surplus. If monies collected for premiums are more than what is paid out in claims, there should be a standard way to reimburse the Association.

Principles of Negotiating Insurance Premium Deductions

- Treat CH. 78 premium deductions as negative compensation for the purposes of negotiation.
- Retro calculations on premium deductions are negotiable.
- Calculate the impact of any premium deduction methodology change on every job classification.
- Include language that ensures members will receive a prorated refund of any premium deduction in the event that the district receives a premium dividend/rebate.
- Districts should not use “blended” rates to calculate premium deductions.
- Coverage period for new employees and employees leaving the district should be clearly delineated in the contract and identify any premium deductions modifications for these employees.
- Bargain clear language as to how new employees and employees who change medical coverage will have their medical premium deductions calculated.
- Plan offerings should be carefully considered so as to offer members a variety of plan options while not jeopardizing the association’s ability to maintain acceptable levels of benefits.
- Benefit modifications should not be bargained as a method to reduce premium deductions without an analysis on the impact of those changes on members, actual premium reductions, and cost savings to the board.

Best Practices for Negotiating Reductions in Premium Deductions

- Initial association positions should include a proposal for relief to CH.78 premium deductions which are consistent with all applicable statutes, regulations, and rulings.
- Decouple premium deductions from medical premiums.
- All premium deductions should be negotiated and never be higher than CH.78 Tier IV levels.
- The amount of premium deductions, in conjunction with salary increases, should ensure that an employee's net pay increases and never decreases.
- New employee premium deductions should be identical to those of existing employees within the same job classification.
- New employee benefit options should be identical to those offered to existing employees within the same job classification.
- Do not incorporate or reference any statutory language into the Collective Bargaining Agreement (CBA) that codifies the Tier IV premium deduction tables contained in CH.78.

Sample Letter

September 15, 2017

Jane Doe, Business Administrator
Anytown Board of Education
1234 Main Street
Unionville, NJ 07833

Re: Contract negotiations

Dear Ms. Doe,

In preparation for collective bargaining between the Anytown School District and the Anytown Education Association for a successor agreement to the current contract, the association is requesting the following financial information regarding salaries, fringe benefits, and health benefits. Please provide this information in electronic form rather than by hard copy.

1. A roster of employees including the following:
 - Employee identification number;
 - Each employee's last name and first name;
 - Job classification;
 - Term of employment (i.e. 10 months, 11 months, 12 months);
 - Percentage of full-time employment (FTE);
 - Step and column on the salary guide;
 - Base salary;
 - Longevity;
 - Any other pensionable adjustments to salary (e.g. 6th period compensation, increment withholding);
 - Total salary;
 - The number of months the employee is/was covered by insurance benefits in which insurance deductions were taken;
 - The medical, prescription, dental and vision insurance plans (and others, as appropriate) selected by each employee;
 - The level of coverage (single, parent/child(ren), 2 adults, family, etc.) selected by each employee for each plan;
 - The calculation used to determine each employee's premium deduction for each plan;
 - The employee's premium deduction dollars paid toward each plan;
 - The employees opting out of coverage waived coverage and the compensation paid to each; and

- In a separate table, the annual premium cost of each level of each plan for the current contract year and any projected increases for the following year.

The information requested above is not protected by HIPAA and must be provided in accordance with various federal and state statutes as well as numerous PERC and New Jersey court decisions.

Please segregate this information by bargaining units/job classifications (secretaries, teachers and other support staff).

2. Current list of employees receiving stipends and the amount being received.
3. Current list of employees receiving salary for extra/co-curricular activities showing the assignments, salary, grade placement, and years of service for each employee for each activity.
4. Name of insurance providers and a copy of the master contract for each program.
5. A copy of any booklets or other materials showing the schedule of benefits, including any services that are not covered.
6. Copy of the utilization report (medical loss ratio) for each of the last eighteen (18) months for all benefits programs offered by the district.
7. Amounts of any rebates, waivers of premiums or other considerations given to the district by any health care insurance provider.
8. The broker's fee paid in each of the last three years and the method by which the broker's fee was calculated.
9. Amount contributed by employees towards healthcare premiums in each of the last three years. Additionally, please specify what year of the Chapter 78 contribution schedule the parties are in during the current year.
10. The rate increase for each benefit program for each of the last three years and, if known, the projected increase in premiums in each program for the next fiscal year.
11. Amount paid by the board for tuition reimbursement in each of the last three years.
12. Contracts for all other bargaining units in the district as well as contracts for administrators including the superintendent.

This information should be provided electronically in an Excel spreadsheet. Attached is a sample roster for your convenience. Please forward this information to me at your earliest opportunity so that both parties may review and agree on baseline financial costs at the earliest possible time. Thank you for your anticipated cooperation.

Sincerely yours,

John Jones,
UEA Negotiations Chair

Sample Roster #1

Sample Salary/ Insurance Roster with Premium Table: Anytown E.A.

ID # LAST NAME FIRST NAME		EMPL TERM: # OF MONTHS % FTE		BASE YEAR COL STEP		BASE YEAR SALARY: * FTE%		BASE YEAR LONGEVITY		BASE YEAR PENSIONABLE STIPENDS AND/OR INCREMENT WITHHOLDING		BASE YEAR TOTAL SALARY	
54947	Friedman	Jazmyn	Aide	10.00	100.00%	Cert	6	24,500.00	-	-	-	24,500.00	
60017	Mayes	Audrey	Aide	10.00	50.00%	NonDeg	2	22,500.00	-	-	-	11,250.00	
17398	Lawrence	Shawn	Sec.	12.00	100.00%	Admin	15	57,770.00	1,000.00	-	-	58,770.00	
18414	Washington	Addyson	Sec.	10.00	83.33%	Office	1	38,815.55	-	-	-	32,345.00	
43123	Decker	Tyrell	Teach	10.00	100.00%	BA	1	51,500.00	-	-	-	51,500.00	
66768	Maddox	Jordon	Teach	10.00	100.00%	BA	2	52,250.00	-	-	-	52,250.00	
60296	Giles	Carmen	Teach	10.00	100.00%	BA	3	53,000.00	-	-	-	53,000.00	
58005	Macias	Preston	Teach	10.00	100.00%	BA	4	54,000.00	-	-	-	54,000.00	
19624	Lloyd	Hadassah	Teach	10.00	100.00%	BA	8	60,375.00	-	-	-	60,375.00	
54083	Brady	Amya	Teach	10.00	100.00%	BA	9	62,075.00	-	-	-	62,075.00	
63518	Crane	Jazlene	Teach	10.00	100.00%	BA	13	69,900.00	-	-	-	69,900.00	
62892	Robertson	Dominique	Teach	10.00	100.00%	BA	13	69,900.00	-	-	-	69,900.00	
51620	Rangel	Philip	Teach	10.00	100.00%	MA	1	55,500.00	-	-	-	55,500.00	
44128	Gay	Kyleigh	Teach	10.00	100.00%	MA	6	61,000.00	-	-	-	61,000.00	
33268	Clay	Jay	Teach	10.00	100.00%	MA	7	62,500.00	-	-	-	62,500.00	
56697	Fleming	Heath	Teach	10.00	100.00%	MA	7	62,500.00	-	-	-	62,500.00	
20134	Howell	Alexa	Teach	10.00	100.00%	MA	10	67,135.00	-	1,060.00	-	67,135.00	
32906	Aguirre	Ali	Teach	10.00	100.00%	MA	16	77,400.00	5,000.00	-	-	82,400.00	
39596	Arellano	Vivian	Teach	10.00	100.00%	MA	16	77,400.00	3,000.00	-	-	80,400.00	
30800	Robertson	Rogelio	Teach	10.00	40.00%	MA	16	193,500.00	-	-	-	77,400.00	
26651	Byrd	Jocelyn	Teach	10.00	100.00%	MA+30	8	67,925.00	-	(1,550.00)	-	67,925.00	
41322	Russell	Gabriela	Teach	10.00	80.00%	MA+30	9	85,093.75	-	-	-	68,075.00	
51235	Noble	Clark	Teach	12.00	120.00%	MA+30	16	66,500.00	3,000.00	-	-	83,400.00	

10 month v 12 month employee

Value of all pensionable salary adjustments - Increment withholdings entered as negative value

NJEA Research:PV

The names and data used in this sample were generated by random.
Any similarity to any individual, living or dead, is purely coincidental.

7/17/2017

Sample Roster #2

Sample Salary/ Insurance Roster with Premium Table: Anytown E.A.

ID #	LAST NAME	FIRST NAME	COVERAGE TERM: # OF MONTHS	Plan Type = PPO, POS, HMO, Etc.,				Coverage Type = Single, 2 Adults, Parent/Child, Family, etc.,				MED DED CALC	RX DED CALC	DENT DED CALC	V/S DED CALC
				MED PLAN	RX PLAN	DENT PLAN	V/S PLAN	MED COV	RX COV	DENT COV	V/S COV				
54947	Friedman	Jazmyn	12.00	DA10	RX1	DENT1		FM	FM	FM		3.00%	3.00%	3.00%	
60017	Mays	Audrey	12.00	NE	NE	NE		NE	NE	NE		0.00%	0.00%	0.00%	
17398	Lawrence	Shawn	12.00	DA10	RX1	DENT1		2A	2A	2A		17.00%	17.00%	17.00%	
18414	Washington	Addyson	12.00	DA10	RX1	DENT1		FM	FM	FM		5.00%	5.00%	5.00%	
43123	Decker	Tyrell	10.00	DA10	RX1	DENT1		2A	2A	2A		15.00%	15.00%	15.00%	
66768	Maddox	Jordon	12.00	DA10	RX1	DENT1		SG	SG	SG		20.00%	20.00%	20.00%	
60296	Giles	Carmen	10.00	OMN	RX1	DENT1		SG	SG	SG		20.00%	20.00%	20.00%	
58005	Macias	Preston	12.00	DA10	RX1	DENT1		FM	FM	FM		12.00%	12.00%	12.00%	
19624	Lloyd	Hadassah	12.00	DA10	RX1	DENT1		2A	2A	2A		21.00%	21.00%	21.00%	
54083	Brady	Amya	12.00	DA10	RX1	DENT1		FM	FM	FM		17.00%	17.00%	17.00%	
63518	Crane	Jazlene	12.00	OO	OO	OO		OO	OO	OO		0.00%	0.00%	0.00%	
62892	Robertson	Dominique	12.00	DA15	RX1	DENT1		PC	PC	PC		23.00%	23.00%	23.00%	
51620	Rangel	Philip	10.00	DA10	RX1	DENT1		SG	SG	SG		23.00%	23.00%	23.00%	
44128	Gay	Kyleigh	12.00	DA10	RX1	DENT1		2A	2A	2A		21.00%	21.00%	21.00%	
33268	Clay	Jay	12.00	DA10	RX1	DENT1		SG	SG	SG		27.00%	27.00%	27.00%	
56697	Fleming	Heath	12.00	OO	OO	DENT1		OO	OO	2A		0.00%	0.00%	21.00%	
20134	Howell	Alexa	12.00	DA10	RX1	DENT1		FM	FM	FM		19.00%	19.00%	19.00%	
32906	Aguirre	Ali	12.00	DA15	RX1	DENT1		2A	2A	2A		28.00%	28.00%	28.00%	
39596	Arellano	Vivian	12.00	DA10	RX1	DENT1		PC	PC	PC		28.00%	28.00%	28.00%	
30800	Robertson	Rogelio	12.00	NE	NE	NE		NE	NE	NE		0.00%	0.00%	0.00%	
26651	Byrd	Jocelyn	12.00	DA10	RX1	DENT1		SG	SG	SG		29.00%	29.00%	29.00%	
41322	Russell	Gabriela	12.00	DA10	RX1	DENT1		FM	FM	FM		19.00%	19.00%	19.00%	
51235	Noble	Clark	12.00	DA10	RX1	DENT1		SG	SG	SG		34.00%	34.00%	34.00%	

OO = Opt out
NE = Not Eligible

The names and data used in this sample were generated by random.
Any similarity to any individual, living or dead, is purely coincidental.

Sample Roster #3

Sample Salary/ Insurance Roster with Premium Table: Anytown E.A.

ID #	LAST NAME	FIRST NAME	MED DEDUCTION	RX DEDUCTION	DENT DEDUCTION	VIS DEDUCTION	WAIVER PAID
54947	Friedman	Jazmyn	802.59	218.38	21.68		
60017	Mays	Audrey	-	-	-		
17398	Lawrence	Shawn	3,180.44	865.37	122.85		
18414	Washington	Addyson	1,337.65	363.97	36.13		
43123	Decker	Tyrell	2,806.27	763.56	108.40		
66768	Maddox	Jordon	1,870.85	509.04	82.58		
60296	Giles	Carmen	1,870.85	509.04	82.58		
58005	Macias	Preston	3,210.35	873.52	86.72		
19624	Lloyd	Hadassah	3,928.79	1,068.98	151.75		
54083	Brady	Amya	4,548.00	1,237.48	111.49		
63518	Crane	Jazlene	-	-	-		5,000.00
62892	Robertson	Dominique	3,809.52	1,088.85	292.70		
51620	Rangel	Philip	2,151.48	585.40	94.97		
44128	Gay	Kyleigh	3,928.78	1,068.98	151.75		
33268	Clay	Jay	2,525.64	687.20	111.49		
56697	Fleming	Heath	-	-	151.75		5,600.00
20134	Howell	Alexa	5,083.05	1,383.07	137.30		
32906	Aguirre	Ali	4,986.78	1,425.31	202.34		
39596	Arellano	Vivian	4,871.66	1,325.55	356.33		
30800	Robertson	Rogelio	-	-	-		
26651	Byrd	Jocelyn	2,712.73	738.11	119.75		
41322	Russell	Gabriela	5,083.05	1,383.07	137.30		
51235	Noble	Clark	3,180.44	865.37	140.39		

PREMIUM TABLE BASE YEAR INSURANCE PREMIUMS			
Plan	Level	Monthly	Annual
Direct 10	SG	779.52	9,354.24
	2A	1,559.04	18,708.48
	FM	2,229.41	26,752.92
	PC	1,449.90	17,398.80
Direct 15	SG	742.08	8,904.96
	2A	1,484.16	17,809.92
	FM	2,122.34	25,468.08
	PC	1,380.26	16,563.12
RX 1	SG	212.10	2,545.20
	2A	424.20	5,090.40
	FM	606.61	7,279.32
	PC	394.51	4,734.12
Dent 1	SG	34.41	412.92
	2A	60.22	722.64
	FM	60.22	722.64
	PC	106.05	1,272.60

NJEA Research:PV

The names and data used in this sample were generated by random.
Any similarity to any individual, living or dead, is purely coincidental.

7/17/2017

Legal Framework for Negotiating Medical Benefits

Negotiability

Health insurance benefits (benefit levels, co-pays, co-insurance, among other plan design components) are, in general, mandatorily negotiable unless preempted. *Tenaflly Bd. of Ed.*, PERC No. 93-83, 19 NJPER 210 (¶24100 1993); *West Orange Bd. of Ed.*, PERC No. 92-114, 18 NJPER 272 (¶ 23117 1992), *aff'd App. Div. Dkt. No. A-5196-91T2* (3/2/93); *Hudson Cty.*, PERC No. 92-56, 18 NJPER 37 (¶23012 1991); *Piscataway Twp. Bd. of Ed.*, 1 NJPER 49 (1975).

PERC established that employees had a statutory right not to have their health benefits unilaterally reduced. *Bor. of Metuchen*, PERC No. 84-91, 10 NJPER 127 (¶15065 1984).

Selection of Health Insurance Carrier

An employer has a managerial prerogative to select the insurance carrier provided the level of benefits is not changed. *Hunterdon Central H.S. Bd. of Ed.*, PERC No. 87-83, 13 NJPER 78(¶18036 1986); *City of Newark*, PERC No. 86-74, 12 NJPER 26 (¶17010 1985); *Bor. of Paramus*, PERC No. 86-17, 11 NJPER 502 (¶16178 1985).

However, the carrier's name may be included in the CBA only as a point of reference to determine the level of benefits. *City of Newark*, PERC No. 86-74, 12 NJPER 26 (¶17010 1985).

An employer may not unilaterally determine which plan is better "on balance," in the aggregate," etc. *Tp. of Cranford*, I.R. No. 2000-4, 26 NJPER 233 (¶31093 2000); *Cty.*

of Hudson, PERC No. 2000-53, 26 NJPER 71 (¶31026 1999); *Bor. of Metuchen*, PERC No. 84-91, 10 NJPER 127 (¶15065 1984).

However, changing the carrier will be mandatorily negotiable if change results in increasing or decreasing level of health insurance benefits or changing the administration of the plan in a manner affecting employment conditions (e.g. Changing the administration of the plan by requiring employee to pay provider and seek reimbursement rather than having provider bill carrier.)

Health Insurance Plan Documents/Duty to Provide Health Benefits Information

The New Jersey Employer – Employee Relations Act requires an employer to provide information necessary for negotiations and the administration of contracts to a majority representative. The majority representative requires the information requested to: ensure the members of its bargaining unit are contributing the amounts required by law; project future costs to its members, and evaluate the financial consequences of their enrollment options, all of which has a direct impact upon salary and benefits proposals.

PERC has consistently held that an employer's refusal to provide without charge information relevant to bargaining, such as budget, payroll records and other requested financial data is a refusal to negotiate in good faith. *Downe Tp. Bd. of Ed.*, PERC No. 86-66, 12 NJPER 3, 10 (¶17002 1985); *Shrewsbury Boro.*

Bd. of Ed., PERC No. 81-119, 7 NJPER 235 (¶12105 1981); see also *County of Morris v. Morris Council No. 6*, IFPTE, PERC No. 2003-22, 28 NJPER 421 (¶33154 2002) and *County of Morris v. Communication Workers of America*, PERC No. 2003-32, 28 NJPER 456 (¶ 33168 2002), *aff'd* 371 N.J. Super. 246 (App. Div. 2004), *certif. den.* 182 N.J. 427 (2005) (relevance is to be liberally construed.)

Likewise, PERC has consistently held that an employer's refusal to provide a majority representative with information relevant to grievance and contract administration is a refusal to negotiate in good faith. *New Jersey Transit Bus Operations, Inc.*, PERC No. 89-127, 15 NJPER 340 (¶20150 1989); *State of New Jersey*, PERC No. 88-57, 13 NJPER 752 (¶18284 1987), *reconsid. den.* PERC No. 88-45, 13 NJPER 841 (¶18323 1987), *aff'd App. Div. Dkt. No. A-2047-87T7* (12/27/88.)

In particular, PERC has frequently held that boards of education are required to provide relevant health information data to associations during negotiations. See *Lakewood Bd. of Ed.*, PERC No. 97-44, 22 NJPER 397 (¶27215 1996) (board is statutorily required to supply information on health benefits); *Boonton Tp. Bd. of Ed.*, D.U.P. No. 98-22, 23 NJPER 639 (¶28313 1997); (citing to *Lakewood* in holding that employer is obligated to provide specific documents and information about any change in health insurance plan); *Bor. of Island Heights*, 24 NJPER 333 (¶29157 1998) (borough's failure to provide police union with specified financial data and voter information violated borough's bargaining

obligation); *Union Tp.*, 28 *NJPER* 86 (¶33031 2001) (township ordered to provide any information relevant to administration of their respective bargaining agreements, including maintenance of health insurance benefits); *Franklin Tp.*, I.R. No. 2006-19, 32 *NJPER* 135 (¶62 2006) (employer ordered to provide union with copies of pertinent documents pertaining to changes in health insurance coverage.)

Although a public employer is not always required to produce documents considered confidential, the employer must prove their confidentiality. *City of Newark*, H.E. No. 2013-7, 39 *NJPER* 165, 170 (¶51 2012). In fact, employers who are not themselves the insurance provider are not prohibited by HIPAA from providing the kind of generic information the Association has requested. See 45 *C.F.R.* § 160.45; see *City of Trenton*, PERC No. 2005-20, 30 *NJPER* 413, 416 (¶135 2004) and *City of Newark*, *supra* at 170. Moreover, such a view disregards the association's statutory status as a majority representative and the fact that it is requesting economic data rather than private medical information. Providing the association with the information it has requested will not result in the disclosure of any information about an individual bargaining unit member's usage of plans, types of medical conditions or types prescriptions utilized.

Even under the stricter standard of confidentiality applicable under the common law right of access when a taxpayer seeks information regarding public employees, the Appellate Division has held that it is not a violation of HIPAA to reveal the name of each employee, the type of health benefits elections which each employee has made, and the cost of the benefits for each employee. *Michelson v. Wyatt*, 379 *N.J. Super.* 611 (App. Div. 2005).

Changes in Benefit Levels

An employer violates the Act when it unilaterally changes health benefit levels. A unilateral change in benefit levels is an unfair prac-

tice even if "on balance" the overall level of benefit may be enhanced. *Pennsauken Twp.*, 14 *NJPER* 61 (¶19020 1987); *Bor. of Closter*, PERC No. 86-95, 12 *NJPER* 202 (¶17078 1986); *Bor. of Metuchen*, PERC No. 84-91, 10 *NJPER* 127 (¶15065 1984).

Repudiation

PERC usually defers claims alleging unilateral changes in mid-contract to the parties' binding arbitration process. However, if the employee's benefits are unilaterally decreased, contract interpretation is not a defense, since the employees' right to maintain the same level of benefits, despite a change in carriers, and the right against unilateral change in terms and conditions of employment, are statutory rights that do not depend on contract interpretation. *City of South Amboy*, PERC No. 85-16, 10 *NJPER* 511 (¶15234 1984).

This is so because PERC has held that a contractual waiver of a majority representative's right to negotiate will not be found unless a unilateral change is clearly, unequivocally and specifically authorized by the language to the collective agreement.

Where the parties' collective negotiations agreement contains a health benefits provision, the Commission considers unilateral changes in the level of health benefits or premium payments a repudiation of the contract. In *Piscataway Twp.*, PERC No. 97-47, 12 *NJPER* 833 (¶17320 1988), there was no dispute as to the meaning of a contract provision which continued health and certain other benefits for retirees. The employer advised an employee, about to retire, that he would not receive health benefits. The Commission held that such a refusal constituted a repudiation of the contract in violation of section 5.4(a)(5). See also, *Bridgewater Twp.*, PERC No. 95-28, 20 *NJPER* 399 (¶25202 1994), *aff'd* 21 *NJPER* 401 (¶26245 App. Div. 1995); *City of South Amboy*, PERC No. 85-16, 10 *NJPER* 511 (¶15234 1984); *Bor. of Metuchen*, PERC

No. 94-91, 10 *NJPER* 127 (¶15065 1984).

Deferral to Arbitration

Deferral to arbitration is the preferred mechanism when an unfair practice charge essentially alleges a violation of the duty to negotiate in good faith interrelated with a breach of contract. Allegations of a unilateral change in the level of health benefits usually fall into this category and are routinely deferred to the parties' binding arbitration process. See *Pennsauken Twp.*, PERC No. 88-53, 14 *NJPER* 61 (¶19020 1987); *Stafford Twp. Bd. of Ed.*, PERC No. 90-1, 15 *NJPER* 527 (¶20217 1989); *Hazlet Twp. Bd. of Ed.*, PERC No. 95-78, 21 *NJPER* 164 (¶26101 1995); *City of Newark*, PERC No. 95-108, 21 *NJPER* 229 (¶26146 1995).

However, in *Clifton Bd. of Ed.*, D.U.P. 98-21, 23 *NJPER* 592 (¶28289 1997), the board's refusal to waive procedural and scope defenses resulted in issuing a ULP. Even though unilateral changes in health benefits may violate the Act, deferral to binding arbitration may be ordered because often the CBA sets the benefit levels and the conditions under which the employer may change benefits. *Stafford Tp. Bd. of Ed.*, PERC No. 90-17, 15 *NJPER* 527 (¶20217 1989).

A complaint will normally center on allegations that the employer refused to negotiate a change in the level of health benefits. Employees have statutory right under subsection 5.4(a)(5) not to have when an employer changes carriers. The case cannot be dismissed as a mere breach of contract dispute. See *City of South Amboy*, PERC No. 85-16, 10 *NJPER* 511 (¶15234 1984); *Bor. of Metuchen*, PERC No. 94-91, 10 *NJPER* 127 (¶15065 1984). The parties' collective bargaining agreement for the term of July 1, 1992 through June 30, 1996 does include health insurance benefits language and binding grievance arbitrations. Although it is Commission policy to defer such allegations to arbitration, the employer here refuses to waive procedural and

scope defenses. Accordingly, there is a significant question here as to whether the underlying merit of the unfair practice charge will be reached. Deferral is not appropriate. *State of New Jersey (Dept. of Human Services)*, PERC No. 84-148, 10 NJPER 419 (¶15191 1984).

Interim Relief

A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Changing the level of benefits in the period of ongoing negotiations undermines the association's ability to represent its members.

To be granted interim relief, the moving party has the burden to prove each of the factors established in *Crowe v. DiGioia*, 90 N.J. 126 (1982) by clear and convincing evidence:

- relief is needed to prevent irreparable harm;
- the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits;
- balancing the "relative hardships" to the parties reveals that greater harm would occur if the relief is not granted than if it were; and
- the public interest will not be injured.

The law is equally well-settled that unilateral changes in health benefits violate the obligation of an employer to negotiate in good faith. *Borough of Closter*, PERC No. 2001-75, 27 NJPER 289 (¶32104 2001); *City of South Amboy*, PERC No. 85-16, 10 NJPER 511 (¶15234 1984); *Borough of Metuchen*, PERC No. 84-91, 10 NJPER 127 (¶15065 1984). The Commission has long held that the level of health benefits is a mandatorily negotiable term and condition of employment that may not be changed unilaterally by an employer. *Piscataway Tp. Bd. of Ed.*, PERC No. 91, 1 NJPER 49 (1975).

Commission Designees have not hesitated to grant interim relief when an employer has unilaterally eliminated and replaced employees' negotiated health care plans. In *Millburn Tp. Bd. of Ed.*, I.R. No. 2012-1, 38 NJPER 99 (¶24 2011), the employee representative filed an unfair labor practice charge and sought restraints, alleging that the employer violated the Act by unilaterally changing employees' health care coverage. The employee representative alleged that the changes to health insurance coverage included the elimination of the traditional plan, the school board's requirement that employees enrolled in the traditional plan move to a POS plan, and increases in co-pays and deductibles.

PERC's Designee granted the employee representative's request for interim relief, holding:

In cases where the Commission has found unilateral changes in benefit levels, it has ordered interim relief by requiring employers to create a fund to reimburse employees for any losses suffered as the result of such violation. Union Tp., PERC No. 2002-55, 28 NJPER 198 (¶33070 2002); Chatham Bd. of Educ., I.R. No. 2002-5, 28 NJPER 84 (¶33030 2001). Although, here the board's changes to the benefit levels are not accomplished through a change in carrier, the alteration to the plan design, including the elimination of the traditional plan, are substantial and create, in effect, a new plan.

The Designee ordered the employer to create a fund to pay or reimburse costs to unit employees for the difference between the health benefits currently provided to them and the health benefits that would have been provided to them under the traditional health plan.

Similarly, in *Burlington Co. Bd. of Chosen Freeholders*, I.R. No. 2013-6, 39 NJPER 352 (¶120 2012), the employee representative filed an unfair labor practice charge and sought interim relief when the employer unilaterally offered three new types of health plans

to employees, including bargaining unit members, without first negotiating with the employee representative. The Commission's Designee granted interim relief, noting that the employer violated the parties' expired collective negotiations agreement when it offered the plans to employees without first negotiating with the employee representative, because the parties had a past practice of negotiating changes concerning available health care plans.

In *Camden Cty. College*, I.R. No. 2008-18, 34 NJPER 104 (¶45 2008), PERC signaled it would only order interim relief in health benefit cases "where there is a clear repudiation or violation of the contractual benefit level." "Repudiation" occurs where the employer has disregarded a clear and unambiguous term of the negotiated agreement. In *Morris Cty. Sheriff's Office*, PERC No. 2010-16, 35 NJPER 348 (¶117 2009), the Commission explained that a claim of repudiation may be supported by factual allegations indicating that the employer has changed the parties' past and consistent practice in administering a disputed clause.

In *Tp. of Cranford*, I.R. No. 2000-4, 26 NJPER 233 (¶31093 2000), the employer was ordered to reinstate the terminated plan and reimburse affected unit employees upon submission of proof of out-of-pocket expenses. The unions established a substantial likelihood of prevailing in a final Commission decision on their unfair practice charge based on the employer unilaterally changing health insurance carriers during negotiations. The Designee reasoned that the township would experience a lesser degree of hardship by being required to adhere to previously agreed-upon terms of the negotiated agreement, whereas the unions were being irreparably harmed as result of unilateral change made during the course of negotiations. Cancellation of the new health care contract was not ordered as unions had not requested such relief.

In *Tp. of Union*, I.R. No. 2000-7, 28 NJPER 198 (¶33070 2002), PERC ordered the township to establish an interim program in order to maintain the level of benefit. The township was directed to establish an interim program guaranteeing that the employees had funds available to them to pay any up-front costs of medical care and any additional costs of medical treatment that would have been covered under the Horizon plan during the pendency of this litigation.

In *Township of Hillside*, I.R. No. 99-22, 25 NJPER 315 (¶30135 1999), the township was directed to immediately reinstate the prescription drug program consistent with the respective employee organizations' collective bargaining agreements for all employees included in negotiations units.

Preemption

The mere existence of a statute or regulation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the statute or regulations fixes a term and condition of employment "expressly, specifically and comprehensively." The issue is not whether a statute authorizes a benefit, but whether a statute prohibits negotiations. The legislation must be imperative and leave nothing to discretion of the public employer.

In *Tp. of Piscataway*, PERC No. 2001-40, 27 NJPER 95 (¶32036 2001), PERC denied a request for restraint of arbitration, stating:

Township's request for restraint of binding arbitration of grievance, alleging that township violated parties' bargaining agreement by failing to notify employees of rate change in health benefits and failing to negotiate over health benefits, was denied, as NJSA 26:2J-1 did not expressly, specifically or comprehensively prohibit employers from agreeing to pay full cost of HMOs.

In *Hopewell Valley Reg'l. Bd. of Ed.*, PERC No. 97-91, 23 NJPER

133 (¶28065 1997), PERC rejected the board's claim that the grievance was preempted by statute and ruled that the association's demand was legally arbitrable. The association's claim was not preempted by statute (NJSA 18A:16-16, 18A:30:6 and 18A:30-7) since the association's grievance did not challenge the board's decision to grant or deny leaves of absence. Rather, it contended that the payment of health insurance premiums for employees who have been granted unpaid leaves involved a mandatory subject of negotiations. It cited *West Orange Bd. of Ed.*, PERC No. 92-114, 18 NJPER 272 (¶23117 1992), *aff'd NJPER Supp.2d* 291 (¶232 App. Div. 1993).

Northern Burlington County Regional Board of Education, PERC No. 2001-19, 26 NJPER436 (¶31172 2000), stated:

Board of education's request for restraint of binding arbitration of grievance, which alleged that board violated bargaining agreement when it discontinued dental and prescription drug benefits for retired employees who participated in the State Health Benefits Program, was granted NJSA 18A:16-19 preempted arbitration of the grievance to the extent it sought restoration of, or reimbursement for, dental and prescription drug coverage for individuals who retired within 25 or more years of service with the board and who opted for State-paid coverage with SHBP.

Impact of P.L. 2011, c. 78 (Chapter 78)

Chapter 78 permits a public employer and majority representative to negotiate the amount of employee contribution following the full implementation of Tier 4. The law, NJSA 18A:16-17.2, states:

A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L. 2011, c. 78 (C.52:14-17.28c) shall conduct negotiations concerning contribu-

tions for health care benefits as if the full premium share was included in the prior contract.

The law goes on to state:

After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

This appeared to be a rather straight-forward process until PERC put its thumb on the scale in interpreting this statutory language. See *Clementon Bd. of Ed.*, PERC 2016-10, 42 NJPER 117 (¶34 2015), *appeal dismissed as moot*, App. Div. Dkt. No. A-0372-15T1, 43 NJPER 125 (¶38 2016). In *Clementon*, the association proposed a three-year agreement with Tier 4 contributions IV contributions continuing in the first year, and a 1.5% contribution thereafter. PERC interpreted this statutory language to bar this arrangement. Rather, under PERC's analysis, a reduction in the employee contribution cannot be negotiated in the next collectively negotiated agreement until after Tier 4 has been fully implemented. PERC's tortured interpretation of the statute is as follows:

[D]epending on the length of the successor agreement that the board and the association agree to, [the proposal] may be preempted by NJSA 18A:16-17.2. For example, if the parties agree to a contract with a one-year term, [the proposal] would be preempted by NJSA 18A:16-17.2 for 2014-2015, the final year of employee contributions at Tier 4 levels. However, it would not be preempted in the 'next' agreement when employee contribution levels become negotiable. Alternatively, if the parties agree to a multi-year successor agreement, the express language of NJSA 18A:16-17.2 would preempt [the proposal] for the first year of the successor agreement as well as any additional years in the agreement until the 'next' agreement when employee contribution levels would become negotiable.

Thus, under *Clementon*, the employer and majority representative are locked into Chapter 78 contribution levels for the life of any multi-year successor agreement where Tier 4 has not been completed. Rather than promote labor stability, *Clementon* is destabilizing. Unfortunately, the Appellate Division dismissed the appeal as moot after the parties agreed to a successor agreement. Hopefully, a definitive answer will come from another case in the pipeline.

Retirees

NJSA 52:14-17.28 and NJSA 40A:10-23, respectively, govern retiree health benefits for employers covered by the SHBP and employers that do not participate. The different statutory schemes have different eligibility requirements that may not be contravened by a negotiated agreement.

P.L. 2011, c. 78 affects all retirees who did not have at least 20 years of service as of the date of enactment, June 28, 2011. Employees who accrue 20 years of service after the date of the enactment of P.L. 2011, c. 78 are required to contribute to their health benefits in retirement. *NJSA 52:14-17.28(d)*; *NJSA 40A:10-21.1*.

Although a public employer must negotiate over the benefits its “currently active employees” would receive at the time of retirement, it

is not obligated to negotiate over such benefits for employees who have already retired. *Middlesex Cty.*, PERC No. 79-80, 5 *NJPER* 194 (¶10111 1979), *aff’d* 6 *NJPER* 338 (¶11169 App. Div. 1980).

A majority representative may pursue a grievance on behalf of a retired employee to preserve and enforce health benefits established under a collectively negotiated agreement at the time of the employee’s retirement. *City of Jersey City*, App. Div. Dkt. No. A-1765-12T2, 41 *NJPER* 31 (¶7 2014).

In *New Jersey Turnpike Authority*, PERC No. 2006-13, 31 *NJPER* 284 (¶ 111 2005) PERC refused to restrain arbitration of a grievance claiming that the employer terminated a retiree’s benefits too early. The grievance contended that an employee’s benefits could not be terminated until one month after the retiree turned 71 years of age; they should not have been terminated when the employee turned 70 years old. PERC held that although a public employer must negotiate over the benefits its current employees will receive upon retirement, it need not negotiate over benefit changes for employees who are already retired. However, a union may enforce a contract on behalf of a retired employee since it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. 31 *NJPER* at 285.

In *Tp. of Middletown*, PERC No. 2006-12, 32 *NJPER* 244 (¶101 2006), PERC refused to restrain arbitration of a grievance claiming that the employer violated its obligation to pay retiree health care costs when the employer required Medicare eligible retirees to pay the full cost of Medicare Part B benefits. PERC held that if the employer did not reserve the right to change retiree benefits or if the arbitration clause did not exclude arbitration of retiree issues, then the matter can be arbitrated.

In *City of Union City*, PERC No. 2011-73, 37 *NJPER* 165 (¶ 52 2011), PERC refused to restrain arbitration of a grievance claiming that the employer unilaterally increased prescription copay for retirees. The grievance contended that the co-pay amount was frozen at the level equal to when the employee retired based upon established practice.

In *Tp. of Voorhees*, PERC No. 2012-13, 38 *NJPER* 155 (¶2011), PERC refused to restrain arbitration of a grievance claiming that the employer unilaterally stopped reimbursing retirees for increased co-pays for prescriptions under the SHBP, in violation of the established practice and an earlier settlement agreement.

Arbitration Awards Issued Post Enactment of Statutes Mandating Employee Contributions

The following is a digest of eight arbitration awards issued after the enactment of the statutes mandating public employee contributions to healthcare benefits, P. L. 2010, c. 2 (requiring payment of 1.5% of base salary) and P. L. 2011, c. 78 (requiring varying contributions based on salary and insurance premiums under a four-year tier system) covering the gamut of typical issues confronted when a board of education changes health insurance carriers.

1. I/M/O Rockaway Borough EA – and – Rockaway Borough BOE, AAA Case. No. 18 390 00692 08 (Jeffrey B. Tener, Arbitrator.) Decided Dec. 22, 2008.

Issue: Did the Board violate the contract by failing to provide medical benefits to Association members at the level in effect on Jan. 1, 2007?

Relevant Contract Language: Health Insurance shall not be changed except that the text of Art. XIV A.1 shall not refer to the “14/20” plan but only refer to “the benefit level in effect on Jan. 1, 2007.”

The district was in the State Health Benefits Plan through April 1, 2008. This plan included a “Traditional” insurance plan. On April 1, 2008, the district unilaterally changed to the School Employees Health Benefits Plan (SEHBP). The new plan did not have a “Traditional” insurance plan. Instead, it offered two PPO’s, Direct 10, and Direct 15. Because the Traditional Plan was eliminated, the Association grieved and arbitrated, claim-

ing that the SEHBP was not equal to/better than the previous plan.

Arbitrator’s Ruling: Grievance sustained. The board violated the contract by failing to provide medical benefits to the Association’s members at the level in effect on Jan. 1, 2007, which it negotiated and agreed to provide in the current collective bargaining agreement.

Remedy: The board was directed to reimburse all employees who submitted evidence that their medical expenses exceeded the amount they would have been if the level of benefits had not been changed from the level in effect on Jan. 1, 2007. Arbitrator Tener retained jurisdiction limited to the implementation of the remedy.

Takeaway: The more descriptive the contract language is with respect to the level of medical benefits a board of education is obligated to provide, the better. Reference to a particular medical, prescription, dental and/or vision plan is optimal, as is the inclusion of a reference date regarding the level of benefits required.

2. I/M/O Flemington-Raritan Regional BOE – and – Flemington-Raritan EA, PERC Docket No. AR-2009-102 (Edmund Gerber, Arbitrator.) Decided Oct. 21, 2009.

Issue: Did the Board violate the contract when it changed insurance carriers due to deficiencies in the relative size and administration of the new plan in comparison to the old plan?

Relevant Contract Language:

B. 1. Effective July 1, 2007, the Horizon Blue Card PPO Major Medical Program (as it exists on July 1, 2007) single and family plans or an equivalent insurance package, mutually agreed upon by the board and the executive committee of the FREA, is available to all employees with a \$10 co-pay. Effective Jan. 1, 2008, the co-pay shall be increased to \$15. The Major Medical plan shall include a mandatory second surgical opinion rider.

2. The Horizon Blue Card Prescription Drug Plan (as it exists in July 1, 2007) single and family plan, or an equivalent insurance package mutually agreed upon by the board and the executive committee of the FREA is available to all employees.

Arbitrator’s Ruling: Grievance sustained. The board violated the contract because, on balance, the sheer difference in size between the networks under the old plan and the new plan establish that they are not equivalent:

Critically, Arbitrator Gerber reasoned:

The issue cannot be decided solely on the basis of how often out-of-network doctors are used. The size of the network can directly impact upon the availability of in-network providers in rural areas as well as the availability of provid-

ers with highly specialized areas of expertise. At least 140 employees had to either change their physicians or use their current doctor's out-of-network. The board violated [the contract] when it unilaterally imposed an insurance plan that was not equivalent.

Arbitrator Gerber's guidance on the meaning of "equivalent" is extremely valuable. Webster's New Collegiate Dictionary defines equivalent as: "Equal in force, amount or value; but not admitting of superposition – a square or a triangle." Accordingly, the old and new plans to be equivalent do not have to have the same "footprint;" they do not have to match item for item. But when the plans are compared overall, any shortcomings in the [new] plans must be counterbalanced by benefits and/or attributes not afforded in the [old] plans.

Remedy: The board was required to reimburse employees for out-of-pocket expenses they had or would incur as a result of the reduction in the level of benefits resulting from the change of insurance carriers. Arbitrator Gerber retained jurisdiction limited to the implementation of the remedy.

Takeaway: When a board of education changes health insurance carriers, the association should not limit its comparison to the level of benefits provided under the new plan versus the old plan; rather, there should also be an evaluation of whether there have been any changes to the administration of the plan, including the quality of the network provided.

3. I/M/O High Bridge BOE – and – High Bridge EA, PERC Docket No. AR-2010-078 (Timothy A. Hundley, Arbitrator.) Decided June 10, 2010.

Issue: Did the Board violate the contract when it switched carriers from a private plan to the School Employees Health Benefits Program by resolution dated Aug. 1, 2009?

Relevant Contract Language:

2. In each year of this agreement, the board will pay the full cost of 'employee only' coverage in the State Health Benefits Plan-Traditional, State Health Benefits Plan-NJ Plus, or State Health Benefits Plan HMO's. In addition, in each year of this agreement, the Board will pay a sufficient percentage of the cost of dependent coverage in State Health Benefits Plan-Traditional, so that the total of its contributions for the State Health Benefits Plan-Traditional (Single plus X% of dependent) contributes enough dollars to cover the full cost of all categories of State Health Benefits Plan-NJ Plus.
3. Provisions of the health-care program shall be detailed in master policies and contracts agreed upon by the board of education and shall include the N.J. State Health Benefits Plan.

Key Facts: This contract language had been included in all agreements since 1996. The Board was a participant in the SHBP at the outset of the 2005-2008 contract term, but switched to the Horizon Direct Access Plan in April, 2006. Horizon remained the Board's insurance carrier until August 1, 2009, when it joined the SEHBP.

Arbitrator's Ruling: Grievance denied. By operation of law and statutory proscription, the SEHBP offers coverage that is at least equivalent to the SHBP. It is noteworthy that the contract does not commit the Board to providing SHBP or equivalent benefits as of a certain date. There is no contractual support for the association's contention that the contract obligated the board to provide benefits and co-pays as they existed in April 2006, when the board switched to the Horizon Direct Access Plan, a

private insurance carrier. Instead the relevant date for any comparison is Aug. 1, 2009, the date on which the board enrolled in the SEHBP. The contract mandates only the board provide coverage "equivalent" to the SHBP. When this critical point is considered together with the SEHBP legislation, which directs that eligible services under the SEHBP shall include all eligible services under the SHBP, it is apparent that the statute resolves the grievance.

Takeaway: The health benefits provisions of the contract should be reviewed every time a successor contract is negotiated to make sure that they are current, and set clear reference points with regard to benefit levels and the administration of each plan. As noted above, the more descriptive the contract language is with respect to the level of medical benefits a board of education is obligated to provide, the better. Reference to a particular medical, prescription, dental and/or vision plan is optimal, as is the inclusion of a reference date regarding the level of benefits required.

4. I/M/O City of Union City PBA Locals 8 and 8A – and – City of Union City, PERC Docket Nos. AR-2010-660 and AR-2010-736 (John J. Harper, Arbitrator.) Decided Nov. 19, 2010.

Issue: Did the City violate the contracts pertaining to rank-and-file and superior police officers when it unilaterally switched health insurance carriers, resulting in increases in the level of co-pays of officers who were already retired?

Relevant Contract Language: Arbitrator Harper cited the recognition clauses in the two contracts in order to highlight the fact that the PBAs no longer represented the retirees, so as to permit the city to unilaterally alter the level of co-pays required to be paid by officers that had already retired.

The city unilaterally replaced Medco prescription service with Benecard and changed the levels of

co-pays for retired police officers from \$0-\$5 (generic-brand) to \$5-\$10. The city claimed that they were in financial distress and this move would save significant money. The union argued that this change represented an illegal reduction in benefits and that the benefit levels for retirees could not be changed under any circumstances, even through negotiations.

Arbitrator's Ruling: Grievance sustained. As long as the employees remain active employees of the city in the job categories covered by the labor agreements, they are members of the bargaining units defined and the PBA has the authority to negotiate their terms of employment with the city. Once, however, the covered employees retire, they are not in the service of the City and the PBA and the city have no authority to negotiate their terms and conditions of employment. Their terms and conditions of employment may only be changed through negotiations while they are on active status.

Remedy: The city was directed to restore the co-pays in effect when the officers retired, and to refund any amounts the retired employees were required to pay when the increased co-pays were in effect.

Takeaway: Arbitrator Harper's ruling is consistent with a long-line of PERC precedent. A public employer and majority representative may not alter the terms and conditions of employment of bargaining unit members that have retired, including, but not limited to, the levels of health benefits referenced in the collectively negotiated agreements they were under on the date of their retirement.

5. **I/M/O Oxford Township BOE – and – Oxford EA, PERC Docket No. AR-2012-665 (Arbitrator Michael J. Pecklers, Esq.) Decided Jan. 24, 2013.**

Issue: Did the board violate the contract by failing to provide an equivalent level of benefits when it changed health insurance carriers

from the Horizon Blue Cross/Blue Shield Direct Access plan to the School Employees Health Benefits Plan Direct 15 plan?

Relevant Contract Language:

The language is not spelled out in the award, but it is clear from Arbitrator Peckler's Opinion that it required that the board maintain an "equivalent" level of benefits if it changed carriers.

The Board provided health and prescription insurance benefits through a private insurance carrier. The contract required that any unilateral change in carriers must provide "equivalent" coverage.

During negotiations for a successor agreement, the association proposed changing coverage to the School Employees Health Benefits Program (SEHBP) in order to reduce costs while still provided good quality coverage. The board refused and the association dropped the proposals.

Several months later, the Board was advised by the carrier that there would be a 51% rate increase for the following year. Upon receiving that notice, the board unilaterally moved the insurance coverage to the SEHBP. The association grieved this change, alleging that the SEHBP did not provide equal levels of coverage as previously existed in the private plan. At the arbitration hearing, the parties stipulated to the differences in the plans and the Board took the position that, on balance, the plans were equivalent and not a financial burden to the association members. The association took the position that "equivalent" required the board to provide the same levels of benefits as the previous plan in every respect. The association provided a dictionary definition supporting that claim.

Arbitrator's Ruling: Grievance sustained. While some medical benefits may have increased under the new plan, others decreased, were capped, or eliminated entirely. The new plan is not equivalent to the old plan. The association has provided a useful definition for the term "equivalent," which per

Miriam Webster, means "equal in force, amount or value," or "virtually identical." As to the board's argument that the Association members also benefited from receiving enhanced benefits under the new plan, Arbitrator Pecklers adopts the reasoning of Arbitrator Tener in Rockaway, holding that the contract language only establishes a minimum coverage level: the parties could have negotiated for an offset but chose not to do so.

Remedy: The board was directed to reimburse employees for their out-of-pocket expenses, and to establish a dedicated fund of \$10,000 going forward, which it was permitted to reduce after six months of experience with the consent of the association. Various timelines were established for the submission of claims and payment. The award also outlined alternative methods that the parties could employ to ensure that all medical information received by the board for reimbursement purposes would be considered confidential medical information for HIPAA purposes.

Takeaway: The opinion and award contains an extensive stipulated record, including a chart outlining the differences between the old and new plans. Needless to say, the more that can be stipulated in a health insurance benefits arbitration case, the easier it will be for the arbitrator to determine that there has been a diminution in the level of benefits and/or administration of the plan.

6. **I/M/O/ Somers Point BOE – and – Somers Point EA, PERC Docket No. AR-2015-101(Arbitrator Joel M. Weisblatt.) Decided Feb. 22, 2015.**

Issue: Did the board violate the contract with respect to any changes in the prescription plan when it switched plans, effective July 1, 2014. In particular, the association contended that the new plan diminished the level of benefits and made detrimental changes in the administration of the plan including: (1) mandatory mail order for specialty drugs; (2) prior

authorization for specialty medications, (3) a step therapy program requiring a trial with lower cost drugs, and (4) dose optimization?

Relevant Contract Language:

- B. The board agrees to pay the cost of full coverage of the pharmaceutical program. Said plan shall have a \$3.00 generic; \$10.00 patent drug, and \$15.00 90-day mail order co-pay.

Key Facts: At the arbitration hearing, the association was able to introduce into an interoffice memorandum from the board's Business Administrator into evidence which contained two significant admissions: (1) the board was changing the current Benecard Prescription Drug Benefits to match the prescription drug benefits administered by the SEHBP, and (2) the new prescription plan contained new utilization management features, including prior authorization, step therapy and dose optimization.

Arbitrator's Ruling: Grievance sustained. The board violated the contract by unilaterally changing the level of prescription plan benefits, both substantive and administrative. The evidence, particularly the Business Administrator's interoffice memorandum strongly suggested that the Board switched to a plan designed to replicate the SEHBP prescription plan rather than its existing Benecard plan. The replication of the unrelated SEHBP plan did not satisfy the contractual requirement to maintain the pharmaceutical program.

Remedy: The board was directed to make whole any unit member suffering monetary loss as a result of the plan change, for the monetary loss demonstrated to have resulted from the change in plans.

Takeaway: There is no better evidence in this type of arbitration case than a board document containing admissions that the new plan is inferior to the old plan. Exhibits emphasizing the differences between the old and

new plans are critical: Arbitrator Weisblatt spent several pages of his opinion outlining the differences in the plans, which he viewed as "convincing proof."

7. I/M/O Ridgwood BOE – and – Ridgwood EA, PERC Docket No. AR-2015-069 (Arbitrator Arnold H. Zudick.) Decided April 7, 2015.

Issue: Did the board violate Chapter 78 and/or the contract by deducting employee contributions from the Association's bargaining unit members for the dental insurance premium?

Relevant Contract Language:

B. Dental

1. All eligible new enrollees will be subject to a one-month delay prior to implementation of dental coverage. Eligible employees may enroll in the board's DHMO (Horizon BC/BS Dental Option Plan) dental insurance programs providing for a level of benefits equal to or better than that described in the dental plan through Horizon dated July 1, 2012. Employee health benefit contributions shall be made in accordance with applicable NJ statutes. Employees waiving medical coverage, but enrolling in dental coverage, are subject to the statutory contributions for their dental coverage premium. . . .

Relevant Statutory Language (Chapter 78 at Section 52): Base salary shall be used to determine what an employee earns for purposes of this provision.

As used in this section, "cost of coverage" means the premium or periodic charges for medical and prescription drug plan coverage, but not for dental, vision, or other

health care, provided under the State Health Benefits Program or the School Employees' Health Benefits Program; or the premium or periodic charges for health care, prescription drug, dental, and vision benefits, and for any other health care benefit, provided pursuant to . . . or any other law by a local board of education . . . when the employer is not a participant in the State Health Benefits Plan or the School Employees' Health Benefits Plan.

Key Facts: The district's medical and prescription coverage was provided through the SEHBP, while the dental plan was provided through a private carrier. The association was under the impression that its bargaining unit members were required to pay Chapter 78 contributions towards the cost of the dental plan, and the board began making such deductions by Jan. 1, 2013. It was not until the association's president attended an NJEA Leadership Training Conference in March 2014 that the association questioned whether its members were required to contribute under Chapter 78 towards their dental premiums. Additionally, at the arbitration hearing, there was testimony that other NJEA affiliate associations had agreed that their bargaining unit members would contribute towards the cost of medical, prescription and dental premiums whether or not they were in the SEHBP.

Arbitrator's Ruling: Grievance denied. The arbitrator interpreted Section 52 of Chapter 78 to require that employee contributions towards the cost of dental health premiums be made. He reasoned:

Reading the entire sentence together – that is both "cost of coverage" earnings/definitions, it appears the Legislature was requiring the charges for all health care plans to be included in the 'cost of coverage,' but created an exception for dental, vision and plans other than medical and pre-

scription drug that were provided through the SEHBP. Why would the Legislature provide such an exception? Perhaps, because by excluding dental and vision plans from being required to be included in the 'cost of coverage' for SEHBP plans, the total cost to employees might be less when all the plans were obtained through the SEHBP which might encourage the purchasing of all plans through the SEHBP.

Takeaway: An arbitrator's construction of a statute is not binding on any other party. In this case, the arbitrator's construction of the statute was "reasonably debatable," but this does not mean that other Associations should take the position that its members do not have to contribute towards the premium of a dental plan provided through a private carrier. The problem in the Ridgewood case was the contract language, "Employee health benefit contributions shall be made in accordance with applicable NJ statutes," was too broad. To guard against this, Associations should propose clear language specifying that no employee contributions are required towards a dental or vision plan provided through a private carrier.

9. I/M/O Hopatcong BOE – and – Hopatcong EA, PERC Docket No. AR-2015-314 (Arnold H. Zudick, Arbitrator.) Decided Jan. 13, 2016.

Issue: Did the board violate the contract when it switched carriers for its medical plans, from Horizon BC/BS to Cigna?

Relevant Contract Language:

Section B. Carriers

The board of education will annually select the insurance carriers provided that the coverage is equal to or better than the current plan.

Key Facts: A key issue in this case involved pre-authorization. The change of insurance carriers resulted in requiring and rigorously enforcing pre-authorization for certain tests and medications. The Association was able to introduce two key documents: (1) an email from the insurance broker admitting that the old carrier did not require pre-authorizations on high end tests and high end medications, and that the new carrier did have such requirements; and (2) a document prepared by NJEA's Research Division comparing the Cigna pre-authorization requirement language with Horizon's Schedule of Procedures Requiring Prior Authorization.

Arbitrator's Ruling: Grievance sustained. "Where the administration of a health plan affects the ability of an employee to receive a benefit he/she received or could have received under a prior plan, then the administrative part of that plan is not equal to or better than the administration of the prior plan. That is the case here."

Remedy: The board was directed to take action resulting in the same plan administration for tests and specialty drugs that existed under the old plan. In the interim, the board was required to reimburse any employee negatively affected by the change in carriers. Additionally, the board was directed to seek a permanent resolution of this issue through negotiations with the association for a new collective agreement. Absent agreement, the board was directed to attempt to return to the old plan or to negotiate with the new carrier or a different carrier for a plan providing the same level of benefits and plan administration as the old plan to the extent possible. The arbitrator retained jurisdiction to resolve any disputes that arose in the implementation of the remedy.

Takeaway: Many of the issues involved health benefit grievances rest upon a "battle of documents." The party with the better documentation of its position is more likely to prevail in arbitration. Essential documents include: (1) those containing admissions by the Board, the insurance broker or the insurance carrier, and (2) comparison documents that are either stipulated into evidence, or are admitted into evidence along with "back-up" documents which contain the original data used to create the comparison documents.

Conclusion:

1. Health insurance benefits (benefits levels and co-pays, among other plan design components) are, in general, mandatorily negotiable unless preempted by statute or regulation.
2. Selection of insurance carriers, in general, is not mandatorily negotiable.
3. But changing the carrier will be mandatorily negotiable if change results in increasing or decreasing the level of health insurance benefits or changing the administration of the plan in a manner affecting employment conditions. (e.g. changing the administration of the plan by requiring employee to pay provider and seek reimbursement rather than having provider bill carrier.) Contract language is of utmost importance. Language must be carefully crafted and must avoid giving carrier and/or management the option to change the level of benefits. Aside from contract language, the better an association can document what was intended through correspondence with the board, the insurance carrier or the insurance broker, the better its chances are of prevailing if a dispute arises.

The Legal Right of the Association to Medical Information

In the context of negotiations, local associations make requests for garden variety information necessary for the formulation of proposals and for the consideration of any counter-proposals by the board, including: a list identifying the name of each employee, the nature of medical insurance selected by the employee (single, family, etc.) and the cost to the employee and employer of the coverage selected.

Occasionally, a school board will demand that the association produce a signed release of information under the federal Health Insurance Privacy and Accountability Act (HIPAA) from each member of the bargaining unit as to whom the information is sought as a pre-condition to turning over the information. In point of fact, employers who are not themselves the insurance provider are not prohibited by HIPAA from providing the kind of generic information requested by the association.

The association has a statutory right to this information under the Public Employee-Employer Relations Act (PEERA.) The Act requires a public employer to provide information necessary for negotiations and the administration of contracts to the majority representative. The association requires information to ensure that the members of the bargaining unit are contributing the amounts required by law, project future costs to members and evaluate the financial consequences of their enrollment options, all of which has a direct impact on the salary and benefits proposals of the association.

The New Jersey Public Employment Relations Commission (PERC) has consistently held that an employer's refusal to provide, without charge, information relevant to bargaining, such as budget, payroll records and other requested financial data is a refusal to negotiate in good faith.

Likewise, the commission has consistently held that an employer's refusal to provide a majority representative with information relevant to grievance and contract administration is a refusal to negotiate in good faith.

It is settled law in New Jersey that a public employer generally has a statutory duty to provide a majority representative with information relevant to an employee organization's representational duties and contract administration, including grievance processing. Relevance is to be liberally construed - the information needs only be related to the association's function as the collective negotiations representative and appear reasonable necessary for the performance of this function. Relevance is determined through a discovery-type standard; therefore a broad range of potentially useful information is allowed to the Association for effectuation of the negotiations process. Various types of information, particularly concerning terms and conditions of employment are presumptively relevant. Specifically, an employer is obligated to provide documents and information about any changes in health insurance plans.

The failure of refusal to provide information relevant to contract negotiations/administration, such as health plan information is a refusal to negotiate in good faith. The employer must also provide the information in a timely fashion. The information must be in the employer's possession before a violation will be found.

The Act's unfair practice provisions parallels its counterpart in the National Labor Relations Act (NLRA) governing private sector labor relations. The federal cases set forth the general principle that an employer has an obligation to furnish to a union, on request, information that is relevant and necessary to its representation of employees in its bargaining unit. Moreover, an employer must respond in a timely manner. An unreasonable delay in furnishing information is as much a violation as a refusal to furnish the information at all.

Case and statute citations have been omitted for the sake of brevity. To obtain the cases or statutes, please contact a network attorney.

Chapter 78 Contribution While on Unpaid Leave

The manner by which an employee must pay his/her share of medical premiums for health coverage while on an unpaid leave is an issue for negotiations under the New Jersey Family Leave Act (NJFLA.) This is specifically set forth in the Employers' Pensions and Benefits Administration Manual, published by the NJ Department of Treasury, Division of Pensions and Benefits, and reads as follows-

For the duration of the NJFLA leave, the employer must maintain the employee's health coverage under any "group health plan," under the same terms as if the employee continued to work.

*If the employee pays a share of the medical premiums for health coverage, the **employer and employee** must decide how to accomplish this.*

This is consistent with the United States Department of Labor's guidance, pursuant to the Family and Medical Leave Act of 1993 FMLA), which states-

A covered employer is required to maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work.

Where appropriate, arrangements will need to be made for employees taking unpaid leave to pay their share of health insurance premiums. For example, if the group health plan involves co-payments by the employer and the employee, an employee on unpaid FMLA leave must make arrangements to pay his/her normal portion of the insurance premiums to maintain insurance coverage, as must the employer.

Such payments may be made under any arrangement voluntarily agreed to by the employer and employee.

As a result, the manner in which insurance contribution must be made during an unpaid leave and maintaining health coverage is mandatorily negotiable and subject to agreement between the individual employee and the school district. The school district cannot mandate that the premiums be paid in advance or in any other fashion without the approval of the member.

Health Benefits Insurance Glossary

Administrative Services Only (ASO) – A type of employee benefit plan that is administered by an insurance company or third party administrator and in which the client is totally at risk for claims.

Adverse Selection – This occurs when those who are less likely to use the plan drop out, leaving only those who are at greater health risk and who are more likely to require higher utilization of the plan. This may cause premiums to increase.

Affordable Care Act (ACA) – Federal health care reform law passed in 2010. The ACA established mandates for both the employer and the individual health insurance markets related to the costs, eligibility and covered services of health insurance plans. ACA reforms include mandatory coverage of pre-existing conditions, extending coverage for children on a parent's plan up to age 26, and tax credits to help low-income Americans pay for health insurance coverage.

Ambulatory Care Facility – A freestanding or hospital-based facility providing preventive diagnosis, emergency therapeutic services, surgery, or other treatment not requiring overnight confinement.

Balance Billing – The practice of billing a member or other responsible party for the difference between the insurer's payment and the actual charge.

Basic Benefits – Those benefits which are covered under the hospitalization and/or medical/surgical portions of the health plan. These are also referred to as "first dollar" benefits as the insurance company

pays all or most of the bills. Any balance would then be submitted to major medical.

Broker – A salesperson who sells health plans and who is ordinarily considered to be an agent of the buyer (board of education)

Cafeteria Plan – (also called *Flexible Benefit Plan/Flexible Compensation*) This is a benefit program under Section 125 of the Internal Revenue Code that offers employees a choice between permissible taxable benefits, including cash, and nontaxable health and welfare benefits such as life and health insurance, vacation pay, retirement plans, and child care. The employee determines how his or her benefit dollars are to be allocated for each type of benefit from the total amount promised by the employer. The term "cafeteria plan" also is used in the more limited sense to refer to a health benefit program that permits workers to select among various costs, coverages, and/or provider options.

Capitation – Capitation represents a set dollar limit that the insurance plan pays to a health maintenance organization (HMO), or other managed care program, regardless of how much you use (or don't use) the services offered by the health maintenance or managed care providers.

Case Management – Case management is a system embraced by employers and insurance companies to ensure that individuals receive appropriate, reasonable health care services. Case management is voluntary in an indemnity plan and mandatory in a managed care plan.

Claim – A request by an individual (or his or her provider) to an individual's insurance company for the insurance company to pay for services obtained from a health care professional.

Claims utilization report – Report of claims that have been paid to providers for medical services for all covered lives on a health benefit plan over a specific period of time.

Coinsurance – A policy provision, frequently found in major medical insurance, by which both the insured person and the insurer share in a specified ratio (e.g. 80/20) of medical expenses resulting from an illness or injury.

Comprehensive Medical Plan – A plan that combines basic and major medical coverages in a single plan. There is no "first dollar" coverage and all medical charges are subject to a deductible and coinsurance.

Concurrent Review – The process by which hospital admissions for elective and emergency treatment are certified for appropriateness within 24 hours after admission and by which continued stays are verified for medical necessity and level of care. Discharge audits are performed on hospital bills to screen for duplicate procedures and inappropriate services before the bill is forwarded to the claimant.

Consolidated Omnibus Budget Reconciliation Act (Cobra) of 1985 – Among the provisions of this legislation that deal with health care coverage are the following:

- Medicare coverage is extended to state and local government employees.

- Employer-provided medical plans can no longer require Medicare to be the primary payer for active participants and/or for their eligible dependents. The active employee's insurance coverage is primary and Medicare, if selected, is secondary.
- Almost every group health plan must provide each participant and qualified beneficiary under the plan the option to pay for continued coverage under the plan in the event coverage would otherwise have ceased as a result of a number of "qualifying events."

Contributory Plan – A benefit plan under which employees bear part of the cost. In some contributory plans, employees wishing to be covered must contribute. In other contributory plans, employee contributions are voluntary and result in increased benefits.

Copayment – Copayment is a predetermined (flat) fee that an individual pays for health care services, in addition to what the insurance covers. For example, some HMOs require a \$10 copayment for each office visit, regardless of the type or level of services provided during the visit. Copayments are not usually specified by percentages.

Cost Containment – Activities aimed at holding down the cost of medical care or reducing its rate of increase.

Cost Shifting – Policies designed to shift the relative burden of health care costs borne by one party or market segment to another. For example, many employers are shifting a portion of the costs of care to employees by copayments and increased contributions.

Deductible – The amount of out-of-pocket eligible expenses that must be paid for health services by the insured before becoming payable by the carrier. Usually, the employee must meet one deductible and if one family member

meets the deductible, then the deductible is waived for all other family members. Sometimes a family deductible may be satisfied by the combined expenses of all covered family members. For example, a program with a \$25 deductible may limit its application to a maximum of three deductibles (\$75) for the family regardless of the number of family members.

Denial of Claim – Refusal of an insurance company to honor a request by an individual (or his or her provider) to pay for health care services obtained from a health care professional.

Direct Primacy Care (DPC) – A type of primary care service that has a direct billing and payment arrangement made between patients and providers, without sending claims to insurance providers. It is an umbrella term, and DPC can incorporate various health care delivery systems that involve direct financial relationships between patients and health care providers.

Direct Primary Care Medical Home (DPCMH) Pilot Program

– A program for active employees and pre-Medicare retirees enrolled in any SEHBP PPO plan that provides primary-care services at no additional cost to the member. Enrollees in the program would have 24/7 access to their physician, same-day or next-day appointments, zero copay primary care visits for themselves and their families, coordination of care with specialists, and so much more. The aim of the program is to increase care to members at the primary care to improve health outcomes and decrease costs in the long-run.

Disability – A condition that renders an insured person incapable of performing one or more duties of his or her regular occupation. Benefit plan definitions of disability vary. The Social Security Act defines disability as follows:

Total disability is the inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected

to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months and which precludes the claimant from performing not only his previous work but considering his age, education and work experience any other kind of substantial gainful work which exists in the national economy regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him or whether he would be hired if he applied for the work.

Disability Income Insurance

– A form of insurance that provides periodic payments to replace income when the insured is unable to work as a result of illness, injury, or disease.

Discharge Planning – A centralized, coordinated program developed by a hospital to ensure that each patient has a planned program for needed continuing or follow-up care.

Employee Assistance Plan (EAP) – A plan designed to help employees whose job performance is being adversely affected by personal problems. The program may also apply to many types of health education, prevention, counseling, and control of specific conditions (e.g. alcoholism, hypertension, smoking, fitness, etc.).

Eligible Charges – Charges that may be used as the basis for a claim.

Exclusive Provider Organization (EPO) – A plan that is a hybrid between a PPO and an HMO. Similar to a PPO, a primary care physician and referrals are not required. However, an EPO has no out-of-network benefits and has narrower networks like an HMO.

Exclusions – Medical services that are not covered by an individual's insurance policy.

Explanation of Benefits (EOB)

– A form sent to the covered person after a claim for payment has been processed by the health plan. The form explains the action taken on the claim. This explanation usually indicates the amount

paid, the benefits available, reasons for denying payment or the claims appeal process.

Extended Care Facility – A health care facility offering skilled nursing care, rehabilitation, and convalescent services.

FAIR Health – A national non-profit corporation that collects information on billed medical and dental services across the nation. The website – *fairhealthconsumer.org* – offers tools and education resources to allow consumers to estimate costs of medical and dental expenses with the goal of bringing transparency and clarity to healthcare costs and information.

First-Dollar Coverage – Those benefits which are covered in full and are not subject to deductibles or coinsurance.

Flexible Spending Arrangement (FSA) – A plan into which an employee makes pre-tax contributions of pay and that reimburses the employee for allowed medical expenses that are not reimbursed through insurance. An employer can also contribute to an employee's health FSA. Maximum contributions for the FSA are set by the IRS each year.

Formulary/Non-Formulary – A listing of prescription drugs, classified by the insurance company as preferred (formulary) and not preferred (nonformulary). Prescription drugs that are listed on the formulary list usually are associated with a lower copayment than those listed on the non-formulary list.

Fourth quarter carryover – Carryover provision that some group health plans have which allows any monies accumulated towards your calendar year deductible in October-December to be applied to the deductible for the next calendar year.

HIPAA (Health Insurance Portability and Accountability Act of 1996) – This law addresses health insurance portability and is designed to protect health insur-

ance coverage for workers and their families when they change or lose their jobs. The law also includes requirements to protect the privacy of individuals' protected health information. Health plans, providers and other organizations with access to protected health information are covered by the requirements of HIPAA.

Health Maintenance Organization (HMO) – A health care system that provides all services within a network of providers and hospitals. Referrals are usually required. There are no out-of-network benefits.

An HMO is a health maintenance organization consisting of a network of physicians, hospitals and other health care professionals which provide subscribers with medical treatment and care. In most cases, the member must choose a Primary Care Physician in the HMO network who manages your health care. Generally there are no out-of-network benefits. HMOs emphasize wellness programs and preventive care, including annual physicals, well baby and child care, immunizations, mammograms and other preventive care services. There may be a small copayment for services but there are no deductibles or coinsurance.

There are two ways of receiving treatment from an HMO – through a fully staffed health center or from a physician who is a member of a network. An HMO may deny coverage to persons who do not reside in its service area.

Health Reimbursement Arrangement (HRA) – An employer funded account to reimburse an insured individual for qualified medical and dental expenses as outlined in the HRA plan document. Reimbursements also apply to qualifying dependents on the plan. An HRA can only be funded by an employer and may or may not allow carryover of unused amounts from year to year.

Health Savings Account (HSA) – An account that can be used along with a qualified high

deductible health plan to reimburse an insured individual for expenses such as deductibles, copays, coinsurance and other qualified medical and dental expenses. Reimbursements also apply to qualifying dependents on the plan. HSAs can be funded by employee contributions, employer contributions, or both. To qualify for an HSA, an individual must have health coverage under a qualified high deductible health plan, and not have any secondary coverage. HSAs are portable and follow the employee upon leaving the employer. HSA contributions are set by the IRS and are subject to change every calendar year.

High-deductible health plan (HDHP) – A plan with a deductible higher than those for traditional health coverage.

Home Health Care – Items and services provided as needed in patients' homes by a home health agency or by others under arrangements made by a home health agency.

Hospice Care Health – care facility or service providing medical care and support services such as counseling to terminally ill persons.

Hospital Audit Program – A system in which hospital bills are reviewed for accuracy and to ensure that every item on the bill was actually requested, used, or performed.

Hospital Utilization Review – The process of reviewing the appropriateness and the quality of care provided to hospitalized patients. Utilization review may be before (prospective), during (concurrent), or after (retroactive) the services are rendered.

Indemnity Health Plan – Indemnity health insurance plans are also called "fee-for-service" or "traditional" plans. With indemnity plans, the individual pays a predetermined percentage of the cost of health care services, and the insurance company (or self-insured employer) pays the other percentage. For example, an individual

might pay 20 percent for services and the insurance company pays 80 percent.

Individual Case Management (ICM) – A system which reviews and manages the medical care provided for large or potentially costly medical cases in order to reduce costs significantly. This service may be voluntary or mandatory depending upon the plan.

IRS Section 125 Plan – (See *Cafeteria Plans*) Essentially, an employee benefits plan in which participants choose between cash and qualified (nontaxable) benefits. An IRS Section 125 plan typically falls into one of the following categories:

- flexible spending account
- premium-only or premium conversion plan;
- cafeteria plan (full menu of benefits choices).

LOS – LOS refers to the length of stay. It is a term used by insurance companies, case managers and/or employers to describe the amount of time an individual stays in a hospital or inpatient facility.

Mail Order Pharmacy Program – Programs that offer prescription drugs delivered through the mail. In most cases the cost and/or supply are better than at a retail pharmacy.

Major Medical Coverage – Type of coverage that usually pays only a portion of the expense for all covered services and specifies a deductible that the insured must first pay. Full reimbursement is often provided once the expenses paid by the individual reach a certain level. Although the maximums that limit total benefits are usually substantial, maximums are generally specified and mean that most policies do not provide completely unlimited protection but are limited to usual, customary and reasonable costs. See also Comprehensive Medical.

Major Medical Threshold – This is the point at which the employee's major medical protection shifts from percent co-pays

such as 80/20 to 100 percent coverage.

Maximum Dollar Limit – The maximum amount of money that an insurance company (or self-insured company) will pay for claims within a specific time period. Maximum dollar limits vary greatly.

Maximum out-of-pocket (MOOP) – Established by the ACA, the maximum amount an insured individual can pay for in-network essential health benefits cost-sharing. Costs that are not subject to the MOOP include premiums, out-of-network coverage, and costs for care that are not considered essential health benefits. Each year, the MOOP is adjusted based on increases in the average per-person health insurance premium in the United States.

Medical loss ratio (MLR) – Percentage of premium dollars paid that have been spent on medical services rather than an insurance company's administrative costs. The Affordable Care Act established MLR requirements of 85 percent for fully insured plans in the large-group market and 80 percent for fully insured plans in the small-group and individual markets. In the event of an MLR benchmark not being met, rebates must be provided to the policyholder.

Medically Necessary – The services or supplies necessary for the diagnosis, care or treatment of a physical or mental condition. They must be widely accepted professionally in the United States as effective, appropriate, and essential, based upon generally accepted standards of the health care specialty involved. (Specific definitions differ for individual health insurance providers.)

Medicare – Administered by the Social Security Administration, Medicare is the U.S. federal government plan for paying certain hospital and medical expenses for those who qualify, primarily those over 65 and those who are permanently disabled. There may be a waiting period for Medicare coverage. The program is govern-

ment subsidized and government operated.

Minimum Premiums Plan – Under this approach, the employer and the insurance company or the service plan agree that the employer will be responsible for paying all claims up to an agreed-upon aggregate level, with the carrier responsible for the excess. This level is usually based on the amount of claims paid in the past two or three years, adjusted by projected increases in claims due to inflation and greater utilization.

Out of Network – This phrase usually refers to physicians, hospitals or other health care providers who are considered nonparticipants in an insurance plan (usually an HMO, POS or PPO). Depending on an individual's health insurance plan, expenses incurred by services provided by out-of-network health professionals may not be covered, or covered only in part by an individual's insurance company.

Out-of-Pocket Maximum – A predetermined limited amount of money that an individual must pay before an insurance company (or self-insured employer) will pay 100 percent for an individual's eligible expenses.

Outpatient – An individual (patient) who receives health care services, such as surgery, on an outpatient basis, meaning he/she does not stay overnight in a hospital or inpatient facility. Many insurance companies have identified a list of tests and procedures (including surgery) that will not be covered unless they are performed on an outpatient basis. The term "outpatient" is also used synonymously with "ambulatory" to describe health care facilities where procedures are performed.

Outpatient Services – Outpatient services are medical and other services provided by a hospital or other qualified facility or provider that does not require a hospital stay. Such services include outpatient physical therapy, diagnostic X-ray, laboratory tests, and other radiation therapy.

Plan Document – Health insurance plans are subject to the requirements of ERISA. Plan must be in writing and must meet the reporting and disclosure requirements of ERISA. Must include claim procedure that is explained in the plan's summary plan description. An employee whose claim is denied must be given a clearly written explanation for the denial. The claims procedure must provide for a full review of the denial by the designated plan official.

Point-of-Service (POS) – Like a PPO, a POS has in network and out-of-network coverage. Unlike a PPO, referrals are usually required and the deductible and coinsurance for out-of-network services are often at higher rate than a PPO.

Preadmission Certification – A form of utilization review in which assessment is made of the necessity – based on health status and treatment needs – of a patient's admission to a hospital or other inpatient institution; health status considerations include both physical and psychological conditions.

Preadmission Testing (PAT) – A plan benefit designed to encourage patients to obtain needed diagnostic services on an ambulatory basis before an elective hospital admission in order to reduce hospital length of stay.

Pre-Certification – Done before receiving treatment from the doctor or hospital for certain treatments. A health insurance policy will normally list the medical conditions that require pre-certification before receiving treatment. When pre-certification is not received, benefits will be reduced or the treatment possibly not covered.

Pre-existing Conditions – A medical condition that is excluded from coverage by an insurance company because the condition was believed to exist prior to the individual obtaining a policy from the particular insurance company.

Preferred Provider Organization (PPO) – A plan where coverage is provided through a network

of selected health care providers (such as hospitals and physicians). The enrollees may go outside the network, but will incur higher costs in the form of deductibles, coinsurance, or balance billing. Referrals from a primary care physician are not required for in-network or out-of-network services.

Premium Conversion/Premium-Only Plan – A kind of Section 125 plan, the sole purpose of which is to enable employees to pay premiums for an employer-sponsored health care plan (or other kind of plan that provides tax-favored benefits) on a pretax basis.

Pretax Dollars – Contributions to a Section 125 plan made through salary reduction agreements between employee and employer as a result of which the contributions are not subject to federal and state income taxes.

Preventive Care – Comprehensive care emphasizing priorities for prevention, early detection, and early treatment of conditions, generally including routine physical examinations, immunizations, and wellperson care.

Primary Care Provider (PCP) – A health care professional (usually a physician) who is responsible for monitoring an individual's overall health care needs. Typically, a PCP serves as a "gatekeeper" for an individual's medical care, referring the individual to more specialized physicians for specialist care. A PCP is found in all HMOs and in most managed care plans.

Provider – Provider is a term used for health professionals who provide health care services. Sometimes, the term refers only to physicians. Often, however, the term also refers to other health care professionals such as hospitals, nurse practitioners, chiropractors, physical therapists, and others offering specialized health care services.

Provider disruption report – Compares the list of network providers between two carriers. When an employer is changing carriers,

the provider disruption report analyzes how many in-network providers will no longer be in-network under the new carrier.

Qualified High Deductible Health Plan – A health care plan with deductibles that meet IRS standards to qualify for a health savings account (HSA). Minimum deductibles are set by the IRS and are subject to change each year.

Risk – A potential hazard which could result in a loss. Risk Management A scientific approach to the problem of dealing with the pure risks facing an individual or an organization in which insurance is viewed as simply one of several approaches for dealing with such risks.

Second Opinion – A medical opinion provided by a second physician or medical expert, when one physician provides a diagnosis or recommends surgery to any individual. Individuals are encouraged to obtain second opinions whenever a physician recommends surgery or presents an individual with a serious medical diagnosis.

Second Surgical Opinion Program – This cost management strategy encourages or requires participants to obtain the opinion of another doctor after a physician has recommended that a nonemergency or elective surgery be performed. Programs may be voluntary or mandatory in that reimbursement is reduced or denied if the participant does not obtain the second opinion. Plans usually require that such opinions be obtained from board-certified specialists with no personal or financial interest in the outcome.

Self-Insurance (Self-Funding) – A fully noninsured or self-insured plan is one in which the insurance company or service plan collects no premiums and assumes no risk. In a sense, the employer is acting as an insurance company – paying claims with the money ordinarily earmarked for premiums. Regardless of the specific self-funding technique a firm chooses, it will need either to buy

its administrative services (ASO) outside the company or develop them in-house. Hence, self-funding arrangements are referenced as “ASO” or “self-administered.”

In New Jersey, self-insurance funds are also known as Health Insurance Funds (HIFs) or Joint Insurance Funds (JIFs).

Skilled Nursing Facility (SNF)

– A facility, or distinct part of an institution, that is licensed to provide inpatient care of persons requiring skilled nursing services for a chronic disease or convalescence over a prolonged period in a separately identified unit. It may be a unit of a general hospital, a nursing home, an infirmary, or a home for the aged.

School Employees’ Health Benefits Program (SEHBP) – A program initiated in 2008 to provide health insurance for eligible active and retired school employees. The program offers a Preferred Provider Organization currently administered by Blue Cross/Blue Shield and two Health Maintenance Organizations (HMOs) administered by Aetna and Cigna.

Stop-Loss Insurance – Contract established between a self-insured group and an insurance carrier providing carrier coverage if claims exceed a specified dollar

amount over a set period of time. Stoploss insurance comes in two varieties: “aggregate” and “specific.”

1. “Aggregate” stop-loss coverage limits the employer’s exposure to a specific overall amount.
2. “Specific” stop-loss coverage limits the employer’s exposure on large, single claims to an agreed-upon amount.

Summary Plan Description –

A requirement of ERISA for a written statement of a plan in an easy-to-read form, including a statement of eligibility, coverage, employee rights, and appeal procedure.

Third Party Administrator (TPA) – The party to an employee benefit plan that may collect premiums, pay claims, and/or provide administrative services. Usually an outside professional firm providing administrative services for employee benefit plans. The SEHBP uses Horizon Blue Cross/Blue Shield as its TPA.

Traditional Indemnity Plan

– A type of medical plan that reimburses the patient and/or provider as expenses are incurred. Reimbursement is subject to deductibles and coinsurance.

Usual, Customary, and Reasonable Charge – The prevailing charge made by surgeons or other physicians of similar expertise for

a similar procedure in a particular geographic area.

Waiting Period – A period of time when you are not covered by insurance for a particular problem.

Waiver of Benefits – A provision that permits the employee to voluntarily waive health benefits in exchange for a taxable cash payment or other incentive.

Wellness Programs – A broad range of employer or union-sponsored facilities and activities designed to promote safety and good health among employees. Purpose is to increase worker morale and reduce the costs of absenteeism due to accidents and ill health. Intended to lead to greater productivity and lower health care costs. May include physical fitness programs, smoking cessation, health risk appraisals, diet information and weight loss, stress management, high blood pressure screening, and other preventative strategies.

Workers’ Compensation – A system of providing for the cost of medical care and weekly payments to injured employees or to dependents of those killed while on the job in which absolute liability is imposed on the employer, who is required to pay benefits prescribed by law.

Sick Leave Banks

The right of local boards of education to institute a sick leave bank was established under P.L. 2007, Ch. 223. The provisions of statute are that both the board of education and the association must consent to the formation of the bank. In addition, the administration of the bank will be by a committee consisting of members of the association and members appointed by the board of education.

A sick leave bank is a voluntary donation program to assist employees who experience a “catastrophic health condition or injury” and have exhausted their paid leave benefits. The bank allows employees to voluntarily donate accrued vacation, personal days and or sick leave to said bank. A sick leave bank is a way to negotiate disability insurance.

The committee establishes standards and procedures that it deems appropriate for the operation of the sick leave bank. These may include eligibility requirements for participation in the sick leave bank and the conditions under which the sick leave time may be drawn.

Drug & Alcohol Testing

Drug and alcohol testing of school employees is a difficult and complicated issue. NJEA believes that mandatory drug and alcohol testing of school employees is an unwarranted and unconstitutional invasion of privacy and opposes such testing. NJEA strongly advises local affiliates that any effort by school districts to initiate drug and alcohol testing should meet with resistance. Such testing is considered a search and seizure as understood by the 4th Amendment to the United States Constitution. However, the courts, in some cases, have determined that there is a delicate balance to be drawn between the legitimate desire to have a drug-free working environment and the privacy and constitutional rights of citizens and employees to be free from unwarranted searches by agents of the government, in this case by boards of education.

Currently, boards of education in New Jersey can order a physical or psychological examination of employees when the board reasonably believes the employee is unable to function in his or her job (see NJSA 18A:16-2). This examination may include drug or alcohol testing following a resolution from a board of education. However, this action is often not responsive to the need, from the Board's perspective, to act quickly when confronted by an employee suspected of being under the influence of a controlled substance while on the job. In a ruling from an administrative law judge, confirmed by the N.J. commissioner of Education, a school district can establish board policy granting additional rights to the board/

administration regarding drug and alcohol testing of employees.

School administrators will typically respond to such a situation by ordering an employee to be transported to a medical facility for testing, with disciplinary consequences if the employee tests positive. Often, administrators who are not familiar with the common indicators associated with drug or alcohol usage take this action without consideration of the employee's legal rights, and without standards and procedures which should guide them in such situations. Fortunately, in the past, issues involving drug and alcohol use do not occur frequently in our schools. The vast majority of our school employees are never impacted by substance abuse problems. However, drug and alcohol testing issues are becoming more common.

Most aspects of drug and alcohol testing are negotiable under the bargaining laws of the state of New Jersey. For that reason, local associations must be prepared to respond to any unilateral attempts by boards of education to initiate drug and alcohol testing programs which infringe on the rights and job security of our members on the job. Due to the complexity of these issues, NJEA strongly urges local associations to contact their UniServ office immediately upon being advised by your district that drug and alcohol testing will be implemented. Any negotiated agreement should be comprehensive and include, in addition to testing and disciplinary considerations, a rehabilitation component and an education program to inform employees about the

negative consequences of drug and alcohol abuse, and programs to prevent abuse and assist employees with such problems.

The following will serve as a guideline for your local leaders and negotiators when bargaining over drug and alcohol testing and the consequences of such testing.

- Who is subject to testing and under what circumstances?
- What drugs should employers test for?
- What types of drug and alcohol testing are there?
- What testing methodology should be used?
- Should rehabilitation programs be available?
- What are the disciplinary consequences of drug and alcohol testing?
- How do we ensure the confidentiality of testing results and the security of the testing process?
- How are employees educated about drug and alcohol testing?

Each of these issues will be discussed at greater length below.

Who is subject to drug & alcohol testing?

There are several different kinds of drug and alcohol testing. Who is subject to testing in a particular circumstance will depend on the kind of testing program and the specific facts of each individual case involved.

For Cause/Reasonable Suspicion – All employees, regardless of job classification or duties, may be subject to “for cause” or “reasonable suspicion” testing. Testing in this situation would be based on an assertion by a supervisor (or other employee) that he/she had observed objective, recognizable indicators that would lead to a suspicion of drug or alcohol use. Such indicators could include behavior or actions which differ from normal behavior or actions under the circumstances; inappropriate or disoriented behavior; the pronounced odor of alcohol on the breath; slurred speech; unsteady gait, etc. The contract can require that the person making the observation be a supervisor who has been trained in the detection of drug and alcohol use.

Random testing applies only to employees who work in “safety sensitive” positions, such as school bus drivers, or school nurses. Other job classifications may be added, depending on the job duties of that position. There are very detailed federal regulations in place regarding random testing programs. The methodology and frequency of testing in a random testing program are important considerations. It should not be left to district administrators to select who is going to be randomly tested. There must be a selection process that is genuinely random, such as a computer program that randomly generates the names of the employees who are to be tested on a given day.

Post-Accident testing would apply to employees who operate district vehicles involved in a traffic accident. Testing would only be appropriate when the employee’s actions may have contributed to the accident. For example, a driver who was stopped at a red light and was then rear-ended by another car should not be subject to post-accident testing.

Follow-up testing occurs after an employee has returned to work following participation in a drug and alcohol rehabilitation program.

This testing should be limited in its duration and the number of times the employee can be tested during that time.

Testing Methodology

A testing program should include, at a minimum, the following elements:

- Management has the obligation to establish that drug and alcohol testing is appropriate under the facts and circumstances of the individual case.
- The identity of the employee to be tested must be confirmed prior to testing.
- Any testing performed must be done at a lab or medical facility that is certified to perform such testing.
- An unbroken chain of custody for all specimens must be maintained and should be available for examination by the Association.
- An initial screening of the specimen should be performed, followed by confirmation testing in the event of a positive initial screen. The confirmatory test should be performed by gas chromatography/mass spectrometry (GC/MS).
- Cut-off levels have been established by federal guidelines and quantitative results should be required and reported.
- Confidentiality of information must be maintained at all times, with the absolute minimum number of people being granted access to testing results.

Availability of a Rehabilitation Program

Employees should have immediate access to a drug and alcohol rehabilitation program either through the school district, the association or through the use of their medical insurance. Attendance in a rehabilitation program

should be confidential, treated like any other illness and not reported to the employer.

Consequences of a position test result (or refusal to submit to properly ordered test)

This involves the disciplinary consequences that may be incurred as a result of testing. All discipline issues are mandatorily negotiable and will depend on the particular facts of an individual case. However, at a minimum, there should be no disciplinary actions taken against an employee who voluntarily comes forward seeking assistance for a dependency problem. To impose discipline on employees seeking help would discourage employees from coming forward. When an employee has tested positive, actions can include mandatory rehabilitation or resignation; progressive discipline, last-chance opportunities, and termination.

Employees may have additional rights and protections under various state and federal laws. Again, you should consult with your UniServ office to explore these possibilities.

Education of Employees

The district should, as part of a comprehensive drug and alcohol program, have educational programs for employees that show the dangers of drug and alcohol abuse, assist employees in avoiding addiction problems and promote rehabilitation and treatment as the best method for dealing with such situations.

Distance Learning & Technology

Over the past decade, information technology has become deeply integrated into our daily lives. While not every member uses a computer, every member is affected by the use of technology in the workplace. E-mail, mobile phones and electronic banking (direct deposit) are everywhere and have to a certain extent replaced non-digital modes of transmission. In a world where you can video message someone on the other side of the world from the beach (or the woods, or the local coffee shop), it is hard to imagine the nature of the employer-employee relationship would remain untouched. In many fields, the terms and conditions of employment have been materially altered by such advances, often to the detriment of workers and their families. NJEA members, however, are fortunate to have protection against the erosion of their terms and conditions of employment; protections afforded by the vigilant enforcement of their rights under collective bargaining Agreements and law. Existing language can and should adequately preserve your hard-won rights.

New technology is often a mystery. Steep learning curves and never-ending updates make hardware and software a constant source of uncertainty and frustration. It is easy to become distracted by the equipment and allow our less-than-perfect understanding inhibit us from applying existing language to novel disputes involving technology.

For example:

A teacher gives a student her personal cell phone to call his

mother. Before returning the phone, the student looks at the teacher's pictures, some of which are rather risqué. The student tells his mother, who then complains to the principal.

What should be the Association's position?

A cell phone is personal property. In this case the phone is not unlike the teacher's briefcase or handbag. While the teacher's decision to permit the student to use the phone may be questionable, it by no means excuses the student's willful snooping and invasion of the member's privacy.

The key is connecting the function of the new technology with its earlier, non-digital counterpart:

- E-mail is like a note in your school mailbox.
- Computers take the place of typewriters, word processors, calculators, and other business machines
- Surfing the internet can be seen as the modern equivalent of reading a magazine (it depends on what one is reading)
- Instant messaging and texting is the same as passing notes or whispering
- Web sites can be like printed literature (catalogs, brochures, manuals, and handbooks), bulletin boards and/or television.
- Web cams are often the equivalent of surveillance cameras.

Regardless of whether it's your bus drivers or your foreign languages faculty, a RIF is a RIF

and subcontracting is still subcontracting.

When reviewing your existing language, it is important to keep a few points in mind: Arbitrators use several standards to interpret contract language. Keep them in mind when negotiating and analyzing your contract. The first is that your contract will be read as "whole cloth." This means that where there are disagreements about the meaning of a passage, an arbitrator will look to the rest of the contract for guidance. An arbitrator will tend to avoid reading your contract in a way that makes language redundant. It is presumed that everything in the contract is meaningful. So, if you intend for your existing rights to apply regardless of technological enhancements, do not add alternative language that applies exclusively when using technology.

For example, an article on "Distance Learning," containing alternate language on professional development, posting and/or bargaining unit work can undermine the Association's position that the parties intended for technologically enhanced work to be treated the same as "old-school" work. **(Note:** Sometimes small adjustments to your existing language will be necessary, so be sure to consult your UniServ office.)

The bottom line is that any language labeled, "Distance Learning" or "Technology," needs to be targeted at the novel aspects of working with technologically mediated learning. This can be achieved within the body of the agreement or as a separate memorandum of understanding.

Bargaining & Professional Development: Supporting New Visions

Do you want to enhance your knowledge and skills or develop new approaches for doing your job? The methods available to acquire information or to hone your techniques today are as diverse as the topics you might choose.

For decades, the phrases “professional development” and its forerunner “continuing education” have stood for such activities as college courses and workshops at different venues – schools, conferences, conventions, and other sites – which school staff members attended.

Typically, these pursuits occurred during the school district’s few inservice days or required the individual to use his or her own time – before or after the school day, on evenings or weekends, or during the week by taking a bargained “professional day.”

Rarely were in-school activities planned or driven by school staff. Instead, districts most often brought in textbook publishers or inexpensive “experts.” Their presentations were loosely tied to the curriculum, broad educational issues, or new textbook series. When the programs became more specific, many often focused on the state-tested areas of reading, writing, or math in elementary schools and revolved around departmentalized content areas in high schools. While some programs incorporated hands-on or participatory segments, most relied primarily on the “sit-and-get” lecture format.

Toss into the mix individual “professional improvement plans” or PIPs – now renamed “profes-

sional development plans” (PDPs). These plans – coupled with other career and educational goals – help individual educators select which workshops or courses to take.

For educational support professionals (ESP), opportunities have been even narrower but along the same speaker-listener formats.

Not surprisingly, the language in most negotiated agreements has reflected these “traditional” individual approaches, with salary guides often recognizing only completion of college courses as vehicles for salary advancement. In addition, contracts have addressed very specific individual opportunities – such as sabbaticals and teacher exchange programs – which limited numbers of school staff get a chance to experience.

Professional learning today

Today, professional development – or “professional learning” as some now prefer – encompasses more than just the traditional individual concepts. It also reflects a broad range of collaborative opportunities for school staff members to work with and learn from each other to address real-life professional challenges and needs.

These collaborative experiences use such approaches as:

- working in **professional learning communities**
- jointly setting and developing **curriculum goals**
- examining **student work/data** together
- engaging in **collegial coaching**
- participating in **study groups**

- conducting **action research**
- connecting through **mentor-novice work**
- developing and analyzing new kinds of **assessments**
- using **protocols** to explore issues, student work, or professional tasks
- conducting or partaking in **professional reading discussion groups**
- joining together in **textbook review**.

These collaborative tools and experiences, and many others, can be used to develop new methods or innovative approaches to deal with education’s diverse challenges. Virtually any topic facing public school employees – student learning, assessment, communication with parents and the community, curricula, safe and healthy learning environments, mentoring, nutritious foods, student behavior, content expertise, job-related skills and practices, scheduling, school safety, program resources, incorporating educational technology and critical thinking, and a host of others – can be targeted through these processes.

These vehicles work best when school staff members:

- get clear information on the collaborative techniques and how they work
- receive extensive training in the approaches
- voluntarily select which techniques they want to use
- choose the issues they want to address in their collaborative studies or work, rather than

someone else picking the techniques or issues

- select the colleagues with whom they would like to conduct the collaborative work.

Imposing structures, processes, or required participation in these approaches through top-down administrative mandates undercut their effectiveness. Instead, these collaborative methods rely on common understandings, agreements, and goals among participating school staff. Trust, openness and voluntary participation play critical roles in the success of these models.

Since these experiences are centered around schools and students, opportunities to engage in them can and should be “job-embedded” or, roughly translated, integrated within the school day as part of staff members’ activities and schedules. This requires a new attitude in understanding the value of expanded professional development, recognizing it as integral to staff and student success and valuable to the school and district.

School boards and administrators also need to be educated about the value of these structures in building strong programs, enhancing student and staff work, improving morale, and establishing strong connections among staff in working toward common purposes.

This also requires overcoming the belief that some forms of professional development should not be compensated.

PD in N.J. & new members

New Jersey’s five-year, 100-hour professional development requirement for teaching staff members has helped raise the level of understanding of the broader definition of professional development.

Besides listing a number of specific alternative collaborative approaches as applicable, the professional development framework established by the State Professional Teaching Standards Board lists such experiences as:

- curriculum work including, but not limited to, research, writing, and revision
- mentoring a novice or preservice teacher
- committee or board work
- grant writing
- conducting a course or workshop.

New Jersey led the nation with establishment of teacher-dominated district and state professional development committees, as well as countywide PD committees to review local plans. In school districts, educators on these committees must be elected by teaching staff members in elections conducted by the majority representative, as required in state regulation NJAC 6A:9-15.3(d). At the state level, NJEA nominates member representatives to serve on the board [NJAC 6A:9-15.3(b)4]. At the county level, the county association nominates teacher representatives [NJAC 6A:9-15.3(c)3].

NJEA has encouraged local associations to bargain language to support committee members and their ability to conduct their work, both through additional compensation and release time.

The federal Elementary and Secondary Education Act, nicknamed in its latest version “No Child Left Behind,” requires every school district in the country to establish such professional development committees. The law further supports long-term collaborative work in its definitions by emphasizing continuous professional development rather than one-day or short-term workshops.

Most recently, in their latest iteration, the state regulations now require a professional development committee in every school to develop school-level plans [NJAC 6A:9-15.3(h)]. Associations are challenged with organizing in districts and schools to ensure that these school-based groups are also teacher-led and teacher-dominated with members elected by association members through the majority representative.

The current regulations state in NJAC 6A:9-15.3(h): “1. The committee shall consist of a principal or designee and at least three teachers who will be elected through the majority representative. 2. The plan shall include a description of school level and team-based learning in the school and will be based on identified school goals, and student and teacher needs...”

We must work to ensure that teacher leadership in state-required professional development planning is not diminished, and that professional development does not revert to being administrator-driven rather than staff-driven.

At the same time, associations must bargain mechanisms to ensure that ESP learning needs – which are not part of the state-mandated planning process -- are addressed.

A way to entice new members

For associations, the emphasis on professional development is a great way to provide new members with a positive introduction to collective bargaining and union work.

Association polls and demographic studies show that new members are eager for professional learning. They view it as a support mechanism. They are eager to collaborate with others in a new team paradigm. And they actively seek opportunities to learn how to deal with everyday challenges in their work. These challenges are rarely addressed through their preparatory programs, regardless of whether they come through the regular teacher education program route or the alternate route after obtaining a college degree.

New members need to understand contract provisions related to professional development, including such aspects as tuition reimbursement, release time, and opportunities for committee work.

Their interest in professional growth can entice them to become more involved, particularly in seek-

ing supportive language for such opportunities.

Key questions in professional learning and bargaining challenges

Is it still professional development/professional learning if you are paid?

“Growth experiences” undertaken during the school day or any other time for which one is paid (such as summer curriculum work) are included as professional learning/professional development in the state’s professional development requirement. The challenge is getting monetary recognition for the breadth of professional development/professional learning.

Who benefits from professional development?

Professional learning takes place for all participants, including facilitators/leaders. Ultimately, students should benefit from working with staff members who have deeper understanding and knowledge of issues affecting their work.

What do the new approaches require?

- Best practices in professional development/ professional learning, with participation that is voluntary and collaborative.
- Confidential collegiality, with information shared among colleagues in the collaborative process remaining undisclosed to others and not part of the evaluative process.
- Training to enable both staff and administrators to understand their roles as participants, facilitators, or supporters.
- New leadership roles for school staff members, allowing them to act as facilitators, trainers and staff developers.
- Time during the school day, whether through formalized scheduled time (which works best) or release time.

- Administrative support for time, supportive schedules, and requested training for staff to work in pairs or groups.
- Changes in school culture.

How do members collaborate?

Depending on the issue or challenge, any combination is possible. Consider collaborative work:

- by grade level
- cross-grade
- by department and/or content area
- by job category
- interdisciplinary
- across different job categories.

How do we get time?

Local associations can negotiate and work to acquire more time for professional learning through a variety of methods. These might include:

- negotiating release time
- reconfiguring staff meetings to include collaborative work
- protecting individual preparation periods and negotiating new prep periods, such as:
- departmental preps
- separate professional development (PD) preps
- mentoring preps
- other inclusive prep periods.

How can we integrate professional growth experiences and opportunities for educational support professionals within district and school plans?

While each school staff member performs a specific role or roles in helping students succeed in our public schools, no individual can accomplish the task alone. It takes teamwork.

Students can’t learn without safe school transportation, safe and healthy environments, nutritious meals and orderly records and offices. Some require one-on-

one instructional help, personal assistance to accommodate student special needs, or language/ translation assistance in and out of the classroom and for their parents.

That is a message we need to underscore with school district administrators, board members, parents, other community members, and our own members in planning, promoting and implementing professional development opportunities.

Recognizing the importance of these factors, some districts willingly expand their professional development plans to encompass ESP staff. Even where these opportunities occur, negotiated language addressing such issues as time, reimbursement, approval procedures and other related matters are essential in bolstering these activities.

Procedures should:

- involve ESP members in identifying areas in which they want to extend their skills
- incorporate opportunities to meet those needs within professional development plans while showing how these experiences are essential components in enhancing student success, health, and safety
- ensure that those opportunities are district-supported, whether during or outside of the school day.

What are some other related contract issues to consider for staff?

- Protect prep periods.
- Seek added compensation for extra responsibilities during the school day.
- Bargain committee selection processes.
- Require training prior to implementation of collaborative processes or programs.
- Negotiate extra pay for facilitators.

- Protect the voluntary nature of participation in such processes. Protect members who do not wish to participate.
- Bargain protective language to make sure that these approaches are not used by administrators as evaluative tools.
- Bargain procedures to ensure that school districts – not novice teachers – provide compensation to mentor teachers, and that the amounts which mentors should receive are spelled out contractually.

Local associations should be vigilant and proactive. In the absence of contract language, members are negotiating by school-by-school and individually for release time for collaborative opportunities.

Some locals are allowing practices with no contract language to back it up.

What types of professional learning opportunities are or should be available to education support professionals?

ESP members should have access to the same wide range of opportunities – both traditional and nontraditional – that are available to teaching staff members. These opportunities to extend knowledge and skills should be backed by provisions in the negotiated agreement.

Regardless of the staff member's job, pre-participation training in nontraditional collaborative approaches is essential for both facilitators and team members.

For more traditional approaches, NJEA provides through the ESP Career Academy:

- online career development programs focused on the latest issues and trends through NJEA's website
- job-site seminars and workshops arranged through your local association

- partnerships with New Jersey's community colleges and Thomas Edison State College (TESC) to provide on-site career development training and, through TESC, online courses. This array of noncredit and college credit programs is designed to meet general and specific ESP job category needs.

How should local associations prepare for negotiating language regarding professional development?

Various aspects of professional development are affected by law and regulation. That's why it is critical to work closely with your UniServ office and field representative in developing contract language with respect to professional development or professional learning.

The negotiated contract is essential to protecting members while paving the way for positive, productive, participatory professional learning experiences.

Sample Memorandum of Agreement

The _____ Board of Education
and
The _____ Education Association

The above-captioned parties, having reached a tentative settlement for a successor Collective Bargaining Agreement as set forth below, shall recommend the terms of this memorandum through their respective bargaining committees to the full Board of Education and the Association's general membership, and this memorandum shall be subject to ratification by the Board and the Association's general membership.

1. Length of Agreement: Number (#) years (20XX-XX through 20XX-XX).
2. All terms and conditions of employment shall remain unchanged except as expressly modified herein.
3. All dates involving the length of the contract shall be modified to conform to the above duration of agreement.
4. Language changes to the present contract as attached (Attachment A, _____ pages).
5. Salary increases as per the following attachments:
Attachment B: Instructional Guides 20XX-XX through 20XX-XX.
Attachment C: ESP Guides 20XX-XX through 20XX-XX.

or

5. The base salary cost for each year shall be increased by the following amounts inclusive of increment:
Year One (2014-15) _____ % of the 2013-14 base
Year Two (2015-16) _____ % of the 2014-15 base
Year Three (2016-17) _____ % of the 2015-16 base.
The previously agreed-upon scattergram representing the base cost is attached and initialed by the parties.
6. Schedule _____ (Co-curricular and Extra-curricular activities) is affixed to this Memorandum as Attachment D.

or

Schedule _____ (Co-curricular and Extra-curricular activities) shall be increased by _____ % in each year of the Agreement.

7. A duplicate of this Memorandum has been furnished to and received by representatives of the parties.

Date: _____

Board of Education _____

Association

NOTES:

The following items should be added to a memorandum of agreement as the individual circumstances dictate:

- This Agreement shall cover all current, retired, and employees for the period from _____ to _____, with all changes retroactive to the commencement date of the successor contract unless otherwise noted.
[Note: This statement should be used in the memorandum when a settlement occurs after the expiration date of the CBA.]
- This Memorandum includes all tentative agreements reached and signed during the negotiations (attached as Items ____ through ____), as well as sidebar agreements executed during the life of the preceding CBA (attached as Items ____ through ____).
[Note: This statement should be used when tentative agreements and/or sidebar agreements have not been incorporated into the memorandum's language or salary changes.]
- This Agreement is subject to the mutual development of salary guides and specific contract language.
[Note: This statement must be used when guides and/language remains to be developed. However, no ratifications should occur until such time as guides and final language can be presented to the membership.]
- It is agreed that neither party shall discriminate against, engage in any reprisals or support repercussions of any nature against any employee of the Board of Education, officers, or members of the Association, or any individual or organization engaged in activities or in support of activities related to contractual negotiations.
[Note: This no reprisal statement may be necessary following contentious bargaining which included alternative strategies or job actions.]

Sample Agreement

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Preamble

The Agreement entered into this _____ day of _____ 20____ by and between the _____, hereinafter called the “Board,” and the _____, hereinafter called the “Association.”

WITNESSETH

WHEREAS, the Board and Association have an obligation, pursuant to NJSA 34:13A-1 et seq. to negotiate with respect to the terms and conditions of employment; and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement;

THEREFORE, in consideration of the following mutual covenants, it is hereby agreed as follows:

ARTICLE I – RECOGNITION

- A.** The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiations concerning grievances and terms and conditions of employment for all regularly employed personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(List excluded employee categories as appropriate)

B. Definitions

1. Unless otherwise indicated, the term “employee,” when used in this Agreement, shall refer to all employees represented by the Association in the negotiating unit as defined.
2. Unless otherwise indicated, the term “teacher,” when used in this Agreement shall refer to all those employees who are required to hold appropriate certificates issued by the State Board of Examiners.
3. Unless otherwise indicated, the terms “support staff,” and “educational support professionals” (“ESP” when used in this Agreement, shall refer to all those employees who are not required to hold certificates issued by the State Board of Examiners as a term and condition of employment.
4. The term “he” shall refer to both males and females
5. The term “spouse” shall refer to domestic partners, married partners, and civil union partners.

ARTICLE II – NEGOTIATION OF SUCCESSOR AGREEMENT

- A.** Consistent with NJSA 34:13A-1 et seq., the Board shall not effect any change in policy concerning terms and conditions of employment except those so negotiated and included as part of this Agreement and contained herein.
- B.** Not later than 120 days prior to the submission of the budget, the parties agree to initiate negotiations over a successor Agreement in accordance with the procedure set forth herein in a good-faith effort to reach continuing agreement on salaries and other terms and conditions of employment. Any Agreement so negotiated shall apply to all members of the negotiating unit and shall be reduced to writing, ratified, and signed by all the parties.
- C.** During negotiations, the Board and the Association shall present relevant data, exchange points of view, and make proposals and counterproposals. Each party shall promptly make available to the other, upon request, information within its possession which is not privileged under law and which is relevant to the subject under discussion. Either party may, if it so desires, utilize the services of outside consultants and may call upon professional and lay representatives to assist in the negotiations.

- D. Whenever members of the bargaining unit are mutually scheduled by the parties hereto to participate during working hours in conferences, hearings, meetings, or in negotiations regarding the collective bargaining agreement, they will suffer no loss in pay.
- E. This Agreement shall not be modified in whole, or in part, by the parties except by an instrument in writing duly executed by both parties.
- F. Except as this Agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement shall continue to be so applicable during the term of this Agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any employee benefit existing prior to its effective date.
- G. The Board agrees not to negotiate concerning employees in the negotiating unit as defined in the Recognition Article of this Agreement with any organization other than the Association for the duration of this Agreement.

ARTICLE III – GRIEVANCE PROCEDURE

A. Definitions

1. A “grievance” is a claim by an employee, employees, or the Association based upon an alleged improper interpretation, application, or violation of this Agreement, policies, or administrative decisions affecting an employee or a group of employees.
2. The term “grievant” shall refer to the employee or employees or the Association making the claim on behalf of the employee or group of employees or the Association on behalf of itself.
3. A “party in interest” shall refer to the person or persons making the claim, and any person including the Association or Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

B. Purpose

1. The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to problems, which may from time to time arise affecting employees. Both parties agree that proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.
2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with the appropriate member of the administration and having the grievance adjusted without intervention of the Association, provided such adjustment is not inconsistent with the terms of this Agreement.

C. Procedure

1. Level One – The grievant shall first discuss the grievance with his immediate supervisor, either directly or with the Association’s designated representative, with the objective of resolving the matter informally.
2. Level Two – If the grievant is not satisfied with the disposition of the grievance at Level One, or if no decision has been rendered within (...negotiated number...) days after the discussion at Level One or (...negotiated number...) days after the grievance was presented, whichever is sooner, the grievance will be reduced to writing and presented to the Superintendent of schools.
3. Level Three – If the grievant is not satisfied with the disposition of the grievance at Level Two, or if no decision has been rendered within (...negotiated number...) days after a discussion with the Superintendent or (...negotiated number...) days after the grievance was delivered to the Superintendent, whichever is sooner, the grievance will be submitted to the Board.
4. Level Four – If the Association is not satisfied with the disposition of the grievance at Level Three, or if no decision has been rendered within (...negotiated number...) days after a discussion with the Board or (...negotiated number...) days after the grievance was delivered to the secretary of the Board or designee whichever is sooner, the Association may submit the grievance to arbitration by filing with the (...American Arbitration Association and/or the Public Employment Relations Commission...) and the rules of such agency shall apply.

D. Authority of the Arbitrator

1. The decision of the arbitrator shall be submitted to the Board and the Association and shall be final and binding on the parties.
2. In the event that the procedural arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator.
3. Disputes as to the scope of arbitration shall be resolved in favor of requiring arbitration.

E. Costs

1. The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

F. Representation

1. Any grievant may represent himself/herself through Level Three of this procedure. When the grievant is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure. Only the Association may process grievances through arbitration.

G. Reprisals

1. No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

H. Miscellaneous

1. The number of days indicated at each level should be considered as a maximum and every effort shall be made to expedite the process. The time limits specified may, however, be extended by mutual agreement. All days referred to in this procedure shall be (...school or calendar...) days.
2. If, in the judgment of the Association, a grievance affects a group or class of employees, the Association may submit such grievance in writing to the Superintendent directly and the processing of such grievance shall commence at Level Two.
3. All decisions rendered shall be in writing, setting forth the decision and the reasons therefore, and shall be transmitted to the Association within the specified timeframes.
4. Any and all documents, communications, and records dealing with the grievance shall be kept in a separate grievance file. Grievance documents shall not be kept in employee personnel files.

ARTICLE IV – EMPLOYMENT PROCEDURES

A. Salary Guide Credit Upon Initial Employment

1. Full credit on the salary schedule shall be given for previous job-related experience upon initial employment. Support staff shall receive additional credit not to exceed (...negotiated number...) years for military experience or alternative civilian service required by the Selective Service System. (Teachers, pursuant to 18A:29-11, are entitled to salary credit for military service for up to four (4) years.) Credit on the salary schedule, for all employees shall not exceed (...negotiated number...) years for Peace Corps, VISTA, Americorps, Teach America, or other such government-sanctioned programs.

B. Association Notification

1. The Superintendent shall notify the Association in writing of the name, address, education, certificates, licenses, salary, salary placement and the reasons for the placement, for each new employee within (...negotiated number...) days of hire.

C. Notification of Contract and Salary

1. On or before (...negotiated date...) but not later than of each year, the Board shall provide to each non-tenured or fixed-term employee either:
 - a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment, but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association;
 - or —
 - b. written notice that such employment shall not be offered.

D. Any employee who receives a notice of non-employment may, within 10 days thereafter, in writing, request, from the Superintendent, a statement of reasons for such non-employment. Said statement shall be given to the employee in writing within 30 days of the receipt of such request.

E. Termination

1. Any employee resigning from his/her position shall give (...negotiated length of time...) notice, but may, upon request, be released prior to the expiration of that time period.
2. All employees upon resignation, termination, or retirement shall be paid their regular rate of pay for each day of accumulated unused vacation time. In the event of death, the employee's estate shall be paid the employee's regular rate of pay for each day of accumulated unused vacation time.

F. Employment Procedures for Coaching Positions

1. The Board agrees to make available to coaches all necessary information to comply with the rules and regulations of the New Jersey State Interscholastic Athletic Association (NJSIAA) a copy of the rules and regulations of the New Jersey State Interscholastic Athletic Association, school record cards, names and addresses, and school medical records of all team members.
2. Coaches shall have the right to use school facilities at all reasonable hours for meetings, practice, exhibition and scheduled game sessions, with the approval of the Superintendent.
3. Coaching seasons will be pursuant to the NJSIAA Constitution and By-laws.
4. Coaches shall be notified of their contract and salary status for the ensuing year no later than (...negotiated date...) for fall and winter sports, and (...negotiated date...) for spring sports.
5. The individual contracts to be issued for each coaching position shall be set forth in Schedule of the Agreement. Each contract shall include the dates of the coaching season, salary, and the dates on which each coach shall receive compensation. All coaching contracts shall be subject to the terms of the collective bargaining agreement.
6. The Board agrees to officially adopt each contract and notify each coach of such official action by presenting a copy of the contract to each, duly signed and executed no later than (...negotiated date...) for fall and winter sports, and (...negotiated date...) for spring sports of the school year previous to the school year in which the individual contract is operative. Coaches shall sign and return the contract within (...negotiated number...) days of receipt. Failure to return the contract within this period shall be considered resignation.
7. Dates of Payment of Coaches' Salaries
 - a. Coaches in season shall be paid in two equal payments during the season as follows:
 - i. Fall sports – October 15th and November 30th
 - ii. Winter sports – January 15th and March 15th
 - iii. Spring sports – April 15th and June 15th
 - b. The salaries of all coaches shall be set forth in Schedule ____.
 - c. Coaching salary shall be paid by separate check.

ARTICLE V – EMPLOYEE RIGHTS & PRIVILEGES

- A.** Pursuant to NJSA 34:13A-1 et seq., the Board hereby agrees that every employee of the Board shall have the right to freely organize, join, and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any employee in the enjoyment of any rights conferred by NJSA 34:13A-1 et seq., or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any employee with respect to hours, wages, or any terms or conditions of employment by reason of his/her membership in the Association and its affiliates, his/her participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his/her institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

B. Bully-free Workplace

1. Every unit member of the Association has a right to be treated with dignity without being subjected to workplace bullying. Any violation of this right by supervisors, administrators, and/or any other agent of the Board of Education shall be a violation of this Agreement and subject to the grievance procedure, which shall, for these matter, result in binding arbitration as its terminal step.
2. Nothing under this Article should be viewed as limiting a unit member's rights under any local, state or federal law, nor shall this Article be construed as to limit the member's right to seek redress for any violations of this Article outside of the parameters of this Agreement.
3. Workplace bullying is defined as any gesture, body positioning, or other physical act; any verbal or written communication, including electronic communication, that involves a real or perceived imbalance of power, and that a reasonable person would determine to be hostile or threatening, made by any agent of the Board acting in his/her role as an agent of the Board, regardless of when or where such an incident occurs.
This imbalance of power could include, but shall not be limited to:

- a. having the effect of physically or emotionally harming an Association unit member, damaging the Association unit member's property, or placing an Association unit member in reasonable fear of physical or emotional harm to his or her person or damage to his or her property; or
- b. having the effect of insulting or demeaning any Association unit member or group of Association unit members; or
- c. creating a hostile working environment for the Association unit member by disrupting or interfering with the Association unit member's performance of his or her job responsibilities or by causing physical or emotional harm to the Association unit member.

Conduct will be deemed to constitute workplace bullying if it involves or has the tendency to constitute the behavior referred to in this section regardless of the intent of the person engaging in such conduct.

"Electronic communication" means a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, tablets, pager, or electronic/digital devices.

- 4. The Board and its agents bears the responsibility to prevent, detect, remedy, and eliminate bullying and harassment in the workplace and shall take every feasible measure to protect Association unit members from workplace bullying. The Board and its agents shall take all reasonable steps to eliminate bullying/harassing behaviors from the workplace environment as defined in paragraph three. Such steps could include, but are not limited to, annual training for all members of the Board and its agents and corrective action for those agents of the Board who violate this Article.
- C. Nothing contained herein shall be construed to deny or restrict to any employee such rights as they may have under New Jersey school laws or other applicable state and federal laws, rules, and regulations. The rights granted to employees herein shall be in addition to those provided elsewhere.
- D. Intellectual property is the unique and exclusive property of the employee. If any employee chooses to contract away their exclusive rights to their instructional intellectual property, the Board shall have the right of first refusal.
- E. No employee shall be disciplined, reprimanded, reduced in rank, or deprived of any professional advantage without just cause. Any such action shall be subject to binding arbitration. [Note: This provision is governed by a complex legal framework. Contact your field representative for assistance before you present a proposal using this language.]
- F. Upon completion of a probationary period of (...number of months/years...) custodial and maintenance staff will be tenured pursuant to NJSA 18A:17-3. Non-renewal of any fixed term contract shall be subject to the just cause provision contained herein and subject to binding arbitration.
- G. Whenever any employee is required to appear before any administrator or supervisor, Board, or any committee (or member thereof) concerning any matter which could be disciplinary in nature, said employee shall be given (...amount of time...) prior written notice of the reasons for such meeting(s) or interview(s) and shall be entitled to have a Representative(s) of the Association advise and represent him/her during such meeting or interview.
- H. Any employee suspended pending charges shall be with pay.
- I. No employee shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.
- J. **Assignment of student grades**
 - 1. If a student's grade evaluation is changed, the person making such change shall initial the change. The teacher assigning the original grade shall be notified in writing within (...negotiated number...) days of such change. No student's grade shall be changed without prior consultation with the teacher issuing that grade.

ARTICLE VI – ASSOCIATION RIGHTS

- A. **Information to Association** – Upon request, the Board shall provide the Association with all information including but not limited to budgetary, financial, and personnel records that the Association has determined are necessary to negotiate and enforce the collective bargaining agreement.
- B. **Release Time for Association Business**
 - 1. Whenever any Representative of the Association, or any employee, is mutually scheduled by the parties to participate during working hours in negotiations, grievance proceedings, hearings, conferences, and/or meetings, he shall suffer no loss in pay.

2. The Board shall release, without loss of pay, the Association President and/or designee and permit him to visit any work station, investigate working conditions, employee complaints or problems, or for any other purposes relating to terms and conditions of employment.
3. The Board shall release, without loss of pay, an Association Representative and/or designee(s) designated by the Association President and permit him/her/them to visit any work station, investigate working conditions, employee complaints or problems, or for any other purposes relating to terms and conditions of employment.
4. The Association President and/or designee(s) designated by the Association President shall be given (...negotiated number...) days paid leave for Association business each year.

(If you negotiate full time release for any association officer, contact your UniServ Representative to make sure you follow all of the steps necessary to protect the employment rights of that officer.)

C. Released Time for Association Meetings

1. The Board shall allow all Representatives designated by the Association to leave their work assignments at (...negotiated time...) once each month to attend the Association Representative meeting.
2. The Association shall be provided the opportunity to hold (...negotiated number...) general membership meetings during the work year. Said meetings shall be held during the workday and unit members may attend without loss of pay.

D. Use of School Buildings

1. Representatives of the Association shall be permitted to transact official Association business on school property at all reasonable times, provided that this shall not interfere with or interrupt normal school operations.

E. The Association or its designees shall have the right to use a school building at all reasonable hours for meetings.

F. Use of School Equipment

1. The Association shall have the right to use school facilities and equipment including but not limited to the public address system, computers and related technology, printers, typewriters, copy machines, other duplicating equipment, calculating machines, and all types of audiovisual equipment at reasonable times when such equipment is not otherwise in use.
2. The Association shall have the exclusive use of a bulletin Board in lounges, dining rooms, and other appropriate areas in each worksite. The Association shall also be assigned adequate space on the bulletin board in the district central office for Association notices. The Association shall designate the location of the Association bulletin Boards in each work area.

G. Mail Facilities, Mail Boxes and Electronic Mail – The Association shall have the right to use the school mailboxes and the district's internal mail (...including e-mail...) delivery system.

H. Association Office – The Association shall be provided with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall have the right to install separate and exclusive internet access line(s) and phone line(s) at its own expense.

I. Exclusivity – The rights and privileges of the Association and its Representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the employees and to no other organizations.

ARTICLE VII – SENIORITY & JOB SECURITY

A. Seniority – Seniority shall be defined as continuous service in the school district without regard to time spent in a bargaining unit.

B. Reduction in Force

1. A seniority list shall be provided to the Association by November 1 annually and at the time of a contemplated Reduction in Force (RIF).
2. Any reduction of positions shall be accomplished in the following manner:
 - a. Employees shall exercise their total employment seniority to replace a less senior employee in the same job category. If there is no less senior employee in the job category, they shall replace a less senior employee in a similar job within the unit.
 - b. In the event that a vacancy occurs, a laid-off employee shall be entitled to recall thereto in the order of his seniority.

- c. Notice of recall to work shall be addressed to the employee's last known address appearing on the records of the school district, by certified mail, return receipt requested. Within (...negotiated number...) days from receipt of such notice of recall, the employee shall notify the Board of Education, in writing, whether or not he desires to return to the work involved in the recall.
- d. Employees on the recall list shall be permitted to reject one job offering within his/her job, shift, hours, and days category of work, and still remain on the recall list. If, after two jobs have been offered and rejected, or if said employee fails to respond, said employee shall forfeit all rights to the recall list.
- e. Job offerings not within the same job, shift, hours, and days category of work shall be offered to individuals on the recall list. Acceptance of such a position shall not affect his status on the recall list for his last position.
- f. Seniority shall be accumulated during the period of layoff. Upon recall, employees shall have their accumulated seniority restored to the date of layoff.
- g. Recalled employees shall have all benefits restored in accordance with their accumulated seniority, including but not limited to vacation eligibility, step on guide, etc.
- h. An employee shall only lose school district seniority if he/she resigns or is discharged for cause, irrespective of whether he is subsequently rehired by the school district.

ARTICLE VIII – SUBCONTRACTING

- A. All aspects of and actions relating to or resulting from the Board's decision to subcontract, including but not limited to whether or not severance pay is provided, shall be mandatory subjects of negotiations.
- B. The Board agrees not to enter into a subcontracting agreement which involves or affects the bargaining unit work performed by the employees covered by this agreement during the term of this agreement.
- C. Prior to entering into a subcontracting agreement the Board shall:
 - 1. Provide written notice to the Association not less than 90 days before the Board requests bids, or solicits contractual proposals for the subcontracting agreement;
 - 2. Has offered the Association the opportunity to meet and consult with the Board to discuss the decision to subcontract, and the opportunity to engage in negotiations over the impact of the subcontracting. The Board's duty to negotiate shall not preclude the board's right to subcontract upon the expiration of the existing collective agreement provided that the Board has provided the Association with the information required by this Article and provided at least 90 days for the Association to engage in the process provided by this section.
- D. In addition to the above requirements, the Board shall not enter a subcontracting agreement unless the other person, vendor, corporation, partnership, or entity which will provide the services included in the subcontracting agreement submits a bid or proposal which includes but is not limited to the following information.
 - 1. evidence of liability insurance in scope and amount equivalent to the liability insurance that the employer maintains to cover its liability for personal injury claims made against it.
 - 2. a list of the number of employees who will provide the subcontracted services, the job classifications of those employees, and the wages the third party will pay those employees;
 - 3. a minimum 3-year cost projection, using generally accepted accounting principles, and which the third party is prohibited from increasing if the bid or proposal is accepted by the employer, for each and every expenditure category and account for performing the subcontracted services;
 - 4. composite information about the criminal and disciplinary records, including alcohol or other substance abuse, Department of Children and Families complaints and investigations, traffic violations, and license revocation or any other licensure problem, of any employees who may perform the services, provided that the individual names and other identifying information of employees need not be provided with the submission of the bid, but must be made available upon request of the employer; and
 - 5. an affidavit, notarized by the president or chief executive officer of the third party, that each of its employees has completed a criminal background check as required by 18A::6-7.1 three months prior to submission of the bid, provided that the results of such background checks need not be provided with the submission of the bid, but must be made available upon request of the employer.
- E. Each employee replaced or displaced as the result of a subcontracting agreement shall retain all previously acquired seniority during that period and shall have recall rights whenever the subcontracting terminates.
- F. The Board shall provide severance benefits as follows:

1. The Board shall pay all affected unit members full pay for all leave days credited to the employee's account.
2. The Board shall grant to all employees not able to vest their pensions, an amount of money equal to the total contributions made on behalf of that employee, up to the date of separation.
3. The Board shall provide that all employees who lose their positions as a result of subcontracting shall be paid one year's annual salary at separation, and shall be retained in their proper places on the district seniority recall list.
4. The Board shall provide a retraining benefit of (...negotiated dollar amount...) for each year of employment to each employee leaving his/her position.

ARTICLE IX – JOB POSTING PROCEDURES

A. All district and unit vacancies shall be adequately publicized by the Superintendent in accordance with the following procedure:

1. A notice shall be posted at each worksite and on the employer's web site as far in advance as practicable, but no less than (...negotiated number...) workdays before the final date when applications must be submitted. A copy of said notice shall be given to the Association and to each employee at the time of posting.
2. Employees who desire to apply for such vacancies shall submit their applications in writing to the Superintendent or designee within the time limit specified in the notice, and the Superintendent or designee shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the Superintendent's office for continual consideration for future vacancies until an applicant notifies the office in writing that the application is withdrawn.
3. Employees who desire to apply for a vacancy which may be filled during the summer vacation period shall submit their names and addresses where they can be reached during the summer to the Superintendent or designee, together with the position(s) to which they desire to apply. The Superintendent shall notify such employees of any vacancies or new positions. Such notice shall be sent as far in advance as practicable, but no less than ...negotiated number... days before the final date when applications must be submitted.
4. In addition, the Superintendent or designee shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, at each worksite, on the employer's web site, and a copy of said notice shall be sent to the Association.
5. The qualifications for any vacancy position, its duties, and the rate of compensation shall be clearly set forth.
6. Position Openings for Coaches
 - a. No later than April 1st of each school year, the Board shall deliver to the Association, and post in each school building, a list of known coaching vacancies which shall occur during the following year.
 - b. Such posting shall include the title of the coaching position being vacated, the contract salary offered, and the qualifications necessary. Such posting shall be in accordance with all provisions of the Agreement.

B. Procedures for filling all extracurricular positions

1. All vacancies in extracurricular positions shall be adequately publicized by the Superintendent or designee in accordance with the procedure outlined in Section A of this article.
2. All qualified employees shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered.
 - a. The Board agrees to give due consideration to the professional background, attainments, and other relevant factors of all applicants.
 - b. In filling such vacancies, when all other factors are substantially equal, length of service in the district shall be the deciding factor.
 - c. Each applicant not selected shall, upon request, receive a written explanation from the Superintendent. Announcements of appointments shall be made by posting a list in the office of the central administration and at each worksite.
 - d. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

3. If the procedure set forth above fails to produce a qualified applicant from within the district, the Board shall make every effort to employ a qualified out-of-district person who is the holder of an appropriate New Jersey certificate.
4. The Board's determination that no out-of-district qualified person can be found to fill an extracurricular position shall be subject to challenge by the Association under the grievance procedure contained in this Agreement.
5. If after having made every effort, the Board is unable to employ a qualified person in accordance with the procedures set forth herein, the Board may assign a qualified employee from within the district. In district Employees shall not be involuntarily assigned to extracurricular positions for more than (... negotiated amount of time...). Any such involuntary assignment shall be made on the basis of reverse seniority among the pool of qualified personnel.

ARTICLE X – VOLUNTARY & INVOLUNTARY TRANSFERS AND REASSIGNMENTS

- A. As soon as is practical, and no later than (...negotiated date...), the Superintendent shall deliver to the Association, a system wide schedule listing the names of all employees who have been reassigned or transferred and the nature of such reassignment or transfer.
- B. Employees who desire to transfer to another worksite or seek a reassignment may file a written statement of such desire with the Superintendent or designee. Such statement shall include the worksite or worksites to which he desires to be transferred in order of preference. Such requests for transfers and reassignments for the following year shall be submitted no later than (...negotiated date...).
- C. No such request shall be denied arbitrarily, capriciously, or without basis in fact provided a vacancy exists.
- D. If more than one employee has applied for the same position, the final determination shall be based on seniority.
- E. Notice of an involuntary transfer or reassignment shall be given to employees as soon as is practical, and except in cases of emergency, not later than (...negotiated date...).
- F. In the event that an employee objects to the transfer or reassignment, upon the request of the employee, the Superintendent shall meet with him/her. The employee may have an Association Representative(s) present at such meeting.
- G. A list of open positions in the district shall be made available to all employees being involuntarily transferred or reassigned. Said employees may request the positions, in order of preference, to which they desire to be transferred. All such employees shall be given adequate time off for the purpose of visiting worksites at which open positions exist.
- H. Any employee whose assignment is changed shall be provided assistance in the following manner:
 1. In cases of reassignments during the work year, the employee shall be provided (...negotiated amount of time...) to prepare for the new position.
 2. In case of reassignments determined during vacation periods, the employee shall have the option of working during the vacation period. The employee shall be compensated at (...negotiated rate of pay...). The Board shall provide assistance in moving equipment and materials to the reassigned employee's new worksite.
 3. In the event an employee takes course(s) related to the change in assignment, the Board shall pay the full cost of tuition, books, and materials. Such payments shall not be included in any limits otherwise required of employees as a condition for receiving tuition reimbursement.

ARTICLE XI – PERSONNEL FILE

- A. No material derogatory to an employee's conduct, service, character, or personality shall be placed in a personnel file unless the employee has had an opportunity to review such material and affix his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The employee shall also have the right to submit a written answer to such material, and said answer shall be attached to the file copy.
- B. All employees have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. Employees are entitled to have a Representative(s) of the Association accompany them during such review. Employees have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain.
- C. The Board agrees to protect the confidentiality of personal references, and other similar documents and the Board shall not establish any separate personnel file which is not available for the employee's inspection.

ARTICLE XII – SICK LEAVE

- A. All ten- (10) month employees shall be entitled to (...negotiated number...) sick leave days each school year as of the first workday of said school year.
- B. All eleven- (11) month employees shall be entitled to (...negotiated number...) sick leave days each school year as of the first workday of each school year.
- C. All twelve- (12) month employees shall be entitled to (...negotiated number...) sick leave days each year as of July 1.
- D. All unused sick leave days shall be accumulated from year to year with no maximum limit. The maximum number of days which may be accumulated in any one (1) year is fifteen (15).
- E. Whenever the Board employs an employee who has an unused accumulation of sick leave days from another school district in New Jersey, or has rehired a former employee, the Board shall credit all accumulated sick leave.
- F. In the event an employee of the unit is excluded from working because of an action taken by the school district's medical or health authorities due to exposure to contagious or infectious disease, or a quarantine is imposed on the employee's household, said employee shall not be subject to loss of pay and such absences shall not be counted as sick leave.
- G. All employees shall receive a perfect attendance award equal to (...negotiated number...) of their gross monthly income for each month of perfect attendance. A month's perfect attendance shall be defined as an employee attending work all days within a calendar month that the employee would normally be scheduled to work.
- H. Non-accumulative additional sick leave benefits shall be allowed to employees according to the following schedule:
 - 1. All twelve – (12) month employees shall receive an additional (...negotiated number...) days per year.
 - 2. All eleven – (11) month employees shall receive an additional (...negotiated number...) days per year.
 - 3. All ten – (10) month employees shall receive an additional (...negotiated number...) days per year.
- I. All employees shall be given a written accounting of accumulated sick leave days no later than (...negotiated date...) of each school year.
- J. Upon leaving employment for any reason, an employee shall be compensated for all unused accumulated sick leave. This compensation shall be at the daily rate of pay in effect at the time of severance. Employees shall have the option of placing the amount of the compensation into a Health Reimbursement Account (HRA).
- K. In the event of the death of an employee, payment for all accumulated days as stated above shall be paid to his/her estate within (...negotiated amount of time...) of employee's death.

ARTICLE XIII – SICK LEAVE BANK

- A. **Purpose** – The parties agree to establish and implement a sick leave bank utilizing a voluntary donation program to assist employees who experience a “catastrophic health condition or injury” and have exhausted their paid leave benefits. The bank shall allow employees to voluntarily donate accrued vacation, personal days and or sick leave to said bank. This bank shall be established pursuant to P.L. 2007, Chapter 223.
- B. **Definition** – A catastrophic health condition or injury is a life threatening condition or combination of conditions or a period of disability required by his or her mental or physical health or the health of the employee's fetus and requiring the care of a physician who provides a medical verification of the need for the employee's absence. Unit members may contribute any unused sick days at the time of retirement.
- C. **Committee** – The sick leave bank shall be administered by a committee which shall be comprised of three (3) members selected by the Board of Education and three (3) members selected by the Association. The committee shall establish standards and procedures that it deems appropriate for the operation of the sick leave bank. These shall include but not be limited to eligibility requirements for participation in the sick leave bank and the conditions under which the sick leave time may be drawn. No day of leave which is donated to the sick leave bank by an employee shall be drawn by that employee or any employee from the sick leave bank unless authorized by the committee in order to provide sick leave.

[Note: The sample language for inclusion in a collective bargaining agreement is complete as written above. For additional sample language addressing standards and procedures for use by the sick leave bank committee contact your UniServ office.]

ARTICLE XIV- TEMPORARY LEAVES OF ABSENCE

- A. Employees shall be entitled to the following temporary leaves of absence with full pay each school year.
- B. Up to (...negotiated amount of time...) at any time shall be granted in the event of serious illness of an employee's immediate family members (...negotiated list of relatives...) and any other member of the immediate household. An additional (...negotiated amount of time...) per year will be granted at employee's request.
- C. Any employee who is a member of a community service organization, or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during work hours, shall be granted time off with pay for such purpose upon request.
- D. Time off with pay shall be granted for appearances in any legal proceeding connected with the individual's employment or in any other legal proceeding, including jury duty, if required by law to attend.
- E. Up to (...negotiated amount of time...) shall be granted in the event of the death of immediate family members (spouse, domestic partner, child, son-in-law, daughter-in-law, parent, father in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law) and any other member of the immediate household. Employees shall be granted up to (...negotiated amount of time...) in the event of death of an employee's friend or relative outside the employee's immediate family as defined above. In the event of the death of an employee or student in the district, the principal or immediate supervisor of said employee or student shall grant to an appropriate number of employees sufficient time off to attend the funeral.
- F. In addition to the leaves granted above and in other articles of this Agreement, each employee shall be entitled to 7 days of paid leave each calendar year to serve as a bone-marrow donor or up to 30 days of paid leave each calendar year to serve as an organ donor.
- G. In addition to the leaves granted above and in other articles of this Agreement, each employee shall be entitled to (...negotiated amount of time...) to allow the employee to accompany one's spouse, children or elderly relatives to routine medical or dental appointments or other professional services related to the care of the child or elderly relative.
- H. Up to (...negotiated number...) paid days shall be granted for representatives of the Association to attend conferences and conventions of state and national affiliated organizations.
- I. All employees covered by this Agreement may attend the NJEA Convention without loss of pay.
- J. In addition to the leaves granted above and in other articles of this Agreement, each employee is entitled to (...negotiated number...) personal leave days per year for which no reason need be given. Such leave shall be accumulative. Personal leave days not utilized during the year shall be converted to accumulated sick leave.

ARTICLE XV – FAMILY & MEDICAL LEAVES OF ABSENCE

- A. A leave of absence not to exceed two (2) years shall be granted to any bargaining unit member for any of the following purposes:
 - 1. the birth, or placement for adoption or foster care, of a child;
 - 2. a serious health condition of a family member;
 - 3. the bargaining unit member's own serious health condition;
 - 4. the care of a child under age 18.
- B. For the purpose of a Family and Medical Leave, a child is defined as the biological, adopted, or foster child, step-child, legal ward or individual under 18 for whom the bargaining unit member serves in *loco parentis*. A family member is defined as a child, spouse, domestic partner, parent, parent-in-law, step- parent, grandparent, an individual over 18 who is incapable of self-care because of a physical or mental disability for whom the bargaining unit member stands in *loco parentis*, or someone who stood in *loco parentis* to the bargaining unit member when he/she was a child.
- C. A pregnant bargaining unit member may commence Family and Medical Leave pursuant to this Article before or after the birth of her child, at her option. The leave is available to the bargaining unit member at the termination of her paid sick leave, at the option of the bargaining unit member. The bargaining unit member may terminate the leave any time after the birth of the child or in the event of the death of the child. The rights afforded to pregnant bargaining unit members under this provision are in addition to those rights pregnant bargaining unit members are already entitled to under the Agreement's sick leave policy, as well as under federal and state civil rights laws.

- D. Whenever practicable, the bargaining unit member will provide the Employer at least thirty (30) calendar days written notice of the request for the leave. The request will include the reason for the leave, the expected beginning date, the expected ending date and whether the bargaining unit member intends to use paid leave for any part of the leave.
- E. In all cases, the 12-month leave year shall be calculated to provide the employee with the maximum benefit.
- F. A Family and Medical Leave may be taken on an intermittent or reduced schedule basis at the bargaining unit member's option.
- G. The bargaining unit member may elect to use his/her paid sick leave, personal leave, and/or vacation leave (or any combination thereof) for all, part or none of the duration of the leave.
- H. A leave of absence for childrearing shall be for a period of up to (...negotiated amount of time...), but such leave may, upon the request of the employee, be extended an additional (...negotiated amount of time...) A leave commencing after (...negotiated date...) shall not constitute the first year.
- I. The Employer shall continue all health insurance benefits during all Family and/or Medical Leaves.

[Important Note: *The legal framework surrounding family and medical leaves is very complex. Leave provisions in a collective bargaining agreement should always consider the impact of the State and Federal Family Leave Acts on those provisions. Always seek assistance from your UniServ representative when you are negotiating leave of absence provisions.*]

ARTICLE XVI – UNPAID LEAVES OF ABSENCE

- A. A leave of absence without pay of up to (...negotiated number...) years shall be granted to any employee who joins the Peace Corps, VISTA, AmeriCorps, National Teacher Corps, or serves as an exchange teacher or overseas teacher or some other volunteer activity, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.
- B. A leave of absence without pay of up to (...negotiated number...) years shall be granted to any employee to teach in an accredited college, university, or other school.
- C. A leave of absence without pay shall be granted for a period of up to (...negotiated amount of time...) to any employee to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.
- D. A leave of absence without pay shall be granted for a period of up to (...negotiated amount of time...) to any employee to campaign for or serve in any NJEA or NEA office or staff position.
- E. The Board for good reason may grant requests for other leaves of absence with or without pay.
- F. All extensions or renewals and requests of leave shall be applied for and granted in writing.
- G. All benefits to which an employee was entitled at the time his/her leave of absence commenced, including unused accumulated sick leave, vacation eligibility, credits toward sabbatical eligibility, and seniority rights shall be restored upon the employee's return and he/she shall be assigned to the same position which he/ she held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

ARTICLE XVII – SABBATICAL LEAVES

- A. A sabbatical leave shall be granted by the Board to an employee for study in any area of specialization, professional development, for travel, or for other good reasons.
- B. Sabbatical leaves shall be granted, subject to the following conditions:
 1. Requests for sabbatical leave must be received by the Superintendent in writing, no later than (...negotiated date...), and action must be taken on all such requests no later than (...negotiated date...) of the school year preceding the school year for which the sabbatical leave is requested.
 2. An employee has completed (...negotiated number...) years of service in the district.
 3. An employee shall be granted, upon request, a sabbatical leave at either one-half (1/2) pay for a full year or one hundred percent (100%) pay for one half (1/2) year leave.
 4. Upon return from sabbatical leave, an employee shall be placed on the salary schedule at the level which he/she would have achieved had he/she remained actively employed in the system during the period of his/her absence and shall be credited with all other benefits to which he/she would have been entitled during the period of his/her leave and continuing thereafter upon his/her return.

ARTICLE XVIII – PROTECTION OF EMPLOYEES

- A. A certified school nurse shall be scheduled to be in each building for the entire day.
- B. No employees, other than certified school nurses, shall be required to administer medicines and/or medical treatment, except in those cases in which the delegation of such duties to non-nursing personnel has been specifically authorized by law or regulation or as may be required in an emergency.
- C. An employee may use reasonable force, as is necessary, to protect himself/herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to gain possession of weapons or other dangerous objects within control of a pupil.
- D. Employees shall immediately report cases of assault suffered by them in connection with their employment to their principal, immediate supervisor and school nurse
 - 1. Such notification shall be immediately forwarded to the Superintendent who shall comply with any reasonable request from the employee for information relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the employee, the police, and the courts.
 - 2. The affected employee shall be provided with a copy of the completed Violence and Vandalism forms required of the school district in accordance with NJSA
- E. The Board shall fully comply with all aspects of applicable Workers Compensation laws when employees are injured in the course of their employment.
- F. When absence arises out of or from an assault and injury, an employee shall not forfeit any sick leave or personal leave.
- G. Benefits derived under this or subsequent Agreements shall continue beyond the period of any worker's compensation until the complete recovery of any employee.
- H. Save Harmless
 - 1. The Board shall give full support including legal and other assistance for any assault upon the employee arising from the discharge of his/her duties.
 - 2. If criminal or civil proceedings are brought against an employee alleging that he/she committed an assault in connection with his/her employment, the Board shall pay for legal counsel to defend him/her in such proceeding.
 - 3. In addition to the rights provided in 18A:16:6, whenever any action is brought against an employee before the Board, the Commissioner of Education of the State of New Jersey, or any agency thereof which may affect his/her employment or salary status, the Board shall reimburse said employee for the cost of his/her defense if the action is dismissed or results in a final decision in favor of the employee.
- I. Personal Effects – The Board shall reimburse employees for any loss, damage, or destruction to their automobile, clothing, or personal property while said employees is on duty in the school, on the school premises, or on a school-sponsored activity.

ARTICLE XIX – HEALTH & SAFETY/FACILITIES & EQUIPMENT

- A. The Board of Education has the responsibility to provide a safe and healthy workplace for all employees. Employees shall not be required to work in unsafe or hazardous conditions or be required to perform tasks which could endanger their health or well being.
- B. The Board shall be bound by all applicable local, state and federal statutes and regulations and shall make available personal protective equipment as required by such laws. Prevailing occupational health and safety standards shall be used in determining the presence of health hazards or unsafe conditions in the workplace.
 - 1. The Board shall be responsible to ensure and maintain conditions of employment that are free of hazards that are causing or are likely to cause accident, injury or illness to employees. The Board's occupational health and safety program shall comply with the requirements of (regulatory agency).
 - 2. Employees will be informed immediately when they have been or may be exposed to contagious diseases, illnesses or environmental hazards. Employees shall be instructed as to proper prevention and protection from diseases, illnesses or environmental hazards.
 - 3. Every employee shall have access to a "Work Environment Concern" form located in the main office of each worksite. Written responses to each concern submitted must be returned to the originator of the concern in a timely manner.
 - 4. No reprisals or discrimination shall be taken against any employee who makes disclosures of unsafe or unhealthy working conditions.

- C. A Joint Health and Safety Committee shall be established and will consist of (...negotiated number...) members appointed by the Association President and (...negotiated number...) members appointed by the Superintendent. The President and Superintendent (or their designees) shall serve as Co-Chairs of the committee. The committee shall meet (...negotiated frequency...) and an agenda shall be prepared and distributed at least (...negotiated number of days...) in advance of the meeting. Such meetings shall occur during the normal work day and association members on the committee shall be released from work without loss of pay for the purpose of attending such meetings.
- D. A training program for the committee, and subsequent training programs for all employees, shall be developed by the parties and will be provided by outside consultants who are jointly selected by the committee. The district shall bear all costs associated with this training.
- E. A notice shall be posted on Association bulletin boards whenever building renovations are scheduled. Whenever possible, such renovations shall take place during hours when the school is not occupied. When not possible, all necessary steps shall be taken to assure that employees are not exposed to any hazardous materials or substances, including relocation of employees to other areas of the building, substituting less toxic materials, sealing off the work area of the building, and other steps as may be required.
- F. The district agrees to share with the Association information related to the health and safety of association members including, but not limited to: accident and injury statistics, reports on workplace accidents, environmental test results, reports and citations from PEOSHA or other government agencies, and medical information on individual members who have authorized such release to the association.
- G. When environmental testing is to be performed by an outside consultant, the selection of the consultant will be made jointly by the health and safety committee. The board shall be responsible for all costs related to the testing and consultant.
- H. The Board shall provide all fire safety and evacuation plans to the Association. A school safety plan shall be developed in consultation with the Association and provided to the staff at the start of the school year.

ARTICLE XX – EXTRACURRICULAR ACTIVITIES

- A. Extracurricular activities include those activities not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year as defined in this Agreement or as established by past practice. Said extracurricular activities, and the compensation for same, are set forth in Schedule attached hereto and made a part hereof.
- B. The salary and other terms and conditions of employment for any extracurricular activities not currently set forth in Schedule _____ shall be subject to negotiations between the Board and the Association.

ARTICLE XXI – HEALTH INSURANCE

I. Eligibility, Coverage Period

- A. The board shall provide insurance protection for all employees and their eligible dependents for all types of insurance plans listed in the contract.
- B. The benefit year for all plans shall begin on (negotiated date) and end on (negotiated date). All deductibles and plan maximums will reset on the first day of the benefit year except for any carryover provisions.
- C. All new employees are eligible for all types of insurance plans for the employee and all eligible dependents on their first compensable day of employment. (*The waiting period for employees receiving insurance through the SEHBP is defined and not negotiable*).
- D. All employees returning from any unpaid leave of absence are eligible for all types of insurance plans for the employee and all eligible dependents on the date of their return to work.
- E. Coverage for ten-month employees and their dependents will continue during the summer months of July and August.
- F. For the purpose of this Article and other references to insurance, the term “dependent child” shall apply to children until the end of the calendar year in which the child reaches age 26. In the case of a dependent child who is totally disabled prior to age 26 and dependent on the employee, the age limit will not apply. (*For employees receiving insurance through the SEHBP, this is already required and not negotiable*).
- G. Benefits upon separation of employment
Employees terminating employment mid-contract will continue to maintain full insurance protection for all types of insurance plans until the first day of the second full month off the payroll. Notwithstanding

this, employees who are terminated as a result of a reduction in force, abolishment of position, privatization or loss of position through no fault of the employee will be provided full benefits at board expense for one year.

(For employees covered through the SEHBP, regulations stipulate when coverage terminates.)

Employees who are covered by the SEHBP and who thereafter retire and are required to stay on the board's benefit plan after their effective retirement date will not be responsible for any premium deductions beyond the effective retirement date.

- H. There will be a minimum of one open enrollment period each year. Employees will be able to make any changes in coverage during this period. All changes will be effective (...negotiated date). If the employee has a change in coverage status (i.e. marriage, birth, divorce, death, etc.) the employee may obtain a change in coverage immediately, provided the request for change is made within (...negotiated time period) before or after the event giving rise to the changed coverage status. *(In SEHBP, notice must be given within 60 days of the change in status).*
- I. In the event of a mid-year carrier change, all deductibles and out-of-pocket maximums will be deemed fulfilled for the remainder of the original benefit year. *(If entering the SEHBP, this is non-negotiable).*

II. Level of Coverage

- A. The board shall provide insurance protection for all employees and their eligible dependents for all types of insurance plans listed below. For all types of insurance plans, the board must provide the following levels of coverage: *Single, Parent/Child(ren), two Adult, and Family*. . Except as otherwise mandated by law and or negotiated in this Agreement, the board shall pay the full cost of all premiums.
- B. The base medical plan for all employees shall be _____ (list name of plan) as of _____(date.) In addition, employees shall have the option to enroll in one of the following medical plans according to the procedures provided throughout Article _____. A schedule of benefits is outlined in Appendix _____.
- C. The following insurance plans shall be the options available to all employees: *(list all medical plans offered by the board)*

1. Medical Insurance

- a. Health Maintenance Organization (HMO)
- b. Preferred Provider Organization (PPO)
- c. Point of Service Plan (POS)
- d. Exclusive Provider Organization (EPO)
- e. High Deductible Health Plan (HDHP)

- 2. **Prescription Insurance:** *The board shall provide a prescription plan (name your plan) as of (date) A schedule of prescription benefits is outlined in Appendix _____. (In the SEHBP, the following provisions are not negotiable and are dictated by the medical plan selected.)*

If prescription coverage is provided through the medical plans listed in section C:

- a. The employee shall be responsible for 10% of the discounted rate.
- b. All coinsurance payments made by employees shall count towards the out of pocket annual maximums.
- c. The board shall provide a mail order option.

If prescription coverage is provided through a stand-alone prescription card:

Copays will be:

- a. Retail Pharmacy:
30-day supply
Generic: \$ _____
Brand: \$ _____
- b. Mail Order: 90 day supply - Generic: \$ _____
Brand: \$ _____

(If other copays exist, outline them here.) (Not negotiable under SEHBP)

- 3. **Dental Insurance** – The board shall provide a dental plan _____ (name plan) as of _____ (date). A schedule of benefits is outlined in Appendix _____.

- a. The annual per person deductible shall be \$ _____ (enter dollar amount here). *(only use this proposal if you have a deductible – it is not recommend that you have a deductible.)*
- b. The per person annual maximum for dental procedures shall be \$ _____ (insert dollar amount here).

- c. Each eligible individual shall be entitled to _____ (number) routine cleanings per year at no cost to covered individuals.
- d. Orthodontic lifetime maximum for each eligible individual shall be \$_____ (enter dollar amount here).

In the event there are multiple dental plans offered, list the similar information for all plans offered.

4. **Vision:** The board shall provide a vision plan _____ (name your plan) as of _____ (date). A schedule of benefits is outlined in Appendix _____.
5. **Disability Insurance:** The board of education will provide disability insurance coverage for all employees. The plan shall be equal to or better than _____ (list name of plan and level of benefit) as of _____ (date). A plan description and limitations will be provided to each employee. The disability provider will be given the opportunity to speak at a regularly scheduled faculty meeting during the regular open enrollment period for the district.

(Note: Check NJEA Member Benefits for the endorsed provider)

III. Deductions

Procedures for insurance deductions and reimbursements are negotiable and the following is written on the assumption that this is being negotiated after a local has phased out of Ch. 78 premium deductions. There should be no reference to P.L. 2011, Ch. 78 in contract language.

- A. Employees' insurance deductions shall be in accordance with law and this collective bargaining agreement. In no case shall an employee's total deductions for insurance coverage exceed the total premium cost of the benefits received.
- B. For employees' insurance deduction methods based on monetary compensation, the district shall not include longevity, stipends, or any other supplementary emolument(s) of employment, but may not go below 1.5% of base salary (P.L. 2010, Chapter 2).
- C. The benefit year shall begin on (date) and end on (date).
 - (Should be defined for all types of insurance plans, including but not limited to medical, prescription, dental, vision, etc.)
 - (In SEHBP, the benefit year is January 1 through December 31.)
- D. Employees shall be required to make insurance deductions only for months for which they receive benefits. Deductions are to be calculated based on the monthly premiums for benefits received during the benefit year. In the event an employee's level of coverage (Single, Parent/Child(ren), two Adult, and Family, , etc.) should change (divorce, marriage, birth, death, etc.) and/or change their plan selection (PPO, POS, HMO, etc.) the employees' insurance deduction shall be adjusted to reflect the new coverage retroactively to the date of the life event.

Procedures for insurance deduction payments or reimbursements are negotiable.

- E. Prior to an employee commencing an approved unpaid leave of absence, the district and the employee must mutually agree on the method by which the insurance deductions shall be made. Options include, but are not limited to, prepaying the insurance deductions for the period of the unpaid leave of absence, or making periodic payments during the unpaid leave of absence. If pre-payment occurs, should the leave of absence not commence as anticipated then the employee's pre-payment deductions shall be returned.
 - An employee who elects to pre-pay the deductions shall have a separate line on his/her pay stub reflecting that deduction. An employee electing to make periodic payments will be doing so on a post-tax basis.
- F. The district shall provide a report of insurance deductions annually to each employee no later than the first paycheck in which deductions are withheld for the benefit year. An employee hired after the first paycheck distribution date shall receive the report on the first date that the deductions are withheld from his/her paycheck. Any employee whose insurance deduction changes for any reason after the initial report shall receive an updated report on the date the deductions are modified.

The report shall show the following information:

1. The annual cost of each type of insurance plan selected (medical, prescription, dental, vision, other);
2. The plan(s) selected by the employee and the level of coverage (Single, Parent/Child(ren), two Adult, and Family.);
3. The employee's total annual and monthly deduction for each type of insurance plan with a clear delineation for summer month deductions and/or any other insurance deductions taken throughout the contracted year;

4. The employee's annual compensation upon which the deduction is based;
5. The method of calculation used to determine the employee's insurance deduction.
- G. The board shall establish and maintain an IRS Section 125 Plan which will ensure that:
 1. All insurance deductions are made on a pre-federal income tax basis.
 2. Employees have access to a dependent care account
 3. Employees have access to a Flexible Spending Account (FSA).
 4. All participation and administrative fees are to be paid by the employer.
- H. In the event that a successor agreement has not been ratified by the expiration date of the current collective bargaining agreement, there shall be no additional insurance deductions taken for retroactive salary increases.
- I. In the event the district fails to make the correct deductions resulting in an overpayment by the employee, the district shall refund the overpayment to the employee. In the event the district fails to make the required deductions, the employee will be held harmless.

Modifications for insurance deductions can be done in a variety of ways, here are some examples of sample language:

1. **Fixed dollar amount with anchor date:** Effective (date), each employee's insurance deduction shall not exceed the dollar amount paid by that employee as of (date). In the event an employee's level of coverage (Single, Parent/Child(ren), two Adult, and Family.) or their plan selection (HMO, PPO, POS, etc.) should change, the employee's insurance deduction shall be adjusted to the dollar amount paid by a similarly situated employee.
2. **Fixed percentage with anchor date:** Effective (date), each employee's insurance deduction shall not exceed the percentage of premiums paid by that employee as of (date). In the event an employee's level of coverage (Single, Parent/Child(ren), two Adult, and Family.) or their plan selection (HMO, PPO, POS, etc.) should change, the employee's insurance deduction shall be adjusted to the percentage paid by a similarly situated employee.
3. **Percentage of Salary:** Employees shall pay _____ percent of salary for insurance deductions. (These percentages can be differentiated by type of plan or level of coverage. Some restrictions apply with SEHBP.)
4. **Modification of Ch. 78 premium sharing chart:** Employees will make their insurance deductions based upon the following schedule:
(Refer to the Collective Bargaining Manual for examples)
5. **Rebates/Refunds:** Effective _____ (date), all employees receiving medical, prescription, vision and/or dental coverage through the district shall receive an annual rebate of \$_____ (dollars/percent) of their annual contribution towards insurance premiums. The rebate shall be payable by the last regular paycheck in June of each year. The rebate shall be subject to all normal deductions required by law and shall not be pensionable. The payment of the rebate shall be effectuated by reducing or eliminating an employee's normal bi-monthly insurance deductions in the amount of the rebate.
e.g. The employees annual deduction towards insurance is \$8,000, with \$400 being deducted from each paycheck. If there was a 15% rebate (\$1200), the last three bi-monthly paychecks would have no deductions made for insurance (\$400 X 3 paychecks).

The following two bullets can be used independently or in conjunction with other Chapter 78 modifications to cap the employee's insurance deductions.

- **Maximums based on percent of salary:** No employee shall pay more than _____ % of salary, exclusive of longevity, stipends, or emoluments of employment.
- **Maximums based on percent of premium:** No employee shall pay more than _____ % of total insurance premiums, exclusive of longevity, stipends, or emoluments of employment.

IV. Change in Carriers

- A. In the event the board changes carriers, all aspects of the plan, including, but not limited to the schedule of benefits, providers and administration of the plan shall be equal to or better than the (...insert name of plan here) in effect on (...insert date).
- B. Procedures for a change in carrier:
 1. The board must provide a letter from the proposed insurance provider guaranteeing the new plan is equal to or better than the existing plan including, but not limited to the schedule of benefits, providers and administration of the plan shall be equal to or better than the (...insert name of plan here) in effect on (...insert date).

2. The board must provide the Association 90 days advance notice of its intent to make such a change.
3. The board must provide the following detailed information for Association review no less than 45 days prior to the proposed change of carrier date. This information will include but is not limited to:
 - a. Schedule of benefits from the insurance provider for all insurance plans
 - b. Side by side comparisons of all benefit levels for existing plan(s) to the proposed plan(s)
 - c. Provider disruption report (*not available for SEHBP*)
 - d. Plan administration description
 - e. A claims utilization report for the last three years (*not available from SEHBP*)
4. The board and the association shall meet within 15 work days of a request by the Association to discuss the proposed plan. A representative of the proposed provider shall be present at this meeting.
5. The board must provide the association with the Master Contract for the plan with the new carrier within 90 days of the change.
6. In the event of a mid-year carrier change, all deductibles and out-of-pocket maximums will be deemed fulfilled for the remainder of the original benefit year
7. In the event of a carrier change, a special open enrollment period will be available to all employees.
8. Notwithstanding any provisions of this Article, the association does not relinquish any rights it has to grieve and arbitrate any disputes.

V. Waivers of benefits

- A. Employees shall be eligible to opt out of any or all types of insurance plans provided in this Agreement in exchange for a monetary payment which shall be made to the employee in the amount of \$_____ (list dollars/percent here) of the total premium for each type of insurance(s) waived. The waiver period shall be July 1 through June 30. The payment will be made in two installments per year, one in Dec. and one in June.

[Note: If the Association chooses to negotiate a flat dollar amount, the amount of the incentive offered to the employee must be delineated by the type of coverage and level of coverage waived. i.e., an employee who waives dental/family shall receive (dollar amount)].

- B. An employee waiving medical and/or prescription coverage must provide proof of alternative coverage. This does not apply to dental and vision.
- C. An employee who waives coverage may re-enroll at the open enrollment periods, subject to carrier rules. If alternate medical/prescription coverage is terminated during a benefit year, the employee shall be re-enrolled immediately in the District's plan so there is no lapse in coverage. If such re-enrollment occurs during the benefit year, the opt-out payment will be prorated for the year.
- D. Employees shall have the option to waive any or all insurance plans at any point during the year so long as they meet the criteria in section 2 above. The employee shall then receive a prorated waiver for that year.
- E. Upon request, the board shall provide employees with a form containing the procedures to request an insurance opt-out.
- F. Opt-out payments are subject to normal Federal and State withholdings.
- G. The board will establish and maintain an IRS Section 125 plan.

[Please note the legal framework, in particular issues related to taxation and employee benefits, is subject to change. Please contact your UniServ office for assistance if either the association or the board seeks to modify the negotiated benefit program.]

VI. Ability to purchase various insurance coverage from district.

- A. The board shall provide coverage, when applicable, through COBRA. The board shall:
 1. Notify employees and their dependents of the COBRA provisions within 90 days of when the employee and their dependents are first enrolled in the qualifying district's insurance plan by mailing a notification letter to their home.
 2. Notify employees and their dependents of the right to purchase continued coverage within 14 days of receiving notice that there has been a COBRA qualifying event that causes a loss of coverage.
- B. Employees who are eligible to retire but who are ineligible for post-retirement insurance benefits shall have the right to purchase any type of insurance coverage from the Board.

VII. Association Rights

- A. The board shall provide the association with a copy of the Master Contract for each type of insurance plan currently in effect. All Master Contracts should be provided within 90 days of the effective date of this agreement. In the event of any insurance changes, the association shall be provided with the new Master Contract within 90 days of the change.
- B. The board shall provide the association with an employment roster upon the association's request. (See page ___ of *Collective Bargaining Manual* for information on what to include in the request.)
- C. The board shall notify the association of any rebates, refunds, premium holidays or any other rate reduction impacting the cost of insurance within 30 days of the board's receipt of notice. Notification includes the following:
 - 1. Effective dates of any rebates, refunds, premium holidays or rate reductions.
 - 2. A detailed breakdown of the savings provided to the district.
 - 3. Refunds may be used to offset the subsequent year's premium or be paid to association members in proportion to their premium deductions. If paid to the employees, such payment shall be made within 30 days of board receipt of savings.
 - 4. A detailed breakdown of the insurance deduction refund due to each member as a result of any rebates, refunds, premium holidays or rate reductions.
- D. At the conclusion of each insurance plan year, the board shall notify the association of the medical loss ratio. (See page ___ of *Collective Bargaining Manual* for information on medical loss ratio.)
- E. Insurance deductions made by association members shall exclude any form of compensation paid to an insurance broker and/or consultant.

ARTICLE XXII – DEDUCTIONS FROM SALARY

All School Employees

- A. The Board agrees to deduct from the salaries of its employees' dues for (...local Association name...) Association, the _____ County Education Association, the New Jersey Education Association, and the National Education Association as said employees individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233, N.J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said moneys, together with current records of any corrections, shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such moneys to the appropriate Association or Associations.
- B. Each of the Associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any Association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.
- C. The Board agrees to deduct from employees' salaries money for services and other programs as said employees individually and voluntarily authorize the Board to deduct and to transmit the moneys within (...negotiated amount of time...) days of deduction, to such agencies. Any employee may have such deductions discontinued at any time upon (...negotiated amount of time...) written notice to the Board and the appropriate agency.
- D. All employees shall be permitted to utilize Automatic Payroll Deductions for participation in (...negotiated credit union...). This participation shall be for either savings or loan repayment. Deductions shall be made (...negotiated frequency...). Monies deducted, together with records of any corrections shall be transmitted to the Treasurer of the Credit Union by the (...negotiated date...) of each month in which deductions are made. Any employee may have deductions started or discontinued at any time upon (...negotiated number...) days written notice to the Board Secretary/Business Administrator.
- E. All employees shall be permitted to utilize the Automatic Payroll Deduction program for electronic transfer of funds. Monies shall be transferred to the employee's banking institution no later than the close of business the same day. If the bank selected by the employee cannot or will not accept the distributions, the Board will not be in violation of this provision.
- F. All employees may individually elect to have any percent of their monthly salary deducted from their pay. These funds shall be paid to the staff member on the final workday in June or deposited monthly into an account of their bank or credit union. The Board shall provide an authorization form to be completed by each participating employee. Once the percentage or dollar amount has been elected, and the repository for these funds has been chosen, there can be no changes made for the duration of the current school year.

G. Deferred Compensation Plans

1. The Board and the Association agree that employees shall have the right to utilize automatic payroll deduction for participation in tax-advantaged products under a 403(b) and/or a 457 plan.
2. The Board shall adopt and make available to its employees a written Plan consistent with IRS regulations. The Plan shall include a listing of companies approved by the Board and shall provide a broad array of investment choices [including 403(b)(7) no-load mutual funds]. The Plan shall include a Roth account for receipt of after-tax deposits that grow tax-free into retirement.
3. The Plan shall include all of the material provisions regarding eligibility, benefits, applicable limitations, and contracts available under the Plan, and the time and form under which benefits and distributions would be made.
4. The Board agrees that no administrative costs will be passed on to the employees.
5. Employees shall be provided with information regarding the various approved vendors, including contact information and investment vehicles. The vendors selected by the Board shall make available to employees in written form the investment vehicles they market with a clear breakdown of all fees, surrender penalties, and performance data.
6. Employees shall be responsible for their own investment choices, and the Board and the Association shall be held harmless from any risks associated with such employee selections.

[As of January 1, 2010, most school districts with 403(b) plans have to be in compliance with IRS regulations which place new responsibilities on Boards. Compliance with these regulations is essential to safeguard the tax-favored status of all funds that are held within these 403(b) products. While local associations may want to memorialize this benefit, caution must be taken to avoid reducing the options for members or being perceived as guiding members to a specific investment vehicle. Please contact your UniServ Office for assistance when negotiating deferred compensation issues.]

ARTICLE XXIII – REPRESENTATION FEE

- A. Purpose of Fee** – If an employee does not become a member of the Association during any membership year (i.e., September 1 to August 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Association as majority representative.
- B. Amount of Fee/Notification** – At the onset of each membership year, the Association will notify the Board in writing of the amount of the regular membership dues, initiation fees, and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by nonmembers/fee-payers will be determined by an impartial arbitrator in accordance with the law.
- C. Notification** – Deduction and Transmission of Fee – On or about (...negotiated date...) of each year, the Board will submit to the Association a list of all employees in the bargaining unit. On or about January 1st of each year, the Association shall provide the Board with the names of those employees who are required to pay the representation fee.
- D. Payroll Deduction Schedule** – The Board will deduct from the salaries of the employees referred to in Section _____ the full amount of the yearly representation fee in equal installments beginning with the first paycheck in February.
- E. Mechanics** – Except as otherwise provided in this Article, the mechanics for the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the transmission of regular membership dues to the Association.
- F. Changes** – The Association will notify the Board in writing of any changes in the list provided for in Paragraph _____ above, and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than (...negotiated amount of time...) after the Board received said notice.
- G. New Employees** – On or about the last day of each month, the Board will submit to the Association a list of all employees who began their employment in a bargaining unit position during the preceding (... negotiated amount of time...) period. The list will include names, Social Security numbers, job titles, dates of employment, and places of assignment for all such employees. The Board will also notify the Association of any change in the status of an employee regarding transfer, leave of absence, return from leave, retirement, resignation, separation from employment, or death.

ARTICLE XXIV – MISCELLANEOUS PROVISIONS

- A. The Board and the Association agree that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer or discipline of employees or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age, or sexual orientation.
- B. This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.
- C. If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.
- D. Any individual contract or annual salary between the Board and an individual, theretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract notification contains any language inconsistent with this Agreement, this Agreement shall be controlling.
- E. Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within (...negotiated amount of time...) after the Agreement is signed. The Agreement shall be presented to all employees now employed, hereafter employed, or considered for employment by the Board.
- F. Whenever any notice is required to be given by either of the parties of this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so in writing to the following addresses:

If by Association, to Board at: _____

If by Board, to Association at: _____

ARTICLE XXV – DURATION OF AGREEMENT

This Agreement shall be implemented between the period _____ to _____ as of _____, [...date of implementation...] and shall continue in effect until [...date of expiration...].

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon.

Board of Education _____ **Association** _____

By _____ By _____

President President

By _____ By _____

Secretary Secretary

SECTION II – Certified Staff only

ARTICLE XXVI – TEACHING HOURS & LOAD

- A. Length of Year** – The regular school year for certified employees shall not begin prior to Labor day and will not exceed June 30 of any given year. The regular school year will not exceed (...negotiated number...) of days.
- B. Length of Day** – The regular work day for certificated employees shall not exceed (...negotiated number...) hours and (...negotiated number...) minutes, except on Friday or the last working day before a holiday or vacation period in which case the work day shall be (...negotiated number...) hours and (...negotiated number...) minutes.
- C. Duty-Free Lunch Period** – Teachers shall have a daily duty-free lunch period of (...negotiated number...) minutes, which shall take place during student lunch hours. Teachers may leave the building during this time.
- D. Teaching Preparations** – Teachers shall not be required to teach more than (...negotiated number...) subject area(s), nor more than a total of (...negotiated number...) teaching preparations.
- E. Planning Periods**
1. Teachers shall have (...negotiated number...) daily duty-free preparation period of (...negotiated number...) minutes. In the event teachers are required to perform any assignment during their preparation period, they shall receive additional compensation of (...negotiated percent...) of their daily rate of pay.
 2. Teachers who are requested or required to develop written reports, documentation, or research educational records in preparation for eligibility or IEP meetings and/or the SEMI program shall be given an adequate amount of release time to complete the task. It is understood that this release time will be in addition to the teacher's daily planning time. When an teacher is required to work beyond the regular workday to complete this documentation, said teacher shall be compensated at the (...negotiated amount...) hourly salary for all time worked beyond the regular work day.
 3. Teachers who deliver distance education courses shall receive an additional preparation period per day.
- F. Student Contact Periods**
1. The daily workload in the middle, junior, and senior high schools shall be (...negotiated number...) teaching periods and (...negotiated number...) student supervision periods per day, but shall not exceed (...negotiated number...) hours per day.
 2. Teachers instructing a distance-learning course shall not be assigned a duty period or homeroom.
- G. Additional Students** – When teachers receive additional students on a temporary basis, they shall be compensated at the rate of (...negotiated amount...) per student, per day, or any part of a day.
- H. Teaching Stations**
1. Teachers in the middle, junior, and senior high schools shall not be required to change subject area teaching stations more than (...negotiated number...) time(s) during the school day and shall not be required to teach continuously for more than (...negotiated number...) periods.
 2. Teachers in the elementary schools shall not be required to change teaching stations and shall not be required to teach continuously for more than (...negotiated number...) periods.
- [Important note: NJEA recognizes that an important segment of its membership does not work in the same way as a classroom teacher. Certain certified employees such as athletic trainers, child Study team members, guidance counselors, media specialists, school nurses and speech language specialists do not have a work day that is defined by periods or student contact time. Negotiators are encouraged to review the working*

conditions of these members and make proposals that are responsive to the actual working conditions in your school district. Contact your local UniServ representative for assistance in crafting specific proposals for these categories of employees.]

I. School Leadership Committees

1. Teachers serving on the School Leadership Committee (SLC) (or other such school based collaborative councils or coordination activities related to Secondary Education Initiative (SEI)) shall have an additional duty free time of (...negotiated number...) periods/minutes each day to fulfill the team's obligations.
2. Teachers serving on the SLC (or other such school based collaborative councils or coordination of activities related to SEI) shall not be required to teach more than (...negotiated number...) periods/minutes each day.
3. Teachers serving as the chairperson of the school's School Leadership Committee (SLC) (or other such school based collaborative councils) shall not be required to teach more than (...negotiated number...) periods/minutes.
4. Teachers serving in any position created pursuant to state regulations shall be released from all other teaching/work responsibilities and other duties in order to carry out the responsibilities of that position.
5. Teachers serving on School Leadership Committees (SLC) (or other such school based councils) shall not be assigned a homeroom or duty period.
6. Teachers required to attend meetings or workshops required by the School Leadership Committee (SLC), or as part of training for compliance with Secondary Education Initiative (SEI), which extend beyond the workday/work year shall be compensated at the following rates.
7. Teachers required to attend School Leadership Committee (SLC)(or other such school based council) meetings or training for compliance with Secondary Education Initiative (SEI), which extend beyond the workday/work year shall be compensated at (...negotiated number...) the following rates.
8. Half-day or evening events (...negotiated rate of pay...)
9. Full-day events (...negotiated rate of pay...)
10. Full-day and evening events (...negotiated rate of pay...)
11. Weekends or holidays (...negotiated rate of pay...)
12. Hours served as an SLC member (or member of other such school and/or district-wide council or activities) shall be applied to a teacher's required 100 hours of Professional Development.
13. Teachers attending meetings or workshops required by the SLC, or responsibilities related to SEI or other similar duties, shall be reimbursed for all expenses related to said activities.
14. Compensation and/or release time shall be provided for increased student contact time as a result of student advisories duties or work beyond the school day.
15. Teachers in multi-grade academies or small learning communities shall be compensated and/or released from existing duties for increased class/lesson preparation.

J. Teachers and Coaching

1. Coaches shall be provided with:

- a. adequate team equipment and supplies;
 - b. a separate, private locker room for the exclusive use of coaches;
 - c. a complete copy of the rules and regulations of NJSIAA;
 - d. (...negotiated rate...) for in-county scouting and (...negotiated rate...) for out-of-county scouting as the need arises, and with the approval of the athletic director and the Superintendent.
2. No coach shall be required to attend a practice, exhibition, or officially scheduled game session if he/she was excused from school that same day because of sick leave or a temporary leave of absence as cited in this Agreement.
 3. Coaching Development and Improvement
 - a. With the approval of the Superintendent and/or the Board, coaches who attend clinics or general coaching sessions of an extended nature outside of their athletic training season, shall be reimbursed for expenses incurred as a result of their attendance. The coach shall be reimbursed for mileage at the current IRS allowable rate.
 - b. Each coach may attend (...negotiated number...) clinics, meets, or conferences of his/her choice. Expenses incurred as a result of attendance shall be reimbursed by the Board. Mileage shall be reimbursed at the current IRS allowable rate.

4. Coaches' Protection

- a. The Board agrees to protect and save harmless every coach from any financial loss resulting from errors and omissions arising out of and in the course of the performance of his coaching duties.
- b. No coach shall be required to drive students to activities which take place away from the school building.

ARTICLE XXVII – MENTOR & PROVISIONAL TEACHERS

- A. All teaching staff members shall have the opportunity to apply for the position of a mentor. The district shall not request or require any employee to apply for a mentor position.
 1. All vacancies for mentoring positions shall be posted as early as the district is aware of its needs. The postings shall be conducted as set forth in Article _____ of this agreement. The postings shall include the qualifications and salary for the position.
 2. No employee shall be assigned to serve as a mentor if there are qualified volunteers available. If an employee is involuntarily assigned to a mentoring position, said employee shall not be involuntarily assigned again until other qualified employees have been assigned.
- B. Mentor teachers shall receive an annual stipend of (...negotiated \$ amount...), in addition to compensation provided through state Mentor Regulations.
- C. Additional days required for mentor training beyond the contracted year shall be compensated as work completed outside the normal school day/school year and compensated at the rate of (...negotiated amount...) by the district. The district shall pay for all costs connected with said training, including travel to any out-of- district training site.
- D. Mentor teachers and participating novice teacher shall be provided (...negotiated number...) days of release time to be used at their discretion to facilitate the mentor program. Release time for the mentor and mentee shall be covered by substitutes.
- E. Mentor/mentee shall not be subject to any additional evaluation procedure. A Mentor teacher shall not in any way participate in, or contribute to, the performance evaluation of a novice teacher.
- F. Mentor Work Load
 1. All teachers serving as mentors shall not be assigned to duty periods.
 2. All teachers serving as mentors shall not be assigned to a homeroom period.
 3. In addition to preparation time stipulated in this Agreement, staff members who perform mentoring duties shall be provided (...negotiated number...) daily joint planning sessions with their assigned provisional/alternate route teacher.
 4. In addition to preparation time provided in this Agreement, teachers serving as mentors shall have a daily period of not less than (...negotiated amount of time...) to perform duties associated with mentoring.
 5. Provisional/Alternate Route teachers shall be provided (...negotiated number...) period(s) per day to meet with their mentors.
 6. No teacher shall serve as a mentor to more than (...negotiated number...) Provisional/Alternate Route teachers per year.
- G. Professional Development
 1. The Board shall provide training for all teachers who serve as mentors before the start of their assignments, and shall provide ongoing training throughout the Mentoring period. Whenever possible, such training shall be scheduled during the regular workday. If training is scheduled for hours outside the regular workday/work year, the teacher shall be compensated for time worked based upon the teacher's hourly rate of pay. The district shall pay all costs connected with said training, including travel to any out-of-district training site, meals, lodging, and miscellaneous fees.
 2. All mentor training will accrue time toward Professional Development hours as set forth by statute.
 3. All mentor teachers shall accrue time toward Professional Development for serving as a mentor, as set forth by statute.

ARTICLE XXVIII – EMPLOYEE EVALUATION

- A. Teachers shall be evaluated consistent with applicable state statute and regulation (Current references are P.L. 2012, c. 26 and N.J.A.C. 6A:10)

B. Preconferences

1. An evaluation preconference shall be conducted between the in-district certified supervisor conducting the observation and the employee being evaluated.
 - a. For classroom teachers, this preconference shall include but is not limited to the following issues:
 - i. Domains to be observed
 - ii. Lesson plan
 - iii. Characteristics of the students/class profile
 - b. For other certificated staff, the preconference shall include but is not limited to the following:
 - i. Domains/services to be observed
 - ii. Characteristics of students served
2. A pre-conference, when required, shall occur within seven work days prior to the observation, not including the day of the observation. Since lesson sequencing and components may vary based on the needs of the students, teaching staff members will not be penalized for adjusting the lessons to meet student needs.
3. The association and the district mutually shall establish the issues to be discussed in the preconference.

C. Observations

1. Each required observation will result in a performance rating which shall be shared with the employee within 10 days and which shall be discussed at the post-observation conference.
2. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, telephone or other video recording, computers, and any other electronic surveillance devices is strictly prohibited.
3. Each required observation shall be scheduled at least once during a semester. In addition, there shall be at least one month between the time one evaluation is completed, including the post observation conference and submission of any responses, and the subsequent observation or evaluation.

D. Evaluation Reports

1. An employee shall be given a copy of any visit, observation, or evaluation report prepared by his/her evaluator(s) seven days before any conference. No such report shall be finalized or submitted to the central office, placed in the employee's file, electronically finalized, or otherwise acted upon until after the post-observation conference with the employee has occurred.
2. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - a. Such reports shall be addressed to the employee.
 - b. Such reports shall be written in narrative form and shall include:
 - i. Strengths of the employee as evidenced during the period since the previous report, citing specific domains and indicators.
 - ii. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated, citing specific domains and indicators.
 - c. No employee shall be required to sign a blank or incomplete evaluation form. An employee's signature on a completed evaluation indicates only that an employee has reviewed a copy of the evaluation, not that the employee is in agreement with any or all of the findings of the evaluation.
 - d. Each observation cycle shall be completed before another cycle begins.
 - e. Each employee shall have the right to attach a written statement of rebuttal/response to all evaluations. Such responses shall be attached to and remain with the evaluation, whether stored physically or electronically.
3. All evaluation reports, documents, records, and other evaluative materials -- whether in a non-electronic or electronic form -- are considered confidential personnel records and are subject to the confidentiality requirements of P.L. 2012, c. 26, and other statutes establishing confidentiality of public employee records. The individual records may not be made available or released to the public. The school district shall be fully responsible for the security of employee evaluation records and data. Access shall only be permitted to the certified supervisor(s) conducting the evaluation, the individual employee, and the association representative.

E. Post-Observation Conferences

1. Every post-observation conference must occur face-to-face between the certified supervisor conducting the evaluation and the employee who was evaluated.
2. The post-observation conference shall include data from the observation and all the evidence that shall be included in the evaluation report, as well as the draft evaluation report.
3. Provision must be made to attach employee responses/objections to the evaluation either physically or electronically, depending on how the evaluation report is stored.

F. Informal Observations/Walkthroughs

1. Any observation – whether formal or informal – shall be conducted openly and with the knowledge of the employee being observed.
2. All employees shall have copies of any forms or checklists being used as part of informal observations prior to any informal observations being conducted. Information on these approaches – including criteria – shall be included in training on the teacher practice evaluation rubric being used.
3. When informal observations are being used as part of the evaluation, written feedback must be provided to the teacher within five working days. If the administrator has concerns as a result of the information observation or walkthrough, a face-to-face post-informal observation/post-walkthrough conference must be conducted within five days of the employee receiving the written feedback.
4. Walkthroughs shall only be used to assess building-wide implementation of new practices or policies. They may not be used for evaluative assessment of individual employees. Employees shall be informed in advance of the purpose and criteria of walkthroughs and be provided with copies of any forms or checklists being used prior to walkthroughs being conducted. Information on this approach and its criteria shall be included in staff training.

G. Prior Provision Of Materials

Employees shall be provided annually with all materials being used in evaluation prior to any observation/evaluation being conducted, whether formal or informal. This includes any criteria, forms (electronic or non-electronic), or other documents. (**NOTE:** *The local association may want to include a deadline date by which these materials must be provided for continuing employees, as well as new employees.*)

H. Observers/Evaluators

1. The Association will be provided a copy of the list of observers/evaluators who have been certified by the chief school administrator as being competent in applying the educator practice instruments and any other evaluation rubrics and the criteria used to assess competence. The list shall be provided annually prior to any administrator conducting an observation or evaluation.
2. No teacher member of the School Improvement Panel (ScIP), no other teaching staff member unless hired as a certificated supervisor or administrator in the district, nor any non-certificated staff member shall be permitted to evaluate, feed into the evaluation of, or participate in the evaluation in any way of any other certificated or non-certificated staff member. Use of any such information will render the evaluation null and void.

I. Criticism

Any question or criticism by a supervisor, administrator, or Board member of an employee's performance/instructional methodology shall be made in confidence and not in the presence of students, parents, co-workers, or members of the public.

J. Use Of Video And/Or Audio Recording Devices In Evaluation

Preferred Language – *We strongly recommend no video/audio recording be permitted or conducted by any means for evaluative purposes.*

1. During a classroom or workplace observation/evaluation, whether formal or informal, no tape recorders, videotape equipment, computers, telephones, or any other device with video or audio recording capability shall be used to record the staff member.
2. Evaluation of a staff member shall not be accomplished through electronic monitoring or taping.

Alternate Language (*where the local association decides to permit use of video and/or audio recording in evaluation*)

1. The employee must consent to the video and/or audio recording for it to be used in any way.
2. The recording shall be conducted openly and with full knowledge of the employee.

3. Prior to the video and/or audio recording, both the employee and certified district supervisor conducting the observation must sign a consent form that includes:
 - the time and date of the recording;
 - the employee's ownership of the video/audio recording;
 - provisions that the video/audio recording shall be used for that observation then destroyed; and that
 - the video/audio recording shall not be shared or distributed within or outside the district, except with the certificated supervisor conducting the observation and the employee's association representative.
4. A request and copy of the consent form to video and/or audio record must be submitted to the employee a minimum of three working days in advance of any proposed videotaping, video, or audio recording by any electronic or other means of an evaluation observation.
5. No employee shall be coerced, harassed, or forced to sign the video/audio consent form or reprimanded or otherwise disciplined for declining to sign the consent form.
6. Because evaluation is a confidential process, access to the recording is limited to the staff member observed, the staff member's association representative, and the certified supervisor conducting the observation.
7. The video or audio recording and access to equipment to review it must be provided to the videotaped employee and, if questions about performance arise, to the employee's association representative.
8. The video and/or audio recording cannot be edited or copied.
9. Any video recording must be made using a 360-degree video camera and must include the employee, students, the observer, and the location of the observation.
10. The use of the recording shall be for the sole purpose of a specific observation. Following the post-observation conference, the video shall be returned to the employee for disposal.
11. The district must ensure that the video and/or audio recording is stored and secured in a location that is not accessible to any other district employees – including non-confidential clerical/office staff, other district supervisors, board members, or other individuals to prevent improper dissemination or viewing by unauthorized individuals prior to required return to the employee for disposal.

K. Individual Professional Development Plan (PDP)

1. The Individual Professional Development Plan (PDP) shall be developed by the teaching staff member and the teaching staff member's certified district supervisor.
2. The PDP shall be considered a living document. The employee shall have the right to modify the plans, goals, and activities listed throughout the calendar year to meet his/her emerging goals, amending the plan in collaboration with his/her immediate certified supervisor.
3. The individual Professional Development Plan shall require no more than the minimum required 20 hours of professional development a year.
4. The PDP shall include no more than three goals, such as a professional practice goal, school goal, and/or district goal.
5. Any professional development required of any school staff member – whether through a PDP or Corrective Action Plan (CAP) – shall be provided during the regularly scheduled work year and work day.
6. Any professional development activity or experience required by the district or district administration shall be fully funded by the district, including payment of associated fees or expenses.
7. The PDP form shall be bargained between the majority representative and the school district.

L. Collaborative Professional Development Period

1. Each staff member shall be provided one duty-free collaborative professional development period each week for collaborative professional learning such as professional learning communities, study groups, action research, and other interactive, collegial, and confidential experiences. These duty-free periods shall be scheduled by the district in addition to, not in place of, regular individual preparation periods. Staff members shall not be pulled from these periods to cover classes or other duties. These experiences shall be credited toward Professional Development Plan (PDP) requirements and may also be used toward meeting Corrective Action Plans.

[NOTE: Local associations should consider bargaining additional full-day or half-day inservice days or one or more additional collaborative professional development periods per week to enable colleagues to work in professional learning communities or undertake similar collaborative professional learning experiences.]

M. Corrective Action Plan (Cap)

1. Any Corrective Action Plan shall be developed collaboratively by the staff member who needs to address the deficiency or deficiencies which led to a “ineffective” or “partially effective” annual summative rating and the individual’s certified supervisor.
2. Any professional development required of any school staff member through a Corrective Action Plan (CAP) shall be job-embedded and provided during the regularly scheduled work year and work day. Any experiences which can help address the identified deficiency or deficiencies that are outside of the school day or year must be mutually agreed upon by the school staff member and the certified supervisor. In all instances, the district shall be responsible for payment of all fees, expenses, required resources, and additional compensation based on the individual’s hourly rate if outside the work day.
3. The individual Corrective Action Plan shall require no more than the minimum required 20 hours of professional development a year.
4. The Corrective Action Plan must define both the individual’s responsibilities and the district’s and supervisors’/administrators’ responsibilities in helping the employee address any identified deficiencies.
5. The plan shall spell out which specific evaluation component(s) and elements need to be addressed. It shall include the individual’s opportunities to view modeling of “effective” representations of meeting the components by the certified supervisor and those rated “effective” or “highly effective” in such components/elements and be provided opportunities to practice and demonstrate them.
6. The Corrective Action Plan shall be established for a period of not less than one year in order to provide the individual with sufficient time and multiple resources to address the identified deficiency or deficiencies, as well as the district to provide the necessary time, resources, and support.
7. The employee who is required to have a Corrective Action Plan shall have the right to have an association representative present during any conference where a Corrective Action Plan is created.
8. Any observations for an individual who has a Corrective Action Plan shall be conducted for a full class period, shall be announced, and shall require a pre-conference.
9. Every individual on a Corrective Action Plan shall be provided regular and continuous support toward and feedback about their progress in addressing any deficiencies.
10. Observations of individuals with Corrective Action Plans shall be conducted by multiple observers who shall be certified district supervisors.
11. No School Improvement Panel teacher member will be involved in creating or meeting another staff member’s Corrective Action Plan.

N. Training

1. Training on the teacher evaluation model shall be grade and/or subject specific and clearly outline developmentally appropriate exemplars and specific descriptors for each domain and element within the teacher practice model.
2. The training also shall include the specific information regarding the rating system and criteria for Student Growth Percentiles, the development and assessment of Student Growth Objectives, and how the final rating is determined for each component and the evaluation system as a whole.
3. Evaluation training shall be offered by the district as part of the professional development program during the school day and school year and be fully funded by the school district. Training shall be provided in-person in collaborative settings and not rely on video or other electronic means, except as providing an exemplar to spark collaborative discussions among those present at the training.
4. When district certified supervisors who conduct evaluations and observations in the evaluation models, tools, and rubrics used to evaluate school staff are trained, association representatives will be provided an opportunity to attend that training. If the training is conducted during the school day or year, association representatives will be provided release time to attend the training with no loss of compensation.

O. Notification Of Student Roster For Student Growth Percentile (Sgp) Purposes

1. The district must consult with each teacher prior to the development of the list of students assigned for Student Growth Percentile calculation purposes. Teachers will be given the opportunity to discuss the students that they teach and the amount of time they spend with students teaching the content area.
2. The district must provide the final list of students assigned to each teacher for the teacher’s review prior to the list being submitted to the N.J. Department of Education.

P. School Improvement Panel

No teacher or other unit member who serves on the School Improvement Panel shall evaluate, participate in, or feed into the evaluation or any component of the evaluation of any other teacher or unit member, including formulating the Corrective Action Plan.

[NOTE: Whether or not this provision is bargained, the local association should declare this in a letter to the school board and chief school administrator, in keeping with P.L. 2012, c. 26, prior to July 1 for each succeeding school year.]

ARTICLE XXIX – EVALUATIONS PROCEDURES – EXTRACURRICULAR POSITIONS

- A. Employees holding any extracurricular position shall be evaluated consistent with N.J.S.A. 34:13A-23.
- B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.
- C. Within (...negotiated number...) days of each observation, the employee shall receive a written report, and within (...negotiated number...) days shall have a conference with the author of the report. Each observation cycle shall be completed before another cycle begins.
- D. Annually, each employee shall receive a written evaluation (...negotiated number...) days prior to a meeting with his/her supervisor to review the content of the evaluation.
- E. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.
- F. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.
- G. Every employee shall be given a copy of any visit, observation, or evaluation report prepared by his/her evaluator(s) (...negotiated number...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee. No employee shall be required to sign a blank or incomplete evaluation form.
- H. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - 1. Such reports shall be addressed to the employee.
 - 2. Such reports shall be written in narrative form and shall include:
 - a. Strengths of the employee as evidenced during the period since the previous report.
 - b. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated

ARTICLE XXX – PROFESSIONAL DEVELOPMENT & EDUCATIONAL IMPROVEMENT

- A. The Board of Education shall pay the registration fee, tuition and textbook costs for all courses the Board requires a teacher to take or the parties mutually agree the teacher shall take. When required by the Board to take any coursework, the teacher shall be given either compensatory time, additional pay at their individual per hour rate, or release time during their contractual workday.
- B. Educational improvement eligible for reimbursement and horizontal movement on the salary guide shall include but not be limited to:
 - 1. Under-graduate and graduate courses at an accredited college or university or county college
 - 2. On-line courses provided by an accredited college or university or county college.
 - 3. In class or on-line training provided by a technical training institution.
 - 4. Any studies, training or coursework leading to the issuance of a National Board Teacher Certificate.
- C. Application for professional development and educational improvement shall be made to _____ for approval. Such approval shall not be unreasonably withheld.
- D. The following schedule for submitting application for under-graduate and graduate courses shall be:
 - 1. Fall Semester _____
 - 2. Winter Semester _____
 - 3. Spring Semester _____
 - 4. Summer Semester _____
- E. Professional development provided by an institution other than a college or university shall require application to be submitted to the district within (...negotiated number...) days/weeks) of the commencement of the instruction.

- F. The Board shall make (...negotiated number...) of professional leave days available to every teacher in each year for attendance at workshops, seminars, or visits to other schools for the express purpose of self professional improvement.
- G. Board required attendance at a professional workshop, seminar, school visit, online seminar or other related educational improvement experiences shall require the Board to pay all expenses attached to the assignment. Further, this time shall be in addition to the professional development days provided in Section F above.
- H. Reimbursement and Salary Adjustments
 - 1. Reimbursement for the cost of all educational improvement shall be in accordance with normal accounting procedures and paid at such time as said procedures provide but not later than (...negotiated number) calendar days after the teacher submits their documentation.
 - 2. Salary adjustments shall become effective July 1 and/or January 1 immediately following completion of eligible coursework.
- I. Teachers required to provide turn-key training to their colleagues shall be given release time to prepare for the training. The amount of release time required shall be determined by the teacher presenter. Any materials, supplies, office equipment and/or audio visual needs shall be provided by the Board. The teacher presenter shall receive additional compensation at their individual per hour rate for all actual hours spent in the final presentation.
- J. Teacher Mentors
 - 1. The position of teacher mentor shall be posted to all teachers both electronically and by hard copy to the Association President. The posting shall include qualifications and application deadlines. No teacher shall be assigned to be a mentor.
 - 2. Mentors shall receive (...negotiated number...) duty free periods per day to meet with and assist their mentees.
 - 3. Mentors shall receive professional development hours toward the State required 100 hours as per the state guidelines. Mentors shall be paid a stipend in the amount of (...negotiated dollar amount...) per mentee.
 - 4. Mentors shall be provided with training from the district. All training shall be done during the contractual workday.
 - 5. Mentors shall be held harmless by the district regarding any complaints made by a mentee.
 - 6. No mentor shall have more than one (1) mentee at a time unless the teacher mentor agrees to do so.
- K. Licensure Positions
 - 1. The Board shall pay all fees and costs associated with state required professional licenses. These would include, but are not limited to, physical and occupational therapists, athletic trainers, nurses, pool instructors, vocational education instructors.
 - 2. The Board shall provide release time and pay all expenses for these certified employees to attend seminars and training required for license renewal and/or re-certification.
 - 3. For those re-certification and/or licensure programs not offered during the contractual workday, the Board shall provide compensatory time equal to the hours spent in the program. These hours shall be computed as those required portal to portal.
 - 4. The Board shall assume all costs associated with obtaining and maintaining any special license or certificate it requires of a teacher. Said teacher shall receive additional pensionable compensation of (...to be negotiated...)
- L. School Professional Development Committee (SPDC) Service and Local Professional Development Committee (LPDC) Service
 - 1. There shall be established a local Professional Development Committee. The local Professional Development Committee shall work in conjunction with the chief school administrator to:
 - a. Assess professional development needs;
 - b. Plan and implement professional development activities in alignment with the Professional Development Standards and the Professional Standards for Teachers.
 - c. Develop the school district mentoring plan
 - 2. The local Professional Development Committee shall be comprised of four teachers, elected by the district board of education instructional and educational services staff through their majority representative, and two administrative staff appointed by the chief school administrator. Election of

teacher representatives shall conform to the following procedures:

- a. There shall be an open nomination of candidates from among the ranks of instructional and educational services staff members;
 - b. Voting shall be conducted in accordance with the established elections procedures of the majority representative as established in its constitution and by-laws. The election calendar developed by the majority representative shall factor in time for runoff elections should the need arise;
 - c. Local Professional Development Committee terms shall begin on September 1 and shall expire on August 31 of the appropriate year;
 - d. Should a teacher member vacancy on the Local Professional Development Committee occur, the president of the employee majority representative shall appoint a replacement to serve out the remaining term until the next scheduled election; and
 - e. Member terms shall be two years. Members can be reappointed up to three times. All active teachers and education services personnel are eligible to vote for and to serve on Local Professional Development Committees.
3. Plans developed by the local Professional Development Committee shall be presented to the district board of education for review
 4. Teacher members of the ScIP and/or the LPDC shall be provided with (...negotiated number...) duty free periods per week to assess and recommend current professional development opportunities and needs.
 5. All district in-service programs under the direction of the LPDC shall be eligible for the state required 20 hours of professional development and be counted as CEU's eligible for horizontal salary guide movement.
 6. Any hours required by members of the ScIP and/or the LPDC to accomplish its charge which must be served after the contractual workday shall be reimbursed at each member's individual per hour rate. Reimbursement and salary adjustments shall be made in accordance with Section H of this article.
 7. The Board shall pay the full costs for SPDC and/or the LPDC members who must attend any workshops, seminars, conferences or other such sessions required in connection with their duties as LPDC members.
 8. Service on the ScIP and/or the LPDC shall entitle members to Professional Development hours in accordance with the regulations.
- M.** Other approved professional activities consistent with the state professional development standards and guidelines including, but not limited to, collaborative time, out of district teaching and instruction, participation in professional associations and preparation of professional materials for publication shall be subject to the terms in Section M above.

SECTION III – Educational Support Professionals Only

ARTICLE XXXI – SUPPORT STAFF WORK SCHEDULE

- A. Work schedules** indicating support staff shifts, workdays, and work hours shall be posted in each building in a prominent location.
- B. Established work shifts, workdays, and work hours** shall not be changed except through negotiations between the Board and the Association.
- C. The workweek shall be five (5) consecutive days** from Monday through Friday and shall not exceed the daily work hours as listed above in (...note paragraph...), unless otherwise agreed to in this Agreement.
- D. Secretarial**
- SCHOOL YEAR** – During the school year, the secretaries' workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.
 - SUMMER HOURS** – During the summer, the regular work schedule shall be reduced (...negotiated number...) hour(s) per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.. Summer work hours shall commence upon the closing of school in June and continue through to the reopening of school in September.
 - BREAKS** – Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided.
- E. Custodial/Maintenance**
- SCHOOL YEAR** – During the school year, the custodial/maintenance staff workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.
 - SUMMER HOURS** – During the summer, the regular work schedule shall be reduced (...negotiated number...) hour(s) per day inclusive of a ...negotiated number... minute duty free lunch/dinner period wherein the employee may leave the building. Summer work hours shall commence upon the closing of school in June and continue through to the reopening of school in September.
 - BREAKS** – Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's workday is extended, an additional break of (...negotiated amount of time...) shall be provided.
 - CLEAN-UP TIME** – Employees shall be granted (...negotiated amount of time...) prior to the end of the work shift in order to put away equipment and supplies and for personal clean up.
- F. Paraprofessional**
- SCHOOL YEAR** – During the school year, the paraprofessional' workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.
 - BREAKS** – Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's workday is extended, an additional break of (...negotiated amount of time...) shall be provided.
- G. Bus Drivers**
- SCHOOL YEAR** – During the school year, the bus driver's workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.

2. **BREAKS** – Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided.
3. **CLEAN-UP TIME** – Employees shall be granted (...negotiated amount of time...) prior to the end of the work shift in order to put away equipment and supplies and for personal clean up.
4. **ALL SCHOOL VEHICLES** – shall be equipped with a district communications system monitored by the police.
5. **ASSIGNMENT OF BUS RUNS** – Field trip and extra duty runs shall be given to volunteers on a rotating seniority basis. If there are no volunteers, the district may assign in order of reverse seniority.
6. **ACTIVITY BUS RUNS** – An activity bus run which is completed after (...negotiated hour...) prevailing time shall entitle the driver to a meal allowance of (...negotiated dollar amount...).

H. Drivers, Maintenance, Custodians, Groundskeepers

1. The Board shall provide all safety equipment such as, but not limited to, protective clothing and footwear. The Board shall provide (...negotiated number...) coveralls per year for employees on the boiler cleaning detail. The Board shall provide (...negotiated number...) uniforms and tee shirts to all custodians during the school year.
2. The Board shall maintain ...negotiated number... sets of foul-weather gear for each worksite and (...negotiated number...) sets of foul-weather gear for the garage.
3. The Board shall provide each custodian with rubber gloves.
4. The Board shall provide each custodian/maintenance employee with respiratory equipment for work on boilers or when necessary to prevent respiratory infections.
5. The Board shall provide safety glasses for employees required to work on boilers or whenever necessary.
6. No custodian shall be required to ascend ladders higher than (...negotiated height...) while working a shift alone.
7. The Board shall provide all necessary equipment and supplies to be used by employees in fulfilling their obligations under the job descriptions contained in this Agreement
8. The Board shall furnish maintenance employees assigned to work outside on a regular basis with insulated outerwear (jumpsuit), the cost of which shall not exceed (...negotiated amount...). This item shall remain the property of the Board and will be replaced as the Board deems necessary.

I. Security Personnel

1. The Board shall provide uniforms and badges for all security personnel.
2. The Board shall provide a public telephone at all worksites within ready access to all employees during work hours. All employees scheduled to work on the evening shift/night shift shall be provided with a communication system – radio, cellular phone, etc., for emergency use. A joint Health & Safety Committee shall be established and consist of (...negotiated number...) members appointed by the Association President and ...negotiated number members appointed by the Superintendent. The Committee shall meet at least (...negotiated number...) times each year to develop, review, and implement training programs and procedures in areas of concern to the parties. Training for the Committee shall be jointly developed and the Board shall pay all costs.

J. Educational Support Professionals and Coaching

1. Coaches shall be provided with:
 - a. adequate team equipment and supplies;
 - b. a separate, private locker room for the exclusive use of coaches;
 - c. a complete copy of the rules and regulations of NJSIAA;
 - d. (...negotiated rate...) for in-county scouting and (...negotiated rate...) for out-of-county scouting as the need arises, and with the approval of the athletic director and the Superintendent.
2. No coach shall be required to attend a practice, exhibition, or officially scheduled game session if he/ she was excused from school that same day because of sick leave or a temporary leave of absence as cited in this Agreement.
3. Coaching Development and Improvement
 - a. With the approval of the Superintendent and/or the Board, coaches who attend clinics or general coaching sessions of an extended nature outside of their athletic training season, shall be reimbursed for expenses incurred as a result of their attendance. The coach shall be reimbursed for mileage at the current IRS allowable rate.

- b. Each coach may attend (...negotiated number...) clinics, meets, or conferences of his/her choice. Expenses incurred as a result of attendance shall be reimbursed by the Board. Mileage shall be reimbursed at the current IRS allowable rate.
- 4. Coaches' Protection
 - a. The Board agrees to protect and save harmless every coach from any financial loss resulting from errors and omissions arising out of and in the course of the performance of his coaching duties.
 - b. No coach shall be required to drive students to activities which take place away from the school building.

ARTICLE XXXII – SUPPORT STAFF WORK YEAR

- A. Ten Month Employees** – The work year for ten- (10) month employees shall be between (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening and closing of school. The maximum number of workdays in the work year shall be as follows (...negotiated number...).
- B. Eleven Month Employees** – The work year for all eleven- (11) month employees listed below shall be from (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening, and closing of school. The maximum number of workdays in the work year shall be as follows (...negotiated number...).
- C. Twelve Month Employees** – The work year for all twelve- (12) month employees listed below shall be from (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening and closing of school. The maximum number of workdays in the work year shall be as follows (...negotiated number...).
- D. Holidays** – The holiday schedule for all eleven- (11) or twelve- (12) month employees shall be according to the school calendar and shall include but not be limited to the following.

• July 4th	• Friday after Thanksgiving	• Martin Luther King's Birthday
• Labor Day	• Christmas Eve Day	• Lincoln's Birthday
• Columbus Day	• Christmas Day	• Good Friday
• Election Day	• New Year's Eve Day	• Memorial Day
• Veteran's Day	• New Year's Day	• Other_____
• NJEA Convention Days (2)	• President's Day	
• Thanksgiving Day		

If a holiday falls on a weekend, it shall be observed on either the last working day prior to the holiday or the first working day after the weekend.

E. Vacations

- 1. All eleven- (11) or twelve- (12) month employees shall be entitled to the following vacation days per year:
 - Less than one year of service: 1 day per month 1-3 years of service: 15 days
 - 4-5 years of service: 20 days
 - More than 5 years of service: 25 days
- 2. A year or any part of a year worked shall count as a full work year of employment when calculating vacation allowance, with the exception of the initial employment year, which shall be prorated.
- 3. Any ten- (10) month employee who accepts an eleven- (11) or twelve- (12) month position shall receive full vacation allowance from the date of initial employment in the district.
- 4. An employee's vacation schedule shall be submitted to the immediate supervisor no later than (...negotiated date...) and shall not be denied without just cause. Vacation scheduling shall be granted in order of seniority.
- 5. Each employee shall receive his/her vacation pay prior to the start of his/her vacation.
- 6. All unused vacation time shall be cumulative.
- 7. All years of employment in the district shall be used when calculating vacation allowances.

ARTICLE XXXIII – SALARY

A. Salary Guides

1. Salary guides for various categories of employees are attached hereto and made apart hereof.
2. School employees must work (...negotiated number of months/days...) of their work year to receive one year's credit toward their next salary increment. "Work" shall include sick days, paid personal leave, and any other day when compensation is provided.
3. Each employee shall be placed on his/her proper step of the appropriate salary schedule at the beginning of the work year.

B. Salary Guide Credit Upon Initial Employment

Full credit on the salary schedule shall be given for previous job-related experience upon initial employment. Support staff shall receive additional credit not to exceed (...negotiated number...) years for military experience or alternative civilian service required by the Selective Service System.

[Note: Teachers, pursuant to 18A:29-11, are entitled to salary credit for military service for up to four (4) years.) Credit on the salary schedule, for all employees shall not exceed (...negotiated number...) years for Peace Corps, VISTA, Americorps, Teach America, or other such government-sanctioned programs.]

C. Longevity – All employees will receive longevity payments at the start of (...negotiated number...) years of service with the district. Such payment shall be ...negotiated rate of pay... of the regular salary.

D. Shift Change – Any custodial/maintenance employee with a temporary change of shift shall receive a (...negotiated amount...) bonus for each day assigned to said shift.

E. Shift Differential – Any employee working the second shift, (...negotiated times...), shall be paid (...negotiated rate of pay...) extra for the year on a pro rated basis.

F. Out of Title Work

1. In no case shall any support staff be requested or required to perform the duties normally assigned to a teacher.
2. Any employee required to perform the duties in a job category higher than his/her own shall be compensated at the rate of the higher job category for the duration of assignment.
3. Notwithstanding A.2 above any educational support professional assigned to provide class coverage in any emergency situation shall be reimbursed at (...negotiated rate of pay...) per period.
4. Educational Support Professionals who hold substitute or teacher certification shall be eligible for appointment as substitute teachers. Such determination shall be made by the Superintendent or designee and the staff member shall serve wherever required. Employees assigned to work as substitute teachers shall be paid 1/200 at a teacher's salary on step 1 of the salary guide.

G. Overtime – Overtime assignments shall be made available on a rotating seniority basis. Overtime assignments shall be voluntary.

H. Call Back Pay – The following job categories (...negotiated list...) shall receive a minimum of (...negotiated number...) hours pay at the overtime rate if called back to work at a time not contiguous with the regular work day.

I. Holiday Pay – Support Staff required to work on a day designated as a holiday shall be paid at (...negotiated rate of pay...).

J. Transportation Expenses

1. Employees using their vehicles to travel between work sites for work related business shall be compensated at their regular rate of pay for the time involved. Mileage and insurance remuneration shall be computed at the highest current IRS allowable rate, or at (...negotiated rate...), whichever is greater.
2. The Board shall cover all damages, losses and expenses incurred by an employee arising out of the authorized use of his automobile in the performance of his duties.

ARTICLE XXXIV – SCHOOL FUNCTIONS BEYOND THE NORMAL SCHOOL DAY/YEAR

A. Early Release – Any employee required to attend night meetings/parent conferences/back-to-school nights or other evening activities will be released at ...negotiated time

B. Compensation – If required to work extracurricular activities such as banquets, dinners, or other school events, employees shall be compensated at (...negotiated rate of pay...) the hourly wage. If an activity occurs on a holiday, employees shall be compensated at (...negotiated rate...).

- C. **Expenses** – All expenses normally incurred for a field trip, (i.e., lodgings, tolls, gas, etc.) will be provided to the employee prior to the start of the trip.
- D. **Meal Allowance** – Employees shall be paid a meal allowance of (...negotiated rate...) for every (...negotiated number...) hours worked due to a field trip
- E. **Chaperone Duty** – Education Support Professionals who are required to perform chaperone duty at extracurricular activities shall be paid at the same rate as teachers who perform chaperone duty.
- F. **Cancellation of Field Trips**
 - 1. **NOTICE** – Employees scheduled to participate a field trip or event shall receive twenty-four (24) hours notice of its cancellation.
 - 2. **Compensation** – The Board will compensate employees scheduled to participate a field trip (...negotiated number...) hours at their overtime rate or (...negotiated amount...) for such cancellation.

ARTICLE XXXV – SCHOOL CLOSINGS

- A. Employees shall not be required to work on days school is closed for reasons of safety such as weather conditions. If school should dismiss early for such reasons, employees will be permitted to leave. The day will be considered as a full day worked.
- B. In the event the normal opening of school is delayed for employees will not be required to report more than (...negotiated number...) minutes before pupils.
- C. All support staff shall receive a full day's pay when they are required to work at least one (1) hour of a particular workday and are then required to leave school because of an emergency school closing.
- D. If certain employees are needed to remedy the situation which caused the delay, those employees will be paid at (...negotiated amount...) for that period of time when all other employees are not required to be present.

ARTICLE XXXVI – EMPLOYEE EVALUATION

- A. All employees shall be evaluated consistent with N.J.S.A. 34:13A-23.
- B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.
- C. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices is strictly prohibited.
- D. An employee shall be given a copy of any visit, observation, or evaluation report prepared by his evaluator(s) (...negotiated amount of time...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee.
 - 1. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - 2. Such reports shall be addressed to the employee.
 - 3. Such reports shall be written in narrative form and shall include:
 - 4. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated.
 - 5. Strengths of the employee as evidenced during the period since the previous report.
 - 6. No employee shall be required to sign a blank or incomplete evaluation form. An employee's signature indicates only that an employee has reviewed a copy of the evaluation.
 - 7. Each observation cycle shall be completed before another cycle begins.
 - 8. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.

[Note: Specific contract language regarding tenured, non-tenured, certificated, and non-certificated staff may be necessary to include in your collective bargaining agreement. Contact your NJEA UniServ office for assistance.]
- E. **Criticism** – Any question or criticism by a supervisor, administrator, or Board member of an employee's performance/instructional methodology shall be made in confidence and not in the presence of students, parents, co-workers, or members of the public.

ARTICLE XXXVII – EVALUATIONS PROCEDURES - EXTRACURRICULAR POSITIONS

- A. Employees holding any extracurricular position shall be evaluated consistent with N.J.S.A. 34:13A-23.
- B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.
- C. Within (...negotiated number...) days of each observation, the employee shall receive a written report, and within (...negotiated number...) days shall have a conference with the author of the report. Each observation cycle shall be completed before another cycle begins.
- D. Annually, each employee shall receive a written evaluation (...negotiated number...) days prior to a meeting with his/her supervisor to review the content of the evaluation.
- E. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.
- F. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.
- G. Every employee shall be given a copy of any visit, observation, or evaluation report prepared by his/her evaluator(s) (...negotiated number...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee. No employee shall be required to sign a blank or incomplete evaluation form.
- H. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - 1. Such reports shall be addressed to the employee.
 - 2. Such reports shall be written in narrative form and shall include:
 - a. Strengths of the employee as evidenced during the period since the previous report.
 - b. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated.

ARTICLE XXXVIII – PROFESSIONAL DEVELOPMENT & EDUCATIONAL IMPROVEMENT

- A. The Board of Education shall pay the registration fee, tuition and textbook costs for all courses the Board requires an educational support professional to take or the parties mutually agree the educational support professional shall take. When required by the Board to take any coursework, the educational support professional shall be given either compensatory time, additional pay at their individual per hour rate, or release time during their contractual workday.
- B. Educational improvement eligible for reimbursement and horizontal movement (or negotiated stipend) on the salary guide shall include but not be limited to:
 - 1. Under-graduate and graduate courses at an accredited college or university or county college
 - 2. On-line courses provided by an accredited county college, college, or university
 - 3. In class or on-line training provided by a technical training institution
 - 4. Any studies, training or coursework leading to the issuance of a National Board Teacher Certificate.
- C. Application for professional development and educational improvement shall be made to for approval. Such approval shall not be unreasonably withheld.
- D. The following schedule for submitting application for under-graduate and graduate courses shall be:
 - 1. Fall Semester _____
 - 2. Winter Semester _____
 - 3. Spring Semester _____
 - 4. Summer Semester _____
- E. Professional development provided by an institution other than a college or university shall require application to be submitted to the district within (...negotiated number...) days/weeks) of the commencement of the instruction.
- F. The Board shall make (...negotiated number...) of professional leave days available to every educational support professional in each year for attendance at workshops, seminars, or visits to other schools for the express purpose of self professional improvement.
- G. Board required attendance at a professional workshop, seminar, school visit, online seminar or other related educational improvement experience shall require the Board to pay all expenses attached to the assignment. Further, this time shall be in addition to the professional development days provided in Section F above.

- H. Reimbursement for the cost of all educational improvement shall be in accordance with normal accounting procedures and paid at such time as said procedures provide but not later than (...negotiated number) calendar days after the educational support professional submits their documentation.
- I. Support staff required to provide turn-key training to their colleagues shall be given release time to prepare for the training. The amount of release time required shall be determined by the educational support professional presenter. Any materials, supplies, office equipment and/or audio visual needs shall be provided by the Board. The educational support professional presenter shall receive additional compensation at their individual per hour rate for all actual hours used in the final presentation.
- J. Licensure
1. The Board shall pay all fees and costs associated with obtaining and maintaining state required licenses and certifications. These would include, but not be limited to, bus drivers license, Black Seal License, county substitute certificate, certified pool operator license, assistant occupational and physical therapist certification, et. Al.
 2. The Board shall assume all costs associated with obtaining and maintaining any special license or certification it requires of an employee. Said employee shall receive additional compensation in the amount of (...negotiated dollar amount...) as pensionable income.
 3. The Board shall provide release time for employees to attend seminars and training required for license renewal and/or re-certification.
 4. For those re-certification and/or licensure programs not offered during the contractual workday, the Board shall provide compensatory time equal to the hours spent in the program. These hours shall be computed as those spent portal to portal.
 5. The Board shall provide tutorial services to employees who so request to prepare for licensure or certification tests.
- (ESP language in districts which have their own professional development hour requirements)
- K. Local Professional Development Committee (LPDC) service.
1. Support staff members of the LPDC shall become members as per the same procedure prescribed for choosing teacher LPDC members.
 2. ESP members of the LPDC shall be provided with (...negotiated number...) duty free time per week to assess and recommend current professional development opportunities and needs.
 3. All district support staff in-service programs under the direction of the LPDC shall be eligible for CEU hours and count toward salary adjustments.
 4. Any hours required by members of the LPDC to accomplish its charge which must be served outside of the contractual workday shall be reimbursed at each member's individual per hour rate. Reimbursement shall be made as per Section J-3 of this article.
 5. Service on the LPDC shall entitle members to professional development hours up to (...negotiated number...) hours per year for the committee service.

ARTICLE XXXVIII – DURATION OF AGREEMENT

This Agreement shall be implemented between the period ____ to ____ as of ____, [...date of implementation...] and shall continue in effect until [...date of expiration...].

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon.

Board of Education _____	Association _____
By _____	By _____
President	President
By _____	By _____
Secretary	Secretary

NJEA Regional Offices

Region 1 – Atlantic & Cape May

436 Chris Gaupp Drive, Suite 201
Galloway, NJ 08205-4464
(609) 652-9200 (609) 652-8653 (F)

Region 2 – Cumberland, Gloucester & Salem

Tomlin Professional Building
7 Myers Drive, Suite F
Mullica Hill, NJ 08062-9512
(856) 628-8650 (856) 628-8656 (F)

Region 3 – Camden

1020 Laurel Oak Road, Suite 101
Voorhees, NJ 08043-4315
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Region 5 – Burlington

509 South Lenola Road, Bldg. 4
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Region 7 – Ocean

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1433 Hooper Avenue, Suite 225
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Region 8 – Mercer

172 West State Street
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312 North Avenue East, Suite 2 & 3
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Region 17 – Morris

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Region 20 – Hudson - South

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Jersey City, NJ 07305-1749
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70 South Orange Avenue, Suite 250
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Region 23/25 – Bergen

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Region 27 – Passaic

Preakness Valley Office Park
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