

EFFECTIVE NEGOTIATION STRATEGIES FOR SALARY/BENEFITS ISSUES

I. NEGOTIATION STRATEGIES AND TECHNIQUES

A. Negotiations for Successor Collective Bargaining Agreement Using Traditional Negotiation Format

1. Bargaining Teams

- a. Neither side can dictate to the other who to include or exclude from their respective teams. The parties may agree to limit the number of bargaining team members.
- b. The bargaining teams are expected to have authority to enter into tentative agreements on contract proposals.
- c. The employer's team should not include a majority of the members of the Board so that a Board commitment to an issue cannot be immediately made at the table. If a majority of the Board is present, the union will put intense pressure on the members who are present to commit to a position.
- d. The employer's team should include an administrator who is familiar with the day-to-day operation of the public body so that if the union asserts that there are operational problems, the employer's team will have reliable information available to them.
- e. Unions sometimes portray the chief administrator as the "bad guy," so that there is a rallying point for the membership. In such cases, it may be best not to have the chief administrator at the table. It also may be advantageous not to have the chief administrator at the table so that the team can take issues back to the administrator for review.
- f. The team should select a spokesperson so that statements made at the table are clear and consistent.

2. Ground Rules

The parties may agree to the establishment of ground rules which will govern the bargaining. The rules may include such items as: 1) no discussion with the media (usually at least until mediation has been invoked); 2) time limit on meetings; and 3) structure of the proposals. Ground rules are not always necessary or desirable. The parties may mutually agree to dispense with or relax them from time to time.

3. The First Proposal

- a. The first proposal at the table should come from the union.

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- b. The employer may wish to base its response on the extent and complexity of the union's proposal.
- c. The employer should insist on receiving a complete proposal from the union so that it will not bargain in a piecemeal fashion.

4. Responses

- a. The employer, as a first response, may not propose a "take it or leave it" proposal.
- b. The employer is not required to accept any proposal made by the union.

5. Strategic Considerations

- a. Use the bargaining table to solve problems. Have the union explain its proposals (be prepared to explain the employer's). Some issues may be generated by specific administrative problems which may be resolved away from the table, with no change in the contract.
- b. When proposing a change, make the new language appear to be as similar to the existing language as possible. Unions, and their members, resist drastic changes to existing language as a matter of course.
- c. In wage matters, as soon as possible, the parties should reach agreement on the scattergram composition at the beginning of negotiations so that there is no misunderstanding of the proposals made during negotiations. The scattergram should not be changed from year to year to reflect new hires or retirements.
- d. Be careful of regressive bargaining. Regressive bargaining occurs when a party makes a subsequent proposal which is less advantageous to the other party than the preceding proposal. (This most frequently occurs when wage proposals shift percentage increases from year to year on a multi-year proposal.)
- e. Use "package proposals." Package proposals combine several proposals and require the acceptance of all or none of the individual components. As bargaining proceeds, proposals which both parties have not abandoned may be resolved by packaging the proposals. Combining proposals which the union has requested with proposals which the employer desires will identify the importance of the proposed issues to each party. Package proposals also permit changes in proposals without a claim of regressive bargaining by combining various proposals and then altering the combinations.

NOTE: Packages tend to be more useful at a later stage of the

bargaining process.

- f. Use the “supposal.” This is a method where each side explores the possibility of a position and the response to that position without making a formal proposal. “If we do this, will you agree to that?” However, remember that once a proposal is made, even unofficially, that position may now be an expectation by the other side.
- g. Use the “sidebar.” One or two members of each team meet outside of the presence of the remaining team members to discuss unofficial settlement possibilities.
- h. Understand the theory of “diminished expectations.” Generally, before bargaining commences, the union has probably inflated the expectations of its members with respect to the outcome of the negotiations. It may take multiple bargaining sessions with Board resistance to the union's proposals before the union and its members realize that their proposals will not be accepted. The union may also need to have the employer's team aggressively reject the union proposals at the table, so that the union can show its members that it has fought for the employees.
- i. Know how each proposal directly affects each member of the union's bargaining team.
- j. Cost each union financial proposal. Do not rely on the union's representations.
- k. Remember that statements made both at and away from the bargaining table send messages to the union. Be careful not to send the wrong message.
- l. “Sleeping dogs” and “sacred cows.”
 - “Sleeping dogs”

Avoid proposing changes when the board arguably has retained the right in question.

Example: Right to assign non-bargaining unit volunteers to extracurricular activity sponsor positions; right to modify work schedules; right to observe and evaluate employees.
 - “Sacred cows” are contract provisions that appear to be minor but are likely to engender a disproportionately charged emotional response.

B. Negotiations for Successor Collective Bargaining Agreement Using Interest Based Bargaining (“Win-Win”) Format

1. Introduction

a. Interest based bargaining (“IBB”) goes by various names including “win-win” and “mutual gains bargaining.” IBB dispenses with the use of a chief spokesperson and systematic exchanging of formal written proposals in favor of participation by many individuals and reliance on interest-based problem solving techniques.

b. The process relies on:

- Extensive training of the bargaining teams – generally larger bargaining teams – in problem solving and listening techniques.
- Commitment of all or most of the members of the board of education to participate in the training and interest based bargaining negotiation sessions.
- A willingness of all the participants to follow the IBB format and principles.

c. Pros and Cons

i. Advantages

Open exploration and discussion of issues may help promote better understanding and relationships.

- Union may develop greater appreciation of board’s limitations and interests.
- Process may help dissipate acrimony built up over previous difficult negotiations.
- The process usually entails an expedited process with a deadline.

ii. Disadvantages

- Unrealistic expectations may cause problems.
- Multiple participants in discussion raise possible contract language problems and grievances.
- Bargaining history is more difficult to discern and verify.
 - Absence of written proposals and counter-

proposals.

- Conceptual agreements which are not immediately put in writing may result in misunderstandings.

- Individuals may be subject to personal attacks if parties do not adhere to interest based bargaining principles.
- The process demands significant time commitment of all participants. Failure to stay committed to the process may damage, not help, labor relations.

2. Interest based bargaining process

The IBB process uses experienced facilitators to train the participants in the interest based bargaining techniques and help the parties in negotiation sessions work towards consensus solutions issues which have been mutually identified by the parties.

a. Training

i. Providers:

- Federal Mediation and Conciliation Service (“FMCS”) will provide interest based bargaining training free of charge.
- The Illinois Education Association and other unions will also provide facilitators.
- Private facilitators may be used by the parties.

ii. Time commitment

Generally the training lasts from one and one-half to three days.

iii. Focus of training

The facilitators will at the outset stress the importance of maintaining an open mind. Board and union negotiators will practice listening techniques and will participate in group exercises and negotiation scenarios to demonstrate the benefits of using these techniques.

iv. Preview of the process

- Participants will identify issues of mutual concern.

- The participants will learn how to identify the various interests both parties have in the issue. (Participants will avoid taking positions on the issues identified.)
- The parties will develop “standards” or criteria for evaluating possible solutions or options.

Examples of Standards:

- Is the solution or option feasible (affordable, workable/practical, flexible, etc.)?
- Does the option or solution satisfy the important interests of the parties?
- Is the option or solution acceptable, i.e., is it sellable to important constituents or are there political problems?
- Is the option or solution legal?
- Is the option or solution fair?
- The parties will develop options and solutions (various brainstorming techniques).
- The participants will learn how to measure the solutions and options against the agreed upon standards.

b. IBB negotiation process

i. Extended time periods for sessions.

Negotiation sessions generally will last at least four (4) hours – and often all day – in order to afford the parties ample time to discuss issues and interests and pursue possible solutions. The facilitators will use flip charts to keep track of various issues, interests, and possible solutions as well as the standards that have been developed by the parties. Common additional conditions in IBB include:

(a) Establishment of subcommittees to address certain issues:

Wages, insurance and retirement issues (economic concerns) or particularly controversial issues such as length of work day/school year or alteration or compression of a salary schedule.

- (b) Compressed time period with specific deadlines by which to complete the bargaining.
 - ii. Participation by all bargaining team members.
 - iii. Options and solutions are freely expressed.
 - iv. Participants use active listening techniques.
- c. Interest based bargaining negotiation completion

At the outset, the parties generally set a final meeting date by which negotiations will be concluded and a final agreement will be reached. By this date:

- Committees must report on resolved and unresolved issues. Unresolved issues must still be treated and resolved by the full teams at this time.
- The parties must agree to convert “agreements in principle” to written tentative agreements.

NOTE: In even well-run IBB negotiations, the parties will almost always revert to traditional bargaining when trying to resolve salary and problematic economic issues.

C. Mid-term Negotiations

1. Statutory Duty to Bargain
 - a. The IELRA obligates employers to bargain “wages, hours and terms and conditions of employment” but reserves an employer’s right to refrain from mandatory negotiation of “matters of inherent managerial policy.”
 - b. Section 4 of the IELRA requires an employer to bargain over “policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon.” The statute compels employers to negotiate both *decisions* affecting mandatory subjects of bargaining and the *impact* of any employer decisions on bargaining unit employees’ wages, hours or terms and conditions of employment. Neither IELRA Section 10(a) nor Section 4 directly address an employer’s obligation to engage in mid-term bargaining.
2. Duty to Bargain Mid-term
 - a. The IELRB has held that an employer has a duty to mid-term bargain issues which are not fully bargained or covered by the parties’ bargaining agreement. *Rock Falls Elementary School District No. 13*, 2 PERI 1150 (IELRB 1986).

- b. General Rule: The union must submit notice of its demand to mid-term bargain an issue. Absent such a mid-term bargaining demand, the union waives its mid-term bargaining rights.
- c. Caution: An employer cannot obtain a mid-term modification of the collective bargaining agreement by initiating mid-term bargaining and implementing its proposed change after reaching an impasse in negotiations. Mid-term contract modifications require the union's consent. The IELRB has stated:

However, when a collective bargaining agreement is in effect, the employer has an additional obligation before making a unilateral change. When the employer modifies a mandatory subject contained in the contract, the employer must not only bargain with the union but obtain the union's consent before implementing this modification. This additional obligation is provided to preserve the parties' rights without subjecting the bargaining process to continual reopening after completion. *Lake Park Community High School District 108*, 7 PERI 1085 at IX-323 (IELRB Hearing Officer's Recommended Decision and Order, July 11, 1991).

3. Waiver of Mid-term Bargaining - Zipper Clauses

A union may contractually waive its right to mid-term bargaining, including "impact" bargaining, provided its waiver is "clear and unmistakable." The IELRB has held:

An exclusive representative may lawfully waive its right to demand collective bargaining under the Act, but such a waiver must be clear and unmistakable. To be a "clear and unmistakable" waiver, however, the contractual language need not specify each subject excluded from the duty to bargain. In this case, the Association voluntarily agreed to a "zipper clause" which clearly waived all bargaining rights that "might otherwise exist under law" during the term of the collective bargaining agreement. This waiver included the right to bargain over those subjects that were not contemplated by either or both parties at the time that the agreement was bargained. In our view, this was a clear and unmistakable waiver of the right to bargain over the suspension policy. *Rock Falls Elementary School District 13*, 2 PERI 1150 at VII-437,438 (IELRB 1986).

D. Preparation

Regardless of the process selected, preparation is essential for productive and effective negotiations. In fact, IBB may require more extensive preparation than traditional bargaining. First, it requires training of all team members. Second, because all team members are expected to participate and contribute, additional preparation time is critical to ensure that all team members understand the

issues and interests behind them. In traditional bargaining, the chief spokesperson does not worry about rogue comments at the table. In IBB, care must be taken to review bargaining team issues, concerns and strategy prior to actual IBB sessions. This section examines some critical areas to address in preparation for bargaining.

1. Finances and Financial Modeling
 - a. Public employers should always be prepared to share financial information and discuss it with the union.
2. Financial projections not only help the employer formulate contract parameters, they also help establish credibility with the union as it relates to the employer's economic proposals. This is especially true when the employer is considering austerity measures. To maximize the value of such projections, the employer should:
 - a. Show actual and anticipated revenues and expenditures;
 - b. Create the financial model early (prior to beginning negotiations if possible);
 - c. Seek the union's input for the model;
 - d. Where the union makes reasonable points, alter the model accordingly.
3. The financial model should not be a budget. Employers should avoid getting bogged down in discussions about budgetary issues or decisions.
4. Create a scattergram (with union input) showing distribution of your current staff on the salary schedule and the total cost of the same.
5. Determine appropriate "comparables" – other similar employers – to analyze your place in the market
 - a. True comparables should be similar in type, size, and market.
 - b. Analyze the comparable employer's entire economic package (wages, benefits, etc.) to obtain a more accurate comparison.

II. APPROACHES TO ADDRESSING SALARY AND FRINGE BENEFITS ISSUES

A. Wage and Salary Schedule Issues

1. Teacher Compensation Issues
 - a. Step Calculations: Always include the cost of step in calculating and presenting the value of the package to the teachers' union. Failure to include the step cost for teachers' salaries underrepresents the value of the proposed pay increases and often diminishes the ability of the union representative to persuade

the moderate elements of the teaching staff that the Board's offer is reasonable.

b. Distribution Issues:

i. Percentage vs. straight-dollar increases: Percentage increases give more of the available salary increases to the senior faculty, while straight-dollar increases provide a larger percentage of the pay raise to the less senior employees. In setting bargaining priorities, the District negotiation team should consider whether base salaries need to be increased. If so, straight-dollar increases will help.

ii. Senior teacher concerns: One place to start thinking strategically about salary increases necessary to resolve the contract short of strike is: what pay raise is needed to secure ratification of the contract by the teachers on the highest steps of the salary schedule, i.e. the most senior, most highly-compensated, most *influential* teachers. These teachers may not expect the same percentage increase as teachers progressing through the salary schedule (they usually do not receive step increases) and may also understand the need to increase base salaries. However, the "maxed out" teachers also have a bottom line, and if salary increases for these teachers are low, it may be difficult to reach an agreement. Creating longevity steps may help deliver more money to more senior teachers.

iii. Newer teachers:

(a) Structural problems with salary schedules:

Teacher salary schedules are structured in such a way that it often becomes impossible to significantly raise base salaries for new teachers without ruining the District's budget. Where this becomes a significant issue, the District must pursue ways to artificially increase base salaries.

(b) Approaches to increasing base salaries:

(i) Compressing or eliminating early steps in the schedule:

Districts may propose eliminating the first one, two, or three steps to boost the base salaries in the district. Compressing the schedule in this way poses a political problem for the union: in a compressed schedule, second, third, and fourth-year

teachers earn the same as rookie teachers. Even though these non-tenured, very junior teachers may receive larger than usual pay increases, many will be disaffected because new hires will make as much as they do. Districts can ameliorate these effects by giving teachers in these early steps double-step movement or one-time, off-schedule, bonus payments.

(ii) New teacher bonuses:

Districts may seek the right to pay new hires “signing bonuses.” These bonuses are generally paid to teachers in hard-to-fill disciplines, such as math, science, computer technology, and speech. Ways to make this kind of program more palatable:

- Specify maximum amount that can be paid.
- Create a bonus repayment schedule if the teacher leaves voluntarily before the second, third, or fourth year of employment.
- Limit the program to teachers in areas of need as defined by the Illinois State Board of Education or the Regional Office of Education.

2. Salary and Compensation Pitfalls

a. Percentage of What?

As early as possible in the negotiation process the parties should agree upon a scattergram and start expressing financial proposals in terms of the scattergram. Inexperienced negotiators sometimes insist on “updating” the scattergram as teachers announce their intentions to retire and replacement teachers are slotted. This is a mistake because:

- i. The changes will generally have very little effect on the bargaining. Unions sometime think that it is to their advantage to exchange a high-priced long-tenured teacher who intends to retire on the scattergram with a lower earning, less seasoned teacher. This is *not* true since the exchange will also reduce the total base salary figure by the difference between the high earner and the low earner teacher.

- ii. Recalculating the scattergram and base salaries throughout the negotiation process will lead to confusion and acrimony.

- b. Projections and Model Building

To establish credibility with the union, many districts prepare three-year or five-year plans showing actual and anticipated revenues from all sources and expenditures. Such a projection and model is critical if the board is to establish its credibility in negotiations in which it may seek austerity pay increases. The model should be built early in the process and a draft of it should be presented to the union for input. Where the union makes valid points, the board must demonstrate some flexibility in altering the model if it is to maintain credibility. If the projections are to be of use in negotiations, the union must be invested in them.

- c. Referendums and Contingent Funding

Some districts agree to increase raises during a contract *if* the district is able to secure additional funding, usually through the passage of a referendum. A couple of points should be borne in mind:

- i. Make sure the criteria for the enhanced salary increase is clear. If the parties are counting *only* on the passage of a referendum (and not general increase funding by the state) that contingency needs to be made clear. Caution should be exercised with respect to excluding one-time, non-recurring, and/or categorical funds such as grants.
- ii. What effect will linking teacher pay raises to the passage of a referendum have on the chances that the referendum will be passed?

- d. Bargaining the Budget

Unions will often compare the *previous* year's total salary base (which assumes a particular number of teachers on particular salary cells) to the *next* year's total base salaries (which may have more or fewer teachers on different salary cells). Unions do this when a district maintains the same number of teachers (or has fewer teachers) in the following year *and* has slightly lower costs due to retirements. This approach should be avoided. The effect of the union's approach will be to give any money the district saves via retirements (retirements which have sometimes been bought by the district through costly early retirement incentives) back to the teaching staff.

B. Health Insurance – Preparation Before Bargaining

1. The issue of employee health care is one of the most important topics of contract negotiations. Employers want to control health care costs and unions want to maintain current benefit levels — especially where wage increases are nominal or non-existent. Additionally, as employers negotiate multi-year contracts in 2014 and 2015, the Cadillac Tax under the ACA must be considered.
2. Significant preparation is necessary to evaluate your health care plan, available options, and to formulate meaningful contract proposals. Items to review in this regard include:
 - a. What does your current health care plan look like?
 - i. What do employees pay and what does the employer pay toward premiums? Is this the same for all levels or tiers of coverage? This will be an important calculation for purposes of the Cadillac Tax.
 - ii. What are the deductibles?
 - iii. What are the co-pays (especially Rx)?
 - iv. How does your plan compare to other employers and/or the market in general?
 - b. How many employees participate in the plan? How many insureds are covered?
 - i. Do most employees have single coverage?
 - ii. What is the breakdown of participants among the coverage tiers?
 - c. When is the last time you made changes to the plan, and what were those changes?
 - d. What would changing certain elements of the plan do to overall plan costs?
 - i. Focus on deductibles and co-pays as that is where the most savings typically are generated.
 - ii. Have broker prepare alternative plans with projected premium costs for each.
 - iii. Consider a high deductible plan with an HSA (Health Savings Account).
 - e. What are the historical trends with respect to overall health plan costs at your workplace? (Be specific.)

C. Health Insurance – At the Table

1. The Costs of Employer-Provided Health Insurance

Health insurance remains the single most costly benefit offered by employers to their employees. The status of employee health care as the most costly benefit component will only grow in significance, particularly as the Cadillac Tax under the ACA begins in 2018.

a. Assessing the proportionate costs of health insurance as a part of the employee's total compensation package.

i. As a part of institutional planning, an employer must assess its ability to maintain its current level of health insurance benefits and its current contributions to employee single and dependent health care coverage. This consideration must be made in terms of viewing employee health care costs as a part of an employee's total compensation package.

ii. Absent health insurance cost containment provisions and limitations in the collective bargaining agreement, the employer cannot properly plan with respect to employee compensation as the continued trend of health insurance cost inflation will subject the institution to unpredictable additional costs.

2. The Impact of Health Insurance Costs on the Labor Negotiations Process

a. Increased labor strife as a result of tightening economic times combined with increasing health insurance costs.

b. Considering the union's view of the health care insurance crisis:

i. Unions generally do not view health insurance as a compensation item. Rather, unions tend to view health insurance as a separate entitlement, similar to the entitlement of a grievance process or a just cause progressive discipline process. This viewpoint dictates the union's strategy in either asserting health care proposals or responding to management cost-containment proposals.

ii. Unions are generally resistant to any perceived "give back" of previously negotiated health insurance benefits.

3. Strategies for Gaining Labor Union Cooperation in Implementing Cost-Saving Measures and Alternatives

a. Traditional Group Plans

i. Employers should consider a variety of cost-containment

options, including the following:

- (a) Impose a maximum dollar limitation on employer contribution toward single and/or dependent coverage. This option is preferable to a percentage contribution requirement. In a percentage plan, the employer cannot reliably predict the possible increases.
 - (b) Cost sharing formula: This option generally involves the employer's agreement to pay a fixed percentage of the current health insurance premium costs, and often includes an agreement to share the burden of any cost increases (i.e., the employer and employee will contribute on an equal basis towards the cost of any health insurance premium increases).
 - (c) Modified insurance plan benefits provisions (such as increased deductible payments or prescription co-pay amounts) which reduce the overall cost of a health plan.
- ii. Recommended Approach: Combination of maximum employer dollar contribution, cost sharing arrangement for premium increases, and modified insurance plan benefits provisions.
- b. Alternatives to the Traditional Group Plan:
- i. Explore establishing Health Savings Account program with High Deductible Health Plan.
 - (a) HSA distributions are tax-free for qualified medical expenses.
 - (b) Helps significantly reduce insurance premiums.
 - ii. Collective risk pools (health benefit cooperatives):
 - (a) The use of health care coalitions or associations to allow a number of institutions to bring down health care costs by increasing the size of the risk pool – and correspondingly achieving a better diversity of risk;
 - (b) The risks of joining a health care association or coalition and contract considerations; and
 - (c) Consider the bargaining obligations.

- c. Cash in lieu of insurance options: consider increasing employee percentage contribution toward premiums and putting value of cash-in-lieu of insurance option on salaries.

- i. Example: Employer has a \$3,000 cash option for forgoing all insurance and a \$2,100 cash option for foregoing family coverage. Employees who take single coverage must pay 10% of premium.

Option: Add \$3,000 to all salaries and increase insurance contribution rates for single coverage to 25%. Net effect on employees' take home pay may be zero, but over time program will increase employees' incentives to control premium cost increases.

4. Affordable Care Act

- a. If the collective bargaining agreement defines which employees are eligible to participate in the employer-sponsored health plan, consider re-defining the agreement to allow all employees working on average thirty hours per week to participate in the plan to avoid penalties for failure to offer minimum essential coverage. The collective bargaining agreement should also clarify which employees are entitled to receive any employer contributions toward the cost of the insurance, as this may impact whether the plan is affordable for the employer's lower wage earners.
- b. Evaluate the agreement's reduction in force language to ensure that it does not unduly interfere with the employer's right to restructure its workforce so as to determine which employees may qualify for the employer provided insurance.
- c. Include a reopener clause to allow for mid-term negotiations to the health insurance language in the event the anti-discrimination rules become effective or changes occur that may subject that employer to penalties under the ACA.

5. Cadillac Tax – Effective January 1, 2018

- a. Forty percent (40%) excise tax on employer sponsored "Cadillac Plans" defined as health plans with premium cost that exceeds specified limits
- b. How to determine its applicability.

The premium cost limit currently set for 2018 is \$10,200 for self-only coverage and \$27,500 for other than self-only coverage employer plus one, family, etc).

This amount may be adjusted for 2018 if the actual increase in the cost of health care exceeds 55% from the time of passage of the

ACA in 2010 and implementation of the tax in 2018 (“the health cost adjustment percentage”).

Annual cost of living adjustments may be made thereafter based on the CPI.

- c. Explore ways to reduce plan costs to avoid/minimize tax implications.

6. Contract Language Tips:

- a. Avoid language that may lock employer into higher rates.
 - i. Health insurance for retirees remaining on employer’s plan (i.e., even if they pay the entire premium!)

NOTE: IMRF employees are permitted by law to elect to remain on the employer’s group plan following retirement.
 - ii. Maintenance of benefits clauses – Do not want any restrictions on employer’s ability to negotiate with provider over modifications to health benefit plans in order to maintain affordability (i.e., coverage, co-pays, deductibles.)
- b. Avoid language that obligates employer to pay employees’ entire portion of their health insurance premium.
 - i. Want employees to pay a portion of their premium so they recognize the value of this important employer-sponsored benefit.
 - ii. Want employees to pay a portion so they have a vested interest in the affordability of the plan or plans.
- c. Fixed dollar contributions by the employer are preferred over a contribution that represents a percentage of the premium.
 - i. May address future premium increases through various cost sharing formulas.
- d. Avoid language that may restrict employer’s ability to make mid-term changes to health insurance.
 - i. Seek language that would allow the employer to make certain changes to health insurance with mid-term bargaining with the union.
- e. Consider language to allow adjustments during the agreement to ensure ACA compliance. This can be done through specific language that grants the employer the right during the term of the agreement to modify the plan or introduce new plans in order to

comply with the ACA and to avoid any taxes or penalties. Alternatively, the contract may contain a re-opener clause that would grant to the employer the right to conduct mid-term negotiations over changes to the health insurance plan.

D. Retirement Benefits

Retirement benefits proposals which provide for end-of-career increases in creditable earnings not to exceed 6% are popular and may have a positive economic effect if they contain a window within which the employee must give his or her notice of retirement and actually retire. Such provisions also help the District plan its budget to account for likely changes in teachers' total compensation.

1. Elements to consider:

- Eliminating Board-paid employee ERO penalty.
- Requiring retirement in the year the employee first becomes eligible to retire without penalty. If the Board provides both Board-paid employee ERO penalty and 6% increases, consider conditioning the ERO payout on the employee retiring the first year he or she is eligible.
- Adding an eligibility provision which disqualifies any teacher from receipt of contractual benefits if their retirement results in a TRS employer penalty payment obligation.
- Sunsetting the program so that it actually induces more expensive teachers to retire.

2. Negotiating ERO

- a. ERO was extended through June 30, 2016, but eligibility now determined locally by each district.
- b. Eligibility criteria are to be adopted by each district with the "mutual consent" of the employee bargaining representative.
- c. Common criteria to consider include:
 - i. Length of service at the district
 - ii. Notice requirement (date by which employee must apply) – can make early enough to budget for ERO expense
 - iii. Number of eligible participants allowed in any year (can limit to as few as one)
 - iv. No TRS penalties to be incurred – employee who received greater than 6% raise in final years of service would not be

eligible.

- v. Employees not eligible to participate in district's retirement incentive if elect ERO
- vi. Employee responsible for employee ERO contribution

3. Negotiating District Retirement Benefits

a. Retirement Incentive Bonus Payments

The statutory 6% cap on creditable earnings has encouraged unions to make concessions to eliminate or reduce pre-retirement incentive bonus payments. Many union proposals now seek to provide for pre-retirement salary bonus payments over a four-year period consistent with the 6% cap which applies to the teacher's final average salary ("FAS") during the teacher's four consecutive highest earnings years pre-retirement.

b. Sick Leave Day Grants

Unions often seek to increase teachers' annual sick leave allocations and sick leave caps to take into account TRS changes which provide that sick leave granted in excess of a teacher's "normal annual allotment" during any of the years used to calculate the teacher's FAS are subject to TRS penalty provisions.

c. District Options

There are a number of counterproposal alternatives which school districts should consider in responding to union negotiation proposals on retirement. For example, the district may consider any of the following alternative counterproposals:

(i) District Pre-retirement Benefit Options:

(a) Delete existing retirement benefits entirely.

This option should be considered by school districts, particularly in situations where there are few eligible teacher-retirees who could retire during the term of the successor collective bargaining agreement. This response is also warranted if the predecessor collective bargaining agreement included a limited "window" for teachers to take advantage of existing retirement plan benefits, or included a "sunset" provision which eliminated retirement benefits as of a specified date.

(b) 6.0% per year creditable earnings increases for the teacher's FAS years.

This type of Board counterproposal is acceptable, provided the proposed contract language is clear and specifies that the teacher will receive a retirement payment equal to the difference between the teacher's annual creditable earnings increase (including any vertical or horizontal step increases, extra-duty stipends, or other creditable earnings increases), and 6% per year for each school year which will count toward the teacher-retirees' final average salary for TRS retirement purposes.

Consider language to address contingency situations, such as the teacher's rescission of their retirement notice after they have begun to receive the retirement payments, and the impact of the teacher's retirement prior to their effective retirement date.

Consider whether or not teachers should be eligible for the retirement payments if they retire under ERO with insufficient years of TRS creditable service to avoid an employee and employer penalty payment to TRS.

(ii) District Post-Retirement Benefit Options:

(a) Post-Retirement Severance Payments.

Post-retirement service bonus or severance payments are not considered creditable earnings under TRS guidelines and, therefore, do not increase the teacher's retirement annuity. This type of employer service bonus payment (e.g., \$500 for each year of district service) does enable the district to recognize teachers' lengthy and noteworthy service. Consider making the service bonus contingent on the teacher's retirement not resulting in the district's responsibility for an employer ERO penalty payment.

(b) Payments toward Teacher-Retirees' Health Insurance Premiums.

This type of benefit is not creditable earnings TRS guidelines and not subject to the 6% annual earnings cap. Employer contributions for teacher-retirees health insurance should be contingent on the teacher's participation in the TRS health insurance program, rather than continuation on the district's health insurance plan.

E. Additional Employer Options for Negotiations in Difficult Economic Conditions

1. Resist Pressure to Make Noneconomic Language Concessions

- Language and management rights ceded during economic downturns will not be easily recaptured.

2. Duration - Be Flexible

Unions and employers understandably like longer contracts but in these uncertain economic times that may not be realistic. Be prepared to agree to a contract of less than three years or one which contains a reopener after the two-year mark. If the parties do agree on a reopener, try to reopen only on wages and insurance and not on the no-strike clause of the contract.

3. Consider Backloading

Backloading the contract has two helpful effects:

- Reduces the total expense of the contract. [A 6% - 5% - 4% wage increase averages 5.33% each year. A 4% / 5% / 6% wage increase averages 4.66% a year.]
- Structures the pay increases in a way which hopefully tracks the economy more closely.

4. Formulas

Banding formulas which make total new money pay increases contingent on the Consumer Price Index are an option but need to be carefully drafted to eliminate confusion about:

- How the total new money percentage is to be calculated (on the basis of the contract or the year preceding the operative year of the formula).
- For which year are the parties using the CPI? The year the CPIU affects the district's taxes or the year immediately prior to the contract year?

Using any formula dependent on school district revenues demands extremely precise definitions as to what is to be included in the definition of "revenues." Unanticipated money from the state or federal governments could lead to unanticipated consequences and provide the teaching staff with salary increases beyond which the board anticipated. Consider the following contingencies:

- Be sure that one-time revenues are not counted as "revenue" for contract purposes unless intended. ARRA funds which take the

place of foundation payments will not net the District extra money.

- What if the foundation payments are "delayed" as opposed to "denied?" If the state begins "delaying" all foundation payments by two months, will this qualify as a "reduction in state aid payments" justifying a reduction in salaries?
- Consider across-the-board reductions in salaries under exigent financial circumstances. This may be the only way to maintain a viable educational program in some cases.
- If a formula is triggered, what will the consequence be; automatic reductions or increases or a return to the bargaining table?

5. Step Increases

Consider whether to grant step increases in the contract hiatus. In *Vienna School District No. 55 v. IELRB*, 162 Ill. App. 3d 503, 515 N.E.2d 426 (4th Dist. 1987), the Illinois Appellate Court held that it is an unfair labor practice for a board of education not to grant step increases in the contract hiatus period unless the board has a history of not granting step increases. If the total new money percentage increase proposed by the board is less than the cost of step, however, the board may have no alternative except to not grant step in the hiatus period and take the unfair labor practice charge.