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The following guidelines are intended to clarify the circumstances under which certain types of activities may or may not be vouchered by consultants. It is understood that rare situations may arise that may warrant exceptions to and/or modification of these guidelines. Exceptions will require prior approval of the appropriate director. The professional staff member who wishes to make the assignment shall seek that approval from the director before making the assignment.

**Assignment to own local:** Consultants may not be assigned to service their own local bargaining unit

- **Number of assignments per day:** Consultants may not be assigned to or accept more than one assignment per day unless approved in advance by the appropriate director. This applies as well to crossover consultants working for more than one division, who must receive prior approval from both directors, who must be made aware that the request would result in more than one voucher on a given day.

- **Preparation for workshops/conferences:** If a consultant is doing a workshop for the first time, has not done the same workshop during the last three years or it is determined by the director/manager or designee that workshop must be adapted to meet affiliate needs; one voucher may be submitted to prepare for said workshop. Consultants who conduct affiliate training should train members to handle organizational management issues, not do the job for them. The time involved in reproducing materials for a workshop is not to be vouchered.

- **Conferences:** Any assigned work at a conference shall be compensated at one voucher for preparation as described above and one for facilitation/participation at each day of the conference. Multiple presentations at the conference shall not result in an additional voucher. Vouchers will not be provided unless the consultant has been given a specific assignment.

- **Overnight workshops:** Consultants assigned to work at an overnight workshop will be provided with a room and meal(s), if applicable, but will not be paid for any day they do not have an actual work assignment.

- **Projects and organizational initiatives:** Under the direction, approval, and guidance of the Director, consultants may be assigned to special projects that further the mission of NJEA and the Division.

- **Email:** Email communications related to consultant assignments should be conducted using NJEA email.

- **Correspondence:** When your correspondence with others is related to an assignment you were given as a consultant, sign the correspondence with your name and NJEA part-time consultant job title. When you correspond regarding matters related to your own school employment or on behalf of your local or county association, do not sign with your NJEA Consultant position.

- **Official communications:** All official communication related to a consultant assignment (letters to PERC, AAA, legislative offices, legislators, other state agencies, etc.) should be on the appropriate official NJEA division or regional office stationery. A copy of all official communications should be sent to the division director or regional office.

- **Clerical assistance:** Consultants should first attempt to have the local do the work that it is capable of doing. If clerical help from NJEA office staff is required to assist consultants in preparing work
related to their assignments, adequate advance notice should be provided to the regional office or division. All such work should be channeled through the appropriate director, professional staff member or administrative assistant. Each regional office or division shall develop its procedure(s) for handling these requests.

- **Research work:** Except in unique circumstances approved in advance by the appropriate director, extended research project work is not an appropriate assignment for consultants.

- **Voucher submission:** Vouchers should be completed and submitted via CPIS/PCIS within four days of the assignment.

- **Meal expenses:** Generally, meal expenses are not reimbursable. On the occasion that you work on an extended in-person assignment that does not provide food, you may seek reimbursement for your meal expense. Provide a receipt and give the rationale for the meal expense. Consultants are not authorized to pick up and be reimbursed for the meal expenses of others.

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**UNISERV CONSULTANT GUIDELINES**

- **Proposals and salary guides:** Consultants may submit one voucher for initial preparation of proposals and one voucher for initial development of salary guides. One voucher may also be submitted for preparation of information/materials for contract ratification.

- **Collective Bargaining Councils:** Consultants will be paid for attendance at collective bargaining council roundtable meetings only if they are assigned to conduct the meeting or make a major presentation as part of the program. Generally, the major part of these programs should be conducted by the full-time UniServ staff.

- **Arbitrations:** As a general rule, up to three vouchers may be submitted related to preparation, presentation, and briefing of an arbitration case.

- **Donaldson hearings:** As a general rule, up to three vouchers may be submitted related to initial member meeting, preparation of opening and closing statements, and presentation at BOE hearing.

- **Regional office trainings:** Each regional office is approved to conduct up to three consultant training events per year.
INTRODUCTION

The NJEA Consultant Payroll Information System (CPIS) is a secure online application, designed and maintained by NJEA’s Information Systems staff, for the entry, approval, and processing of the monthly payroll for NJEA’s consultants. (CPIS is presently designed for the payroll of Communications, Great Public Schools, Priority Schools, Professional Development, and UniServ consultants. A new CPIS release is being constructed for the unique needs of Pension consultants.) Consultants will use CPIS to enter the information they previously provided on paper assignment vouchers. This will enable consultants to submit vouchers more easily and to track their vouchers through the approval and payment process. CPIS will also eliminate the entry of information from paper vouchers by NJEA associate staff employees, and will enable field representatives and management employees to approve payment entries online. Overall, CPIS is expected to reduce errors and expedite the payment of consultant payroll.

LOGGING ONTO CPIS

To access CPIS, simply log onto njea.org, using your PIN or NJEA email address and password. When the My Web Apps page appears, CPIS will be listed as one of the options. Click on the CPIS link, and a Terms and Conditions page will open. At the bottom of the Terms and Conditions page, your Role will be designated Consultant, and your Division(s) will be listed. Click on I Accept, and the CPIS Home page will open, with your name at the top right.

Note to cross-over consultants: If you are a cross-over consultant (i.e., you can receive assignments from more than one division), you must identify which type of voucher you wish to open by clicking on the appropriate Division before your click on I Accept.

COMPLETING A VOUCHER

At the top left of the CPIS Home page, select Voucher and click Add New. The Prepare Voucher page will appear, pre-filled with your name and division or field office (see Figure 1 on pg. 5, which is a UniServ voucher).

Most of the voucher is completed using pull-down menus. All vouchers will have the following pull-down menus below your name:

- Meeting Date – enter the date of the assignment (mm/dd/yyyy) or click on the calendar icon and select the date of the assignment.
- Start Time
- End Time

Use the pull-down arrows to select the beginning and end times of the assignment (be sure that AM/PM are correct). The Visit Length will automatically be calculated and displayed.

For UniServ assignments: Complete the Assigned By field below your name using the pull-down menu, which will list the field representatives in your UniServ region. For an assignment made by a field representative outside your region, click on the ellipses (…) next to the pull-down arrow. A list of all field representatives will open. Click on the name of the appropriate field representative, and click Select at the bottom. If the assignment was not made by a field representative, click Other NJEA Staff, enter the appropriate name, and click Find.
ASSIGNMENT ACTIVITY

Using the pull-down menus at the right, complete all the assignment activity information. (The pull-down menus and menu options are specific to the type of assignment you are entering. The voucher in Figure 1 is for a UniServ assignment – the menus and menu options will be different, for example, for a Professional Development assignment.)

For UniServ assignments:

- The Local pull-down menu allows you to choose among the local associations in your assigned UniServ region. If you work in a local outside your region, click on the ellipsis (…) next to the pull-down arrow, and a search window will open. Enter the name of the local where you worked and click Search – a list of local association names will appear based on your search data. Click on the name of the appropriate local and click Select.
- Below the Bargaining Unit pull-down menu, there's a check box labeled Multiple. If the assignment involves more than one Bargaining Unit, check this box and you will be able to designate additional Bargaining Units, as appropriate.
- The Unit Key pull-down menu allows you to select the type of employees included in the Bargaining Unit.
- The Purpose pull-down menu allows you to select the purpose of the assignment.
- Below the pull-down menus, there's a line labeled Visit Number. When Negotiations is selected as the Purpose, the system will match up the Local and Bargaining Unit information, and identify how many visits the consultant has completed in that unit. If the Visit Number display indicates that this is the 10th or more visit with that Local and Bargaining Unit, Visit Explanation Box must be completed.

For all other (non-UniServ) assignments:

- The Local pull-down menu allows you to choose the local or county association in which you worked. Under the menu, select the county in which you worked. You will then see a list of the affiliates in that county. Click on the name of the appropriate affiliate and click Select.
- Below the Bargaining Unit pull-down menu, there's a check box labeled Multiple. If the assignment involves more than one Bargaining Unit, check this box and you will be able to designate additional Bargaining Units, as appropriate.
• The Unit Key pull-down menu allows you to select the type of employees included in the Bargaining Unit.
• The Purpose pull-down menu allows you to select the purpose of the assignment.

INITIATING THE VOUCHER

Once you have completed the Meeting Date, Start Time, End Time and all Assignment Activity information, click Continue at the bottom left of the page. This simply starts the voucher – it is not yet being submitted (you will be able to return to this page or delete the voucher if there is an error.) Also, clicking Cancel on any page will result in any information you entered being saved in Draft status, and the system will return you to your main CPIS page, where you will see the Draft voucher listed among your other vouchers.

After you click Continue, the Prepare Voucher page will now display with up to three additional tabs at the bottom of the voucher (see Figure 2 on pg 6, which shows a UniServ voucher):
• Expenses/Compensation
• Assignment Details
• Assignment Follow-up
You will click on each tab, as required, to enter the appropriate information.
While working on the tabs, you can return to any of the initial pull-down menus at the top of the page to make changes before submitting the voucher.

FIGURE 2
EXPENSES/COMPENSATION

(All vouchers)

Click on the Expenses/Compensation tab (see Figure 2), and enter the following information:

- **Miles Driven** – enter your business mileage for this assignment. The current IRS mileage rate is displayed, and the Mileage reimbursement amount will automatically be calculated and displayed at the right.

- **From/To** – enter your travel points for this assignment (the towns or cities).

- **Tolls/Parking** – enter the total amount you spent for this assignment on tolls and/or parking.

- **Meal Expense Detail** – if you incurred a business meal expense for this assignment, enter the reason for the meal, the type of meal (breakfast, lunch, dinner) and the amount you spent.

- **Telephone Expense Detail** – enter information and cost for any telephone expenses you incurred for this assignment.

- **Other Expense Detail** – enter information and cost for any other expenses you incurred for this assignment.

*Note:* For these expenses, a receipt is required. If you enter an amount in the Meal Expense, Telephone Expense and/or Other Expense lines, a pop-up window will ask if you are attaching the receipt electronically or sending it in separately. If you are going to attach a receipt electronically, you will need to scan it and save it as a JPG or PDF file before completing the voucher. If you wish to send it in separately, complete the information here, and mail the receipt and a paper expense voucher to your supervisor, noting the assignment number on the paper voucher.

The Compensation amount will automatically be calculated and displayed, based on the current contractual stipend amount and the Start Time and End Time you entered.

The Total Compensation amount will also automatically be calculated and displayed, adding the Compensation to the expenses entered above.

Click the Save button at the bottom to save what you have entered. (This will not submit the voucher, and you can still go back and edit.)

For a UniServ voucher: DO NOT click Submit for Approval yet – your voucher is not completed! See instructions below for completing Assignment Details and Assignment Follow-up as instructed below.

For all other (non-UniServ) vouchers: Continue by following the instructions under Submitting the Voucher on page 7.

ASSIGNMENT DETAILS

Click on the Assignment Details tab, and complete the following information:

- **Assignment Details** – briefly describe the work completed on this assignment.

- **Contact Person and Position** – enter the name and position of the person in the local association who was your primary contact for the assignment.

- **Name of Fact Finder/Mediator** – for negotiations assignments, enter the name of the mediator or fact finder, if the negotiations are at one of these stages of the process.

- **Other Staff on Assignment** – enter the name(s) of any other NJEA employee(s) working on the assignment.

Click the Save button to save what you have entered. (This will not submit the voucher, and you can still go back and edit.)

**Note:** When editing written information you have already entered, be sure to click on the appropriate field and use your cursor arrow keys to move within the text. If you simply click on the field, all the text within that field will be highlighted, and any new text you enter will delete the highlighted text.

**DO NOT** click Submit for Approval yet – there’s one more step to complete your voucher!

ASSIGNMENT FOLLOW-UP

Click on the Assignment Follow-up tab, and complete the following information (where applicable):

- **Further Action Required** – do you need another session with the same Local and Bargaining Unit? If so, click this box, and enter the date of your next meeting under Action Date (type in date or click on calendar and select date).
• **Explanation of Further Action** – briefly describe the need for further action and the work that will be completed on the next Action Date.

• **Organizational Problems in District/Affiliate** – describe problems in the district and/or affiliate that are affecting your work with them.

Click the **Save** button to save what you have entered. (This will not submit the voucher, and you can still go back and edit.)

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**SUBMITTING THE VOUCHER**

Before clicking the **Submit for Approval** button, review the information you provided on each tab, and make any necessary changes. Click the **Save** button after completing each edit.

When you are satisfied the voucher is correct, click **Submit for Approval**, and the voucher will be submitted. The appropriate administrative assistant will automatically be notified that you have submitted an assignment voucher. S/he can then verify the assignment, and the appropriate field representative and/or management employee will be notified that the voucher is awaiting his or her approval. In your **CPIS Home** page, the voucher **Status** will be shown as **Submitted** with the submittal date.

If, at any point in the approval process, there is a question regarding the information submitted on the voucher, the voucher will be moved from **Submitted** status to **Draft** status. If this occurs, you will be notified that the voucher has not been approved, and that you need to contact the appropriate administrative assistant or field representative to find out what changes are needed. (Note: Only you can make changes in your own vouchers. Please do not ask another employee to edit your voucher, as **CPIS** does not permit this.)

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**TRACKING & MANAGING VOUCHERS**

**CPIS** allows you to review all of your vouchers at a glance, and see the status of each, including prior vouchers that have already been paid.

At the top left of the **CPIS Home** page, select **Voucher** and click **Search**. A set of search fields will appear at the top, followed by a list of all your vouchers sorted by assignment date (most recent at top).

• **Searching Your Vouchers** – To find a voucher or group of vouchers, enter the search criteria as appropriate (you can change one or any combination of multiple criteria). For example, to find all vouchers for assignments you worked in March 2013 that have already been paid, you would enter the **Meeting Date** range of March 1, 2013 to March 31, 2013 and select **Paid** from the Status pull-down menu.)

• **Viewing** – To open a voucher listed, click on the **View** link to the left of the assignment date. **NOTE:** You can only make changes in a voucher that is in **Draft** status. You will be able to see whether a voucher you submitted has been approved, and also if there are any in Draft status that you need to repair.

• **Deleting a Voucher** – If a voucher is in **Draft** status, you can delete it by clicking the View link to open it, then clicking **Delete** at the bottom of any page of the voucher.

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**STARTING A NEW VOUCHER**

If you wish to begin entering a new voucher after submitting one, you can do so by selecting **Voucher** and clicking **Add New.** This can be done from the **CPIS Home** page or **Search** page.
Education laws in New Jersey are the product of three primary sources: constitutional provisions, statutory enactments and judicial decisions (case law). These major sources necessarily serve as guides when the state and local boards of education develop rules and guidelines (policy) as their rules cannot contradict the higher authority – state law.

Most of education law is contained in the New Jersey Statutes Annotated, Title 18A (NJSA). These laws are found in four volumes and include more than 2500 pages.

Education is a state responsibility rather than a federal or local one. No direct reference is made to education in the Federal Constitution, but the 10th Amendment states that powers not delegated to the United States nor prohibited to the states are reserved to the states or to the people.

In 1817, the New Jersey legislature created a State School Fund. This was the first attempt to stimulate public school funds.

In 1846, New Jersey established the Office of State Superintendent of Public Instruction. This office later became the State Department of Education headed by the Commissioner of Education. In 1866 the State Board of Education was established. A year later, each district was required to have a board of education.

In accordance with the U.S. Constitution, in 1875, the framers of the New Jersey Constitution included a provision which states: “The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the state between the ages of 5 and 18 years.” Subsequently, the state legislature has passed laws stipulating that children between the ages of 5 and 20 shall be afforded free public education. The New Jersey Supreme Court ruled that the state must provide pre-school education for students in the Abbott districts.

Local school districts are not sovereign entities. The New Jersey Constitution clearly and unequivocally places prime and absolute responsibilities for education upon the state legislature. The legislature has voluntarily delegated educational authority to local, county and state officials. In some areas of responsibility, the lawmakers have set mandatory standards by express statutory provisions.

Local control has been taken to mean that the educational function of government is controlled exclusively at the local level. However, the notion of home rule is a myth. New Jersey’s educational system is based on a concept of lay control, not local control, and the exercise of that power is shared among officials at all levels of government.

The local board of education is the prime enforcer of the school laws. Its obligation in this respect is unambiguous, arising under a legislative mandate that it enforce the rules of the state board and perform all acts consistent with law for the conduct, equipment and maintenance of public schools. The legislature has given local boards quasi-judicial powers. Any member of a local board may administer oaths to witnesses in any hearing in which the local board has jurisdiction. The president of any local board may issue a subpoena at the request of any party to such a hearing.

The Commissioner of Education has jurisdiction over controversies and disputes that are not resolved locally, and this jurisdiction covers all disputes arising under NJSA 18A. Proceedings before the Commissioner are initiated by the filing of a petition which must be filed within 90 days of the occurrence. This is a critical timeline and one you do not want to miss. In all instances,
the actual hearing before the Commissioner is conducted by an Administrative Law Judge (ALJ) assigned by the Office of Administrative Law. The ALJ makes findings of fact, conclusions of law and recommends a decision to the Commissioner, who must adopt, reject or modify the initial decision within 45 days or the initial decision becomes final.

**The commissioner can exercise power in three ways:**

1. May determine whether a disputed local decision is improper as a matter of law,
2. May decide whether the evidence available in a particular case is sufficient to sustain the factual conclusions which were reached locally, and if not, to find new conclusions of fact, or
3. May determine whether the board’s discretion was applied in an arbitrary, capricious or unreasonable manner, in those issues that entailed the use of local discretion.

Any party dissatisfied with the results of administrative review is guaranteed the opportunity to have at least one Appellate Court consider its claim. Appeals from decisions of the Commissioner may be taken to the Appellate Division of Superior Court. The Appellate Division sits in panels of two or three judges each. It is at this level that the results are least predictable.

A party aggrieved by a decision of the Appellate Division has only a limited right of appeal to the NJ Supreme Court. If the case involves substantial constitutional issues or if there were dissenting opinions in the Appellate Division’s decision, the Supreme Court must hear the appeal. Otherwise, the Supreme Court does not have to grant certification of the action. It generally grants certification only if the appeal presents a question of general public importance that has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court.

Following any State Supreme Court action, including a denial of certification, there is an extremely limited right of appeal to the U.S. Supreme Court. Such appeals are limited to cases involving federal constitutional and federal statutory issues.

Until the passage of the New Jersey Public Employer-Employee Relations Act in 1968, school employees’ working conditions and benefits were established in the law or by board policy. The passage of this legislation legalized collective negotiations in the public sector and a process to enforce those things bargained.

Since the passage of the “bargaining bill” some employee rights appear in education law and the local collective bargaining agreement. Generally, the law states the minimum that can be given to an individual and the association is free to negotiate additional benefits. Occasionally, the law sets a limit that cannot be changed through bargaining.

Sick leave is a good example of this. **18A:30-2** guarantees school employees a minimum of 10 sick days. Some associations have negotiated additional sick day benefits. **18A:30-3** allows individuals to carry over to the following year the part of the sick day allowance that is not used. **18A:30-7** puts a limit on the total number of days one can accumulate from sick leave and other sources like personal days to fifteen in any one year.

While associations are free to negotiate increases in benefits, they are not free to negotiate benefits that conflict with law. **Example:** Many collective bargaining agreements say that a doctor’s certificate must be provided to the board if an employee is out five consecutive days. The assumption is that if the individual is out three consecutive days and his/her board asks for a doctor’s certificate he/she does not have to provide one because that would be a violation of the contract. This is a wrong assumption. **18A:30-4** provides that the school board may require a doctor’s certificate whenever sick leave is used. A local board does not have the authority to bargain away rights it has under law. The association can grieve any discipline that results from the employee not being able to get a doctor’s note if the board’s first request for same came after the employee returned to work.
AUTHORITY OVER PUPILS

18A:25-2. A teacher or other person in authority over such pupil shall hold every pupil accountable for disorderly conduct in school and during recess and on the playgrounds of the school and on the way to and from school. The driver shall be in full charge of the school bus at all times and shall be responsible for order; he shall never excuse a pupil from the bus, but, if unable to manage any pupil, shall report the unmanageable pupil to the principal of the school which he attends.

A pupil may be excluded from the bus for disciplinary reasons by the principal and his parents shall provide for his transportation to and from school during the period of such exclusion.

BUS DRIVERS

18A:39-17. Names, social security numbers and certification of bus driver’s license and criminal background check. In each school year, prior to the assignment of any driver or substitute driver to any vehicle operated by the board of education of any district as a school bus driver, there shall be filed by the secretary of such board with the county superintendent the name and social security number of each such driver or substitute driver and certification of a valid school bus driver’s license and criminal background check.

18A:39-19.1. Bus drivers; submission of name, address and fingerprints; criminal history record check qualification; grounds for disqualification; hearing on accuracy of report or to establish rehabilitation; revocation of license on notice of disqualification.

a. Prior to employment as a school bus driver, and upon application for renewal of a school bus driver's license, a bus driver shall submit to the Commissioner of Education his or her name, address and fingerprints taken on standard fingerprint cards by a law enforcement agency.

b. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal history record check performed pursuant to this section without an opportunity to challenge the accuracy of the disqualifying criminal history record.

c. The applicant shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record information.

CORPORAL PUNISHMENT

18:A:6-1. Corporal punishment of pupils. No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary:

(1) to quell a disturbance, threatening physical injury to others;
(2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;
(3) for the purpose of self-defense; and
(4) for the protection of persons or property;
and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of the section. Every resolution, bylaw, rule, ordinance, or other act or authority permitting or authorizing corporal punishment to be inflicted upon a pupil attending a school or educational institution shall be void.

CRIMINAL HISTORY

18A:6-7-1. Criminal history record; employee in regular contact with pupils; grounds for disqualification from employment.

18A:6-7.2. Fingerprints; submission by applicant; exchange of data and information; consent to criminal history record check; payment of costs. An applicant for employment or service in any of the positions covered by this act shall submit to the Commissioner of Education his or her name, address and fingerprints taken on standard fingerprint cards by a law enforcement agency. The Commissioner of Education is hereby authorized to exchange fingerprint data with and receive criminal history record information from the federal Bureau of Investigation and the Division of State Police for use in making the determination required by this act. No criminal history record check shall be performed pursuant to this act unless the applicant shall have furnished his or her written consent to such a check. The applicant shall bear the cost for the criminal history record check, including all costs for administration and processing the check.

18A:39-19.1 Requires criminal background check for school bus drivers; establishes permanent disqualification for persons convicted of applicable offense; establishes temporary disqualification for persons with suspended driver’s license.

6A:9B-4.1 (c) All certificate holders shall report their arrest or indictment for any crime or offense to their superintendent within 14 calendar days. The report shall include date of arrest or indictment and charge(s) against certificate holder. Such certificate holders shall also report to their superintendents the disposition of any charges within seven calendar days of disposition. Failure to comply with requirements may be deemed “just cause” (for revocation or suspension) pursuant to NJAC 6A:9B-4.5. School districts shall make these requirements known to all new employees and to all employees on an annual basis.

DISCRIMINATION

18A:6-6. No sex discrimination. No discrimination based on sex shall be made in the formulation of the scale of wages, compensation, appointment, assignment, promotion, transfer, resignation, dismissal, or other matter pertaining to the employment of teachers in any school, state college, college, university, or other educational institution, in this state, supported in whole or in part by public funds unless it is open to members of one sex only, in which case teachers of that sex may be employed exclusively.


EMPLOYMENT

18A:26-2. Certificate required to teach. No teaching staff member shall be employed in the public schools unless he/she holds a valid certificate. (Note: A county substitute certificate or a provisional is considered a valid certificate.) [See 64:9-5.1]

18A:27-2. Employment without certificate prohibited. A Board shall cease to employ anyone as a teacher whenever that person is found to lack a valid certificate, regardless of term of employment contract.

18A:27-3. Employment for school year fixed. The school year and length of individual contracts is set as the period from July 1 to the succeeding June 30th.

18A:27-3.1. Nontenured observation and evaluation. Each nontenured teacher to be observed and evaluated at least three times per school year.

18A:27-3.2. Nontenure nonrenewal. Teacher receiving notice of nonrenewal may request within 15 days a written statement of reasons which will be provided by the Board within 30 days of the request. (See Section 2, Chapter 5, for Donaldson rights and procedures.)

18A:27-4b. A novice teacher employed by a board under a valid certificate of eligibility, certificate of eligibility with advanced standing, or a provisional certificate is
deemed to be a teaching staff member for all purposes and entitled to all benefits of employment provided by law and regulation. He/she shall also receive the terms and conditions provided to teachers in that district under the contract including, but not limited to, salary, sick leave, and health benefits.

18A:27-5. Written contracts of employment required. Non-tenured teachers to be given written contracts to sign. [Note: Tenure teacher terms of employment are covered by statute, not individual employment contracts.]

18A:27-6. Contents of required written teaching contracts. Each teaching contract shall contain the following:
1. date of commencement of employment
2. type of certificate held
3. salary, payable not later than five days after the first and fifteenth of each month, or not later than five days after the close of the month when paid in monthly installments.

18A:27-10. Nontenure offer of employment or nonrenewal. On or before May 15 each nontenured teacher shall receive either a notice of nonrenewal or a written offer of employment for the succeeding year.

18A:27-10.2. Paraprofessional offer of employment or nonrenewal. On or before May 15 a paraprofessional continuously employed since the preceding September 30 in a school district that receives Title I funding shall receive either a notice of nonrenewal or a written offer of employment for the succeeding year.

18A:27-11. Failure to give timely notice of nonrenewal. Failure to comply with 18A:27-10 shall be deemed to be an offer of employment for the succeeding year.


18A:16-1.1a. Substitute in a vacant teaching position. A vacant teaching position shall not be filled in any school year by one or more individuals employed as substitutes and holding a CE (Certificate of Eligibility) or CEAS (Certificate of Eligibility with Advanced Standing) for more than 60 days. If one individual is employed as such for more than 60 days, s/he shall be paid as would be a similarly credentialed teacher in the district.

HOLIDAYS

18A:25-3. Teaching, etc., on holidays not required. No teaching staff member shall be required to perform his duties on any day declared by law to be a public holiday and no deduction shall be made from such member’s salary by reason of the fact that such a public holiday happens to be a school day and any term of any contract made with any such member which is in violation of this section shall be void.

LEGAL PROTECTION

18A:16-6. Indemnity of officers and employees against civil action. Whenever any civil action has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

18A:16-1.1b-d. Substitute with CE or CEAS in a vacant teaching position. A vacant teaching position shall not be filled in a school year by one or more individuals employed as substitutes and holding a CE (Certificate of Eligibility) or CEAS (Certificate of Eligibility with Advanced Standing) for more than 60 days. If one individual is employed as such for more than 60 days, s/he shall be paid as would be a similarly credentialed teacher in the district.

18A:16-1.1. Indemnity of officers and employees in certain criminal actions. Should any criminal action be instituted against any such person for any such act or omission and should such proceeding to dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals.
MILITARY SERVICE

18A:28-11.1. Seniority; teaching staff members; armed forces service employment or seniority credit.

18A:29-11. Credit for military services. Every member [teacher] who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of this state, . . . shall be entitled to receive equivalent years of employment credit for such service . . . except that the period of such service shall not be credited toward more than four employment or adjustment increments.

NJEA CONVENTION

18A:31-2. Attendance at conventions of New Jersey Education Association (NJEA). Whenever any full-time teaching staff member of any board of education of any local school district or regional school district or of a county vocational school or any secretary, or office clerk applies to the board of education by which he is employed for permission to attend the annual convention of the New Jersey Education Association, such permission shall be granted for a period of not more than two days in any one year and he shall receive his whole salary for the days of actual attendance upon the sessions of such convention upon filing with the secretary of the board a certificate of such attendance signed by the executive secretary of the association.

PHYSICAL & PSYCHIATRIC EXAMS

18A:16-2. Physical examinations; requirement. Every board of education shall require all of its employees, and may require any candidate for employment, to undergo a physical examination, the scope whereof shall be determined under rules of the state board, at least once in every year and may require additional individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical or mental health.

Any such examination may, if the board so requires, include laboratory tests or fluoroscopic or X-ray procedures for the obtaining of additional diagnostic data.

18A:16-3. Character of examinations. Any such examination may be made by a physician or institution designated by the board, in which case the cost thereof and of all laboratory tests and fluoroscopic or X-ray procedures shall be borne by the board or, at the option of the employee, they may be made by a physician or institution of his own choosing approved by the board, in which case said examination shall be made at the employee’s expense.

RIGHT TO REPRESENTATIVE

18A:27-7. Meeting which could adversely affect employment; right to notice and representation. Whenever any teaching staff member is required to appear before the board of education or any committee or member thereof concerning any matter which could adversely affect the continuation of that teaching staff member in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a person of his own choosing present to advise and represent him during such meeting or interview.

SALARIES / COMPENSATION

Nothing contained in this section shall be construed to reduce the number of employment or adjustment increments to which any member may be entitled under the terms of any law, or regulation, or any action of any employing board or officer, of this state, relating to leaves of absence.

18A:29-3. Summer payment plans. Deduction of 10% from each paycheck, with payment in installments over the summer, is allowable with approval of the Board and written participation by the employee. [Note: Interest is subject to bargaining per PERC.]

18A:29-4.1. Salary schedule adoption and funding. A board of education may adopt up to a five-year salary policy and schedules. The policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for the adopted period. Every school budget adopted shall contain such amounts necessary to fully implement the policy and schedules for that budget year.

18A:29-4.2. Payment of school nurse according to teachers’ salary guide. Any teaching staff member employed as a school nurse and holding a standard school nurse
certificate shall be paid according to the provisions of the teachers' salary guide in effect in that school district including the full use of the same experience steps and training levels that apply to teachers.

18A:29-9. Agreement as to initial salaries. Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education.

18A:29-11. Credit for military services. Every member (teacher) who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of this state, including active service in the women's army corps, the women's reserve, or any similar organization authorized by the United States to serve with the army or navy, in time of war or an emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service, shall be entitled to receive equivalent years of employment credit for such service as if he had been employed for the same period of time in some publicly owned and operated college, school or institution of learning in this or any other state or territory of the United States, except that the period of such service shall not be credited toward more than four employment or adjustment increments.

18A:29-14. Withholding of increments. Employment increments (step movement) and adjustment increments (negotiated increase at each step) may be withheld by a Board for inefficiency or other good cause by a roll call majority of full Board. The employee may appeal to the commissioner (unless the reason for withholding is disciplinary, in which case any appeal shall be through binding arbitration in accordance with NJS A 34:13A-26).

18A:6-8.5. Tuition assistance. In order for a board of education to provide to an employee tuition or additional compensation upon the acquisition of additional academic credits or completion of a degree:

a. The institution shall be a duly authorized institution of higher education
b. Employee shall obtain approval from superintendent prior to enrollment in any course for which tuition assistance is sought. If superintendent denies approval, employee may appeal to the board of education.

c. The course or degree must be related to the employee's current or future job responsibilities

SICK LEAVE

18A:30-1. Definition of sick leave. Sick leave is hereby defined to mean the absence from his or her post of duty, of any person because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

18A:30-2. Sick leave allowable. All persons holding any office, position, or employment in all local school districts, regional school districts or county vocational schools of the state who are protected by tenure in their office, position or employment under the provision of this or any other law, except persons in the classified service of the civil service under Title 11, Civil Service, of the Revised Statutes, shall be allowed sick leave with full pay for a minimum of 10 school days in any school year.

18A:30-3. Accumulated sick leave. If any such person requires in any school year less than the specified number of days of sick leave with pay allowed, all days of such minimum sick leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years.

18A:30-3.2. Sick leave credit upon transfer from another district. If an employee is hired from another New Jersey school district, the employing Board may grant partial or full credit for any unused sick leave from the receiving district, such amount to be fixed by Board resolution and uniformly applied to all employees. The number of such days granted shall be irrevocable by the granting Board [see 18 A:30-3_4].

18A:30-4. Physician's certificate required for sick leave. In case of sick leave claimed, a board of education may require a physician's certificate to be filed with the secretary of the board of education in order to obtain sick leave. 18A:30-6. Prolonged absence beyond sick leave period. When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day’s salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

18A:30-7. Power of boards of education to pay salaries. Additional sick leave or other leaves of absence. Nothing in this chapter shall affect the right of the board of edu-
SICK LEAVE & SALARY ALLOWABLE FOR SERVICE CONNECTED DISABILITY

18A:30-2.1. Payment of sick leave for service connected disability. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in sections 18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability. Leave taken by an employee pursuant to subsection a. of this section shall constitute satisfactory service as provided pursuant to NJS 18A:29-14 and any other provision, statutory or contractual, relating to employment, adjustment or other increments and shall not constitute inefficiency or other good cause for the withholding of an employment or adjustment increment.

TENURE

Tenure – Traditional Public Schools

18A:28-3. Citizenship required. No teacher shall acquire tenure unless or until he/she becomes a citizen of the United States.

18A:28-4. Certification required. No teacher shall acquire tenure unless he/she holds an appropriate certificate for his position.

18A:28-5. Acquisition of tenure. Certificated employees hired after August 6, 2012 shall be tenured and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, conduct unbecoming, or other just cause after

(1) Four consecutive calendar years; or
(2) Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
(3) The equivalent of more than four academic years within a period of any five consecutive academic years.

A teacher shall also complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment.

In order to achieve tenure, a principal, assistant principal, and vice-principal shall also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

18A:28-5.1. Tenure upon movement to an underperforming school. A tenured teaching staff member who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school shall be under tenure in that position in the new district after the employee receives a rating of effective or highly effective in at least one of the annual summative evaluations within the first two years of employment in the new school.

18A:28-6. Tenure upon internal transfer or promotion. Tenure after promotion or transfer in a district shall be obtained after two years in the new position. Requires 2 years of effective or highly effective evaluations within the first three years of employment in the new position.

18A:38-33. Attendance officer tenure. Attendance officers obtain tenure after one year of employment, but only in city school districts.

18A:6-10. Grounds for tenure charges and hearing requirement. No tenured employee shall be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after written charges specifying the causes of complaint preferred by the Board or other person(s) have been filed with the Commissioner and a hearing
before the Commissioner has taken place. (Note: This section does not preclude RIF)

18A:6-11. Mechanics of tenure charges. Tenure charges to be presented to Board secretary in writing together with a written statement of evidence; Board shall provide employee with a copy; Board shall determine by majority vote of full membership whether there is cause to certify the charges and whether such charge warrant a dismissal or reduction in salary; Board shall notify the employee by certified mail of its determination; and Board shall forward written charge to the Commissioner for a hearing pursuant to 18A:6-16. Consideration and actions of the Board as to any charge shall not take place at a public meeting.

- A corrective action plan required as result of “ineffective” or “partially ineffective” evaluation ratings
- The Superintendent must file inefficiency charges if a teacher, principal, or vice principal is rated “ineffective” or “partially effective” in an annual summative evaluation and “ineffective” in the following year’s annual summative.
- Superintendent can defer filing for one year for exceptional circumstances if individual is rated “partially effective” in two consecutive annual summative evaluations or is rated “ineffective” one year and “partially effective” the following year on the annual summative. He/she must file charges if the following year summative rating is “ineffective” or “partially effective.”

18A:6-13. Dismissal for failure to certify. If the Board fails to make a determination within 45 days after receipt of the written charges, the charges shall be deemed to be dismissed.

18A:6-14. Suspension, compensation, reinstatement. Upon certification, the Board may suspend with or without pay, but if the Commissioner does not make his determination within 120 calendar days after certification, then the suspended employee shall be paid beginning on the 121st day and until such determination is made. If the charge is dismissed, the person shall be reinstated immediately with full pay retroactive to the first day of the suspension. He/she shall continue to be paid during any appeals (less mitigating salary from any substituted employment).

18A:6-16. Proceedings before commissioner; hearing. Upon receipt of charges and certification, the commissioner shall examine the charges. The charged individual shall have 15 days to submit a response to the commissioner. The commissioner has 10 days to determine the sufficiency of charges and to dismiss or refer to an arbitrator for a hearing. The arbitrator has 45 days from assignment to hold first hearing, then 45 days from first hearing to issue Arbitrator’s report.

18A:28-8. Notice of intention to resign. Tenured teachers must give the employing Board 60 days notice of intention to resign, unless the Board shall approve a release on shorter notice. Failure to so notify shall be grounds for charges of unprofessional conduct, and the Commissioner may suspend the teacher’s certificate for not more than one year. [See NJAC 6A:9-17.9 for expansion of 60 day notice requirement to all teachers.]

18A:28-10. Seniority. RIF dismissals shall be made on the basis of seniority. (Note: Seniority accrues only with tenure.)

18A:28-11. Seniority lists. In the event of a RIF, the Board shall establish a seniority list, notify each affected person as to his seniority, and may request advisory opinions from the Commissioner regarding individuals’ placement on the list.

18A:28-12. Reemployment from RIF list. The board shall retain a preferred eligibility list in order of seniority for reemployment purposes. Whenever a vacancy occurs for which a RIFed employee is qualified, he/she shall be reemployed by the dismissing Board.

18A:6-120. School improvement panel. Each school shall establish a panel composed of at least the principal (or designee), a vice or assistant principal and a teacher. The panel is responsible for oversight of evaluations, corrective action plans and mentoring, as well as professional development. This statute establishes that “information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public.”

18A:17-2. Secretarial tenure. Secretarial and clerical Board employees acquire tenure after the equivalent of more than 3 years within 4 years. However, unless there are negotiated seniority provisions in the Collective Bargaining Agreement (CBA), secretaries do not have seniority. (See Ramage v. Franklin Bd of Ed, SLD 1983)."

18A:17-3. Custodial tenure. Unless appointed for a fixed term of employment, custodial employees shall not be dismissed, suspended or reduced in compensation except for neglect, misbehavior or other offense and in accordance with hearing procedures before the Commissioner.
Streamline Tenure – Charter Schools

6A:11-6.2 (a). Acquisition of streamline tenure. All teaching staff members, janitors, and secretaries shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment as determined by the Department-approved educator evaluation system established by each charter school and in accordance with the charter school’s uniform policies and procedures.

6A:11-6.2 (c). Voiding of streamline tenure. The Commissioner may void acquired streamline tenure status for all applicable charter school employees if stipulated in the terms of probation pursuant to NJAC 6A:11-2.4.

6A:11-6.3. Process for streamline tenure disputes. The charter school board of trustees shall establish a process for hearing streamline tenure disputes. The tenured employee must be given written notice of charges, right to request a hearing, opportunity for legal counsel, and opportunity to confront and cross examine witnesses. Hearing must be held within 30 days after board receives response to charges. Board must issue written decision within 10 days of determination, and must include summary of evidence, factual findings and a determination of whether each charge was substantiated.

6A:11-6.4. Appeals of streamline tenure disputes. Upon receipt of the board of trustees’ written decision finding that a charge has been substantiated, the aggrieved party shall have 15 days to submit to the Commissioner a written appeal of the board of trustees’ decision. The board of trustees may submit a response within 10 days. The Commissioner shall render a determination on the appeal within 45 days of receipt of the board of trustees’ response or due date of response. The Commissioner’s decision shall constitute a final agency decision appealable to the New Jersey Superior Court Appellate Division.

WORKERS’ COMPENSATION

18A:30-2.1. Payment of sick leave for service connected disability. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in sections 18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen’s Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen’s compensation award made for temporary disability.
18A: 30-1 Definition of sick leave:
Sick leave is defined as being an absence from work because of a personal disability due to illness or injury.
Sick leave cannot be used to take days off to care for a sick family member.

18A:30-2 Minimum number of sick days:
The minimum number of sick days allowed is 10 per school year. Even part time employees are entitled to 10 absences due to personal illness.
A Commissioner’s Decision dating back to 1950, Marriott vs. Hamilton Township, gives employees the right to use sick days from the first day of employment.
A 1974 Commissioner’s Decision, Woodbridge, states that it is not legal to give one sick day per month to employees. However, in an arbitration which proceeded to the State Courts, the Appellate Division of the Superior Court held that the sick leave statute does not prevent BOEs and Associations from bargaining the proration of sick leave for people who are employed after the beginning of the school/employment year. Schwartz vs. Dover, 190 NJ Super 222 (App. Div.1981)

Use of sick days if you hold an extracurricular position:
An employee cannot use sick days to cover absences from an extra curricular position unless the use has been negotiated.

18A:30-3 Accumulated sick days:
All days of the minimum sick leave not utilized in any one year shall be accumulated for use in subsequent years.

18A:30-4 Doctor’s certificate:
A BOE has the right to require a doctor’s certification in order to grant sick leave. PERC has ruled that employee unions cannot restrict this right via negotiations.
Associations have the right to negotiate that if a BOE requires a doctor’s note, then the BOE will pay the doctor’s fee. The Association can also negotiate the sufficiency of the note.
The BOE can deny payment to those who do not supply a doctor’s note when one is requested. Newark, 1984.

18A:30-6 Prolonged leave beyond sick leave period:
The BOE may pay an employee his/her salary less the cost of a substitute if his/her illness exceeds sick leave allowance. A BOE may not negotiate away its discretion regarding this issue. The BOE cannot negotiate language giving everyone the same amount of additional leave. Discuss with your field representative other ways to negotiate conditions or benefits that protect members’ interests in this area.

18A:30-7 Additional leave:
A BOE has the right to grant or negotiate more paid sick days than the minimum, except that no person shall be allowed to accumulate more than 15 days in any one year.
TENURE & SENIORITY

Job security is one of the important things a person considers when accepting a job. Some public employees are covered by civil service regulations. Some are at-will employees with year-to-year contracts that include a 30- to 60-day termination notice. Others can attain tenure. Teachers, administrators, secretaries and clerks are among those that can obtain tenure. The Tenure Law is found in Title 18A: Education Law.

DO ALL EMPLOYEES GAIN TENURE THE SAME WAY?

No. As of August 6, 2013, newly employed teachers obtain tenure in one of three ways (18A:28-5):

a. With four consecutive calendar years of employment, or
b. With four consecutive academic years, together with employment at the beginning of the next succeeding academic year, or
c. With the equivalent of more than four academic years within a period of five consecutive academic years. Teacher hired before August 6, 2013, obtain tenure in one of three ways:
   1. With three consecutive calendar years of employment, or
   2. With three consecutive academic years, together with employment at the beginning of the next succeeding academic year, or
   3. With the equivalent of more than three academic years within a period of four consecutive academic years.

Clerical employees can obtain tenure 2 ways. (18A: 17-2) They obtain tenure with 3 consecutive calendar years of employment or with 3 consecutive academic years of employment, with employment at the beginning of the next academic year.

Janitorial employees (custodians and maintenance workers) gain statutory tenure only when given an open-ended contract, that is, if he/she is not appointed for a fixed term. If such a contract is awarded, the custodian has tenure immediately. Most BOEs get around tenure by offering custodial staff renewable year-to-year contracts. Associations can negotiate tenure rights into collective bargaining agreements.

IF YOU HAVE TENURE, CAN YOU LOSE YOUR JOB?

Yes, for cause.

WHAT DOES TENURE GIVE ME?

It gives you protection from unjust firing. It assures you a due process hearing. Some reasons for which a tenured employee may lose his/her job:

- **Incapacity**: Mental or physical inability to perform duties.
- **Incompetence/inefficiency**: BOE must show a pattern of poor performance over time which could include….
- **Corporal punishment**: Not all instances of a teacher physically contacting a pupil constitute corporal punishment and even where corporal punishment is established, one or two instances in the context of an overall good record may not be found to warrant dismissal.
- **Insubordination**: Strictly and narrowly defined as the explicit refusal to obey the direct order of a superior. To succeed in this charge, the BOE needs
to establish a pattern of insubordinate or obstructive behavior.

- **Unbecoming conduct**: Not usually related to the staff member’s teaching ability; rather, the charge is that teacher is an unreliable employee or unfit to work with children.

- **Criminal conduct**: Employees convicted of criminal conduct may be removed through operation of the criminal forfeiture statute, as part of a criminal plea negotiation; or subject of an unbecoming conduct charge.

- **Series of incidents / combination of charges** could also result in dismissal.

**WHAT ARE THE PROCEDURES FOR FILING AND CERTIFYING TENURE CHARGES?**

The charges must be filed in writing with the board secretary. Charges must be accompanied by a statement of evidence under oath to support the charges. A copy of the charges must be sent to the employee forthwith.

An employee has 10 calendar days to respond by submitting a written statement of evidence and a written statement of position. The BOE considers the charges and the employee’s statement together. Within 45 calendar days of the filing, a majority vote of the BOE’s full membership is necessary to certify the charges. If the BOE votes to certify the charges, it must notify the employee (personally or by certified mail) that the charges are being certified to the Commissioner.

The employee may file a response to the Commissioner within 10 calendar days. The Commissioner will assign an arbitrator within 5 days of the deadline for the employee’s response.

For the first 120 days after charges are certified, a BOE may suspend an employee without pay. After 120 days, salary payments to the employee must resume. If charges are dismissed, the employee is reimbursed for any salary withheld during the first 120 days.

**DOES TITLE 18A PROVIDE SENIORITY RIGHTS TO ALL SCHOOL EMPLOYEES?**

No. NJAC Title 6A regulates certificated staff members’ seniority. Janitorial employees who have statutory tenure have seniority if and when a reduction in force occurs. Other support staff can negotiate seniority provisions into their collective bargaining agreements to deal with layoffs. Seniority becomes important ONLY when there is a reduction in force (RIF).

**WHAT RIGHTS DO I HAVE WHEN THERE IS A RIF?**

18A:28-9 – The teaching staff can only be reduced (RIFed) for reasons of economy, because of a reduction in the number of pupils, due to a reorganization of the district or for other good cause.

18A:28-11.1 – Up to four years of service in military (active duty only) after 1940 counts toward seniority.

18A:28-12 – Tenured teaching staff members dismissed because of a RIF remain on a preferred eligibility list. Associations have the right to bargain the procedure to be followed when there is a reduction in force for members not covered by statutory tenure and seniority (i.e. notice, reasons, hearing, right to recall). Associations do not have the right to establish criteria (i.e. that a certain job be eliminated first).

Employees with tenure cannot lose their jobs until all nontenured employees holding the job(s) for which the tenured employee is certified/qualified to do are let go.

Secretaries have tenure by law, but without contractual seniority or layoff procedures, there are essentially two classes of secretaries – tenured and nontenured. Without seniority language, the BOE can RIF tenured secretaries without regard to the number of years they have worked for the district.

**A BRIEF OVERVIEW OF THE TEACHNJ ACT (S-1455)**

**HIGHLIGHTS OF TENURE ACQUISITION**

- **Who is not covered** – Tenure acquisition rules for attendance officers, secretarial, or custodial employees, or higher education staff will not be changed.

- **Acquiring tenure** – Tenure for certificated employees newly hired for the 2012-13 school year will now be earned with:
  1. Four consecutive calendar years; or
  2. Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
  3. The equivalent of more than four academic years within five consecutive academic years.
  4. Eliminates Board’s option of reducing time needed to obtain tenure.
New teachers – A “teacher” must also complete a district mentorship program during the initial year of employment and receive a rating of “effective” or “highly effective” in two annual summative evaluations within the first three years of employment after the initial year of employment. The mentoring program shall provide observation and feedback, opportunities for modeling, and confidential support and guidance in accordance with the Professional Standards for Teachers and the evaluation rubric. The program shall enhance teacher knowledge of and strategies related to the core content standards in order to facilitate student achievement and growth; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching; and assist first-year teachers in the performance of their duties and adjustment to the challenges of teaching. Mentoring activities shall be responsive to the unique needs of different teachers in different instructional settings.

New administrators – A principal, assistant principal, and vice-principal must also receive a rating of “effective” or “highly effective” in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

TRANSFER/PROMOTION

Tenure in a new position or promotion (under a different certificate, i.e. instructional, educational services, or administrative) will still be achieved after 2 years with “effective” or “highly effective” ratings within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

- Move to “priority” or “focus” school – A tenured teacher who has been rated “effective” or “highly effective” on his most recent annual summative evaluation and who accepts employment in the same position in an underperforming school (“priority” or “focus” school) shall be tenured in that position in the new district after the employee receives a rating of “effective” or “highly effective” in at least one of the annual summative evaluations within the first two years of employment in the new school.

- Role of school improvement panel – Each school will have a school improvement panel consisting of the principal or designee, an assistant or vice principal, and a teacher. The panel will:
  - Oversee mentoring, conduct evaluations, and identify PD opportunities;
  - Conduct mid-year evaluations of teachers evaluated as “ineffective” or “partially effective.”

The teacher on the panel shall have a demonstrated record of classroom success and be selected in consultation with majority rep. The teacher will not be part of evaluation process unless majority rep agrees.

- Corrective action plan – In the event that a teacher receives an annual summary evaluation rating of “ineffective” or “partially effective” in one year, a corrective action plan shall be developed by the teaching staff member and a district staff member serving in a supervisory capacity to address deficiencies outlined in the evaluation. The corrective action plan shall include timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the plan and specific support the district shall provide for the following year.

* This replaces the 90-day improvement plan previously required for inefficiency under NJSA 18A:6-11.

HIGHLIGHTS OF TENURE CHARGES COMPONENTS

- Who hears case – NJSA 18A:6-9 will be amended to require that an arbitrator (rather than an administrative law judge appointed by the Commissioner of Education) shall hear and make a final determination on a controversy and dispute arising under NJSA 18A:6-10 (tenure charges).

- Reasons for dismissal – NJSA 18A:28-5 still states: “...shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming or other just cause....”

* All employees (teacher/custodian/secretary) under statutory tenure will have hearing before arbitrator.

- Filing of charges – The process for filing tenure charges will remain essentially as under the pre-existing law:
  - Charges to be filed with the secretary of the local board of education
  - Board will serve employee with copy of charges and evidence
  - Employee will have opportunity to respond to charges
  - Board must certify the charges to the commissioner within 45 days – failure to do so will result in the charges being deemed to be dismissed
• Upon certification of charges, the employee may be suspended without pay for up to 120 calendar days (or longer if delays are caused by the employee).
• Upon certification of charges to the Commissioner, the employee will have 15 days (10 days when based on “ineffective” rating) to respond.
• Commissioner will determine sufficiency of charges within 10 days (5 for “inefficiency”) following end of response period, and, if charges deemed sufficient, will refer to an arbitrator for a hearing.
• Arbitrator must hold hearing within 45 days of assignment to the case and render decision within 45 days of start of hearing.
• Upon referral of case to arbitration, the school board shall provide all evidence and witness list.
• At least 10 days before the hearing, employee shall provide all evidence and witness list.
• Both sides may not present additional evidence at the hearing, except to impeach witnesses.

**When charges must be filed** – The Superintendent must file inefficiency charges if a teacher, principal, or vice principal is rated “ineffective” or “partially effective” in an annual summative evaluation and “ineffective” in the following year’s annual summative.

Superintendent can defer filing for one year for exceptional circumstances if individual is rated “partially effective” in two consecutive annual summative evaluations or is rated “ineffective” one year and “partially effective” the following year on the annual summative. He/she must file charges if the following year summative rating is “ineffective” or “partially effective.”

**Selection of arbitrators** – A panel of 25 arbitrators will be set up and work under the rules of the American Arbitration Assn. (AAA), not PERC: 8 to be designated by NJEA, 3 by AFT, 9 by NJSBA, 5 by NJPSA. If a conflict exists between the AAA rules and the statute, the statute shall govern. The 25 arbitrators will be put on a random rotating list and will be assigned in order as cases come up. The cost of the Arbitrator shall be borne by the State.

**Arbitrator may consider** – For inefficiency charges, the arbitrator may only consider whether or not:
1. The employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan and professional development opportunities;
2. There is a mistake of fact in the evaluation;
3. The charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
4. The district's actions were arbitrary and capricious.

The quality of an employee's classroom performance is not subject to an arbitrator’s review.

**Appeals** – Arbitrator’s ruling not appealable to Commissioner or State Board of Education, but is subject to judicial review on very limited grounds (as specified in NJSA 2A:24-8; NJSA 2A:23B-23).

**Effective date** – Tenure charges filed prior to the effective date of this law shall proceed based on the prior law. The act takes effect for the 2012-13 school year, except for certain portions regarding evaluation, which do not take effect until the 2013-14 school year.

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**CHANGES TO NJSA18A AS RESULT OF TEACHNJ ACT, S-1455**

18A: 6-9 – Moves hearings for tenure disputes from ALJ to an Arbitrator.
18A: 6-11 – Replaces the 90-day improvement plan for charges of inefficiency before tenure charges can be filed.
* Will be replaced by corrective action plan required as result of “ineffective” or “partially ineffective” evaluation ratings.
18A: 6-13 – Removes references to 90-day improvement plan.
18A: 6-14 – Tenure charges still certified to the Commissioner.

Individual still may be suspended for 120 calendar days with or without pay.

Once charges are certified an Arbitrator replaces the Commissioner as determiner of charges. Beyond 120 calendar days, pay still restarts, however, the law generally limits process to about 90 days:
• 45 days from when the case is assigned to the Arbitrator to hold first hearing.
• 45 days from first hearing to Arbitrators report.

18A:6-16 – Changes references from ALJ to Arbitrator.

18A:6-17.3 – Filing with the secretary of the board of education notice of a charge of inefficiency; procedural requirements a. Notwithstanding the provisions of NJS 18A:6-11 or any other section of law to the contrary, in the case of a teacher, principal, assistant principal, and vice-principal:

1. The superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

2. If the employee is rated partially effective in two consecutive summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until after the next annual summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

b. Within 30 days of the filing, the board of education shall forward a written charge to the commissioner, unless the board determines that the evaluation process has not been followed.

c. Notwithstanding the provisions of NJS 18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charges to the commissioner. The commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

18A:28-5 – Changes three years to four years to obtain tenure for all certificated staff newly hired for the 2012-13 school year.

• Board cannot shorten four-year requirement.
• Adds “mentorship” to first year for classroom teachers.
• Requires two years of “effective” or “highly effective” evaluations in years two, three, or four.

18A:28-6 – Still requires two years to receive tenure upon promotion to another position within the district.

• Board cannot shorten two-year requirement.
• Requires two years of effective or highly effective evaluations within the first three years of employment in the new position.
• Allows tenured teachers who transfer to an “underperforming” school to gain tenure after two years in the new district with ratings of “effective” or “highly effective” in one of the two years.
DONALDSON HEARING

In the spring of each year a nontenured certificated member may receive a notice indicating that his/her employment contract for the next school year is not being renewed. Said notice may be in the form of a letter from the chief school administrator or the board of education itself.

If the chief school administrator notifies the employee that he/she will not be recommending employment for the next school year, there may be no further board action. In some instances the board may choose to vote to not renew.

- The Open Public Meetings Act requires that each board of education notify an employee whenever his/her employment status is going to be discussed.
- An employee so notified may elect to have the board discuss his/her employment status in public rather than in closed session.
- If more than one person is being discussed, then all persons must make the request to have the matter discussed in public. If one person objects, then all discussion will be in closed session.

If a nontenured, certificated member does not receive proper notification of his/her contract status by May 15th, or if he/she does not receive notice of contract renewal, NJEA advises him/her to send the following letter to his/her board immediately and, in any event, not later than June 1.

(Date)

(Inside Address)

Members of the Board of Education
c/o Board Secretary

____________________________

Dear Members of the Board of Education:

I hereby notify you in writing that I accept your offer of employment for the coming school year.

Very truly yours,

(Signature)

IMPORTANT TIME LIMITS

May 15:

Statutory date (on or before) to notify nontenure certificated staff member of the nonrenewal of his/her employment contract.

Within 15 calendar days of receipt of notice of nonrenewal:

(Whether from the chief school administrator or the Board of Education, whichever comes first).

Teaching staff member may request, in writing, a written statement of reasons for non-reemployment.

Within 30 calendar days of receipt of written request:

Board must provide a written statement of reasons for nonreemployment.
Within 10 calendar days of receipt of written statement of reasons:
Teaching staff member can make a written request to the board for an informal appearance before the board.

Within 30 calendar days of receipt of the requested statement of reasons by certificated nontenured staff member:
Board must schedule an informal appearance.

Within 3 days following the informal appearance:
Board may notify the affected staff member, in writing, of its final determination.

On or before June 1:
In the event that the nontenure member receives an offer of continued employment for the following school year OR IF NO NOTICE IS GIVEN BY May 15th, the non-tenure member must accept the board's offer of employment in writing by June 1.

GUIDE TO REPRESENTING NONTENURE TEACHERS IN CONTRACT NONRENEWAL SITUATIONS

Suggested approaches for representing nontenured teachers at an informal appearance.

1. **The teacher advocate** makes an opening statement and points out to the board what is going to happen at the meeting.

2. **The teacher** has the responsibility to convince the board that their decision not to renew is erroneous and that the school district, as a result, will lose a good teacher. It is essential that the teacher present the case on his/her own behalf.

3. **Review the evaluations of the teacher.** If they are positive, have enough copies so that each member of the board may have one.
4. **It is possible to have individuals make statements on the teacher’s behalf.** These individuals may be parents, highly respected staff members, influential citizens, or former students. The purpose of their statements is to inform the board of the personal involvement they have had with the teacher, in an attempt to persuade the board that the school district will suffer as a result of not renewing this teacher. These witnesses are sequestered and they are called into the room one at a time to make their statements. The board may question these individuals.

5. **Special programs** – the teacher should elaborate to the board any unique activities and/or units taught.

6. **Open classroom** – the teacher might invite the superintendent, principal, or board members to visit his/her classroom for additional observations.

7. **Classroom tour** – the teacher may invite the board that evening (if possible) to visit his/her classroom and provide explanations as to the different projects, teaching stations, etc., in the classroom.

8. **Extracurricular program** – The teacher may review with the board his/her involvement with any extra position, i.e., coaching, clubs, etc.

9. **Community programs involving children** – The teacher may wish to inform the board of his/her involvement in community programs, i.e., Scouts, Big Brother, YMCA, United Way, etc.

10. **Professional improvement** – The teacher may wish to review the various courses taken, seminars attended, etc., since he/she has been in the employ of the district.

11. **Closing statement** – The teacher advocate might review the highlights of the teacher’s major attributes, thank the school board members for their time and interest, and urge the board to reconsider.
GRIEVANCE DEFINITION

PERC law sets the minimum definition for grievances:

A grievance is a claim by an employee or the association based upon the interpretation, application, or violation of policies, agreements and administrative decisions affecting an employee, group of employees, and/or the association.

In some contracts, the grievance definition is patterned after the minimum. However, in other contracts, a definition that is broader or more limited may have been negotiated. If the definition is more limited, the minimum will prevail at least at the initial step of the procedure. Conversely, if a broader definition has been negotiated, the contractual definition will prevail. However, binding arbitration can be precluded for matters outside the scope of negotiations.

If a complaint is not a violation of the contract, there may be an alternative method used to settle the dispute.

GRIEVANCE PROCESS

One of the most important articles of the negotiated agreement is the grievance procedure. A grievance arises when a contract is misinterpreted, misapplied, or violated. It may also include administrative decisions that adversely effect working conditions. During the term of the agreement, the grievance procedure is the primary vehicle for settling conflicts and problems that arise.

When the contract has been violated a grievance gets filed. Each contract should have timelines and steps (or levels) for filing grievances. Know the timelines and adhere to them unless you have a written agreement with the board to waive them. The actual procedural steps should provide sufficient opportunity for resolution of grievances through a series of discussions with those at successively higher levels of decision-making authority while protecting against unreasonable delay. The key element in any grievance procedure is the terminal step. Hopefully, the process ends with final and binding arbitration.

Once a petition is filed with PERC or AAA, an arbitrator is usually assigned within thirty days and a hearing date is scheduled. The hearing is usually scheduled within a two-month period; however, a six-month wait is not uncommon. The hearing is similar to any court proceeding with the arbitrator serving as the judge and jury. While it is less formal than a courtroom setting, there are rules that govern the process.

After the hearing is completed and briefs (if agreed) are submitted, the arbitrator has an additional thirty days or more to issue the award.

Snags

1. The board files a petition for a scope of negotiations determination with PERC. A scope of negotiations defines and limits the extent of negotiability by identifying the topics that are, or are not, legally negotiable and that are, or are not, legally enforceable contractual provisions.

2. When the association is successful, the board may want to appeal the decision. If they are not happy with the PERC decision, or their attorney has convinced them that the decision could be a violation of law, they could appeal to the courts.

3. The board ignores the arbitrator’s ruling. The association has ninety days to go to court and have the award affirmed.
GRIEVANCE AUTHORITY

The contract embodies terms and conditions of employment, and benefits and rights to protect members individually and the association collectively. It is an agreement between the board and the association concerning the rights and obligations of each party with the boundaries established by the law.

The law which gives public employees the right to negotiate their terms and conditions of employment including a grievance procedure is the New Jersey Employer-Employee Relations Act, (NJSA 34:13A).

Public employers shall negotiate written policies 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, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes.

Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

WHO CAN GRIEVE?

The Supreme Court decided in 1978, that the majority representative has the constitutional and statutory right to present grievances on behalf of members and that this right cannot be waived through contrary contractual language. The case, involving the Red Bank Regional Board of Education, 78 NJ 122, prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether an association can file a grievance against the wishes of the affected employee.

In Saginario vs. Attorney General, 87 NJ 480, the Supreme Court found that members with a substantial interest in the resolution of a dispute have the right to be heard within the dispute mechanism even if his/her position is in conflict with the majority representative.

TIMELINES & TIMELINESS

Most contracts specify a time limit within which a grievance must be filed, timelines for management’s response at each level, as well as timelines for the grievant to appeal to the next level an unsatisfactory response. The limits vary from contract to contract. Be aware of the timelines and act within them unless the board agrees to waive the timelines. If that happens, confirm this agreement in writing.

Time limitations on filing a grievance do not ordinarily apply to continuing violations. A continuing violation is a violation that is repeated on an ongoing basis. In these circumstances the association can bring a grievance forward after the date of the original violation as each time the violation occurs it can trigger a grievance. Even if the arbitrator agrees that the violation is one that is continuing, the arbitrator may determine that any remedy is limited to the date that the grievance was raised, and not to the date of the original violation.

WORK-THEN-GRIEVE

Certain rights are guaranteed under the contract and the law. However, management has the right to issue directives; employees have the right to grieve a directive or appeal it through appropriate channels.

If an employee is ordered to do something which, in his/her opinion violates his/her contract, board policy, or the law, the individual should tell management that he/she believes there is a problem with the directive and that the requested action should not have to be done. If the dispute is not resolved, he/she should carry out management’s directive and contact an association representative for help.

The exception is when a directive to do something is obviously injurious to the individual’s health or physical safety. If there is a reasonable belief of an imminent danger, death, or serious physical injury, then the only choice is to refuse the work. However, if the danger is not readily apparent, the work-then-grieve principle applies.

INTERVIEWING THE GRIEVANT(S)

Find the right place in which to conduct your conversation with the grievant. You need to choose a private
location where the grievant/s will feel secure. Listen to what the member has to say. Let him/her express his/her feelings. Ask probing questions. Help the member think through the problem. Avoid making judgments or assumptions. Avoid giving advice.

When you interview a grievant you need to ask questions in order to determine if there is a grievance; and if there is a grievance, to be able to write a grievance statement and/or present the grievance before an administrator or board.

- **Who** is involved in the incident, including the person making the complaint; witnesses, if any; the administrator or supervisor involved; etc.? Who is affected by the grievance? Should the association grieve the issue for an individual or group?

- **What** is the complaint? What is alleged to have been done or not done? Does the claim involve a violation of the agreement according to the grievance definition in the collective bargaining contract? What is the remedy sought? What will correct the situation?

- **When** did the incident occur? Is it within the time limits of the grievance procedure? If the grievant has waited too long, the complaint may no longer be grievable. The grievant has waived his/her rights. Consider whether or not the situation would be considered a continuing grievance.

- **Where** is the violation alleged to have occurred? Where is the appropriate level to enter the grievance?

- **Why** is the incident or complaint grievable?

- **How** are the individual(s) and the association affected? How should the matter be handled?

**Take good notes.** Together decide upon the outcome you want to achieve. Discuss possible alternate remedies. Decide who will attend the meeting. Decide who will speak during the meeting and what they will say. Decide how to end the meeting.

At the end of the interview summarize what you have learned and tell the grievant what will or will not be done on their behalf.

**SOURCES OF INFORMATION**

People who can supply you with information including the employee who has the grievance, other employees, and witnesses. You may want to speak with association representatives or officers and ask them if there have been similar grievances in the past and if so, ask how they were resolved. It is usually best to speak to the administration about a grievance before the grievance is actually filed. Talk to them and get their views so that you can better understand their reasoning. You can also get a clearer idea of the facts after hearing them from both the employee and the administrator. The discussion with administration usually takes place at step one of the grievance procedure.

**Administrative records:** Personnel file. Time and attendance records. Medical records. Policies, procedures, rules, regulations. Personnel action forms. Written memoranda or letters.

**Association records:** Contract or past practices. Past grievances. Arbitration awards.

**WRITING A GRIEVANCE**

Don’t argue your case in the written grievance. Because the written grievance only informs the administration of the complaint, it should have no arguments supporting the case. Save these arguments for actual negotiation of the grievance. Of course, you should have them written down for your information.

The written grievance should have a complete statement of the facts. Although brief, the written grievance must still have enough information so that the administration fully understands the situation. This means that it should include the who, what, when, where and why of the situation.

Be sure to include what possible remedy or relief you expect.

Practice makes writing easier. When you first start to write grievances, it requires a lot of hard work. A good way to get practice in writing grievances is to write a grievance statement for every complaint you hear about and throw them away.

State the grievance with confidence. Do not write that you think or hope you have a grievance. State the grievance as if you are sure. This is done simply by writing that the administration has violated the contract in the situation you are describing. It may be shown that you are wrong and that no violation has taken place, but until you are proven wrong, you must be convinced that your case is a good one.
IS THE ISSUE GRIEVABLE?

The benefit of doubt should be given to the grievant when there is no clear-cut violation of the employer’s responsibility. Even when a complaint does not qualify as a grievance, a conscientious representative can sometimes mediate the dispute, give counsel, and exercise persuasion.

Care must be taken, however, not to take on management’s role of directing employees. Employees don’t need another supervisor. Where there is no policy, the association may try to negotiate one.

Ask the following questions to determine if an issue is a grievance: Is the complaint a violation of

- The contract, including arbitration awards?
- The law?
- Past practice?
- An administrative decision?
- The terms and conditions of employment?

IS THE GRIEVANCE ARBITRABLE?

The Public Employer-Employee Relations Act allows for arbitration of grievances arising out of the interpretation of the collective bargaining agreement.

The decision to carry a case to arbitration is an important one. The responsibility for the decision to proceed to arbitration usually rests with the association executive committee, not with the member or UniServ consultant.

If an individual wants to assert his/her right to act in a manner contrary to the group’s interest, the association should not prevent him/her from using the grievance procedure. Most contracts have language safeguarding the association’s right to select which grievances it wishes to submit to arbitration. Be knowledgeable about this clause in each contract. In making its decision, the association has a responsibility to treat grievants fairly and not to be arbitrary or capricious in its decision making.

Several factors must be considered such as: the interest of the group, probability of success, previous remedies to similar or like situations, cost in terms of resources, and the possible effect on other parts of the contract.

Should a decision be made not to arbitrate, the grievant affected should be notified and his/her right to an internal appeal and access to arbitration should be explained.

Before recommending arbitration, the UniServ consultant should discuss the grievance with the field representative and the association leadership.

PRESENTING A GRIEVANCE

Know the facts and present them with confidence. When you are ready to go into a conference with an administrator do not try to outsmart him/her and don’t anticipate being outsmarted or outwitted. Know the contract. Understand at the outset how far the matter can go. Know the grievant’s rights and stick to them. State the facts plainly. Cite specific provisions of the Collective Bargaining Agreement which you allege have been violated. If you must err, do so on the basis of too many citations rather than too few. Avoid opinions or hearsay evidence. Too many grievances are lost because the employee advocate did not have the facts. Rarely does the presentation of the grievance win the case. It takes facts. Be certain that the relief you seek is attainable and to the extent possible, realistic.

Stick to the point. As the discussion progresses, the administrator may try to sidetrack the real issue and lead you into a discussion of irrelevant issues, or inject additional complaints against the employee. Insist on discussing only the issue raised by the grievance. Nothing else.

Take a positive position. Do not be timid or convey the feeling to the administrator that you are presenting the grievance because it is an obligation on your part. Avoid being apologetic. Impress upon the administrator that there is no possible doubt in your mind that the grievance has merit and should receive an equitable settlement. State the relief you are seeking in precise yet open terms in order to allow for the possibility of creating a remedy you have not considered.

Keep the burden of proof on the administrator. Let the administrator try to justify and prove that the action he/she took is correct. Do not try to show the administrator where he/she is wrong. First, let him/her carry the burden of proof in telling you how he/she is right.

Disagree with dignity. Disagree with the administrator when you must in a calm, firm, and positive manner. Declare your intentions of taking the grievance to the next step. As a rule, administrators prefer to settle complaints before the complaint is carried to a higher management level. However, remember contract mainte-
nance may be new to the administrator with whom you are dealing. You may have to do some educating during the first steps of the grievance procedure.

**Maintain a united position with the grievant.** Make sure you and the grievant are both in accord on the facts and issues before you go to meet with the administrator. If you have a difference of opinion during the conference, take a recess and work out the problem in private. Present a united position to the administrator.

**Settle the grievance at the first step, if possible.** It is desirable to settle the grievance at the first step. Each step of the grievance procedure becomes more formal and does not lend itself to a resolution as easily as the first step. In settling make sure you do not agree to something that violates the contract. If you are not sure, tell the administrator that his/her idea sounds good, but you need to discuss it with the association leadership and will get back to him/her. If no resolution is reached, contact the UniServ Field Rep and association leadership.

**Be prompt.** Don’t allow the grievance to linger. Delayed grievances mean delayed justice. Adhere closely to the time limits prescribed in the grievance procedure. Forfeiture may result from inattentiveness to the time limits. Be prompt in processing the grievance and keeping the aggrieved person and association leadership up-to-date on the progress of the grievance.
**GRIEVANCE STATEMENT**

| WHEN & WHO          | On or about (insert date), Mr. Smith, principal at          |
| WHERE & WHO         | Bedlam Junior High School, ordered Mr. Jones               |
| WHAT                | to cover a class of another teacher who was absent that day, thereby depriving him of his duty-free lunch period. |
| WHY (Authority)     | Therefore, in accordance with ARTICLE II. (Grievance Procedure) of the current Agreement between the Association and the Board, the Association on behalf of Mr. Jones, submits the above matter as a grievance. |
| WHY (Contract Violation) | The Association contends that the action of the school principal, Described above is in violation of ARTICLES IV, VII, XXII, and other articles relevant to the instant matter. Further the Association contends the matter involves an administrative decision affecting Mr. Jones’ terms and conditions of employment as set forth in ARTICLE II. |

**REMEDIES SOUGHT:**

1. That Mr. Jones be compensated for the extra assignment at the rate specified in ARTICLE XXII, paragraph B.
2. That in the future the principal refrain from assigning teachers during their duty-free lunch periods.
3. Any other remedy that may be appropriate.

Please let me know when we may meet to discuss this matter.
The ability to communicate successfully is essential to all advocates. There are two elements of communication – the ability to send and receive messages. You must be able to effectively do both when helping people who have work-related problems.

The key to communication is believability. In short, that means the words we speak must be supported by the tone of our voice and our body language. Many individuals have creative ideas and a meaningful message, but they block the delivery system. You may have a strong and powerful message, but without the ability to deliver it into the heart and mind of the listener, the words will not be believed.

In the verbal component of a message you find the message, the content, and the information. The vocal component includes such things as the volume, tone, projection, and frequency of the voice. The visual component is influenced by body language, gestures, facial expressions, movement, and eye contact. To be believed what the person sees must match the verbal and vocal components of the message.

There are significant opportunities to misinterpret even the simplest message. If the sender’s message is unclear and the receiver cannot ask questions or look for visual clues, successful communication will not occur. Remember that nonverbal communication is more than one-half of the total message.

Many equate being a good communicator with being a dynamic speaker. Often, we forget that sending the message is only one-half of the communication process. The other half is receiving the message; what we commonly call listening. Being a good communicator also equates with being a good listener. When deciding if you should talk or listen, remember you do not learn anything by talking.

Communication is not successful unless someone listens – that is, receives and understands the message. Listening is not easy and distortions regularly occur when any message is communicated.

Listening is an intellectual and emotional process that searches for meaning and understanding in a message. Many people consider themselves to be good listeners, and that overconfidence is a major barrier to successful communication. In reality, we only listen about at 25 percent of our listening capacity. This means we distort, forget, ignore, or misunderstand 75 percent of what we hear. Such poor listening habits can adversely affect our work as advocates.

**ROADBLOCKS TO COMMUNICATION**

To become a better listener, one must first learn to recognize the roadblocks to listening. Some barriers to listening include:

- **Assumptions:** As listeners, we make assumptions about the speaker, what is being said, why it is being said, the real meaning, what the speaker wants, etc. If you are making assumptions, you are not listening.

- **Hot buttons:** As listeners, certain words are hot buttons and trigger us emotionally. When our hot buttons are activated, we tune out, distort, prejudge the message, and stop listening.

- **Filters:** As listeners, other stimuli often interfere with receiving the message. When distractions succeed, listening fails.

- **Counterarguments:** As listeners, we often find ourselves challenged by the message and begin formulating counterarguments, rather than listening.
Speaker’s control: As listeners, we expect a two-way flow of information. When the speaker totally controls the message and there is only one-way communication, the listening process is typified by low retention and rapid loss of interest.

Evaluating: As listeners, we often draw premature conclusions and begin to evaluate the message, rather than listening to the complete message.

Preconceived beliefs: As listeners, we often allow our perception of the speaker or the message to interfere with listening. What we always knew prevents effective listening.

Other barriers to effective listening include daydreaming, poor knowledge of the subject, status differences, negative reactions to speaker, stereotyping, defensiveness, stress and the physical environment.

When another person is experiencing a problem and you have decided to help, you may consider approaches like giving good advice or asking key questions. Asking questions, giving job directions and advice can be both appropriate and productive. Expressions that put down or demean others are always roadblocks to an effective working relationship.

When you work with people who are experiencing problems, you need to:

1. Show a genuine concern and interest in helping;
2. Communicate trust by allowing the other to openly express thoughts and feelings in a non-evaluative climate;
3. Truly understand the other person’s communication and let that person know you understand;
4. Help the other person become aware of and understand his/her own expressed thoughts and feelings; and
5. Help the other person take responsibility for self-problem solving, rather than become dependent on you or others.

HOW TO “ACTIVE LISTEN”

First try to sense what feeling has been sent, and then try to identify the object or event linked to the feeling. Put both the feelings and the facts together in a sentence and send your response.

The “you feel” element in active listening gives credit and responsibility to the sender for the feeling.

An accurate use of active listening skills will take a person to the heart of the problem. As the person defines and redefines, the problem becomes clearer, feelings are dissipated, and solutions begin to form in the individual’s mind.

To understand another person’s feelings and experiences you need to attempt to enter his/her personal frame of reference. However, since it is impossible for you to be the other person, the best you can do is approximate an understanding. Remember, that at best you will have a limited understanding of the unique person with whom you are interacting.

Phrases that are useful when you trust that your perceptions are accurate and the sender is receptive to your Active Listening are:

- You feel . . .
- From your point of view . . .
- It seems to you . . .
- As you see it . . .
- What I hear you saying . . .
- You’re (identify the feeling) . . .
- Where you’re coming from . . .

Phrases that are useful when you are having some difficulty perceiving clearly, or when it seems that the sender might not be receptive to your active listening:

- Could it be that . . .
- I’m not sure if I’m with you, but . . .
- Correct me if I’m wrong, but . . .
- Does it sound reasonable that you . . .
- You appear to be feeling . . .
- Is there any chance that you . . .
- Let me see if I’m with you; you . . .

Effective listening demands energy, know-how and practice. How effectively you listen ultimately determines how successful you will be at advocating for our members.

Sources: NEA Leader Effectiveness Training
NEA Vital Link Training
The Art of Communicating by Bert Decker, Crisp Publications, 1988
Evaluation regulations give certificated staff the right to rebut evaluations. Some collective bargaining contracts also provide this right.

Signing the evaluation document does not indicate agreement. It indicates that one has received the document. However, failure to rebut the evaluation within the proper timelines implies consent.

The written rebuttal should be structured so as to strengthen performance and weaken the negative items on the evaluation report.

To prepare a response, first analyze the evaluation.

- Work with the employee to gain an overview of the evaluation.
- Identify what is positive and what is negative.
- Review earlier evaluations and observations and look for patterns.
- Ask questions: any parental complaints mentioned? Is there a new supervisor? What’s different about this situation as compared to a year ago?
- Review the employee’s notes about what happened during the lesson.
- Look at the recommendations. Do they answer the noted weaknesses?
- Use this analytical stage to identify what has to be rebutted.

When writing the rebuttal it is important to neutralize what has been stated.

- Give reasons why some aspect of the performance was negatively discussed.
- Give rationale for what happened. What purpose did the teacher have in mind when presenting the lesson? Discuss the nature of the class. Were some aspects of the lesson discussed the previous day?
- Respond to any comments that include the following words: “failure to do,” “lack of,” “in need of,” “should/could have,” “suggest,” “noticed,” “appeared.”
- Mention any failure on the part of the evaluator to do something they were to do.
- Mention circumstances beyond the employee’s control like the lack of materials or if there was a fire drill in the middle of the lesson.

Equalize the results.

Stress preparation, motivation, the curriculum, and flow of the lesson.

- Focus on objectives, procedures, and attainment.
- Connect performance with curriculum and job description.
- Be critical of, but do not reject, recommendations.

Never attack the evaluator directly. Attack the document. A sure way to be non-renewed or to begin to lay a foundation for tenure charges, is to appear unwilling or unable to improve.

Disciplinary actions which masquerade as an evaluation can be grieved and taken to binding arbitration. (1989 Amendment to N.J. Public Employer-Employee Relations Act.)

However, deciding whether or not a bad evaluation is disciplinary requires careful examination. You are encouraged always to discuss this with your field rep. To be considered a disciplinary statement, at the minimum, it must contain a threat or warning. Example: “You didn’t attend Parents’ Night; therefore, I am recommending that your increment be withheld.”
Past practice constitutes one of the most significant factors in labor-management arbitration. Evidence of past practice may be introduced for any of the following major purposes:

- To provide the basis of rules governing matters not included in the written contract.
- To indicate the proper interpretation of ambiguous contract language.

Past practice, under certain circumstances, may be enforceable through arbitration. Various arbitrators have held that certain accepted, but not all, clear and long-standing practices can establish conditions of employment that are as binding as written provisions. Historically, oral understandings, interpretations, and mutually acceptable habits of action, have grown up around a contractual agreement over the course of time and have been viewed in conjunction with the written agreement.

Where the contract is unclear, ambiguous, or broadly written, an arbitrator will look to past practice to give meaning to the words of the agreement in order to discern what the parties intended. Where the contract is silent, an arbitrator will look at past practice to determine whether the parties’ conduct has resulted in unwritten rights and obligations.

There seems to be a general agreement among arbitrators that if a practice involves an employee benefit such as a dinner allowance or free tickets to a football game for employees, the practice is controlling as a condition of employment if the contract is silent. However, if the contract contains language that is clear and unambiguous such as “employees are to pay for their expenses on field trips and at athletic events,” the controlling factor would be the clear language rather than the practice.

There are several tests to determine whether a past practice exists:

- **Frequency**: The practice must be known and accepted by both parties over a reasonable period of time.
- **Consistency**: The practice needs to be applied in the same manner over a reasonable period of time.
- **Longevity**: The length of time that a practice occurs is important in determining the validity of the practice.

**Clear contract language vs. past practice**

Typically, past practices are set aside in light of clear contract language that has been negotiated between the parties. The language of an agreement represents the clear and concise meaning of the party’s intentions and therefore, the language controls.

**Practices may be changed**

It is crucial to note that where a past practice has developed or if clear contract language exists that has not been followed, the practice may be changed or nullified by:

- Formally notifying the other side of the intent to apply the existing, clear contract language and when the enforcement will begin.
- Negotiating that the practice won’t be brought forth into the new contract.
- By mutually agreeing, in writing, to discontinue or change a practice.

**Past practice clauses** are sometimes referred to as “Savings” or “Maintenance of Benefits” clauses. They incorporate into the contract unwritten practices concerning benefits, procedures, and rules of employment. A typical past practice clause reads:
Except as this agreement shall otherwise provide, all term
and conditions of employment applicable on the effective
date of this agreement as established by administrative
procedures and practice in force on said date shall continue
to be so applicable during the terms of this agreement.
Unless otherwise provided in the agreement, nothing con-
tained 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.

The absence of a past practice clause in the contract does
not mean that a board need not adhere to established
past practices.

**Zipper clauses** are sometimes referred to as “fully bar-
gained” provisions. They attempt to limit the complete
agreement to the express terms of the contract. A typical
zipper clause reads:

*All prior agreements either oral or written are hereby can-
celed and this agreement constitutes the entire agreement
between the parties.*

This type of language may be cited by boards in an effort
to diminish the association's claim to benefits or work-
ing conditions established by past practice. Where a
contract contains both a zipper and past practice clause,
the two would appear to be in direct contradiction to
one another, and the arbitrator may give little weight
to either clause. Where a past practice clause does not
exist and a zipper clause does, particularly a recently
negotiated zipper clause, an arbitrator may find that such
language serves to nullify certain benefits or procedures
established through past practice. However, arbitrators
traditionally have not allowed zipper clauses to preclude
consideration of past practice in the interpretation of
ambiguous contract language.

The major court case which defines past practice is
found in *United Steel Workers of America vs. Warrior
and Gold Navigation Company* wherein the United States
Supreme Court discussed the role of past practice and its
impact on a collective bargaining agreement.

Each field office has a copy of “How Arbitration Works.”
It would be time well spent if you read the chapter on
past practice.
The National Labor Relations Act (Section 7) provides that employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Included within this is the right to have union representation at an investigatory interview.

In 1975, the U.S. Supreme Court ruled that an employee has a right to request a union representative be present during an investigatory interview by management. These rights are called Weingarten rights.

In 1979, Weingarten was adopted by PERC in *East Brunswick Board of Education*, 5 NJPER 398. The legal framework of this right continues to evolve.

An investigatory interview occurs whenever a supervisor questions an employee to obtain information that could be used as a basis for discipline. The employee must have a reasonable belief that disciplinary action may result from what he or she says at the interview.

A case-by-case analysis is necessary in order to decide whether the Weingarten right attaches. A supervisor who gives instruction on how to do a job is not conducting an investigatory interview. Nor is an investigatory interview being held if the employer is simply informing the employee of some discipline that has already been decided.

The right to request a union representative may apply midway through an interview if the employee suspects that disciplinary actions may result.

An employer may not validly maintain a blanket rule denying union representation based on a categorization of the employee’s status in the investigation, i.e. target versus witness.

When an investigatory interview occurs, the following rules apply:

**Rule 1** – The employee must make a request for union representation either before or during the interview. *Employers have no duty to inform workers of their rights unless provided for in the collectively bargained agreement.* Workers who fail to request union representation can be questioned.

**Rule 2** – Once an employee makes a request, the employer must choose from among the following options:

- The employer may grant the request and delay questioning until the union representative arrives and has a chance to consult with the employee.
- The employer may deny the request and end the interview immediately and possibly proceed with discipline based on other evidence.
- The employer may give the employee a choice of continuing the interview without representation, or discontinuing the interview.

**Rule 3** – Under no circumstances can an employer ignore or deny a Weingarten request and continue asking questions. If an employer denies the request for union representation, the employee has a right to refuse to answer further questions. The employer may not discipline the employee for such a refusal. However, the employee does not have the right to refuse to attend the meeting even if union representation has not been provided.

**Rule 4** – The presence of an association representative can be crucial, and both members and their representatives should be aware of the employee’s rights under Weingarten.
The employee does not have the right to a representative of his/her choice. The choice of a representative may be based on availability.

The employee and his/her representative have the right to know the subject matter of the interview.

The employee representative must be allowed to take the employee aside for a private pre-interview conference before questioning begins.

The employee representative can request to speak with the employee in a private conference (caucus) during the interview.

The employee representative must be allowed to speak during the interview.

The employee representative can request that the supervisor clarify a question so that the employee can understand what is being asked.

Before questions have been asked, the employee representative can give advice on how to answer.

When the questioning ends, the employee representative can provide additional information to the supervisor.

If Weingarten rules are complied with, the employee representative has no right to tell the employee not to answer questions, nor to give false answers.

**Rule 5** – If the purpose of the interview concerns a possible criminal activity, including a charge of child abuse, the employee should not make any statements to the employer and/or any other person without contacting the regional UniServ office to secure the services of an NJEA network attorney.

**Remember**, any decision made or evidence obtained as a result of the interview is admissible in later proceedings. Conversations between association representatives and employees are not privileged.
Introduction to NJSA 34: Chapter 13A – Public Employer-Employee Relations Act

The New Jersey Public Employer-Employee Relations Act was passed by the State legislature in 1968. The law was established because legislators became convinced that it was in the best interest of the people of the State, that there be a mechanism to promote settlements of labor disputes. The Public Employment Relations Commission was put in place to carry out this policy. The mainstay of the PERC law is “the public’s interest.” The Commission is concerned with the practical aspects of its decisions – how its decisions impact on management, employees and the public.

The Commission has a tripartite structure. The seven Commissioners (two representing management, two representing employees, and three representing the public) are appointed by the governor with the advice and consent of the Senate to three-year terms. One of the three Commissioners representing the public serves as the full time chairperson and chief administrative officer of the Commission’s professional and nonprofessional staff.

The Commission has jurisdiction over all public employers, which includes the State of New Jersey, counties, municipalities, school boards, independent agencies and authorities; and all public employees including any and all organizations representing public employees.

PERC CHRONOLOGY

1941 The New Jersey Employer-Employee Relations Act passed. The purpose of the Act is to prevent or settle labor disputes in both the private and public sector.

1968 – Amendment to the law:
- Establishes the Public Employment Relations Commission
- Allows for the right of public employees to organize and select a majority representative
- Allows the majority representative to participate in collective negotiations over terms and conditions of employment
- Requires establishment of a grievance procedure to provide a mechanism for resolving disputes between the parties

1974 – Amendment to the law:
- Establishes unfair practices
- Gives PERC authority to prevent unfair practices, to determine the scope of negotiations, and to resolve questions of representation

1979 Amendment to the law:
- Establishes right for majority representative to negotiate a representation fee in lieu of dues and to collect the fee through payroll deductions
- Establishes majority representatives responsibility to fairly represent nonmembers as well as members

1990 – Amendment to the law:
- Allows negotiations over all aspects of employment concerning extracurricular activities
- Allows for negotiations of a schedule for minor discipline
- Establishes disciplinary transfers between work sites to be illegal
- Allows that the withholding of increments for disciplinary reasons can be grieved through to
binding arbitration even if the collective bargaining agreement does not have binding arbitration as the terminal step in the grievance procedure.

2003 – Amended by the passage of the School Employees Contract Resolution and Equity Act:

- Establishes that boards of education may not unilaterally impose, modify, amend, delete or alter any terms and conditions of employment without specific agreement of the majority representative – boards can no longer impose an agreement.

2003 – Amendment to the law

- Prohibits school boards from unilaterally imposing their last best contract offers and unilaterally imposing, modifying, amending, deleting, or altering any terms and conditions of employment without specific agreement of the union.
- Nothing in the law limits the prohibition on school boards from unilaterally imposing the last best contract offer during or after the completion of any of the below steps.
- Requires parties to school district negotiations who have failed to reach agreement in mediation to participate in factfinding.
- Establishes a super conciliation process after a fact-finding report has failed to resolve a negotiations impasse.

2006 – Amendment to the law

Arbitration

- Adds language favoring arbitration to NJSA 34:13A-5.3:

  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.

- New Jersey Supreme Court addressed the amendment in Alpha Bd. of Ed. v. Alpha Ed. Ass’n, 188 N.J. 595 (2006), stating that the amendment

2007 – Amendment to the law

PERC Authority

- Authorizes PERC to provide technical advice and mediation services to integrate separate labor agreements into a single agreement.
- Authorizes PERC to order interest arbitration if necessary.
- Authorizes PERC to adjust the structure of collective negotiations units.
- Authorizes PERC to establish a fee schedule to cover the actual costs of providing its services under the law.

2012 – Enactment of the TEACHNJ Act

- Establishes that a teaching staff member who obtains tenure can only be dismissed or have their compensation reduced “during good behavior” for “inefficiency, incapacity, or conduct unbecoming [] such a teaching staff member or other just cause.”
- Lengthens time necessary for all teaching staff members employed on or after the effective date of the TEACHNJ Act to obtain tenure from three years to four years by:
  - Serving for four consecutive calendar years; or
  - Serving for four consecutive academic, together with employment at the beginning of the next succeeding academic year; or
  - Serving for the equivalent of more than four academic years within a period of any five consecutive academic years.
- Should any teaching staff member under tenure or eligible to obtain tenure be transferred or promoted

1 In Camden v. Alexander, the New Jersey Supreme Court rejected the presumption of arbitrability where it was grievances that the Board violated a just cause clause when it did not renew the annual employment contracts of 15 nontenured custodians. By a 4-3 vote, the Court held that the grievances were not contractually arbitrable absent clear language making non-renewal decisions subject to the just cause and arbitration provisions.
with his consent to another position, he or she will not obtain tenure in the new position until after:

- The expiration of a period of employment of two consecutive calendar years in the new position, unless a shorter period is fixed by the employing board for such purpose; or
- Employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or
- Employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years.

Institutes minimum evaluation criteria which a teacher or other teaching staff member must attain to obtain tenure. Observation requirements include, but are not limited to, a minimum of two observations per year mandatory post-conference following every observation within 15 teacher work days and held prior to further evaluative observations, and the issuance of one report per observation signed by the supervisor who conducted the observation/post-observation and the observed teacher. Observers must also be employed in the district, serve in a supervisory role, and possess an administrative certificate.

To achieve tenure, a teacher shall complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial employment.

Procedure for Challenging Tenure Charges

- Refers charges to New Jersey arbitrator, rather than an ALJ with the OAL, for determination.

2018 – Enactment of the Workplace Democracy Enhancement Act (“WDEA”)

Access to members of negotiations units

- Grants unions the right to meet with employees on the public employer’s premises during the work day to investigate and discuss grievances, work-related complaints, and other workplace issues, as well as the right to meet with newly hired employees for a minimum of 30 minutes, within 30 calendar days from the hiring date, during new employee orientations or, where there are no orientations, at individual or group meetings.

- Grants unions the right to conduct worksite meetings during lunch and other non-work breaks, as well as outside of the workday on the employer’s premises to discuss workplace issues, collective negotiations, internal union matters involving governance/business of the union, etc.

Information required from employer

- Requires public employers to provide, within 10 calendar days from the hiring date of negotiations unit employees, contact information to unions including, but not limited to name, job title, worksite location, home address, telephone numbers, date of hire, e-mails, etc. For all negotiations unit employees, this information must be provided to the union every 120 calendar days.
- Grants unions the right to use public employer’s e-mail systems to communicate with members regarding collective negotiations, investigation of grievances, other workplace-related complaints, related issues, etc.

Withdrawal from union and payment of dues

- WDEA permits union employees to withdraw from the union and cease paying dues upon notice to the employer during the ten days following each anniversary date of their employment, unless the applicable dues deduction authorization form/agreement requires the employees to pay such dues.
- However, the Third Circuit has honored the good faith defense of a union recognizing dates other than the statutory ten-day period. In Fischer v. Murphy, Case No. 20-1751 (3d Cir. 2021), consistent with NJEA policy, NJEA permitted members to terminate their union affiliation based on notices they submitted long before their statutory ten-day period, eliminating the impact of the ten-day period on the members. Therefore, the Court held that the members lacked standing to challenge the ten-day notice period.

Elections

- Amends pre-election hearing procedure and requirements, as well as expansion of scope of pre-election hearing.

Inclusion in negotiations unit

- Includes all regular full-time and part-time employees of the public employer who perform negotiations unit work in the negotiations unit represented by the union.
- In effect, if you perform bargaining unit work, your position is in the unit.
• Prohibits supervisors, professionals, and craft employees from inclusion in a unit with their respective non-supervisor, non-professional, and non-craft counterparts.

2020 – Amendment to the law

Right to binding arbitration for nonteaching staff member (NJSA 34:13A-29(c))

• Establishes right of nonteaching staff member to submit to binding arbitration any dispute regarding whether there is just cause for disciplinary action, including but not limited to reprimands, increment withholdings, terminations or non-renewals, expiration or lapse of an employment contract or term, or lack of continuation of employment, irrespective of the reason for any employer’s action or failure to act, and irrespective of any contractual or negotiated provision or lack thereof.

2021 – Amendment to the law

Negotiations and impasse procedures

• Requires party initiating negotiations to, no later than 15 days before commencement date of negotiations or alternate date agreed to by the parties, provide written notice to the other party of its intention to commence negotiations on that date and file a copy with PERC.

• See section on 2003 Amendment

Mediation and fact-finding

• Provides form for filing request for both on PERC’s website.

Super conciliation

• Provides form for filing petition to request a super conciliator on PERC’s website.

• Grants the public employer, the union, or both, to request in writing that the Director of Conciliation invoke conciliation.

Grievance arbitration

• Provides form for filing request for submission of a panel of arbitrators on PERC website.

• Grants each party the right to, following receipt of written request and list of names of at least five persons from the Arbitration Panel, have 10 days to cross off any names, number the remaining names in order of preference, and return the list to the Director of Arbitration via e-mail. A second list may follow if the parties do not agree.

Notice of subcontracting

• Prohibits employer from entering into a subcontracting agreement following the term of the current CNA/CBA unless it provides written notice to the union and PERC no less than 90 days before the employer requests bids or solicits contractual proposals for the subcontracting agreement, and has offered the union the opportunity to meet and consult with the employer to discuss the decision to subcontract, as well as the opportunity to engage in negotiations over the impact of the subcontracting.

• Requires the employer to, at least 90 days prior to requesting bids or soliciting contract proposals, provide written notice to the Director of Conciliation containing certain information, including but not limited to buyer and union’s names, addresses, and contact information, titles and number of potentially affected employees, etc.

Subcontracting

• Prohibits employer from entering into a subcontracting agreement for a period following the term of the current collective negotiations/bargaining agreement unless the employer:
  1. provides written notice to the majority representative in each collective bargaining unit that may be affected by the agreement and to PERC not less than 90 days before the employer requests bids or solicits contractual proposals for the agreement, and
  2. has offered the majority representative the opportunity to meet and consult with the employer to discuss the decision to subcontract and the opportunity to engage in impact negotiations.

• Unfair labor practice is now a remedy against the employer for violating the above requirement.
There are certain basic understandings relative to strategy and techniques of negotiation that everyone representing employees should know.

**Concept One:** You are not going to negotiate benefits below those the members now possess. A board proposal which lowers benefits is rejected.

**Concept Two:** It is not bad faith to say no, by either the board or the association. No is a position the same as any other position and will have to be handled as such.

**Concept Three:** It is appropriate to question the board on the rationale it used for a proposal or position. It would be well to question everything the board does.

**Concept Four:** The initial proposals become the agenda for negotiations. Early in your discussions with your team you should ask them to prioritize their proposals.

**Concept Five:** As a general guideline, you should not trade monetary items for non-monetary gains.

**Concept Six:** The negotiation team should maintain a positive and firm attitude toward their proposals.

**Concept Seven:** Communicate with the members. The general attitude of the troops is what builds the credibility of the team at the table. It is the joint responsibility of the association officers and negotiation team to build and maintain a positive attitude on the part of the members.

**Concept Eight:** Communicate with other local associations, consultants, and field reps in your area. What is happening in the geographic area or UniServ region can have an impact on bargaining. Attend CBCs in your region.

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**STRATEGIES**

1. Learn as much as you can about the other side.
2. Planning prior to each session is essential. Include a “put yourself in their shoes” scenario for every issue.
3. Do not improvise decisions at the table. Caucus and discuss.

**BASIC TECHNIQUES**

The basic objective in collective bargaining is to reach an agreement. Unfortunately, there are association and board representatives who approach bargaining as if it were some kind of trial by combat or a debating society. Such attitudes and approaches raise serious obstacles to the development of a constructive labor-management relationship. The following suggestions are designed to facilitate the reaching of sound agreements.

**The “yes” habit:** Start discussions from areas of common agreement rather than from an obviously controversial matter. Secure a basis of agreement on which to build and you will find that subsequent favorable accommodations are more easily reached on disputed issues.

**Assume acceptance:** Do not indicate that you lack confidence in the reasonableness or acceptability of any major proposal. If you indicate in any way that your proposal might be turned down, it probably will be.

**The forced choice:** It is often difficult to reach a decision. The more that rides on a given decision generally the more difficult it is to reach. The forced choice is an attempt to ease the burden of a weighty decision by offering a choice between alternatives. There are many situations where two alternatives may be of relatively
equal value to the association. What you need to avoid is offering a choice between something and nothing.

**Allow for face-saving:** It never hurts to be gracious. If you win a point, credit the other party for his/her sincerity and fair-mindedness. To gloat and chortle over minor victories may make it impossible for the other side to offer reasonable compromises without resentment and embarrassment.

**Burden of proof:** In the nature of collective bargaining, the party making a proposal has the burden of proof to provide rationale for the proposal. Keep in mind that both sides should be obliged to explain their reasons for rejecting any demand or proposal.

**Explain, discuss, persuade:** You are engaged in collective bargaining, not collective begging. Be quick to demonstrate respect and courtesy; be equally quick to demand the same consideration from your adversary.

**Cite the advantages of your proposal to the other party:** Where a proposal benefits the district, it serves as a proper additional factor in support of your case.

**Keep discussions professional and objective:** Don’t allow personalities to get in the way of progress. The greater the degree of objectivity that can be developed, the more constructive the relationship will be. Collective bargaining at its best is a systematic, conscientious search for answers that work.

**Splitting the board:** To use this tactic, turn away from the board spokesperson and direct questions to other members of the board’s team. Argue about a controversial point and get all members of the board’s team into the debate. Ask each board member if he/she fully understands your proposals.

When the board spokesperson makes a point, ask if it is the consensus of the full board. If the spokesperson says he/she must take a proposal back to the full board, ask about his/her authority to negotiate.

If the board talks about public pressure, ask each member individually how many phone calls, emails, texts, or letters he/she has received.

**SEQUENCE OF NEGOTIATION**

Most association negotiators believe that major economic items and other difficult provisions should be dealt with last. There are two fundamental reasons for this preference.

First, these items generally are most important to associations and boards. If these major items are resolved first, there is little likelihood that minor issues will be addressed.

The second reason is more significant. As bargaining proceeds, the two teams develop a method of working together and dealing with each other that will allow much more stringent and effective negotiations to take place later than could have occurred in earlier sessions. The negotiators become more comfortable with one another, and the spirit of agreement becomes contagious.

The above sequence may have to be altered, but it is usually to everyone’s advantage to begin negotiating with those matters on which agreement can easily be reached.

The development of a relationship that reduces tensions and builds understandings between the parties can be very helpful. As negotiations continue, some items will be accepted with relatively little trouble. Others will be more difficult. Rather than disrupt negotiations over a disagreement, the problem should be temporarily set aside. The preferable time to resurrect the issue would be during a session where a number of agreements have been reached.

**CONTROLLING THE DIALOGUE**

The association should control the dialogue by initiating discussion of each item. This discussion should begin with a summary of the provision, an explanation of its significance, an assertion of the employees’ strong feelings for its need, and development of supporting facts and arguments.

The presentation must be designed to draw a response from the board. It should lead to an examination of the respective positions of the parties and an exchange of counterproposals. The board might answer in a number of ways. Each reply can be placed in one of the following categories:

1. Outright acceptance.
2. Qualified acceptance.
3. Opposition on principle or management prerogative.
4. Opposition on the basis of feasibility – cost or administrative load.
5. Refusal to discuss the matter.

The association’s team must assess the board’s response carefully so that counter arguments can deal with the real objection.
If the board has accepted the proposal with qualifications, it would probably be better to rewrite the proposal so as to preserve the association’s objective, but also to accommodate the board’s objections rather than belabor the board with a harangue on the proposal’s desirability.

When faced with a board of education that continually postures with “no,” the association team’s best tactic might be to ignore the board’s refusal to negotiate and continue to develop its own case. The team should take care to emphasize that a problem has been identified, that negotiation is a problem solving process, that an exchange of views on a significant problem is the best approach to its solution, that employees know what should be done about the problem, that the proposal has merit, and that much information indicates it is feasible.

The objective of this approach is to force the board to discuss the problem, to cause the board to state its specific objections, or to stimulate the board to offer a counterproposal. While this discussion is under way, the association team should seize upon every point of agreement. The chief spokesperson should highlight every such point, and the recorder should maintain a careful record of what is said.

At some point, confrontation may be the only alternative. In such cases, you must not hesitate to expose the board’s unwillingness to negotiate and must suggest indirectly the likelihood of dire results. The tactic should be coupled with a reaffirmation of the association’s willingness to receive and conscientiously evaluate and discuss any board idea concerning the problem.

Oblique conversation is an important part of negotiations discourse. Proposals are stated forthrightly, but willingness to compromise or concede is dealt with indirectly.

The negotiating team should avoid absolute statements and should not exaggerate the board’s use of them. Generally, it is well to consider a “no” as a “no with qualifications” and to consider a “final offer” as the “first final offer” or a “relatively final offer.”

A board’s refusal to compromise is probably temporary. A slight restatement of the demand, even if the objective is preserved intact, might very well trigger the compromise. You must persist in your demands, watch for a signal that progress is possible, and then capitalize on that signal.

WINNING AGREEMENT

The three methods the association team must use for winning agreements are:

1. To persuade the board that an item should be accepted on its merits.
2. To exchange proposals and counterproposals to close a gap between the respective positions.
3. To exchange items on a quid pro quo basis.

The first is, of course, most desirable, and the negotiating team should be prepared to deal with each item on its proposal on this basis. However, experience indicates that regardless of how skillfully the total proposal is presented, the team will have to resort to the latter two methods.

EXCHANGE OF COUNTERPROPOSALS

Seeking agreement through an exchange of proposals and counterproposals is an effort to close, or reduce, the gap between positions by reaching a middle ground.

The association team should first rewrite the proposal so as to maintain all of its benefits while avoiding references to the terms to which the board objects. Such rewording frequently narrows the distance between positions. If the board’s representative responds in good faith to the new language, the gap probably can be eliminated through compromise or mutual concessions.

The team should not reduce the substance and scope of its demands through counteroffers until it believes that agreement can be reached by the counterproposals. This is particularly true when the association’s counterproposals approach a rock-bottom position on “must have” items.

The final counterproposal, which is a bare-bones statement of what is acceptable, should be offered only when it is fairly certain that the board will agree to it. It is far better to advance alternative agreements that will move the board to offer the association’s rock-bottom position than for the association to propose that position.

FAIR TRADE / QUIP PRO QUO

Generally, your proposals may contain items that are of low or relatively low priority. These items are not to be considered as extraneous but items which, when the
Timing is right, may be used to trade for items of higher priority. You must make a careful selection of items of this nature and avoid classifying as give-away items those that are of high priority with members. A give-away item has little value in trading if it does not affect a majority of the members of the unit.

When you withdraw anything from your proposal, it’s desirable to receive something in exchange. However, there may be occasions when you simply withdraw a proposal as a strategy or to get closer to a settlement. Do not jeopardize your position by withdrawing all your proposals in the event that you proceed to mediation and beyond.

If agreement has been reached on several important items, the association team might make a proposal for total settlement although many other items have not been completed; this is called “packaging” the settlement. The settlement package could be brought forth in the following form: “In order to reach a final agreement tonight, the association proposes that the board agree to its position on items A, B, C, and D. The association proposes specific compromise settlements on items E, F, and G. The association withdraws its demands of items W, X, Y and Z.”

The association team must be extremely judicious in handling the proposal for settlement. It should be practically certain that such a move will result in total agreement.

TENTATIVE AGREEMENTS

When tentative agreement is reached on an item or article, it should be typed in the form agreed to and distributed to both teams. Each team can then check and verify whether the typed version reflects its understanding of the agreement. Once verified, the article should be marked as a tentative agreement (TA), signed and dated. Doing this reduces the probability of future misunderstandings. It also builds the final memorandum of agreement.

CAUCUS

The caucus is a temporary interruption of the negotiating process to allow either team to meet by itself. It is used to make team decisions, to assess what is happening, and to evaluate positions. Your use of the caucus conveys certain messages to the board.

Excessive use of the caucus could indicate uncertainty or lack of control. An extended caucus suggests that the team is having difficulty or doubt – or that the team is genuinely interested in the last counterproposal and is taking its time to review it. Conversely, a brief caucus could very well indicate that the team is firm and united in its resolve and has seen or heard nothing which could cause it to change its position.

Decisions relative to the caucus should not be treated casually. Productive momentum should be preserved. The team should resist efforts to interrupt negotiations at a time when significant agreements seem imminent or when a succession of agreements is coming forth. On the other hand, it might be desirable to interrupt negotiations if a cooling off period might help or if passage of time might cause the board to rethink its position.

FRAMING ISSUES

The way you phrase your proposals sets the stage for further positive conversation.

Rather than countering the other party’s position or demand with your position or demand, you need to frame or reframe what is being said in terms of problem solving. Virtually any position or demand can be reframed into interests, options, and standards. You need to frame issues in an objective and neutral manner. Frame issues as briefly as possible and be specific. Before moving into a discussion of the options, both parties should confirm that the framing of each issue is accurate. Following are some examples of how issues should be framed:

Frame issues in terms of the issues or relationships between the parties rather than in terms of a person’s attitude or behavior.

Wrong: Let’s talk about your negative attitude to anything we propose.
Better: Let’s talk about how we can evaluate proposals.

Frame issues so they cannot be answered with a “yes” or “no.”

Wrong: Let’s talk about whether the staff will have three additional days off.
Better: Let’s talk about the issue of days off.
Frame issues as questions or problem statements.
For example: “How can we . . .?”, or “What can be done to . . .?”

Frame issues so that multiple solutions are possible.
Wrong: Who will have use of the school car?
Better: Let’s talk about the issue of transportation needs.

Separate issues or problems from people. De-personalize conflict.
Wrong: Let’s talk about John’s exploiting the grievance procedure.
Better: Let’s talk about making the grievance procedure more effective.

Frame issues so that they are joint problems.
Wrong: How can the administration better inform staff about promotional opportunities?
Better: How can we improve the communication process when there are promotional opportunities?

Frame issues in terms of future relationships rather than past guilt or innocence.
Wrong: Could we decide who was at fault for the impasse in our last negotiations?
Better: Could we discuss how to develop a procedure for negotiations that can avoid impasse?

Using this technique fosters good relationships and opportunities for settlement.
The negotiating team is the vehicle through which an association’s proposals are presented to the school board.

Unity: The negotiating team cannot function in a vacuum. It must construct its negotiating positions and derive its strategy through the input of the membership. It must communicate with members throughout the process.

Regular meetings, association websites, and updates to the general membership help to keep them informed.

Research: Research is vital to good negotiating. Incomplete, superficial, or inaccurate research can lead to disastrous results at the bargaining table. Poor quality research can lead to the defeat of major proposals or bargaining issues. It is critical for you to be aware of the research tools available to you and your locals. Discuss your needs with the field representative and he/she will direct you to an appropriate resource.

Size of the team: In general, there is no definitive number of team members that makes a successful team. Consideration must be given to the size of the local and categories of membership (i.e. custodians, secretaries, bus drivers, teachers, etc.). It is recommended that each membership category have representation on the team.

Roles of team members: The chairperson has the most important role on the team. All other members of the team are entrusted with supporting roles which help the chairperson function. The following are important team roles. They are not meant to be rigid or static.

- **Chairperson** – must be the team leader of the committee and must advocate the total group’s position.
- **Other team members** should take notes as to the parties’ positions on proposals and counterproposals. The notes should be as complete as possible.
- **Each team member** should be prepared at each bargaining session with a copy of the current agreement, association proposal, board proposal, note pad, etc.
- **All members of the team** should observe board reactions and body language during negotiations.

You may also want to assign certain responsibilities for research of certain proposals to particular team members. Someone may be responsible for salary guides, another for health benefit information, yet another may be responsible for knowing all there is to know about work day issues. It is unrealistic to expect the chairperson to have enough time and energy to research all aspects of the proposals. Negotiating requires a team effort.
The initial bargaining statement is used to do two things – put the association in control of the dialogue and establish an early consensus on objectives. An initial bargaining statement provides a noncontroversial springboard to specific proposals.

An initial bargaining statement can also be used to re-establish consensus at any subsequent point in negotiations or to bridge from one proposal to another.

A good initial bargaining statement has two steps:

1. Begins with a general statement of noncontroversial objectives; and
2. Uses those areas of implied agreement to introduce one or more specific proposals.

**EXAMPLE:**

“Mr. Smith, I’m sure we would both agree that salary schedules for staff should not discriminate unfairly against anyone. One way to assure this is to make extra pay for extra-curricular activities more uniform, and the association would like to make the following proposal . . . .”

The initial bargaining statement can be an important tool in helping negotiators to build a psychological climate which will be beneficial to the introduction of a proposal. Equally important is the ability to ask questions in a strategic and systematic manner. Asking the right questions, at the right time, and in the right way, can help to shape the attitudes, opinions, and decisions of the opposing negotiating team in your favor.

To know what your adversary is thinking and striving for, you must apply various communication methods and techniques. The usual way to get information is to ask a question. Questions are windows to the mind. In an appropriate situation you can ask the other side, “What do you expect? What would you do if you were on my side of the table?”

You will have to decide what questions to ask, how to phrase them, and when to ask them. The effect on the adversary is also an important consideration. The importance of properly phrasing a question is well illustrated by the following story. A member of the clergy asked his superior, “May I smoke while praying?” Permission to smoke was emphatically denied. Another member of the clergy, approaching the same superior, asked him, “May I pray while smoking?” To the question thus phrased, permission to smoke was granted!

Timing of questions is important as they may put people in an immovable position. Before asking people to take a position, it would be more advantageous to have everyone ask one or two questions. Postpone any commitment of position. Sincere questions requiring information should be sought first. Questions should be used to make all participants familiar with available facts and assumptions upon which to base their conclusions.

Questions cause the other side to think – and often to start thinking critically about your proposition.

It is important to listen to the answers as they may reveal what the other side needs to accomplish.

**Open-ended questions** are ones which give the other person an opportunity to tell you what is on his/her mind – or what s/he considers to be important or relevant.

**Closed-ended questions** frequently, but not necessarily, require a yes or no answer. “We would be happy to go out and tell the public that the board wants secret negotiations because it doesn’t want the public to know what is going on. Do you want that?”
In general, you should ask open-ended questions when you feel that you need more information about what the board is thinking. You should ask closed-ended questions when you want to limit the area of discussion or when you want to extract a certain response from the board.

The **paraphrase** is another important verbal skill, which facilitates understanding at the bargaining table. A paraphrase is a restatement in your own words of a previous remark made by another person.

**Confirmatory paraphrase** is used to accomplish any one of three things:

1. Confirm an attitude or fact;
2. Place a statement on the record;
3. Build a climate of empathy and mutual understanding.

**EXAMPLE:**

Board says, “We would like a little more time to study this proposal.”

Association says, “You would prefer to discuss this proposal at our next meeting after you’ve had time to review the proposal.”

**Leading paraphrase** is used to accomplish either of two things: persuade the board to re-examine a previously held opinion or position, or suggest disagreement without actually contradicting the board.

**EXAMPLE:**

Board says, “We feel that this whole subject of evaluation is a management prerogative.”

Association says, “I see, it is the board’s position, then, that a teacher or bus driver has no legitimate interest in his/her evaluation.”

In any collective bargaining process, the dialogue will occasionally break down because of disagreement, misunderstanding, willful delay, or some other problem. When this occurs, it will be up to you to keep the negotiations moving forward and to prevent them from getting sidetracked. A position statement should be used when negotiations are stalled.

When negotiations appear to be headed toward an impasse, it is a good strategy to clear the air with a flat statement such as, “This is the best we can do under the circumstances.”

You may decide that it is better to take a less hard line or to compromise on a point. In this event you might say, “I don’t think we’ll have much trouble with this point if we can get this other item settled.” The statement shows a definite intention to make a concession on the first point, facilitating the progress of the negotiations.

The first step of a position statement should articulate a bargaining position. Secondly, it should summarize a proposal citing mutual benefits whenever possible. Thirdly, it should request a response. Hence, moving the process forward.

**EXAMPLE:**

“Mrs. Jones, the position of the association is perfectly clear. We are resolved to accept nothing less than the going rate. Acceptance of our proposal will help keep this district competitive in the job market. . . .”

A position statement should be used to accomplish any of the following:

1. Clarify a proposal.
2. Keep the negotiations on track.
3. Communicate priority.
4. Overcome delaying tactics.
5. Stimulate a reaction or counter-proposal.

In general, if the board adopts a negative position toward a proposal or bargaining issue, the board’s position will be easy to refute if you are able to prove that the board is in error – hence, make a **proof statement**.

A good proof statement should first re-state briefly the board’s position and then offer the appropriate proof to refute it.

**EXAMPLE:**

“The board has just expressed the belief that the salaries for teachers holding masters degrees are unusually high in this school district. I would like to direct your attention to the data compiled by the association which demonstrates that these salaries are really below the median for districts of comparable size in the state/county.”

In some cases, a negative position held by the board will be difficult to refute because the objections are subjective in nature and therefore not susceptible to proof. In this situation you would make a **rebuttal statement**.

The first step of a good rebuttal statement also begins by re-stating briefly the board’s position. However, instead of offering proof, the second step will attack the board’s position by suggesting that it indicates unreasonableness, ignorance, or incompetence.
EXAMPLE:
“The board suggests that it considers the association’s desire for uniform pay policies for extra-curricular activities an indication of an ‘unprofessional’ attitude. This kind of baseless charge is just one more example of the board’s usual knee jerk reaction to any constructive proposal with a price tag higher than 25 cents. Furthermore, it is based on the board’s admitted ignorance of the time and effort which these extra-curricular activities require.”

When it appears that agreement has been reached on a proposal – or any part of it, it will be to the advantage of the association to immediately articulate this understanding of the point(s) agreed to, and move for their acceptance as a matter of record. This is referred to as the closing agreement statement.

The purpose of the closing agreement statement is to move the negotiations from a point of apparent informal consensus to the point of explicit formal agreement.

A good closing agreement statement consists of three steps.
1. It assumes that agreement has been reached.
2. It summarizes the points agreed to.
3. It moves for tentative or final agreement as a matter of record.

EXAMPLE:
“Mr. Jones, we have agreed that the performance of excessive nonteaching duties can detract from a teacher’s overall effectiveness. Cafeteria supervision and similar functions can be performed with equal efficiency by paraprofessionals. Therefore, let the record show that we have reached tentative agreement that cafeteria duty will be removed from Article V.”

If agreement appears to have been reached on only a part of a proposal, you should make a closing agreement statement on that portion of the agreement.

Occasionally, a closing agreement statement may be used when agreement has not been reached. In this case it is used as a leverage weapon to force a passive or non-committal board to make an unequivocal response which will get meaningful negotiations started.

TABLE TALK

Initial bargaining statement
- Allows association to control the dialogue
- Provides noncontroversial springboard
- Re-establishes consensus or creates bridge from one proposal to another

Questions
- Open-ended (allows for further understanding of position)
- Closed-ended (usually requires a yes/no answer)

Paraphrases
- Confirmatory
- Leading

Position statement
- Articulates a bargaining position
- Summarizes citing mutual benefits wherever possible
- Requests a response

Proof statement
- Restates briefly board’s position
- Offers appropriate proof to refute

Rebuttal statement
- Begins by restating board’s position
- Attacks board’s position by suggesting unreasonableness, ignorance, or incompetence

Closing agreement statement
- Assumes agreement has been reached
- Summarizes the points agreed to
- Moves for tentative or final agreement as a matter of record
Listening is a skill. It can be learned. Dr. Edward Wakin, a professor of communication at Fordham University, offers these guidelines for better listening:

1. **Be interested and show it.** Genuine concern and a lively curiosity encourage others to speak freely. Interest also sharpens your attention and builds on itself.

2. **Tune in on the other person.** Try to understand his/her viewpoint, assumptions, needs, and system of beliefs.

3. **Hold your fire.** Avoid jumping to conclusions. Hear the speaker out. Plan your response only after you are certain that you have gotten the whole message.

4. **Look for the main ideas.** Avoid being distracted by details. Focus on the key issue. You may have to dig hard to find it.

5. **Watch for feelings.** Often people talk to “get something off their chests.” Feelings, not facts, may be the main message.

6. **Monitor your own feelings and point of view.** Each of us listens differently. Our convictions and emotions filter – even distort – what we hear. Be aware of your own attitudes, prejudices, cherished beliefs, and your emotional reactions to the message.

7. **Notice nonverbal language.** A shrug, a smile, a nervous laugh, gestures, facial expressions, and body positions speak volumes. Start to “read” them.

8. **Give the other person the benefit of the doubt.** We often enter conversations with our minds already made up, at least partially, on the basis of past experience. Prejudgments can shut out new messages.

9. **Work at listening.** Hearing is passive. Our nervous system does the work. Listening is active. It takes mental effort and attention.

10. **Get feedback.** Make certain you are really listening. Ask a question. Confirm with the speaker what s/he actually said.
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.

2. **Increments should be paid without 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. Adding steps to the salary guide can affect a member's career earnings because it increases the number of years required to reach the maximum salary.

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 the continuing education requirement. 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 the maximum salary.

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**PRINCIPLES OF SALARY GUIDE DEVELOPMENT**

1. There should be a guide.
2. All employees should be on guide.
3. Guides should be developed consistent with the Best Practices.
4. Guides should have high starting salaries.
5. Guides should have as few increments as possible.
6. Increments should always be paid.
7. Before making a salary proposal you should know and agree with the board on the scattergram, base cost, and increment cost.
8. Salary guide goals should be discussed during the negotiations and guides created before a settlement is reached.
9. Guide revisions should be among the initial negotiations proposals.
10. Starting salaries should be increased by at least the same amount as maximums and never be decreased.
11. There should be as many advanced training/educational differentials as possible.
12. If longevity is used it should be tied to years of experience, not guide placement.
13. Breakage should go to the association for guide improvement.
14. Balloon increments are inconsistent with the Best Practices.

**SALARY GUIDE CONCEPTS**

1. The minimum salary requirements of those at maximum should be ascertained in advance of negotiations in order to target the overall acceptable settlement level.
2. Using percentages to apply the settlement to a new guide, versus using equal dollar distribution, increases the monetary difference between steps, the bottom and top of the guide, and between columns.
3. Guide revisions should be among the initial negotiation proposals.
4. Step on guide does not necessarily equate with years of experience.
5. The immediate value of guide compression increases in direct proportion to the number of people below maximum.
6. The relationship between the teacher and educational support professional guides at minimum/maximum/number of steps should be studied as well as the mean and median.

**REASONS FOR IMPROVING THE HORIZONTAL VALUES**

1. The board pays in non-negotiation years.
2. Members may some day be required to move across columns either by the state or through local negotiations.
3. If people move across columns the pension benefits are enormous.
4. As graduate course credits become more expensive and tuition reimbursement remains static, guide reimbursement becomes more important.
5. Research shows that advanced training levels of teachers correlate with improved student achievement.

**REASONS FOR INCREASING STARTING SALARIES**

1. It builds the base.
2. There is no cost to the settlement.
3. It offsets, to some degree, the lower salary base caused by retirements.
4. The entry level salary should appreciate, not stagnate, or become devalued.

**SALARY GUIDE LENGTH**

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

1. Shorter guides have a higher base cost. This means that the settlement percentage yields more dollars to spend on raises.
2. Shorter guides have more people on the maximum step. This reduces the increment cost and frees up more dollars to spend on raises.
3. A person reaches the maximum step of the guide sooner and earns the highest salary for the longest period. This leads to higher career or cumulative earnings.

**SALARY GUIDE DISTRIBUTION METHODS**

Salary guides are created to spread the negotiated raise over the existing salary base. Methods for distributing the new money over the previous guide include:

1. **Across-the-board raises** in dollar or percentage form. This method results in the addition of a step to the guide each time it is used.
2. **Step adjustment plus guide improvement.** Staff are adjusted to reflect an added year of experience. This cost is subtracted from the settlement. Remaining new money is distributed to the guide in equal dollars or percentages. If this method is used, those moving through the guide get the raise plus their increment and those at the top step receive only the raise portion of the settlement.
3. **Maximum adjustment**, step adjustment plus guide improvement. Establishment of the raise to be applied to maximum. Remaining new money is spent first to adjust staff for a year’s experience then to give raises to the other steps of the guide.

**Example:** $90,000 salary of retiring employee  
$50,000 salary of replacement employee  
$40,000 breakage

**Bubble/balloon** – An abnormal separation between two steps on a salary guide.

**Example:**  
Step 13............$73,000  
Step 14............$75,000  
Step 15............$85,000  
Increment.....$10,000 or 20%

**Cumulative earnings** – The total sum of all salaries in a specified time period or career, based on the existing salary guide. Longevity may be added, and any other negotiated amounts at the appropriate time.

**Guide movement** – A movement from one step on a guide to the next higher step on that guide. Horizontal movement would be movement to a higher credit/degree/level guide based on a specified criteria.

**Horizontal/lane/column** – A specific list of salaries with a minimum, maximum, and number of steps.

**Example:**  
BA, Custodian I, Lead Secretary  
Non-Degree, MA+30, etc.

**Longevity** – Additional money paid to an employee above the salary guide. It is usually based on years of service to either the school district or the profession in general. It is usually a specified dollar amount, but can also be a percent of salary.

**Example:**  
$1,000 additional for 15 years of service to the district, or 3% of individual salary for 15 years of service to the district

**Maximum** – The highest step on the published salary guide. It may also be called the career rate.

**Minimum** – The beginning step of a guide that is considered to be the hiring step with no experience. It may also be called the entry level step.

**Off-guide salaries** – Additional salaries that are paid above the printed salary guides. They are actually additional steps that are not attainable through guide movement.

**Salary guide** – A chart that shows the dollar value of each step and level/category.

**Scattergram** – A chart showing the number of employees on each step and level/category of a salary guide. The number should reflect the full time equivalency (FTE) of the employees.

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**TIPS FOR MAKING THE MOST OF THE SETTLEMENTS**

1. Improve starting salaries builds the base, adds no cost to the settlement and helps to offset a decrease in the salary base due to retirements.

2. Split or delay the implementation of the guide. Doing so can give the board a savings and insure that salaries improve at a higher rate than without the delay. **NOTE:** Members receive less money in their pockets the first year of settlement but make up for it in following year.

3. Combine or partition bases. Using an aggregate salary base (e.g. teachers and secretaries together) permits movement of dollars to ESP guides with high increment cost. Removing parts of the base to lower cost of settlement (horizontal differentials, bubble adjustments, guide improvements, longevity improvement).

4. Steal from other bases. For instance, use the value of percentage increase on extra-pay guides to add to regular guides for maximum or guide correction.

5. Improve or extend horizontal values. Inserting new columns add no immediate cost. Expand equivalencies (e.g. BA+45 = MS). Improve the value of columns. Keep the cost of horizontal movement outside the settlement.

---

**COMPENSATION GLOSSARY**

**Average salary** – The base salary cost divided by the total number of full-time equivalent employees (FTE) on the scattergram.

**Base salary cost** – Each step on the guide multiplied by the FTE’s on each corresponding step on the scattergram. Other amounts may or may not be included, such as longevity, ratio differentials, extra-curricular activities, stipends, black seal amounts, building stipends, etc.

**Breakage** – The amount of dollars saved between the salary of a departing employee (retirement, resignation, and leave of absence) and the new employee who is replacing the departed employee.

**Example:**  
$90,000 salary of retiring employee  
$50,000 salary of replacement employee  
$40,000 breakage
QUESTIONS, DECISIONS, & GOALS

The following items impact on salary guide construction. Each item should be carefully considered with regard to its effect on the distribution of negotiated increases on the salary guide. The local is encouraged to use Magic Money to analyze the guide structure and compute guide and increment costs.

In addition, items should be prioritized in an attempt to address the needs and concerns of various employees over the duration of the contract.

County ________________________________

District ________________________________

A separate worksheet should be completed for each employee group.

- Teachers
- Secretaries
- Cust./Maint.
- Bus Drivers
- Aides
- Cafeteria
- Other ________________________________

1. Minimum raise for those at maximum?
   - $ ________________________________
   - % ________________________________

2. Should everyone move one step closer to maximum each year?
   - Yes
   - No

3. Changes in increment pattern?
   - Reduce “bubble”?
   - Reduce cost?

4. Guide length:
   - Same number of steps?
   - Compression?

5. Training column/job category column changes:
   - Equalized in $ or % form?
   - Addition of new columns?
   - Change in degree equivalency?

6. Longevity
   - Change in amount?
   - Earlier onset?
   - More frequent payout?
   - Change to % from?

7. Minimum/maximum raise to any one person?

8. Minimum/maximum salary requirement?

9. Your local concern . . .

   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________

10. Your local concern . . .

    _______________________________________________________________________
    _______________________________________________________________________
    _______________________________________________________________________
    _______________________________________________________________________
## WHEN EQUAL PERCENTAGES ARE USED

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## WHEN EQUAL DOLLARS ARE USED

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BENEFITS ARE OF GREAT VALUE

When people think of compensation, they first think of their salary but they should think about all other forms of compensation including paid insurance benefits.

Health benefits have been hard-won over the last forty years of negotiations. Over those years members have substituted wage increases for paid health benefits. Health benefits are under constant attack and you need to be vigilant in trying to keep the best possible health benefits for members.

CASE LAW

Boards are exempt from submitting Health Insurance Plans for public bid.

Boards have the unilateral right to select insurance carriers.

Associations have the right to negotiate the level of benefits.

Changes occur resulting in decreasing or increasing level of health benefits.

Changes in the administration of the plan that affect employment conditions are mandatorily negotiable.

The identity of the carrier can be in the collective bargaining agreement.

Disclosure of the plan document is required. Further, the employer is obligated to provide specific documents and information about any change in a health insurance plan. The employer’s refusal to provide specific documents and information about any change violates the Public Employer-Employees Relations Act, as well as the Open Public Records Act.

It is PERC’s policy to defer allegations of a unilateral alteration of health insurance benefits to the parties’ grievance arbitration process, when the health insurance coverage is a contractually set benefit and it is reasonably probable that the dispute underlying the change will be resolved in arbitration.

You can find a more extensive discussion of case law as it relates to health benefits in NJEA’s Collective Bargaining Manual. [https://www.njea.org/cbmanual](https://www.njea.org/cbmanual)

TYPES OF HEALTH INSURANCE PLANS

There are many different types of health benefit plans. It is important to know which plans are offered by the employer in order to match member needs and preferences with the available plans. The more information you have, the better your health care decisions will be.

The plans range from HMO’s to Traditional Plans, with the HMO being the most restrictive health care option and the Traditional Plan being the least restrictive option. All plans have some form of managed care in them. Even the Traditional Plans have a section called Utilization Management by which the insurance company determines what is medically necessary and appropriate under the group’s policy.

With a health maintenance organization (HMO), you must pick a primary care physician. This primary care physician is sometimes known as a gatekeeper. This primary care physician or gatekeeper is the first stop in any health care need.
No matter if you go to your primary care physician or a specialist in the health maintenance organization, if they are in-network doctors there are no deductibles and there are no claim forms. Out-of-network expenses are not covered except in some emergencies. You must have an in-network physician refer you to an in-network specialist. Otherwise, your expenses may not be covered.

A point of service (POS) plan has two kinds of coverage. It has in-network coverage and out-of-network coverage. The in-network coverage works like an HMO. The plan may require a primary care physician and the physician is in charge of the medical program. While coverage for in-network visits is usually covered 100% with no deductible or claim forms, there are co-payments. If the member needs to see a specialist, the primary care doctor may require a referral.

The difference between a POS and an HMO is that a POS plan also has out-of-network coverage. The out-of-network coverage usually requires out-of-pocket expenses for a deductible and coinsurance.

A preferred provider organization (PPO) also has in-network and out-of-network coverage available.

The in-network benefit is similar to a POS except no primary care physician is required. As long as you pick a doctor that has a contract with the PPO, it is considered an in-network benefit where there is no deductible and no claim forms. Usually there is a co-payment.

If you decide to use a doctor who does not have a contract with the PPO there are out-of-pocket expenses including a deductible and coinsurance.

An exclusive provider organization (EPO) is a type of health plan that offers a network of doctors and hospitals for you to choose from. However, if you choose to get care outside of your plan’s network, it usually will not be covered (except in an emergency). No referrals are required to see a specialist and you usually will not need to select a primary care doctor. Copayments and deductibles may apply.

A high-deductible health plan (HDHP) is any health plan that typically has a higher deductible than other health plans. In general, the health plan starts paying for eligible medical expenses after you’ve met your deductible, meaning you’ve paid out-of-pocket up to the amount of the plan’s deductible. Prescription coverage is part of the plan including the deductible. A Health Savings Account (HAS) is required along with the plan.

Traditional indemnity plans are the least restrictive plans. Usually there are three parts to a Traditional Indemnity Plan:

- Basic benefits which sometimes are referred to as the hospital benefits.
- Extended basic or the medical-surgical benefits.
- Major medical benefits which include the deductible, coinsurance and may have a lifetime maximum.

Some Traditional Plans do not have these three pieces. Some Traditional Plans are called Comprehensive Major Medical where all benefits are subject to deductible and coinsurance.

**CHOOSING A HEALTH PLAN**

When a school district changes its health insurance plan you need to know if the new carrier will honor the deductibles already met or partially met under the current carrier and whether or not the new carrier will honor the coinsurance met or partially met under the current carrier.

To get a health plan that best meets with needs of members, you should consider the following factors:

**Financial performance of plan:** You will want to make sure that members are protected from financial exposure for care provided by an undercapitalized plan that goes bankrupt or files for reorganization. Ask questions like: Is the plan solvent and can it be expected to be an ongoing entity? Ask the board to provide evidence that the plan’s reserves are in compliance with state requirements or the National Association of Insurance Commissioners’ (NAIC) guidelines. Ask what percent of the premium payment goes to patient care, to administrative expenses, and to profits.

**Quality of service:** Find out if the carrier is willing and able to customize benefits based on the local’s needs. How does the plan treat preexisting conditions? Does the plan have a member appeals process and will it work with the purchaser to identify and resolve employee complaints? What types of utilization reports does the plan provide? Are there any contractual provisions (gag orders) between the attending doctor and the plan that prevent the doctor from explaining treatment options available for a given diagnosis?
Coverage: The services covered by plans differ. Some provide services that others do not cover at all. Compare coverage.

Choice of doctor: Some plans provide partial reimbursement when nonparticipating providers are used. Other plans only pay for or allow the use of participating providers.

Convenience of access: Certain plans may have participating providers or centers that are more convenient to members than others. Consider the location of physicians’ offices and hospitals affiliated with the plan.

Cost: Some plans require you to pay a yearly deductible and coinsurance before the plans will provide coverage. If a plan does not cover certain types of services that you expect members to use, you must also consider the out-of-pocket cost of the services.

## PRESCRIPTION PLANS

Generally, there are two kinds of prescription coverage. One is under the Major Medical portion of your medical plan and the other is a Free-Standing Prescription Card.

If one submits prescriptions under the Major Medical portion of the health insurance plan, it is called an MMRx Plan. In these cases, the pharmacy asks the patient for payment of a percentage of the discounted cost of the medication based on the coinsurance percentage. Some plans require that the deductible be met before coverage begins.

If you have a PPO or POS Plan, you may have in-network and out-of-network reimbursement. Each plan is different so be sure to understand how members are to be reimbursed and to what extent they will be reimbursed.

The second kind of prescription plan is a free-standing prescription card. The card usually comes with a co-payment. The amount of the co-payment sometimes varies depending on whether a brand name or generic drug has been requested.

Prescription drug plans were first introduced in 1964. Employers often will provide this benefit, in part, because it encourages beneficiaries to complete prescribed drug therapy and may prevent more costly medical complications later.

Prescription drug plans provide coverage for out-of-hospital prescription drugs. They usually cover only drugs that, under federal law, cannot be dispensed without a prescription.

For the price of one co-payment a retail pharmacy will usually fill a 30-day supply. The 30-day supply cannot be more than 100 pills. If a patient brings a 90-day prescription to the pharmacy, the pharmacy could charge three co-payments for the prescription.

Most prescription companies also have mail-order. Usually for about one co-payment, mail order companies will send a 90-day supply.

Many plans place limits on the quantity of a drug that may be dispensed at any one time.

The most common types of plans include open-panel plans, closed-panel plans, mail-order plans, and nationwide-panel plans.

Open-panel plans permit employees to choose the pharmacies they use. Participants pay for prescriptions and send the receipts, with claim forms, to the plan administrator for reimbursement. If the plan has a deductible, receipts are usually accumulated until the deductible is satisfied and then are submitted to a claims office at one time.

Closed-panel plans generally employ a number of pharmacies, ranging from a few to several thousand. These pharmacies dispense drugs to plan members at prices agreed upon by the plan provider and the pharmacy. Sometimes the price is the pharmacy’s cost plus a dispensing fee. The plan administrator pays the panel pharmacies directly. Plan members pay only the applicable deductible and are not required to submit claim forms.

In mail order plans, employees send their prescriptions to specified mail order firms. Because of volume, mail order pharmacies frequently offer prescriptions at lower prices than other pharmacies.

Nationwide-panel plans use a network of pharmacies, usually through a prepaid drug plan administrator (that is, a firm administering plans for insurance companies, employers, joint funds, and others) and negotiate price discounts. Nationwide plans may include a mail-order component.

## DENTAL PLANS

A dental insurance plan should specify the types of services that are and are not covered. Covered services generally include:
• Diagnostic procedures (oral examinations, regular checkups, and x-rays)
• Preventive procedures (fluoride treatment and cleaning, polishing, and scaling teeth)
• Restorative procedures (repairing teeth, including fillings and crown work)
• Oral surgery (operations performed in the mouth)
• Endodontics (root canal therapy)
• Periodontics (treating gum diseases)
• Prosthodontics (replacing missing teeth with fixed or removable prostheses, including bridgework, partial removable dentures, and full dentures)
• Orthodontics (correcting malpositioned teeth)

Several types of dental plans are common. Nonscheduled plans typically cover dental costs based on usual, customary, and reasonable charges. These charges are defined as the usual fee charged by the dentist, the customary or prevailing fee charged by other dentists in the same geographic areas for the same treatment, and a reasonable amount based on the circumstances involved.

Scheduled plans use a schedule of benefits that provides a flat-dollar amount for each service. If a dentist charges more than the scheduled amount, the participant is responsible for the difference.

Combination plans combine the usual, customary, and reasonable payment method with the schedule-of-benefits payment method.

Closed-panel plans include a designated group of dentists to provide services to group participants. The full cost of services is paid when employees go to providers specified by the plan. Employers pay a premium for such services and the premiums are used to pay the dentists’ salaries or to cover a fixed cost per beneficiary.

Most plans are designed with cost-sharing features. Two common cost-sharing features are deductibles and coinsurance or co-payments.

A deductible is an amount a participant must pay before receiving any insurance payments. Depending on a plan’s design, deductibles must be satisfied once annually or once in a lifetime.

If a plan has a coinsurance feature, the plan and the participant share the costs of each covered dental service. The plan pays a specified percentage of covered services and the participant pays the balance. A plan may offer a number of coinsurance schedules depending on the treatment.

In some plans, coinsurance is used in conjunction with a deductible. Under such a plan, after the yearly deductible has been paid by the participant, the plan will pay some stated percentage of additional incurred dental expenses.

Most dental plans set maximum limits on the amount they will pay for each participant. Separate maximum limits may apply for different treatments.

When bargaining a dental plan you will want to obtain the list of participating dentists and find out if there is any reimbursement for services provided by out-of-network dentist.

You will want to know what are the basic services as well as what limits there are on orthodontics, periodontic and prosthodontic services.

VISION SERVICE PLANS

Except for medical or surgical treatment and, in some cases, contact lenses after cataract surgery, many traditional health insurance plans provide little or no vision care coverage.

The typical vision care plan covers eye examinations, lenses, frames, and the fitting of eyeglasses. Nearly all vision care plans impose limitations on the frequency of covered services and glasses. Typically, they limit participants to one eye exam within a 12-month period, one set of lenses within a 12-month period, and one set of frames within a two-year period.

Sometimes vision care plan participants are required to pay deductibles. The deductible is a specified amount of vision care costs that the participant must pay before any costs are paid by the plan.

Plans may have a coinsurance arrangement in which the plan participant pays some portion of the vision care expenses and the plan pays the remainder.

Other plans specify a covered dollar amount for each service. Under the schedule-of-benefits approach, the plan participant pays any amount over the scheduled dollar limit.

Plans may use a closed-panel arrangement in which a designated group provides service to an employee group. The full cost of services is paid when plan participants go to providers specified by the plan. The providers are reimbursed for their cost of materials plus a dispensing fee. If participants go to providers who are not in the closed panel, the plan pays only a specified amount; the participant must pay any excess.
Plans commonly use a combination of the approaches described above. A plan that covers services based on usual, customary, and reasonable charges may also require payment of a deductible or coinsurance. Coinsurance may also be included in a schedule-of-benefits approach.

When you bargain a Vision Service Plan you will want to know the number of providers within the state and if the network is nationwide. Ask if the plan requires the participants to obtain an authorization prior to making an appointment with a participating provider.

You will want to know if the plan reimburses members for services provided by non-participating providers.

Some plans provide 100 percent coverage for contact lenses for certain conditions. When lenses are not medically necessary most plans provide a flat-dollar allowance.

Find out the maximum reimbursement for frames and how often frames and lens can be replaced. Ask if the plan covers scratch coating and tinted lenses.

SECTION 125 PLANS

There are three types of Section 125 Plans: flexible spending accounts, premium reduction plans, and cafeteria plans. Each type contains characteristics of the other two.

One of the most important advantages to the employee in a Section 125 Plan is the tax savings, thereby giving him/her increased take-home pay. Employee contributions to the plan are subtracted from gross salary. Federal income tax, Social Security tax, and some state and local taxes are then calculated on these reduced salaries, resulting in a reduced tax bite from the current paycheck.

P.L. 2011 Chapter 78 mandates that employers establish a Section 125 – Cafeteria Plan that includes a Premium Only Plan (POP) and a Flexible Spending Account (FSA). The Dependent Flexible Spending Account (DFSA) is not mandated but is negotiable.

The POP must be in place prior to the first deduction, the employer is responsible for the cost of the set-up fee and there is no monthly maintenance fee.

The Medical FSA allows for the employee to reduce their salary to pay any medical and dental expenses not covered by their health insurance plan. There is a set-up fee and a monthly maintenance fee attached to a Medical FSA. NJEA has taken the position that since the law states that the employer “shall establish” such a plan, that the board is responsible for both the set-up fee and the monthly maintenance fee. This position is supported by the Local Finance Notice released by the New Jersey Department of Community Affairs, Division of Local Government Services on July 25, 2011, and which states, “However, any funds in an employee’s FSA not used by the end of the plan year revert to the employer and are to be used to cover or assist with the administrative costs.”

The Dependent FSA allows employees to reduce their salary to pay for qualified dependent care expenses. As with the Medical FSA, the Dependent FSA has both a set-up fee and a monthly maintenance fee. However, the law states with regard to the Dependent FSA that the board “may provide” such a plan and therefore, NJEA has taken the position that the set-up fee and monthly maintenance fee are negotiable items. This position is supported by the Local Finance Notice released by the New Jersey Department of Community Affairs, Division of Local Government Services on July 25, 2011, and which states, “As with the Medical FSA, funds not used by the end of the plan year revert to the employer.” In this instance, the notice does not state for what the funds that revert to the employer are to be used.

Should a district or county college attempt to unilaterally impose the set-up fee or the monthly maintenance fee on its employees, you should contact the field rep and ask if the local should file a grievance and/or an unfair labor practice charge.

The law and the bargaining strategies surrounding Section 125 plans are constantly changing. Therefore, you should talk with the UniServ rep when you have any concerns regarding these plans.
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 causes premiums to increase.

Ambulatory care – Health care services delivered in a setting in which a 24-hour hospital stay is not required. These services can be delivered in a hospital setting, such as an outpatient clinic or emergency department; physician’s office, or urgent care center. Services can range from a patient assessment to surgical procedures not requiring a hospital stay. Ambulatory care has substantially increased as payers have looked for alternatives to more costly hospital stays and as medical technology and service delivery innovation has made services more accessible to patients.

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 the services offered are used (or not used). A fixed, prepaid payment for a defined set of health care services for a defined population.

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. A patient’s health care is managed by a health care professional throughout the continuum of needed services to assure better continuity. Case management is generally applied to chronically ill or acute care patients to help assure optimal outcomes and cost effectiveness.

Centers of excellence – A health care institution specializing in certain procedures or types of health care services. These institutions include academic medical
centers, tertiary care hospitals or regional hospitals that are staffed, equipped and recognized for their medical expertise in delivering types of health care services. Centers of Excellence designation has allowed hospitals to distinguish themselves in their marketplace and to achieve economies of scale in the delivery of care due to the centralization/regionalization of highly specialized services. Centers of Excellence can be regional, national or international in their scope. Purchasers may contract with Centers of Excellence to provide discounts for these health services in return for promised patient volume.

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.

Clinical pathway – Clinical pathways are guidelines for specific diagnoses that include the sequence and timing of major interventions by physicians, nurses and staff members of ancillary departments such as laboratory, dietary and radiology. Clinical pathways are used to treat patients more efficiently in cost-effective health care environments and to improve the outcomes of that care.

Co-insurance – 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. Also called percentage participation clause.

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 of 1985 (COBRA) et seq – Among the provisions of this legislation that deal with health care coverage are the following:

1. 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.

2. Medicare coverage is extended to state and local government employees.

3. 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.

Conversion privilege – The right of an individual to convert a group health or life insurance policy to an individual policy should the individual cease to be a member of the group. Under such a provision, a physical examination usually is not required.

Co-payment – Co-payment 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 “co-payment” for each office visit, regardless of the type or level of services provided during the visit. Co-payments 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 co-payments and increased contributions.

Deductibles – 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.

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 benefit – Periodic payments, usually monthly, payable to participants under some retirement plans if such participants are eligible for the benefits and become totally and permanently disabled prior to the normal retirement date.

The Division of Pensions defines an Ordinary Disability Retirement as one in which the individual must be totally and permanently incapacitated for further employment in that position. (There are no provisions for temporary disability.) In addition, the individual must have at least ten years of pension credit.

An Accidental Disability Retirement is defined as one in which the individual is totally and permanently incapacitated for further employment in that position as a direct result of a traumatic event occurring during and as a result of the performance of the employee's regular duties. (There are no provisions for temporary disability.)

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.

Eligible charges – These are the charges that may be used as the basis for a claim.

Emergency care – Health care services provided to an individual suffering from a life-threatening health/medical condition. Managed care plans typically impose payment restrictions on the delivery of emergency care in non-life threatening situations.

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.)

Employee Retirement Income Security Act of 1974 (ERISA) – ERISA requires that persons engaged in the administration, supervision and management of pension monies have a fiduciary responsibility to ensure that all investment related decisions are made (1) with the care, skill, prudence and diligence…that a prudent man…familiar with such matters would use…and (2) by diversifying the investments…so as to minimize risk. It mandates two significant changes in traditional investment practice (1) the age-old “prudent man” rule has been replaced by the notion of a prudent “expert”; (2) the notion of a prudent investment has been replaced by the concept of a prudent portfolio. ERISA also established an insurance program designed to guarantee workers receipt of pension benefits if their defined pension plan should terminate. It regulates the majority of private pension and welfare group benefit plans in the U.S. (but not state, local or other public plans).

Exclusions – Medical services that are not covered by an individual’s insurance policy.

Exclusive provider organization (EPO) – An Exclusive Provider Organization (EPO) is a network of individual medical care providers, or groups of medical care providers, who have entered into written agreements with an insurer to provide health insurance to subscribers.

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 and the claims appeal process.

Extended care facility – A health care facility offering skilled nursing care, rehabilitation and convalescent services.

Fiduciary – Indicates the relationship of trust and confidence where one person (the fiduciary) holds or controls property for the benefit of another person, i.e., the relationship between a trustee and the beneficiaries of the trust.

First dollar coverage – Those benefits which are covered with no deductibles or coinsurance.
Flexible spending account (flexible reimbursement account) – (NOTE: see Cafeteria Plan) Most typically, an account funded by employee salary reduction contributions, out of which employees pay unreimbursed medical expenses. May also be funded for child care (or dependent care) expenses and, occasionally, funded with employer contributions or credits.

Formulary – A list of drugs covered by a health plan. Formularies are used by health plans to manage and influence drug selection and to facilitate the appropriate and cost-effective use of pharmaceuticals. Formularies can be classified as either “open,” “closed” or “partially closed.” Open formularies reimburse for drugs regardless of whether they are included on the formulary. A closed formulary restricts coverage to only those drugs included on the formulary. A partially closed formulary covers drugs not on the formulary, but only if approval is received prior to use.

Fully insured plan – Under a fully insured plan, the insurance company bears the full responsibility for the health insurance expenses. The employer is not liable for catastrophic expenses.

High deductible health plan (HDHP) – Is a health insurance plan with lower premiums and higher deductibles than a traditional health plan. Being covered by an HDHP is also a requirement for having a health savings account. Some HDHP plans also offer additional “wellness” benefits, provided before a deductible is paid. High-deductible health plans are a form of catastrophic coverage intended to cover for catastrophic illnesses.

Health Insurance Portability and Accountability Act of 1996 – This law addresses health insurance portability and is designed to protect health insurance 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 prepaid medical group practice plan that provides a predetermined medical care benefit package. The HMO can be sponsored by the government, medical schools, hospitals, employers, labor unions, consumer groups, insurance companies and hospital-medical plans. HMOs are both insurers and providers of health care.

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. You choose a Primary Care Physician in the HMO network who manages your health care. 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 co-payment for service but there are no deductibles or coinsurance.

There are two ways of receiving treatment from an HMO – through a fully staffed 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.

HIF (Health Insurance Fund) – See Self-Insurance.

High Deductible Health Plan (HDHP) – A health insurance plan with lower premiums and higher deductibles than a traditional health plan. Being covered by an HDHP is also a requirement for having a health savings account. Some HDHP plans also offer additional wellness benefits, provided before a deductible is paid. High deductible health plans are a form of catastrophic coverage intended to cover for catastrophic illnesses.

Home health care – Items and services provided as needed in patient’s 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. UR may be before (prospective), during (concurrent), or after (retroactive) the services are rendered.

Incentives/bonuses – A payment, in addition to normal salary/reimbursement, made by a managed care plan to a physician whose patients’ utilization of health care services is below a set rate during a specified time frame. Physicians above the threshold amount do not qualify for bonus payments and thus have an incentive to reduce the utilization of health care services by their patients. These payment arrangements have been criticized by managed care opponents who argue that they promote the underutilization of needed health care services. Managed care proponents believe that these payment arrangements incentivize physicians to provide care that is medically necessary and appropriate.
arrangements ensure cost-effective use of health care resources, including specialty services.

**Incurred but not reported (IBNR)** – A term used to describe estimates for the amount of claims dollars outstanding (still owed) after the end of a plan year. This estimate is a result of the lapse of time between when a claim is incurred (e.g., doctor’s office visit) and when that claim is paid by the health plan.

**Indemnity health plan** – Indemnity health insurance plans are also called “fee-for-service.” These are the types of plans that primarily existed before the rise of HMOs, IPAs and PPOs. 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. The fees for services are defined by the providers and vary from physician to physician. Indemnity health plans offer individuals the freedom to choose their health care professionals.

**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.

**Individual practice association (IPA)** – A type of HMO that consists of a central administrative authority and a panel of physicians and other providers practicing individually or in small groups in the community. Providers are usually reimbursed individually on a fee-for-service or per capita (capitation) basis.

**JIF (joint insurance fund)** – See Self-Insurance.

**Liability insurance** – A type of insurance that provides a benefit payable on behalf of a covered party who is held legally responsible (liable) for harming others or their property.

**Long-term disability income insurance** – Insurance issued to an employer, group or individual to provide a reasonable replacement of a portion of an employee’s earned income lost through serious and prolonged illness or injury during the normal work career.

**LOS (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 in-patient 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. Internal limits on particular services, such as psychiatric care, may also be specified. See also Comprehensive Medical.

**Major medical threshold** – This is the point at which the employee’s major medical protection shifts from a percent copay, such as 80%/20%, to 100% coverage.

**Managed care** – In a managed care plan, the policyholder, insurer and provider all work together to assure that the most appropriate, cost-effective care is provided. Because of this cooperation, managed care aims to control rising costs and preserve quality health care. Managed care plans typically offer comprehensive benefits by contracting with a network of physicians, hospitals or other health care professionals from which the policyholder can choose. The purpose of the network is to contain cost and maintain quality care. Managed care focuses on well care and preventive medicine. There are a range of managed care plans, including a health maintenance organization (HMO), a point-of-service (POS) plan and a preferred provider organization (PPO).

Each strikes a different balance between consumer choice and cost savings. Most managed care systems offer HMOs and PPOs that individuals are encouraged to use for their health care services.

**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.

**Medical loss ratio** – The percentage of premium paid out in health care benefits. Underwriters will have target loss ratios established based on plan design, retention needed and IBNR estimates (if not self-insured). This ratio is used by the health plan to determine if rates are adequate by comparing actual claims to premiums that are estimates of claims plus expenses.
Medical/surgical benefits – Part of the basic benefits of a health insurance program which are often subject to limits for first dollar coverage. Medical/Surgical benefits are cutting; suturing; treatment of burns; correction of fracture; reduction of dislocation; manipulation of joint under general anesthesia; electro cauterization; tapping (paracentesis); application of plaster casts; administration of pneumothorax; endoscopy; or injection of sclerosing solution.

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 affective, 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 government subsidized and 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. There is often a very large payment due if the employer leaves the insurance plan.

Out-of-pocket maximum – A predetermined limited amount of money that an individual must pay out of his/her own savings before an insurance company (or self-insured employer) will pay 100 percent of an individual’s health care 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 supplier, such as mental health clinic, rural health clinic, mobile x-ray unit or freestanding dialysis unit. Such services include outpatient physical therapy services, diagnostic x-ray and laboratory tests, x-ray and other radiation therapy.

Pension plan – A plan that provides benefits, after retirement, from a trust or other separately maintained fund, by the purchase of insurance, or from general assets (unfunded plan). The amount of benefits is either specified or can be calculated in accordance with a set formula based on various factors such as age, earnings and service. The amount of annual contributions needed to provide the specified benefits are estimated actuarially.

Plan document – Health insurance plans are subject to the requirements of ERISA. Plans must be in writing and must meet the reporting and disclosure requirements of ERISA. Plans must include claim procedures in the summary plan description. Associations are entitled to access to the written plan document.

Point of service (POS) – A managed care plan in which members do not have to choose how to receive services until services are needed. For example, members decide to use a network provider or an outside provider. Although services of an outside provider are covered, benefits are greater if members select a network provider (70% vs. 100% coverage). In a POS plan, you must choose a personal care physician to manage your health care.

Preadmission certification – A form of utilization review in which assessment is made of the necessity of a patient’s admission to a hospital or other inpatient institution, based on health status and treatment needs.
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.

Precertification – A step in some plans that must be taken prior to receiving treatment from the doctor or hospital for certain treatments. A health insurance policy will normally list the medical conditions that require precertification before receiving treatment. When precertification is not received, benefits will be reduced or possibly not covered.

Preexisting conditions – A medical condition that is excluded from coverage by an insurance company, because the condition was believed to exist prior to the individual’s obtaining a policy from the particular insurance company. The exclusion period varies from company to company. Not permitted if an entire group changes plans.

Preferred provider organization (PPO) – A group of hospitals and physicians who contract on a fee-for-service basis with employers, insurance plans or third-party administrators to provide comprehensive medical service.

A PPO consists of groups of hospitals and providers that contract with insurers to provide health care services to covered persons. This network of providers accepts negotiated fees as payment for services rendered.

In a PPO, you have the freedom to choose a physician or hospital out-of-network but you usually pay more. There is no Primary Care Physician required to monitor your care and you are free to choose any network physician without a referral.

Premium-conversion/premium-only plan – A type of Sec. 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 Sec. 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 or Social Security taxes.

Preventive care – Comprehensive care emphasizing priorities for prevention, early detection and early treatment of conditions generally including routine physical examinations, immunizations and well-person 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 “quarterback” 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.

Profit margin or margin – An amount over and above administrative expenses that is included in the retention charges to add to the health plans’ corporate profits/revenues.

Prospectively rated conventional plan – Financial remuneration of health care providers through a rate established prior to the period to which the rate is to be applied, resulting in the provider being paid the established rate regardless of actual costs.

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.

Retention rate – Term used to describe this component of medical plan expense that is neither claims nor insurance costs. Retention includes administrative expenses and profit/reserve contribution. Often in fully insured products aggregate stop-loss (insurance premiums) and utilization review fees will also be included in retention figures.

Retrospectively rated conventional plan – An insurance plan for which the premium is not determined until the completion of the coverage period and is then based upon the plan’s actual experience for that period, subject to a state minimum and maximum, and providing for recovery of expense and administrative factors.

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. Correct calculations of the risk management factors is extremely important in a self-insured plan.

School Employees Health Benefits Program – A program, initiated in 2008, to provide health insurance to eligible active and retired school employees. The program offers a preferred provider organization (PPO) currently administered by Blue Cross/Blue Shield and two health maintenance organizations (HMO) administered by Aetna and Cigna.
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.

Section 125 plan (see cafeteria plans) – Essentially, an employee benefits plan in which participants choose between cash and qualified (nontaxable) benefits. A Section 125 plan typically falls into one of the following categories:
1. Flexible spending account;
2. Premium-only or premium conversion plan; or
3. Cafeteria plan (full menu of benefits choices).
A written description of the Sec. 125 plan that must be kept by the plan sponsor. Written plan descriptions and summary plan descriptions for many benefits offered within a Sec. 125 plan must be filed with the Department of Labor if the specified plan has 100 or more participants. In more general sense, a written plan document applies to an insurance plan and, in fact, can be called the master contract and/or governing documents.

Self-insurance (self funding) – A fully non-insured 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-insured health insurance plans are permitted for two or more public school districts. 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.

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. Stop-loss 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.

Term insurance – Life insurance payable to a beneficiary only when an insured dies within a specified period. There is no cash value to the insurance policy.

Third party administrator (TPA) – The party to an employee benefit plan that may collect premiums, pay claims and/or provide administrative services. Usually an out-of-house professional firm providing administrative services for employee benefit plans (synonyms: administrative agent, carrier, insurer, underwriter).

Traditional indemnity plans – In these traditional fee-for-service group health insurance plans, the patient chooses whichever doctor and hospital he or she wants to use. The employer pays premiums to the health insurance company to cover the costs of providing benefits and administering claims. The employee may pay a portion of the monthly insurance premiums, an annual deductible and/or co-payments per medical visit. These plans are usually experience rated, and health care providers are paid on a cost-plus, retroactive reimbursement system. The insurance carrier uses the premiums to pay claims and for retention fees, including state premium taxes, administrative expenses, commissions, risk charges and claims processing. The employer has no liability for any deficit. See also Indemnity Health Plan.

Traumatic event – Defined by the Division of Pensions and the courts as “one in which the worker is involuntarily exposed to a violent level of force or impact which is not brought into motion by the worker.” A worker must demonstrate that:
1. The injury was not induced by normal work effort;
2. The individual met involuntarily with the object that was the source of the harm; and
3. The source of the injury was a violent or uncontrollable power.

**Urgent care** – Health care services delivered to an individual requiring immediate medical attention but whose condition is not life threatening. Urgent care is distinguished from emergency care in that the condition is not life threatening. Payment restrictions may be imposed on the use of urgent care under certain circumstances by managed care plans.

**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 an individual is not covered by insurance for a particular problem.

**Waiver of benefits** – A waiver of benefits is 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 accidents and ill health such as absenteeism, lower productivity and 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 so forth.

**Withholds** – A payment arrangement between a managed care plan and physician where a portion of the physician’s salary/reimbursement is withheld as an incentive to meet the plan’s recommended utilization rates for health care services. Physicians below the threshold utilization rate receive 100 percent reimbursement/salary. Physicians exceeding the threshold receive only a percentage of reimbursement/salary, which may be based on their patients’ utilization rates in comparison to the plan’s recommended utilization rates.

**Workers’ compensation** – A system of providing for the cost of medical care and weekly payments to insured employees or to dependents of those killed in industry in which absolute liability is imposed on the employer, who is required to pay benefits prescribed by law.

*Many definitions supplied by the Employee Benefit Plans: a Glossary of Terms, 6th Edition. Published by The International Foundation of Employee Benefits Plans, Inc., 1987; the State of New Jersey, Division of Pensions; and by the State Health Benefits Program. Some definitions from NJEA Research Glossary 2008.*
WHAT IS BUDGET ANALYSIS?

Budget analysis is a process designed to provide an understanding of school district operations and priorities, as expressed through annual financial plans and reports. The process involves three steps: recording financial data in standard formats, analyzing the data mathematically, and interpreting the results.

WHAT BUDGET ANALYSIS CAN ACCOMPLISH

The prime benefit derived from budget analysis is the confidence that results from having reliable data on school district finances. Specifically, the analysis develops information on increases and decreases in the district budget, reveals changing priorities in district expenditures, compares adopted budgets with actual receipts and expenditures, measures financial effort per pupil, and provides a basis for comparing school districts.

Budget analysis answers the “what” questions: What portion of the budget is allocated to instruction? What is the relationship between budgeted and actual receipts? What are the district’s priorities? What do other districts spend per pupil?

The answers to these questions logically lead to the “why” questions: Why do teachers’ salaries account for a larger portion of the budget this year than last year? Why were monies transferred out of the general fund and into the capital improvement fund mid-year?

With the completed budget analysis and an understanding of its findings, local associations can put forth their own budget proposals in the form of “why not” questions: Why not allocate additional funds for a reduction in class size? Why not have libraries available in all elementary and secondary schools in the system?

IMPORTANCE OF REVENUE ANALYSIS

Revenue analysis derives its importance from the fact that available revenues limit expenditures. Budgeted revenues are estimates of anticipated receipts.

Three keys to Revenue Analysis:

1. **Reliance.** To what extent does the district rely on a particular revenue source? How significant is it in the total scheme of things? Will an increase or reduction in the source have a great impact on the budget?

2. **Predictability.** How certain can one be that budgeted revenues will actually be received? What has been the history of actual receipts for this source of funds? Based upon experience with this revenue source, what should be the projected receipts for this year?

3. **Growth.** What has been the growth trend of each source over the years? How will this trend affect current year receipts? Which sources will provide major revenue increases in the coming years?

These answers will indicate areas deserving close monitoring in the future and should provide associations with direction for their school finance efforts.
IMPORTANCE OF EXPENDITURE ANALYSIS

Expenditure analysis derives its importance from the fact that expenditures define the dimensions and limits of the district budget. It is the financial plan for reaching agreed-upon goals. Like revenues, budgeted expenditures are estimates.

Three keys to expenditure analysis:

1. **Significance.** Is the percent of budget allocated to a particular item large enough to have an impact on other budget items? How has this percentage changed over time? Is there a readily apparent reason for the change?

2. **Variation.** Is the percent spent routinely over or under budget? Does a variation in the percentage spent result in large savings or over expenditures? What effect do these variances have on other portions of the budget?

3. **Status.** How has each account increased or decreased over the years? Are these changes independent of student enrollment? Do percentages of change in the current budget represent a departure from the recent past?

WAYS TO USE THE BUDGET ANALYSIS

1. **Organizing Members.** The use of budget analysis need not be restricted to the annual consideration of the school district's budget. The data form a permanent record of district objectives and accomplishments. Both the current association membership and prospective members can be reached through appropriate use of the analysis. For one group, the association can point to gains made under its stewardship, and to the other, it can demonstrate a thorough knowledge of the district's fiscal affairs. Specifically, the association can demonstrate its knowledge of the district's finances, show that members have received a fair share of the increased funding, and develop organizing leaflets around different aspects of the budget.

2. **Negotiations.** The outcome of negotiations depends heavily on available finances and the perception thereof. Presentation and interpretation of the right data at the right time can favorable influence the decision-making process. Knowledge, not only of one's own district finances but also of the finances of comparably situated districts, will prepare association representatives for bargaining. Specifically, the association can increase the instructional budget, show the necessity for salary increases, and make the case for employee benefit increases.

3. **Communications and public relations.** Associations can use budget analysis reports in their communications and public relations functions to influence persons both within and outside the education community. Getting the association's story across to the public is important if association goals are to be realized. Graphic presentation of the data is particularly helpful in reaching this audience. Specifically, the association can obtain local support for tax increases, get public opinion behind association negotiating positions, and get public support for the association's positions on the budget.

4. **Lobbying and political action.** Lobbying and political action programs need to be backed up by facts and figures. Long-term trend data and cross-district budget analysis are well suited to these tasks. Using these functions, associations can demonstrate the impact of state education finance decisions on the state as a whole and on individual school districts.

*Taken from NEA publication: Budget Analysis: Beyond the Numbers*
RECOGNITION

- Recognizes in the “Recognition Clause” all positions in the bargaining unit.
- Excludes as few positions as possible. The Public Employer-Employee Relations Act excludes managerial executives and supervisors who have the power to hire, discharge or discipline, and confidential employees.
- Does not exclude part-time employees.

AUTHORITY OF THE ASSOCIATION

- Does not give an individual, instead of the association, the right to determine if a grievance is meritorious and whether or not it will be submitted to arbitration.
- Has binding arbitration as the final step of the grievance procedure.
- Contains exclusivity language: “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 (name employee job titles Association represents).”

JOB SECURITY ISSUES

- Requires that the Just Cause Standard be met when an employee is disciplined, terminated, or nonrenewed.
  - “Any nonrenewal shall be for just cause and subject to the grievance procedure set forth herein.”
- Provides job security for people holding nontenurable positions.
  - Recognizes the rights of the most senior employee(s) when there is a reduction in force.
  - Grants tenure to those who don’t have it in law: “Custodians, maintenance employees, and cleaning personnel shall receive no more than three successive yearly fixed-term contracts. If an employee is renewed following the third such annual contract, it shall be for an unfixed term.”
- Addresses job security for coaches, extra curricula positions, lead teachers, and other nontenurable positions.
- Addresses subcontracting issues:
  - Notice
  - Severance
  - Recall
WORK YEAR & WORK DAY

- Is as specific as possible.
- Defines the work year (July - June / September - June)
  - Gives the number of days that will be worked in any one year.
  - Explains the number of days assigned a special purpose such as for orientation or in-service.

- Defines the work day in hours and minutes wherever possible.
- Explains if and how a special purpose day is different from a regular work day.
- Defines the various shifts that exist for custodians and maintenance workers.
- Limits new duties being added to the workday: “No extensions in the daily working hours of (six hours and 45 minutes) shall be made by the Board of Education or the administration without first negotiating with the Association.”
SECTION 4 – PRE-NEGOTIATIONS CHECKLIST

Current costs:
- **Salary guide costs**: Scattergram for each unit.
- **Longevity costs**: Scattergram for each unit.
- **Extra-curricular/coaches**: Scattergram for each unit.
- **Stipends & other compensations**: Scattergram for each unit.

**Benefit costs**:
- **Current and projected costs**.
- **Census information** regarding your memberships’ enrollment in all health benefits products:
  - Medical/Surgical & Major Medical
  - Dental
  - Prescription
  - Optical
  - Chapter 78 Tier Level and Contribution Totals
  - Other

**Cost of other fringe benefits**:
- Personal days
- Sick days
- Family illness days
- Tuition and/or course reimbursements
- Sabbatical leave.
- Other

**Basic statistical data**:
- Number of district employees by category. Include administrators.
- Number of students.
- Profile Chart of district, if appropriate.

**History**:
- **Past settlements**. What did the district commit to spending and how much did they spend?
  - Past settlements as compared with tax impact.
  - Past grievances.
  - Past high priority items.
  - Other:

**Research**:
- Find the most productive comparative group:
  - County, State or District grouping.
  - Look at historical as well as current comparisons.
  - Know your average salaries, minimums/maximums, and cumulative earnings as they compare with other groups.
  - Know how your benefits compare to other groups.
  - Know how other terms and conditions like length of work day and work year compare to other districts.

**Changes in cost during bargaining**:
- Personnel changes (cost savings):
  - Breakage.
  - Other areas of savings.
ANYTOWN EDUCATION ASSOCIATION

NEGOTIATION PROPOSALS

PRESENTED TO THE BOARD OF EDUCATION ------DATE-----

The Negotiation Team for the Anytown Education Association, Inc. is empowered to reach a tentative agreement with the Anytown Board of Education pending ratification pursuant to the procedure for ratification established by the local association and; therefore, submits the following proposed modifications to the July 1, 2___ - June 30, 2___ Collective Bargaining Agreement. (The previous statement is not a proposal but should be included with the association’s proposals and made known to the board of education. This is to make clear that all agreements are tentative until ratified by the full association.)

ARTICLE IV: EMPLOYEE RIGHTS (Page 7)

D. Add: “Nonrenewal of an employee holding a fixed-term contract subject to the just cause standard.”

Delete: “This paragraph is not subject to the arbitration clause of this agreement … (Section III, Paragraphs H.1. through H.3.).”

ARTICLE V: ASSOCIATION RIGHTS (Page 8)

New C. “The Association President, Grievance Chairperson and Negotiations Chairperson shall be released from work to attend to AEA responsibilities. A substitute shall be provided for them.”

New C. “Members of the PEA Representative Council shall be released from work, without loss of pay, at 3 p.m. once a month to attend Association meetings. The Association Secretary shall provide the Board Secretary with a list of the members of the PEA Representative Council before September 15 of each year. If the members change during the year it shall be the responsibility of the Association Secretary to update the list with the Board Secretary.”

New D. “The rights and privileges of the Association and its representatives as set forth in the Agreement shall be granted only to the Association as the exclusive representative of the bargaining unit members, and to no other Association or organization.”
**SECTION 4 – GAINING SUPPORT OF THE BARGAINING PROCESS**

**WITHIN THE MEMBERSHIP**

**PRELIMINARY ACTIVITIES**

Before your team meets with the board’s team –

Create the proper climate for negotiations:
- Do not assume that support for the negotiation committee will come about automatically.
- Use every means and opportunity to remind the members of their key role in the bargaining process.

Include the membership in the preparation of proposals:
- Many good ideas can be obtained in this way.
- Remember, people tend to support something which they had a chance to decide.
- Membership participation may be obtained at meetings – use the ARs as well as members of the negotiations team to conduct meetings with members at their worksite and/or by special interest.
- Membership participation may be obtained through written communications – use surveys.

Focus your membership’s attention on the major contract problems and their suggested solutions as reflected in the bargaining proposals:
- The list of proposals is often too long and detailed to be on the lips of every member – summarize the issues.
- All resources for communicating with the membership should be used to keep the membership informed.

- Communication documents should be designed to give the membership a clear understanding of the major proposals.

**Prepare members for the probable management approach to negotiations:**
- What will be the major administration proposals and how will they be defended?
- What will be the probable attitude of the administration toward various association proposals?
- Intelligent predictions in this area will help soften the impact of administration activities on behalf of its own proposals and will help build confidence in the association's negotiations team.

**WHILE NEGOTIATIONS ARE IN PROGRESS**

Keep in touch with the membership:
- People tend to accept propositions when they have been kept up-to-date on decisions.
- Use all local resources for communicating with the membership to keep them informed. NOTE: There may be sound tactical reasons for temporarily withholding certain information.

Lack of progress, as well as progress, should be reported:
- The absence of progress may be based on the administration's evaluation of membership interest.
WHEN NEGOTIATIONS ARE COMPLETED

The ratification meeting:
- The report should be frank and honest.
- Decide in advance of the meeting as to the nature of the report.
- Generally speaking, the report should include a recommendation for acceptance.
- Members should be clearly and repeatedly informed of their rights concerning any recommendation.

• Written summaries of guides and language changes should be in the hands of the members when discussing changes.
• Take time to review factors contributing to success or failure with regard to certain proposals.
• Stress the importance of making the new agreement work and the need for all members to be vigilant regarding the terms and conditions of their employment.

Start the membership thinking and planning ahead to the next contract negotiations.

WITHIN THE COMMUNITY

Gaining community support for negotiations and raises is difficult, but here are some items for consideration. Community support must be ongoing, not only in times of crisis.

1. Size up the community.
   - What does the community value?
   - What are the community’s hot button issues?

2. Translate the bargaining goals into a message that resonates with the residents of the community.
   - Connect what you care about with what the members of the community care about.
   - Keep your message short and simple and repeat it often.

3. Meet and greet.
   - Host coffee’s or breakfast meetings with community power brokers.
   - Have a dialogue with PTA and/or PTO members.
   - Develop list of supporters.

4. Put it in writing.
   - Send news releases.
   - Write letters.
   - Put your message on tee-shirts
Why do we do actions?

- Builds unity.
- Shows solidarity.
- Helps members/community understand the issues.
- Makes it increasingly uncomfortable for board not to settle.

If the association is split internally, you need to find things to do that brings members together – avoid being divisive. Remind the members of the results they have had in the past because of their solidarity.

How do we keep group on target?

- Develop a message.
- Ask how the action advances the message.
- Do things with which members are comfortable. Use surveys or conversations to find out what is acceptable to them. Do NOT vote as doing so gives some members the feeling they have a choice to participate or not.
- Set timelines and hold people accountable for meeting them.
- Sustain members’ enthusiasm by making actions fun. Give actions a beginning, a middle, and an end. Recognize the efforts of the members after each action. Thank you’s go a long way.
- Keep members informed.
- Use members’ only website
- Use bulletin boards to post notices.
- Use telephone chain/text message/social media.
- Assign action team members to carry the message to each work site.

- Remind members of the shared goal. This is not about individual wants but about what the association can gain for its members.
- Remind members the leaders can’t convince the board of their members’ support – members must do that by showing up and participating in actions.

Communication is key.

- Members first, then board, then parents, community-at-large, and media.
- The association should develop a message before developing action plans. The actions become the vehicle for getting out the message.
- Early in the process the association needs to consider what the community values and link it to what the association wants.
- Threats don’t persuade.

Use a calendar to plan activities.

Consider the school calendar and school events when planning actions:

- First day/week of school
- Welcome back letter
- Kindergarten orientation
- Gift from association
- Back to School Nights
- School Elections
- “You entrusted your children to us. We are proud of their achievements”
- Graduation
- Book Fairs
- Concerts
- Art Shows
- Athletic events
- Awards Night
- And there are always board meetings to attend
There are holidays and other special days to organize around:

- New Year
- Martin Luther King's Birthday
- Valentine's Day
- St. Patrick's Day
- April Fool's Day
- Arbor Day
- Earth Day
- Memorial Day
- Juneteenth
- July 4
- Labor Day
- Indigenous Peoples’ Day
- Halloween
- Veterans Day
- Thanksgiving
- Winter holidays

There are days of recognition you can organize activities around:

- National School Nurses Day
- National Teachers Day
- American Education Week
- Educational Support Professionals Day

Refer to the NJEA desk calendar for more details about holiday activities.
WHEN TO BEGIN ...

Let’s look at a step-by-step guide to a winning action plan

The Association leadership should discuss and decide when to begin Action Planning, considering the following factors:

- History of bargaining in the district
- Policies in the local association’s constitution and bylaws (for example: no-contract-no-work clause)
- Organizational unity or factionalism

An association that fails to do organizational action planning may signal to the employer that it’s business as usual. This approach has a calming effect on both parties, but offers little or no incentive to settle.

Once leadership decides Action Planning should begin, follow these steps:

Step 1 – Leadership creates the Action Team

The Negotiations Team asks the Association president to appoint an Action Team. The president appoints a representative group, including members from all buildings, job categories, age and experience groups, etc. and announces the appointments to the membership. A Negotiations Team member should serve as a liaison to the Action Team. Tip: when recruiting volunteers, explain why the appointee is particularly appropriate for the Action Team: “Tom, I’ve noticed that you’re great with the computer (or...a real organizer, a great detail person, a local resident, a creative guy with good ideas, respected by everyone, etc.). The Action Team needs a representative from each building. Can I count on you?”

Step 2 – Action Team creates internal communications network

The Action Team sets up a system to communicate with members quickly. The type of network needed will depend upon the size of the membership, but every association needs two basic networks – a text message for urgent news and a plan for regular membership meetings. These meetings can be structured by school job site, by wings at school, by department, etc. Decide how to notify members of meetings? How will you tell members if you must change plans? How will you think members after a successful action? (See “tips for Creating an Internal Communications Network”)

Step 3 – Action Team creates action plan

The Action Team begins holding strategy sessions immediately and continues to meet frequently until a settlement is reached. Begin the planning process by recognizing what local residents like best about their schools... whether its caring teachers, high SATs, or a winning football team. The Association’s message should link that special quality to a settlement.

Remember: Success depends upon a strong, positive message with community appeal and on an Action Team that carefully plans every detail of a well-executed strategic action plan, taking its direction from the Negotiations Team liaison member.

Step 4 – Action Team develops the plan

The Action Team develops an overall calendar of actions, as well as a detailed analysis of how it will evaluate each action.
Step 5 – The Action Team evaluates the plan

Implement one action at a time. The whole team should evaluate the effectiveness of each action immediately after its implementation. Team members should report their experience and how their constituent groups reacted. The team uses this feedback to improve the Action Planning process.

TIPS FOR CREATING AN INTERNAL COMMUNICATIONS NETWORK

To establish a communications system within each building, all association representatives should meet to devise a network. That network must provide a way:

- To insure that every member gets association literature
- To meet with members in person
- To personally contact each member

The following guidelines may be helpful:

- Create a detailed outline of how communications will occur in the building
- List all association contacts
- List all the members who are responsible to each contact
- Be sure that members who travel between schools are accounted for (work out arrangements with other A/Rs to determine responsibility)
- Use building sign-in sheets as a cross check and submit to the Action Team
- Be sure to include ALL members
- Include an updated telephone chain for each building

Remember, always make sure ESPs are included!

SUCCESSFUL MESSAGES

Translate your Association’s proposals and bargaining goals into a message which resonates with your school board and your residents. Consider the four sample messages below. Then, working with your contact from NJEA, use them or messages like them as your Association’s campaign theme. This theme will become the backbone of your campaign, regardless of your actions.

Campaign #1 –
Our Common Cause: Children & Education
(great for a coalition or unified association)

Campaign #2 –
Blue Ribbon Schools
Blue Ribbon Staff
Deserve A Fair Contract!

Campaign #3 –
Great Schools
Great Staff
Deserve a Fair Shake!

Campaign #4 –
Play Fair With Your School!
(great for district with parents passionate about athletics)

PLANNING AROUND THE THEMES

Goals for each theme:

- Support negotiations
- Unify the association
- Communicate a clear message to key audiences
- Create pressure on the board to settle
- Show solidarity
- Sustain members’ enthusiasm

SUCCESSFUL ACTIONS

- Host an Association breakfast to discuss your action plan.
- Put up black “crisis” information bulletin boards in staff rooms.
- Distribute flyers/brochures at events.
- Send letters to board members.
- Send letters to the editor.
- Send letters to NJEA members in community.
- Utilize social media platforms.
- Send news releases.
• Wear buttons, arm bands, T-shirts, clothing colors on certain days. Demonstrate at board meetings. Stage a candlelight ceremony for mediation/fact-finding. Hold an Association rally/unity party.
• Make presentations to parent groups (PTA/Friends of Athletics/Foundation) and residents (civic and senior groups).
• Ask residents to post lawn signs.
• Hold a uniform sign-in (with before-school rally).
• Organize a friend-to-friend targeted parent outreach to board.
• March through the community.
• Take a vote of “no confidence” in administration or board.
• Picket a board member’s home (keep moving and obey police).
• Announce the Association’s strike authorization vote.
• Issue a report card on the board/administration.
• Carry out the holiday-related activities.

WHEN DOES ACTION PLANNING BEGIN?

The Negotiations Team asks the President to appoint an Action Planning Committee.
President then appoints and announces the committee members.
A representative of the Negotiations Team meets with the Action Planning Committee and discusses what and when the Negotiations Team needs from the membership.
Action Planning Committee chooses campaign theme and creates the action organizing plan.
<table>
<thead>
<tr>
<th>SCHOOL BOARD MEMBERS</th>
<th>Do not care about</th>
<th>Care plenty about</th>
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<tr>
<td>• Philosophical arguments for increased staff or employee salaries</td>
<td>• How to get reelected</td>
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<td>• Curriculum content (unless complaints are voiced by parents)</td>
<td>• Image among coworkers in their full-time jobs</td>
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<td>• Inservice training programs</td>
<td>• Protecting the interests of those who support them or those who might support them in the next election</td>
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<td>• School employee morale</td>
<td>• Favorable publicity</td>
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<td>PARENTS</td>
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<td>• School employees’ salaries</td>
<td>• Taxes</td>
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<td>• School employees’ burdens in the working day</td>
<td>• Quality and cost of cafeteria food</td>
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<td>• What goes on in negotiations</td>
<td>• Safety (sidewalks, halls, bathrooms, street crossings)</td>
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<td>• The cost of educating a teacher</td>
<td>• Preparation to land jobs, enter college</td>
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<td>• Keeping teachers in the district</td>
<td>• Hours of the school day</td>
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<td>• How hard we’ve tried to negotiate with the board</td>
<td>• Academic reputation of the district</td>
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<td>• Education as an investment in the future</td>
<td>• Drug use and availability</td>
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<tr>
<td>COMMUNITY GROUPS</td>
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<td>• School employees’ salaries</td>
<td>• Visibility for their organization and leaders</td>
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<td>• Conditions in the schools</td>
<td>• Being successful with current organizational projects</td>
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<td>• Compensation for extra duties</td>
<td>• How local school programs interact with their programs</td>
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<td>• Association - board relationships</td>
<td>• How much cooperation they get from school officials and employees</td>
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<td>• Employee turnover</td>
<td>• Their respective projects</td>
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<td>• School employee-versus-industry wage comparisons</td>
<td>• Athletic facilities</td>
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<td>MEDIA</td>
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<td>• Association complaints against the board that happened last week.</td>
<td>• How many local names are in the story</td>
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<td>• The burdens of school employees (low salaries, unruly students, paperwork)</td>
<td>• The action that has taken place (as opposed to philosophies)</td>
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<td>• The justice of the employees’ case</td>
<td>• How fast a story is reported</td>
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<td>• The history of the Association</td>
<td>• Honesty</td>
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<td>• How deserving employees are</td>
<td>• What the editor will think of the story</td>
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IDEAS FOR MONTHLY EVENTS

SEPTEMBER – Labor Day

Action: Rally & Picnic

Stage a unity rally and picnic for members and their families (a welcome back to school event.) Distribute T-shirts, buttons, etc. Display banner and signs. Invite the press, key parent groups, any allies. President makes Labor Day speech about the achievements of the school district and what the association wants for children. Distribute flyer at picnic to community members, press, or parents who attend.

Other Ideas: March through the community or to a board member’s home. Lead or participate in a Labor Day Celebration in your community. Invite senior citizens and NJEA members in town. Take a vote of “no confidence” in superintendent or opposing board members. Post photos and information on the Crisis bulletin board.

Message: The board should be ashamed that it’s Labor Day and there is no contract. This board must negotiate in good faith and reach a fair contract – It’s the American thing to do. The Labor Movement has strengthened public education. Use the Association’s unity symbol – our union label – on your flyers. Tout achievements of local public schools and ways the local Association has made them better. Great schools! Great staff! Deserve a fair shake!

Materials: Press advisory of event, speech, flyer inviting members, flyer to community, red, white and blue bunting, flags, association banner, campaign banner, car signs.

OCTOBER – Halloween

Action: Bonfire & Rally

Stage a bonfire and rally to cheer on the negotiations team. Association leaders can burn issues or problems in the bonfire. Invite the press to see display of determination. Members bring pumpkins carved with sad faces. (The following day, bring and display them at school.) President makes speech that says the board is a ghost at the bargaining table.

Other Ideas: Wear black to school. March to a board members’ home for a trick or treating demonstration. Invite NJEA members who live in town. Issue a report card on the board or administration. Take a vote of “no confidence.”

Message: The board is masquerading as the taxpayer’s friend, but really is hurting our children, our schools, and our property values. The board should drop the mask and settle. Its last offer was a trick. We won’t be deceived! This board and what it wants to do is scary to those who love our town’s schools. Great schools! Great staff! Deserve a fair shake!

Materials: Municipal permit for bonfire, wood for bonfire, pumpkins, pumpkin carving utensils, press advisory of event, speech, flyer inviting members, flyer to community, lawn signs, banner, T-shirts.

NOVEMBER – Thanksgiving

Action: Food Drive

Organize a food drive for a specific charity. (Food drop off at Association office, member’s garage or anyplace identified with association.) Invite the press for the delivery process. President makes speech.

Other Ideas: Post photos and information on the Crisis bulletin board. Write letters about the event to board members. Invite seniors, parents, and NJEA members in community to participate. Fill a cornucopia with issues that must be resolved and place it in the staff room.

Message: Hey school board: It’s time to talk turkey! Let’s both recognize our blessings – school employees are thankful for our students and their parents. Board should appreciate the extraordinary service we provide to the community’s children. Let’s settle the contract now and celebrate together at Thanksgiving. Great schools! Great staff! Deserve a fair shake!

Materials: Flyer announcing food drive, press advisory and release, organization plan for food drop-off and pick-up.

DECEMBER – Winter Break/New Year

Action: Card-Writing Party

Throw an after-work card-writing holiday party. Ask members to write each board member a New Year or Winter Holiday card. On the card, each member praises the work of another member and urges the board to settle. Members hand card to a committee (headed by an English teacher) that proof-reads for errors, and makes or secures needed corrections. Association stamps and mails cards to board members. Hang campaign banner on wall. Members wear T-shirts that day to work.
Other Ideas: Committee makes Xerox copies of cards and binds them into a book for all members to enjoy. Deliver cards by hand during a rally outside a board member’s home. Organize a caroling activity.

Message: Members write messages such as: “As we approach the winter holidays, it seems an appropriate time to take stock and think about others. I am grateful to work with colleagues like Ms. Sara Smith, who is one of the most creative and dedicated teachers in the state. She deserves a contract! Let’s settle now and start the New Year with a clean slate. Great schools! Great staff! Deserve a fair shake!”

Materials: A variety of secular holiday cards (can be bought in bulk), stamps, flyer inviting members to attend, a sample message, party food, campaign banner, T-shirts, etc.

JANUARY – Martin Luther King Day

Action: Candlelight Memorial Service

Held in a symbolic place – in front of a board member’s house, a school, memorial statue, or a civic center. Invite the press. President makes a speech.

Other Ideas: Invite allies. Ask local religious leaders to attend. Take holiday* and conduct event during the school day. Announce a strike authorization vote. Hold protest march.

Message: It was Dr. King’s support for labor that took him to Memphis in 1968. He went to help organize the city’s sanitation workers. He led marches through the streets, seeking recognition and respect for workers. Hours later an assassin’s bullet took his life. King reminded all public employees of the need to respect ourselves and of the value of standing up for our rights. In this spirit, on this holiday, we call on the board to settle our contract now! Great schools! Great staff! Deserve a fair shake!


*Note: 18A:25-3 – Teachers may exercise a legal right not to work statutory holidays without loss of pay. Board may require them to make up the day.

FEBRUARY – Valentine’s Day

Action: Valentine’s Day Party

Host a Valentine’s Day party at the beginning of February. At the party, members send a letter to every parent, enclosing a big red heart. The letter explains that there is serious conflict between the Association and the board and asks parents to encourage a settlement by putting the heart in their front window until the conflict is resolved and the contract settled. (School employees, their friends and families who live in town get the ball rolling by putting hearts up.) Letters with hearts should also go to any sympathetic group – police or other public employee unions. In addition, members send valentines to every board member. Include a home-made version of traditional Valentine candy – tiny pastel hearts with the printed message “Settle now!” Or tie a ribbon around a small box of candy. Inside put the message: “Let’s wrap it up by Valentine’s Day.”

Other Ideas: Use valentines wherever you can. Put candy out on counter in the school office. Present board members with valentine cookies which have appropriate messages. Mail valentine cards to board members.

Message: Let’s wrap it up by Valentine’s Day. Don’t be stone-hearted. Don’t break our hearts! Settle now! Great schools! Great staff! Deserve a fair shake!

Materials: Letters to residents and board members, large red hearts, candy, flyer inviting members to attend the letter writing “party,”

MARCH – St. Patrick’s Day

Action: Protest March

Carrying candles and dressed in green, Association marches en masse to board office, board member(s) home(s), or a board meeting to deliver a message. President makes a speech. Members wear shamrocks that say “Stop the blarney! SETTLE NOW!” Invite the press. The march would be enhanced if a member would play a mournful Irish tune on a flute, the bagpipes, or a fiddle. (Members can go out for corned beef dinner together afterwards.)

Other Ideas: Go to school board meeting and present them with the blarney stone.

Message: This board has the gift of gab. But what they’ve proposed is a bunch of blarney. Settle by March 17, or even the luck of the Irish won’t save us. Success is not a matter of chance. Get to the table and stop the blarney! Great schools! Great staff! Deserve a fair shake!

Materials: Shamrocks saying “Stop the blarney! Settle now!” Flyers to press and public onlookers, speech, candles, music.
**APRIL – April Fool’s Day**

**Action:** **SURPRISE!**

To stage an April Fool’s Day action, members observe a uniform sign-in time by meeting at a place away from school and entering their building en masse at the last second. Association distributes a flyer on the way in to administrators, parents and reporter(s). Members do not park their cars in the school parking lot.

**Message:** This board has been fooling around too long. But it’s no joke working without a contract. The board’s latest proposal was just foolish. We’ve got a few tricks of our own. Let’s settle now! Great schools! Great staff! Deserve a fair shake!

**Materials:** Flyer. Caution: to be successful, this action requires absolute confidentiality. Members cannot leak the plan. Therefore it may be more appropriate for smaller locals that have more control. Larger locals should activate their phone chains the night before the event, telling members to report for an early morning meeting.

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**MAY – May Day**

**Action:** **Tree Planting Ceremony**

On May 1, on school grounds or in another public area, members plant a tree. Invite the press. President gives a speech.

(***Note:** If the association is beginning negotiations next year this event can be adapted to be a kick-off ceremony.)

**Other Ideas:** The way members get to the ceremony could be an event in itself. Could plant flowers instead of tree.

**Message:** The board’s recalcitrance is destroying our school’s learning environment. Our discussions have been unproductive. Let’s use this May Day as a new beginning. Board members come and go, but our members have long roots in this community and its schools. Let’s plant the seeds of a new relationship. What we plant today we’ll enjoy tomorrow. Let this tree be the symbol of our work: we’re building the future, working together for the children, our community, and our cultures. Let the board look at this tree, think about our children’s future, and settle the contract now! Great schools! Great staff! Deserve a fair shake!

**Materials:** Tree, shovels, press advisory, flyer explaining event to onlookers.

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**JUNE – National Children’s Day**

**Action:** **Picnic**

Plan an afternoon of activity for students, including a picnic. Invite the press and board members. Ask the board members and reporters to stay after the children have gone home. President then holds a press conference.

**Other Ideas:** Members could also take children to a minor league baseball game or other local event. Association could sponsor event honoring retirees and giving scholarships to high school graduates.

**Message:** “We all have a responsibility to children, not just on National Children’s Day, but everyday. As caring teachers and school employees, we feel – and meet – that responsibility today and every day. But this board has ignored that responsibility and, by not settling its contract, has distracted school employees from their important work with children. **Remember:** Great schools! Great staff! Deserve a fair shake!

(***Note:** If the association is beginning negotiations next year this event can be adapted to be a kick-off ceremony.)

**Materials:** Organizational plan for event, flyer announcing event to children and parents, press advisory, speech.
# ACTION PLAN WORKSHEET

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<th>WHAT</th>
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1. Generally you do not withdraw proposals until the final agreement has been reached. Exception: When you withdraw a proposal in exchange for the board withdrawing one.

2. When proposals are agreed to, a tentative agreement should be signed by both parties. Then stop talking about them.

3. Save hard bargaining on salary and other important money items until last. If these issues are settled first, you won’t have any leverage to get other issues settled.

4. Listen carefully to the board’s statements and objections. You may find you are able to rewrite your proposal in a way that the board’s objections disappear and you keep the substance of your proposal.

5. The ability to react and study the board’s reactions and to tune in on its thinking will help in the preparation of counterproposals which are acceptable to the board.

6. Substantive agreements are usually made in the final hours.

7. Who gets the last word in at negotiations is not important. Getting an agreement is the important thing.

8. The most successful negotiations occur when associations have internal strength; good executive committees; well trained, well disciplined, and competent negotiating teams; and a strong communication system which keeps members informed of the progress at the table.
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.

(NOTE: In the event that the settlement occurs after the expiration of the current agreement, a statement regarding retroactivity and start dates of other items must be included.)

1. **Length of Agreement:** Three (3) years (2XXX-XX through 2XXX-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 2XXX-XX through 2XXX-XX.
   - *Attachment C:* ESP Guides 2XXX-XX through 2XXX-XX.

   or

The base salary cost for each year shall be increased by the following amounts inclusive of increment:

- **Year One** (2XXX-XX) _____ % of the 2XXX-XX base
- **Year Two** (2XXX-XX) _____ % of the 2XXX-XX base
- **Year Three** (2XXX-XX) _____ % of the 2XXX-XX base.

The previously agreed-upon scattergram representing the base cost is attached and initialed by the parties.
This agreement is subject to the mutual development of salary guides.

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 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: ____________________

For the Board of Education:  For the Association:

______________________________  ________________________________

______________________________  ________________________________

______________________________  ________________________________

______________________________  ________________________________

______________________________  ________________________________
The following items should be added to a memorandum of agreement as the individual circumstances dictate:

- This Agreement shall cover all current, retired, and resigned 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.]

- It is agreed that neither party shall discriminate against, nor 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

Attachment A. Language changes.

[Bracketed material to be deleted]. **Bolded material to be inserted.**

**Preamble**

Change [2015] to **2018**.

**Teachers:**

**Article 1**

In second paragraph, change “…[are] professionally prepared…” to “…should be professionally prepared…”

Change [Chapter 123, Public Laws, 1975] to **NJSA 34:13A-5.3**.

**Article 2**

A. Change as follows:

“…for all **certified** personnel under contract, on leave, employed [or to be employed] by the Board for the duration…but excluding the Superintendent, Assistant Superintendents [of Schools], **Board Secretary, Business Administrator, Executive Directors**, and all confidential employees.”

B. Change as follows:

“…shall refer to all [professional] employees…as above defined. [excluding the Superintendent and Assistant Superintendent of Schools, and all confidential employees]”
Article 3

A. Change as follows:

“The Board agrees…in accordance with [Chapter 123, Public Laws 1975] NJSA 34:13A-5.3, in a good-faith effort…terms and conditions of teachers’ employment. [Such negotiations shall begin not later than October 1 of the calendar year preceding the calendar year in which this Agreement expires]. The parties agree to enter collective negotiations over a successor agreement according to the timetable established by the Public Employment Relations Commission.” Any agreement so negotiated shall apply to all employees, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

D. Make the following deletions:

[Receipt of a proposal shall be acknowledged in writing within (five) 5 days.]
[During negotiations, the Board and the Association shall present relevant data, exchange points of view, and make proposals and counter proposals.]

G. Make the following deletion:

“…be conducted in private and that [reasonable] confidentiality…”

Article 4

A.1. “…decisions affecting [a teacher or group of teachers] teachers’ terms and conditions of employment.”

2. An “aggrieved person” is [an employee, employees] a teacher, teachers, or Association directly affected…”

B.1. “…resolution of [the problems which may from time to time arise affecting teachers] disputes concerning the rights of the parties.”

C. 3. Insert new paragraph C.3. as follows:

Notwithstanding any provision to the contrary, written grievances shall be filed, whether by a teacher, teachers, or the Association, within forty-five (45) work days from the event grieved, or within forty-five (45) work days of the date the grievant knew or should have known of the basis for the grievance. If a written grievance is not filed as set forth herein, it is barred.

(Note: Redesignate present paragraphs C.4. through C.6. to C.4. through C.7.)
PREPARATION

- Review constitutional requirements.
- Publish procedures in advance.
- Locate a place to hold meeting.
- Give consideration to:
  - Sound equipment, lighting, seating, equipment.
  - Check-in procedures.
  - Scheduling meeting(s) based upon members’ work schedules.
- Give notice of the place and time.
- Prepare documents which explain changes in contract language, benefits, and salary guides.
- Prepare for voting. Give consideration to:
  - Voice vote vs. secret ballots.
  - Allowing or not for absentee ballots.
  - Procedures and personnel to conduct vote (if permitted under the local association constitution).
  - How and when the vote will be announced.
- Encourage members to ask questions and seek clarification of the changes.
- President or another association leader makes a statement of support for the tentative agreement.
- President asks for motion to ratify and a second to the motion. (This should be anticipated in advance of the meeting.)
- Members may discuss motion to ratify.
- Vote held and results announced according to procedure.

PRESENTATION

- Prepare agenda with association leaders.
- President is “in charge” of the meeting.
- Negotiations team gives presentation.
- Give consideration to:
  - Reviewing the original proposals, the association’s goals, and the hard work that went into getting the tentative agreement.
  - Reviewing all the changes is a must.
  - No salary guides available.
  - Language changes not spelled out.
  - Poor facilities – overcrowding – poor sound.
  - No opportunity to ask questions.
  - No opportunity to digest information presented.
  - Lack of information prior to ratification as to the association’s goals and the developments during negotiations.
  - Bargaining team not committed to the agreement.
  - Rules and procedures not known and therefore made up on the spot.
  - Surprises and controversial items brought up for the first time.
  - Failure to understand hidden agenda of those who oppose.
HOW TO AVOID PROBLEMS

- Be well prepared.
- Adopt procedural rules well in advance of the meeting.
- Prepare all guide and language changes in advance with enough copies so each member may have one.
- Hold meeting at a facility that is conducive to your needs.
- Hold meeting at a time that is convenient to the most members. The association may request that certain employee categories, like night custodial, be allowed to attend the meeting without loss of pay.
- Prepare the audience prior to the meeting.
**Contract Settlement Highlight Form (Part 1)**

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**When emailing form:**
When submitting via e-mail, please send to the Regional Office AA.
Please send a copy of the signed memorandum to the Regional Office using regular procedures.

**Submitting via paper:**
When submitting form by paper, please mail one copy to the Regional Office with a copy of the signed Memorandum of Agreement (MOA).

**Regional Offices:**
When you receive completed forms, please ensure that a copy is either mailed or e-mailed to NJEA Research along with a copy of the signed MOA. Also, please send copies of ratified guides to Research as soon as possible after ratification.

### YEAR 1

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See pg. 101 for Years 3 - 5

NJEA Consultants Handbook 2022
### Contract Settlement Highlight Form (Part 1, pg. 2)

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## Contract Settlement Highlight Form (Part 2)

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### Changes to Contract Language

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Each day we are faced with making hundreds of decisions. They can be as simple as when to get out of bed or as complex as how to negotiate a contract provision. Some decisions we make alone; others are a group product.

As a UniServ consultant, you need to be able to help groups of people reach agreement. Sometimes you will be working with the association’s team. Other times you will be working with groups made up of association and board members. There are many group decision-making processes; those that work best accommodate all the participants and respect individual differences. Selection of the most effective process in a given situation is the key to success.

Group decision making is enhanced when each member of the group is an integral part of the process. The worth of the decision is magnified when different perspectives are considered and appreciated.

Each individual needs to guard against being trapped into seeing things only one way – his/her own way. Group members must be cautious of seeing only the obvious and failing to sort through hidden opportunities for growth and understanding. To be successful, members of the group need to keep their individual experiences and patterns of behavior from preventing their exploration of new ways of looking at issues and making decisions.

The key to effective group decision making is trying to understand the rationale and points-of-view others bring to the discussion. Often, “off-base” ideas are the building blocks for a truly creative group decision – once all the possibilities have been explored.

Several decision-making methods are used when working with groups. They include self-authorization, minority, majority, compromise, unanimity, and consensus.

Decisions made by self-authorization are one-person edicts, which often anger the group and may have little support of the group.

Minority decision making occurs when a small group makes a decision for the larger group. Often, this occurs because the majority is disorganized or does not care. Sometimes an effective way for a large group to make decisions is for it to authorize a small group of members, who have specific knowledge, to make decisions about specific issues on behalf of the larger group. Example: A committee interviews and selects candidates for the entire membership to support in school board elections.

The majority-vote method is generally used when large numbers of people need to make a decision, like who will be the president or will the contract be ratified. In other settings, when small groups of people want to make a decision, it’s best to reach group decisions based on consensus rather than by majority vote.

Compromise, while often touted as the end to all ends, requires everyone to give up something of value. It leaves some members of the group feeling as though their views have been sold out. Generally, few, if any, members of the group are happy with the end product; they just go along with it.

Unanimity is the ideal state that is almost impossible to achieve. Because it calls for complete and total agreement, most groups do not even consider it as a workable option.

In consensus decision making, each member of the group must be totally open to the ideas and perspective of all the others. Individuals have a responsibility to share their own ideas as well as their reaction to the ideas of others. No decision is final until all members of the group embrace it; in other words, each member of the
group has both input and veto power. Reaching consen-
sus generally takes a great deal of time and energy.

Decisions reached with little involvement carry little
investment or commitment. Decisions made with high
involvement carry a greater commitment, but also
require more time. The more you are willing to invest,
the better the results.

Decision making and problem solving are intertwined.
We often address problems by making decisions.

Source: NEA Vital Links Training: Decisionmaking

TOOLS FOR MAKING GROUP
DECISIONS

Once you have facilitated a few meetings, you will start
wondering why some work better than others. Some-
times your group bogs down trying to define a problem;
or it seems uncreative in trying to think up solutions.
Other times the group is alive and creative, moving
smoothly from one problem to the next and accomplis-
ing a lot of work. Why the difference? How can you help
your group when it gets hung up on minor issues?

To help your groups be effective in their decision mak-
ing, you need to understand the dynamics of problem
solving and know how to use a number of group prob-
lem-solving and decision-making tools.

Awareness of different methods is even more essential
when you want a group to use the same tool at the same
time. You cannot do that without being explicit about
which tool to use. For example, when you see that your
group is having trouble generating alternative solutions,
you should be able to say, “I don’t think we’re getting
anywhere by considering old solutions. Let’s try to work
together to think up some new ones. We could try brain-
storming.”

Human problem-solving is a messy business. Sometimes
you may have a solution before you know what problem
it solves. Sometimes you think of a new way of defining
a problem while you are evaluating some alternatives.
These steps are sub-problems that you face as you wind
your way from problem to solution. Each requires a
different focus.

• When you define a problem, you ask, “What is the
  problem?”

• When you analyze, the question to be answered is:
  “Why is it a problem?”

• When you generate alternatives, you ask, “What are
  some ways we might solve the problem?”

In the end, the group judges the alternatives and makes
a decision.

When you are in the phase of problem perception, you
ask: Is there a problem? Where is the problem? Is it really
a problem? Whose problem is it? What does it look like,
feel like, etc.? It’s the sniffing, groping, grasping phase. It
includes whatever you do to get a handle on a problem,
to stake out the general problem area.

Problem perception is closely related to problem defini-
tion and problem analysis. In all three phases your focus
is on the problem itself; afterward you start thinking
about solutions. In reality you will find the group cycling
back and forth between understanding more about the
problem through analysis, getting a sharper definition of
the problem, and seeing and accepting a sharper defini-
tion of the problem, and seeing and accepting it more
fully. Until these phases have been covered thoroughly,
don’t let your group proceed to solutions.

During this phase your objective is to help the group
recognize whether it has a problem and, if so, to accept
it and agree to try to solve it. Is there a situation that the
members of the group want to change? Group members
have to buy into the problem, to own it. Otherwise they
will have little energy to proceed. In fact, a lack of energy
in a meeting is often a symptom that you have not dealt
adequately with the problem-perception phase.

Many individuals and groups are afraid of problems. To
admit to having a problem is often regarded as an admis-
sion of failure. People like to say, “Everything’s all right
– no problem!” So some refuse to recognize they have a
problem or keep ignoring it or hiding it. If you point it
out to them, they will say it is unsolvable, that that’s just
the way things have to be. Often there is an underlying
fear that any change will be for the worse, and it’s better
to hold on to an old familiar problem than to have to
cope with a new one.

You must convince your group that it can solve its
problems collectively in a meeting and that there are real
benefits in doing so. It is your responsibility to create a
positive, supporting, and secure climate in the meeting
so that problems can surface, be accepted, and be solved.
Following are several problem-solving methods to use during the perception phase:

Everybody sees things differently, especially problems. The objective in collaborative problem-solving is to get agreement on a common statement of the problem. Before you can do that, you have to understand how each person perceives the problem. The expression of personal views, no matter how divergent, has to be legitimized.

One technique for legitimizing individual perceptions is to ask all group members to state their personal view of the problem. Accept and support each statement as a legitimate view and protect it from attack until it has been recorded in the group memory and has been somewhat depersonalized.

Once you have heard and recorded everybody’s point of view, the tension should relax and you may be able to find areas of overlap or, with further analysis, some underlying cause.

It is very important that group members not only hear but also understand how other people feel about a problem. There are many ways to experience a problem from different points of view. If the various sides are present in a meeting, people can exchange roles and try to express the other person’s concerns.

If critical views are not present in the meeting, you could role-play to stimulate how others might see the problem. There is always a danger when you try to speak for someone else, but as long as you realize that a role-playing situation is not necessarily an accurate representation of reality, a lot can be learned.

Sometimes group members will skirt around a central problem, hinting at it but afraid to discuss it openly. You may be able to diagnose this type situation because you will sense a general feeling of nervousness and caution. When you see this happening, you should consider being direct with the group. Point out their behavior: “It seems to me you are avoiding something. Is there something else you haven’t brought up?” Or, “Sometimes when people are silent, it means there is something they don’t want to talk about.” Then, legitimize: “It’s all right. It can’t be that bad. In the long run, it would be much better to deal with the real problem than to continue ignoring it.” If this doesn’t work, you may have to say it for them: “Is it that you are afraid someone has a special deal with the principal?” Do not acquire a stake in your statement of the problem. A little nudge in the right direction may be enough to get the ball rolling.

People have the strangest reasons for not wanting to face problems: fear, fantasies, and unrealistic worries. If you can bring these concerns to the surface, they may melt in the light of day. When a group is balking at tackling a problem, you can suggest a look at the best, worse, and most probable consequences of solving and not solving the issue. Sometimes when questioned directly, people cannot think of any terrible consequences and become more willing to grapple with an issue. The payoffs for solving a problem become convincing when compared to the probable consequences of not solving the problem.

One question you should ask a group in this phase of problem definition is: “Whose problem is it?” Countless meetings have been devoted to arguing over issues that group members were powerless to affect or incapable of resolving. As a rule, you cannot solve someone else’s problems. Ask: “Can this group deal with this problem in this meeting? Who else should be involved?”

Once you have perceived a problem, the next step is to get a working definition of it. When you define something, you set boundaries around it; you say what it is and what it is not. You describe without necessarily naming. Each definition limits the possibilities. In problem definition the set of possibilities is called the problem area.

There is a great danger that if you narrow the problem area too quickly, you will exclude the real problem. Example: If you can’t start the engine of your car, and leap to the definition that you have engine trouble, you will be excluding the possibility that the problem is an empty gas tank. Try to avoid all unnecessary assumptions which can blind you to other causes and innovative solutions. But do make sure that you are defining a problem, not a solution.

Experiment with a number of definitions, continually testing your definition with the known facts that have been discovered through analysis. You want to build your definition on the foundation of hard evidence, not speculation or blind assumptions.

State the problem as open-ended questions, preferably beginning with “how to” or “what is.” Each definition has a different slant, a different implied solution. If they are stated as open-ended questions, they can be used in an alternative-generating session. A question like, “Should we change our filing system?” is not useful because it is a yes/no question. It doesn't leave room for alternatives.
Remember, most problems do not have one right solution, just a range of possible solutions, some more suitable than others.

If you want to tighten up a definition, the “lasso” method works well. Write the definition on poster paper and then circle or lasso key words, asking the group to be more specific. If the definition is “How to solve drug abuse in the schools,” you could lasso “drug,” “abuse,” and “schools.” What drugs, what do you mean by abuse, which schools, what age levels, and even what do you mean by reduce, eliminate entirely, prevent, etc. Each time you clarify a key word, you sharpen the definition. If there is an “and” in the definition, make sure you are not trying to solve two problems at once.

Another technique for defining the problem was developed by Kepner and Tregoe, researchers at the Rand Corporation. It is referred to as the “Is/Is Not” technique. Put two columns on chart paper. In one column write facts you know about the problem: where it is, what its effects are, when it occurs, etc. In a second column write what is not a part of the problem. Collectively, these statements build up to a definition of the problem without running the risk of assuming something that is not verified.

In the analysis phase your objective is to break down the problem into component parts and to examine how they go together. You are trying to learn about the problem, not describe it, although the more you understand the problem, the more accurately you will be able to define it. People tend to be impatient with analysis. They feel an urge to rush on and try to solve the problem. There are, in fact, no simple solutions. Everything is part of a larger system, and you have to understand the larger context and how one part affects another.

Everyone knows that decisions are not better than the information on which they are based. If you have faulty data, your solutions will be faulty. They won’t work, or worse, will compound the problem. Your role is to keep asking the group whether it has the necessary data to proceed. If it does not, it’s better to stop and figure out how to get the facts. Help your group separate hearsay and gossip from the facts.

Fact finding and research are more efficiently accomplished by individuals than by groups. Make a list of required information and encourage the group to assign to specific group members the tasks of researching the questions and presenting their findings to the entire group. If there is a major gap in the collective knowledge and experience of the group, it may indicate that other people should be in the meetings.

The first step in analyzing problems is to ask basic questions of who, what, where, when, and why as well as such related questions as how many, how big, how much, etc. Ask group members what questions need to be answered to build a complete picture of the problem.

The second step is to break it down into smaller and smaller sub-problems until you reach a size you can handle. The trick is to discover a good way of slicing a problem so that the parts are relatively independent of each other. Otherwise, the solution to one part may interfere with the solution to another. Example: Suppose you want to know what food to purchase to feed your family in the coming week. You could partition the problem into planning a vegetable for each meal and then a meat for each meal. The difficulty would be that you might end up with spaghetti and mashed potatoes in one meal and steak and applesauce in another. It makes more sense to break the planning problem into a menu for Saturday night, a menu for Sunday lunch, etc., and then add up the quantities of the various food at the end. Once you have the list of needed food you can compare it to what is in your pantry and go to the store to purchase what is needed.

One way of looking at a problem is to visualize it as a boundary between forces that are sustaining it from getting worse and forces restraining it from getting better. This method is called force-field analysis. The argument goes that if you want to induce a permanent change and reach a new dynamic balance, you should increase the sustaining forces while reducing the restraining forces. Figuring out what forces contribute to the problem is the analytic part of the method. When you begin to figure out how to change the forces, you move on to the next phase – generating alternative.

At times it will become clear to you that your group is out of its depth, or, more bluntly, does not know what it’s talking about. As analysis gets more specific and technical, it is natural that any group will reach a point where most members get lost. Unfortunately, some people are not bothered by discussing something they know little about and do not like to admit it when confronted. When it becomes obvious that people are getting confused or that the argument is going in circles, interrupt the cycle by asking, “Who would know the answer to this question?” Or, “Who could we invite to our next meeting?”
Groups can get stuck or fixed in problem solving and spend hours arguing over generalities or fighting over specifics. When you notice this happening you need to help them disengage and come back at the problem from a different direction. When your group gets locked into abstractions or generalities, you can bring the conversation down to earth by asking for specific examples. Or, when group members are in disagreement about specific points you can gain some headway by asking, “What’s the overall problem? Is there a more general situation that needs to be changed?”

If your group has perceived and agreed upon a problem as well as defined and analyzed it, you are ready to go on to the next phase. If not, you may be doing more harm than good by letting your group charge on to generating alternatives. The majority of time in group problem solving should be spent coming to an agreement on a definition and analysis of a problem. A good foundation here should make the rest of the phases of problem-solving go smoothly.

**Generating alternatives is the “thinking up” phase.** It is the bridge between perceiving, defining, analyzing and evaluating, and deciding on a final solution. Groups achieve synergy and produce more creative ideas than group members can generate individually.

Two big barriers to creativity exist in group problem solving. One is premature evaluation. Ideas are delicate. They have to be protected and nurtured. If one person suggests an idea and another person jumps on it as stupid, several destructive things happen: A potentially important idea may be dismissed and the momentum of the group may be interrupted. You need to keep this from happening. You need to protect ideas and individuals. As a rule, all forms of evaluation should be banned from this phase of problem-solving. Encourage people to turn off their criticizers and to let go and use their imaginations.

The second barrier to creativity is fixation – getting stuck in a rut and seeing the problem from only one point of view. You must keep your group moving. Remember, one of the causes of fixation may be the definition of the problem. If you are not getting anywhere, maybe you should return to the analysis phase or tentatively move on to evaluating your existing alternatives.

**Brainstorming** is a simple and effective way to generate alternatives. The rules are simple: Everyone tosses out as many ideas as possible. The ideas are written down by a recorder. Nobody is allowed to criticize or evaluate any ideas until after the brainstorming session is over. Make sure everybody knows the focus of the brainstorming session. Set a time limit. Give them an objective – “I’d like to see if we can produce thirty-five ideas.” Draw people out – “Francis, you look like you have an idea. How about it?”

An alternative to having everyone toss out ideas simultaneously is to ask an individual to contribute one idea and then move to the next person. Continue this round-robin approach until everyone has contributed all the ideas they can think of. This is especially useful if some individuals are not participating in the discussion because they do not want to own the results.

What people often do not realize is that creativity is as much the appropriate selection of whatever exists as the development of the totally new. Many of our most popular designs are the product of modifying or adapting something that existed before. Examples: Frisbees are a modification of a disk. Roller skates and surfboards were around for a long time before people thought of combining the two and surfing down hills on skateboards.

When individuals make judgments, he/she consciously or subconsciously consults a set of personal criteria or standards about what is good or bad. When someone says, “I like that,” he/she is saying, “That one is consistent with my set of personal preferences.” Most people are not aware of their criteria, but they have them nevertheless. Except for periods of serious reassessment, most evaluations and decisions are made by testing the alternatives against personal criteria and selecting the one which most conforms.

Intuitive evaluations are fine for individuals, but they raise havoc in groups. When one member of the group says, “I like alternative A,” and another says, “I like alternative B,” where do you go from there? Unfortunately, what follows are a lot of “whys” and “becauses,” which often lead to more entrenched positions.

Before a group moves to judging alternatives, it needs to reach agreement on common criteria. The development of explicit criteria has important benefits:

1. It forces all group members to externalize their values and to reexamine them.
2. Being clear about personal criteria helps others understand how each group member makes his/her decisions.
3. It creates a useful interlude between generating alternatives and the evaluation of alternatives.
4. It is easier to reach consensus about criteria before alternatives are discussed than afterward.
5. If you cannot reach consensus on criteria, it is unlikely you will reach agreement on an acceptable alternative.

6. If you reach consensus on criteria, future decisions should be more consistent.

**Evaluating alternatives:** In theory, once you have your criteria, evaluation should be simple. All you have to do is to rate each alternative according to how many criteria it meets. Whichever scores best should be your selection.

In practice, evaluating is more complicated. Some criteria are more important than others. So, you need to rate or rank-order them. Often the solution you intuitively feel is best does not score well, so you have to go back and reexamine your criteria. Evaluating means modifying, adding or subtracting criteria, and then reapplying them to alternatives. Even if you end up choosing the alternative you liked from the beginning, the procedure of criteria development forces you to examine your values and rationale. Sometimes, no alternatives will score very well and you will have to generate other alternatives.

There is another way to evaluate. **Test the alternatives** first, and then evaluate them. Rather than working hard to figure out which alternatives will be best, eliminate the obviously inadequate, and try the rest and see which one does work best. In group problem-solving you often face a list of alternatives and need a way of ordering them. As your problem-solving moves along, it is useful to take a look to see which items seem more important than others at the moment. Since this is not a way to make a final decision, but only a way to take the temperature of a group, you can vote. The simplest way is to ask group members to vote for one alternative by raising their hands. Read the list and have the recorder write down the number of votes next to each alternative. The sequence or rank order is determined by the resulting numbers from high to low.

Sometimes you end up with so many alternatives that it is hard to know where to begin evaluating. Under these circumstances, your group might work out some general categories of alternatives, some natural groupings. Then rather than starting to evaluate individual alternatives, see if you can reach general agreement on which category of alternatives seems most appropriate.

Often you and your group will want to get right into evaluating alternatives and bypass the development of criteria. That is okay for relatively unimportant decisions. If it is a major decision, ask the group to list the advantages and disadvantages of each alternative. It is a way of organizing the evaluation and making sure that you examine all aspects of each alternative. Do not worry about contradictory evaluations at first. Record them anyway and complete the first cycle of evaluation. Sometimes when all the alternatives have been examined this way, one or two will emerge as most acceptable.

When a meeting is being run informally and people are generating alternatives and evaluating them at the same time, you can use the **“What I like about . . .” technique.** This technique helps avoid some of the problems of premature evaluation. Establish a rule that before group members voice criticisms they must first say what they like about an idea. You need to keep reminding and pushing individuals to come up with more likes.

When people have to look for the good in an alternative it forces them to break fixed positions and consider a different point of view. It also keeps them from putting down the originator of the idea. After coming up with a number of likes, members of the group should phrase their dislikes as concerns. “What I like about that idea is . . . . My concern is that . . . .”

In the decision-making phase of problem solving a group should review the results of the evaluation and commit itself to one or more courses or action.

There are two ways to make decisions: win/win and win/lose. The benefits of the win/win approach are the quality of decisions as well as the extent of the commitment to decisions. Consensus can be reached when a group moves together through a complete problem-solving sequence rather than being presented with limited alternatives developed by individuals or subgroups. The key to attaining win/win decisions lies in authentic collaboration.

If your group is falling apart trying to make a decision, it may be that you have tried to move too fast or skipped some previous phase. It may be time to back off and analyze where things went wrong.

Assuming that your group is ready to make a decision, here are some ideas to help you help them through the process. Tell them they do not have to choose a single alternative. Sometimes several alternatives can work together. Secondly, encourage them to strive for consensus before resorting to such win/lose tactics as voting or executive decision. **Remember:** Group consensus means that every participant can buy into or live with the decision; it does not mean that everyone believes the solution is the best. Encourage everyone to keep voicing their concerns until their fears have been dealt with. They are doing the group a valuable service by pointing out short-
comings of the solution and in the end the quality of the final solution will be higher.

Guard against the dangers of groupthink. Groups tend to focus on areas of disagreement. Counter that by getting people to start the process by looking at where they already agree. Try to keep people from dwelling on the negative. Encourage flexibility.

**Consensus-seeking** is a delicate process. You must keep the group moving toward a point of agreement without getting hung up in destructive arguments.

Let’s assume your group has generated and evaluated a list of alternatives. If you think that one alternative is clearly favored, you could shoot directly for consensus by asking, “Who would like to propose a solution?” When someone volunteers a solution ask, “Is there any one who could not live with that solution?” Notice that you do not ask, “Does everyone think this is the best solution?” Urge group members to voice any reservations they have. You are not looking for a compromise; rather, a solution everyone feels good about. If no one raises any objections to the solution, you are home free – consensus has been reached.

If one or more persons has strong reservations, you build up or eliminate. By building up, you focus on what you know should be in the solution and slowly add to it; you work with your group to uncover what parts of the solution are acceptable to everyone, and then begin to deal with the reservations.

Ask questions like, “Can you think of any changes in the solution that would satisfy your concern?” Or, “Can anyone see a way that this could be dealt with?” After each proposal or addition, you return to your basic question: “Can everyone live with that?”

If the building-up method does not work, try the opposite strategy, elimination. Focus on what people know they do not want. Ask, “Is there any alternative that you know now you could not accept?” If someone suggests a solution to be removed from the list, check out with the group whether the solution can be removed. If everyone agrees, the solution gets axed and you have one less alternative to deal with. If someone objects, forget it for now and see if other alternatives can be eliminated.

During the decision-making phase, you must try to maintain a delicate balance between pushing for consensus and protecting individuals who still have strong reservations. You do not want the group to steamroll over valid concerns. Let people know how hard it is to maintain this balance. You can say, “I’m going to be pushing you to reach closure on this issue, but please let me know if you feel I’m pushing too hard. It is important not to let go of valid concerns until you are satisfied they have been heard and taken into account.”

If you see that one or more people are totally opposed to the will of the rest of the group, do not prolong the agony. Sometimes consensus is not going to be possible, and the sooner you recognize the fact, the sooner you can move on to another method of decision making.

At the beginning of the decision-making phase, it is sometimes useful to know how everybody feels about the existing alternatives. In this case, **straw voting** can be used, but with caution. Explain that a show of hands is only a way of taking the pulse of the group, of seeing how much agreement already exists. If your group is considering five alternatives, a straw vote might show you that everyone favors one alternative over another.

**Executive decision:** In hierarchical organizations, group consensus is sometimes not possible nor necessary. Many people are satisfied if they have a chance to contribute their views and are relieved if the final decision is left in the hands of someone “higher up” on the organizational chart.

Sometimes the implications of having to resort to this win/lose method is enough to break a deadlock. Otherwise, you can turn to the person who is in the role of decision-maker and say, “Well, Frank, it doesn’t look like consensus is possible at this time. You are going to have to make the decision yourself. Is there any other information you need from this group?” Encourage the decision-maker to be as explicit as possible about how and when he/she is going to make the decision. Then move on to the next item or close the meeting.

**Majority vote:** You will want to remind the group that resorting to a majority vote may cause dissension and certainly less support for the decision. On the other hand, it may be necessary to point out to certain individuals that if they continue to maintain extreme positions, they may end up losing more than if they try to modify or adapt the existing alternatives.

**Source:** How To Make Meetings Work, Michael Doyle & David Straus, Berkley Trade, NY, 1993.
People have disagreements all the time. Sometimes they argue with family members and sometimes they argue with colleagues and other association members. Some of the disagreements grow into full blown conflicts. Associations and boards of education often have opposing views. Sometimes they are able to find a common ground and other times the conflicting views grow stronger. These situations generate lots of opportunities for UniServ consultants to intervene and, if not resolve the conflict, at least help the parties manage their conflict.

In spite of the fact that conflict can often be healthy and productive, most of us are conditioned to believe that conflict is negative or to be avoided. Each conflict situation has the potential for hurting feelings and making someone look foolish at the least and producing lasting damage at the most. It is important to understand that conflict itself is neutral. The way people react to the conflict will result in either a positive or negative outcome.

Managing interpersonal conflict is not easy. How you approach conflict determines, in large part, your effectiveness. Successfully managing conflict demands that you expand the ways in which you respond and hone your skills in determining which response is appropriate.

The common sources of conflict tend to fall into five basic categories:

1. Scarce and/or undistributable resources – like time, money, people, materials.
2. Unmet expectations.
3. Unclear or different goals or values.
4. Jurisdictional ambiguity or lack of role clarity.
5. Different methods or styles.

Conflict in these situations is inevitable because people have different viewpoints. In a work group or organization, conflict may arise because members see the needs of the organization differently or because they have different responsibilities.

Since conflict is natural, it is not necessary to expect to eliminate it. Help people to view conflict as essentially healthy and to understand that it can be handled and managed constructively. Individuals and groups are enhanced by exploring differences. New ideas will occur and new learning will result. Usually when conflict arises and is dealt with openly, people are stimulated to creativity. Alternatives are considered and better ideas come forth. Even though individuals in the group respond differently to the conflict, the end result will be a better course of action.

Researchers have identified five ways people respond in conflict situations. The five responses are:

- **CN Compromise/negotiate**
  People with this behavior pattern look to split the differences, usually by trade-offs.

- **PD Power/dominance**
  People with this behavior pattern unilaterally use their power, persuasion, or influence to gain compliance while resisting other views.

- **SS Suppression/smoothing over**
  People with this behavior pattern unilaterally advance their views by accentuating similarities or benefits and down playing differences or liabilities.

- **DW Denial/withdrawal**
  People with this behavior pattern simply avoid any conflict by denying it exists or withdrawing.

- **IC Integration/collaboration**
  People with this behavior pattern explore and integrate relevant views for joint problem solving.
There are advantages to using each of the behaviors at different times and in different situations. However, most people exhibit a “typical” reaction to conflict situations. Behavior selection determines whether the outcome of conflict is positive or negative. Understanding the various behaviors exhibited in conflict opens the door to enhancing your skill in managing conflict. As you become more aware of what is happening during conflict, you can develop skills to help others work through the situation whenever possible.

Helping others deal constructively with conflict will have a profound impact on their lives. By learning to manage conflict we are open to making meaningful contact with others, we finish uncompleted business, and our vision of what is possible is expanded. Teaching people to select the right behavior is the key. When you are involved in managing a conflict, take time to understand its cause. Avoid being defensive. Avoid deception. Avoid assumptions. Be willing to admit mistakes and let others do the same.

Source: NEA Vital Skills Training – Managing Conflict

### STEPS TO FACILITATING CONFLICT

Understanding the differences between debates and arguments is critical. Healthy debate is essential. Dysfunctional arguments, however; lead to disaster.

<table>
<thead>
<tr>
<th>In a healthy debate</th>
<th>In dysfunctional arguments</th>
</tr>
</thead>
<tbody>
<tr>
<td>People are open to hearing others' ideas.</td>
<td>People assume they’re right.</td>
</tr>
<tr>
<td>People listen and respond to ideas even if they don’t agree with them.</td>
<td>People wait until others have finished talking then state their ideas.</td>
</tr>
<tr>
<td>Everyone tries to understand the views of the other person.</td>
<td>No one is interested in how the other person sees the situation.</td>
</tr>
<tr>
<td>People stay objective and focus on the facts.</td>
<td>People get personally attacked and blamed.</td>
</tr>
<tr>
<td>There’s a systematic approach to analyzing the situation and looking for solutions.</td>
<td>Hot topics get thrashed out in an unstructured way.</td>
</tr>
</tbody>
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Techniques that create healthy debate

- Stay totally neutral.
- Point out differences so they can be understood.
- Insist that people listen.
- Have rules and use them politely.
- Make people paraphrase each other’s ideas.
- Ask for concerns.
- Make people focus on facts.
- Invite and face feedback.
- Facilitate assertively.
- Get closure and move on.

Techniques that allow dysfunctional arguments

- Join the argument.
- Ignore differences. Just pray they will go away.
- Let people be rude.
- No ground rules.
- Ignore the fact that no one is really hearing anyone else.
- Sidestep hot issues.
- Let people get personal.
- Get defensive.
- Stand by passively.
- Let position polarize and the meeting drag on.
Your key contribution during any facilitation is to **provide the structure and process** that will keep the discussion moving efficiently and effectively.

One of the biggest mistakes you can make as a facilitator is to show up without having assessed the situation or prepared a meeting design. You can gather information about the participants a number of ways: one-on-one interviews, group interviews, observations, and/or surveys. Once you’ve gathered data, give the participants feedback about what you have assessed to be their needs, the objective/s of the meeting/s, and the ground rules you expect to employ. When there is an understanding among the parties as to the goals of the meeting, set a meeting date.

**Facilitating conflict has two distinct steps:**

1. **Venting emotion.** This involves listening to people so they feel that they are heard and any built-up emotions are diffused. People are rarely ready to move on to solutions until their emotional blocks have been removed.

2. **Resolving issues.** This step involves choosing the right structured approach to get solutions. The approach can be collaborative, problem solving, compromising, accommodating, or consciously avoiding.

Not every difference of opinion is characterized by intense emotions. But **when negative emotions erupt**, you need to handle them. When people start to get emotional there are some basic strategies you can employ:

1. **Slow things down.** Get the attention of the individual or group by stopping the action and asking them to slow down. You can use the excuse that you can’t keep up with all that is being said. Ask them to start over and repeat key ideas.

2. **Stay calm.** Maintain your composure and do not raise your own voice. Speak slowly with an even tone. Avoid emotional body language.

3. **Revisit the norms.** Point out the existing norms and remind people that they agreed to them earlier on. Engage the group in writing new norms.

4. **Be assertive.** Move into the referee mode. Insist that people speak one at a time. Make them put their hands up and stop people who interrupt others. Do not stand by passively while people fight.

5. **Raise awareness.** On a clean sheet of paper record member ideas about the difference between a debate versus an argument. Ask them which one they want to have.

6. **Make interventions.** Do not let people fight with each other or display rudeness.

7. **Emphasize listening.** Paraphrase key points and ask others to do the same thing.

8. **Call time out.** Do not hesitate to stop the action any time emotions get out of hand or if the discussion is spinning in circles. Ask: “Are we making progress? Are we using the right approach? How are people feeling?”

9. **Use a structured approach.** Use techniques such as force field analysis, cause and effect analysis, or systematic problem solving. Do not let a discussion rage on without imposing structure and systematically capturing key ideas.

10. **Create closure.** Make sure that the debating is really going somewhere. Ask participants to help summarize what has been agreed to. Test these items for agreement. Help the participants create action plans to ensure implementation of key suggestions.

**Following are five basic approaches** you can choose from once emotions have been vented, in order to resolve the underlying issue:

1. **Avoid.** Ignore the conflict in the hope that it will go away. Maintain silence or try to change the subject. Use it in those 10 percent of situations when issues cannot be resolved.

   Avoiding does not deal with the issue.

2. **Accommodate.** Ask people to be more tolerant and accept each other’s views. Ask them to try getting along. This sometimes involves asking one person to give in to another person.

   Use it only in those 5 percent of situations where keeping the peace is of more importance than finding a solution.

   Accommodating just smooths things over.

3. **Compromise.** Look for the middle ground between highly polarized views. Ask each person to give up some of what he/she wants in order to get other items he/she thinks are more important.

   Use it in those 20 percent of situations when faced with polarized choices.

   Compromising helps find the middle ground.

4. **Compete.** Use force to make points and quell any conflicts. Go for a personal win even if the other person feels like he/she has lost the argument.

   You should never use this approach.
5. **Collaborate.** Face the conflict, draw people’s attention to it, surface the issues and resolve them in a win/win way by using systematic problem solving. This is the best and preferred approach to managing conflict. Use it in 65 percent of all conflict situations. Collaborating helps get people working together to find the best solution for everyone. Because it is consensual, it unites and generates solutions that everyone feels committed to implementing.

Collaboration is a superior way to manage conflict. However, a number of conditions need to be in place to ensure a successful outcome. Participants must:

- Have sufficient trust among them to open up and be supportive of each other when necessary.
- Have a positive intent to work towards a win/win solution.
- Have relevant information on hand to make a sound decision.
- Have the time to make a decision.
- Believe the topic is important enough to warrant spending the time it will take.

During any meeting, there will be occasions when you will need to make an **intervention.** The definition of intervention is: any action or set of actions deliberately taken to improve the functioning of the participants. This may be necessary in the following situations:

- Someone is not listening.
- Two people are having a side conversation.
- People are interrupting each other.
- One person uses a sarcastic tone.
- Comments get personal.
- The discussion gets off track.

Intervening is like holding up a mirror to the participants so that they can see what they are doing and take steps to correct the problem.

You always need to be cautious about intervening. If you intervene every single time there is a problem, you might be interrupting too frequently. Instead, you need to keep a watchful eye for repetitive, inappropriate behaviors that do not seem to resolve themselves. Following is a set of questions to ask when deciding if an intervention is advisable:

- Is the problem serious?
- Might it go away by itself?
- How much of a disruption will intervening cause?
- How will it impact relationships; the flow of the meeting?
- Can the intervention hurt the climate?
- Will it damage anyone’s self-esteem?
- Do I know these people well enough to do this?
- Do I have enough credibility to do this?
- Is it appropriate to intervene given their level of openness and trust?
- What will happen if I do nothing?

Interventions are always risky since they can make the situation worse. For this reason, interventions need to be worded carefully. There are generally three distinct components to an intervention statement:

1. Describe what you are seeing. This is nonjudgmental and does not attribute motive. It is based solely on observations of actual events.
2. Make an impact statement. Tell members how their actions are impacting on you, the process or other people. Base this on actual observations.
3. Redirect the person’s behavior/s. This can be done in the following ways: (a) asking members for their suggestions about what to do, or (b) telling members what to do.

**When people start to get emotional,** there are specific responses that can effectively redirect negative behavior. It is important that your statements do not put down anyone and that they offer a way for the person to save face and to say or do the right thing next time.

**When someone is being sarcastic:** “Ellen, I’m afraid your good ideas are not being heard because of the tone of voice you are using. How about stating that again, only in a more neutral way?”

**When one person is putting down the ideas of another:** “Joe you have been ‘yes butting’ every suggestion Carol has put on the table. I’m going to ask you to explore these ideas by asking a few questions to make sure you fully understand them before dismissing them. It will make Carol feel more like she’s being heard.”

**When two people are arguing, cutting each other off and not listening to each other:** “I’m afraid neither of you are hearing the excellent points being made by the other. I am going to ask you both to first paraphrase what the other has said before you make your own comment.”

**When someone in inappropriately aggressive or hurtful to another person:** “Fred, I’m going to stop you from saying anything further for just a moment and ask June...
to tell you how she would like to have you interact with her during the rest of this meeting. June, what would be better than this?"

**When one person dominates the discussion:** “Al, you always have lots of valuable ideas, but we need to hear from the other members of the team. Would you please hold your comments until the end so that other people can be heard?”

**When someone has hurled a personal slur at someone else:** “Jim, rather than characterizing Sally as being ‘sloppy,’ please tell her specifically about the state of the meeting room after her session, so that she can address the situation.”

**When two people are trash ing each other’s ideas without giving them a fair hearing:** “You are discounting each other’s ideas very quickly. I am going to ask that you give a quick recap of what the other person said before launching into your points.”

**When people run in and out of a meeting:** “In the last ten minutes, three people have gone in and out of this meeting, disrupting the discussion. What ought to be done about this?”

**When the whole group is acting dysfunctional:** “I’m going to stop this discussion. I am noticing that two people are talking among themselves while three others are arguing emotionally. What can we do to make the rest of this meeting run more smoothly?”

In some of the preceding interventions, the facilitator told people what to do, while in others they were asked. Still in others, it sounded like the facilitator was only making a suggestion.

Before you make an intervention statement you need to make a judgment about which of these approaches to use, situation by situation. While there are no hard and fast rules, here are some principles:

1. Asking is always better than telling because people are more likely to accept their own intervention.
2. It is always appropriate to suggest or tell people what to do on matters of process.
3. A directive or telling response is appropriate if the individuals are exhibiting extremely dysfunctional behavior.
4. The more a group acts maturely and responsibly, the more effective it is to ask, rather than tell.

You need to have a strategy ready for dealing with situations in which the participants resist. Sometimes this resistance comes out into the open when an outspoken person gets up and vents concern. At other times it remains hidden, only expressed in people’s negative body language. When you encounter resistance there is a right and a wrong way to deal with it. Using the wrong way will make the resistance grow. Choosing the right approach will make it manageable.

The right approach for handling resistance always consists of two steps.

1. Invite the resistor to express his/her resistance while you actively listen, paraphrase and offer empathy. "Tell me why you feel this way." "What are all of the things that are making you resist?"

2. After all the concerns have been acknowledged, ask questions to prompt the resistor to suggest solutions to the barriers. "What circumstances would make you willing to stay?" "What assurance will eliminate your concerns?"

As a facilitator you have six distinct decision-making methods available. Each of these options represents a different approach. Each has pros and cons associated with it. The decision option should always be chosen carefully to be sure it is the most appropriate method.

1. **Consensus building.** This involves the parties understanding the situation or problem to be decided, analyzing all of the relevant facts together, and then jointly developing solutions that represent everyone’s best thinking about the optimal decision. It’s characterized by a lot of listening, healthy debate and testing of options. Consensus generates a decision about which everyone says, “I can live with it.”
   **Pros** – It is a collaborative effort that unites people. It demands high involvement. It is systematic, objective, and fact-driven. It builds buy-in and commitment to the outcome.
   **Cons** – It is time consuming and produces low-quality decisions if done without proper data or if individuals have poor interpersonal skills.
   **Uses** – When decisions will impact on both parties to the facilitation. When buy-in and ideas from all parties are essential.

2. **Spontaneous agreement.** This happens occasionally when there is a solution that is favored by everyone and 100 percent agreement seems to happen automatically. Unanimous decisions are usually made quickly. They are fairly rare and often occur in connection with the more trivial or simple issues.
   **Pros** – It is fast, easy, everyone is happy, and it unites those involved.
**Cons** – May be too fast, perhaps the issue actually needed more discussion.

**Uses** – When lack of discussion is not vital or when issues are not complex, requiring no in-depth discussion.

3. **One person decides.** This is a decision that groups decide to refer to one person to make on behalf of the group.

**Pros** – It is fast and accountability is clear.

**Cons** – It can divide a group if the person deciding does not consult or makes a decision that others can’t live with.

**Uses** – When the issue is unimportant or small, when there is a clear expert in the group, when only one person has the information needed to make the decision.

4. **Compromise.** A negotiated approach applicable when there are several distinct options and people are strongly polarized. A middle position is then created that incorporates ideas from both sides. Throughout the negotiations each person wins a few of their favorite points, but also loses a few they like.

**Pros** – It generates lots of discussion and does create a solution.

**Cons** – Negotiating when people are pushing a favored point of view tends to be adversarial. In the end everyone wins, but everyone also loses.

**Uses** – When two opposing solutions are proposed neither of which is acceptable to both parties. Compromise may be the only solution if everyone is strongly polarized.

5. **Multivoting.** This is a priority-setting tool that is useful in making decisions when the individuals have a lengthy set of options and rank ordering the options, based on a set of criteria will clarify the best course of action.

**Pros** – It is systematic, objective, democratic, non-competitive, and participative. Everyone wins somewhat and feeling of loss are minimal. It is a fast way of sorting out a complex set of options.

**Cons** – It is often associated with limited discussion and, therefore, limited understanding of the options. This may force unsatisfactory choices on people, because the real priorities do not rise to the surface or people are swayed by each other.

**Uses** – When there is a long list of alternatives or items from which to choose or when choosing a set of criteria to identify the best course of action.

6. **Majority voting.** This can only be used when working with groups of people. It involves asking people to choose the option they favor, once clear choices have been identified. Usual methods are a show of hands or secret ballot. The quality of the vote is always enhanced if there is good discussion to share ideas before the vote is taken.

**Pros** – It is fast. Decisions can be of high quality if a vote is preceded by a thorough analysis.

**Cons** – It can be too fast and low in quality if people vote based on their personal feelings without the benefit of hearing each other’s thoughts or facts. It creates winners and losers. The show of hands method may put pressure on people to conform.

**Uses** – When there are two distinct options and one or the other must be chosen. When consensus has been attempted and can’t be reached.

Decision making is rarely easy. Following are some tips to help you manage decision-making sessions.

- Be clear on the process to be used. Explain any tools or techniques that will be used.
- Ask people what assumptions they are operating under with regard to the issue/s or the process.
- Disagreements are a natural part of decision-making discussions. Always confront differences assertively and collaboratively. Don’t strive to avoid conflict or accommodate by asking people to be nice or to get along.
- Urge people not to give in if they feel they have important ideas.
- If the individuals or groups involved in the facilitation choose to try to reach consensus, help them stick with it even when the going gets rough.

Beware of the tendency to toss the coin or to bargain to make things easier.

- Stop the action if the process or behaviors become ineffective. Ask “What are we doing well? What aren’t we doing so well?” and “What do we need to do about it?” Then act on the suggestions.
- Be very particular about achieving closure on each issue. Test for consensus and make sure things are final before moving on or adjourning.

*Source: Facilitating with Ease!, Ingrid Bens, Wiley, 2017.*
RACIAL JUSTICE DEFINITION

The systematic fair treatment of people of all races that results in equitable opportunities and outcomes for everyone.

NEA VISION FOR RACIAL JUSTICE IN EDUCATION

NEA has a vision for a Great Public School for Every Student. We know that institutional and structural racism are barriers to achieving our vision. We will leverage the power and collective voice of our members to end the systemic patterns of racial inequity and injustice that affect our Association, schools, students and education communities.

FRAMEWORK PRINCIPLES

- Our collective work promotes a vision for public education that advances inclusion, equity, and racial and social justice in our schools, Association and society.
- Our collective work must dismantle white supremacy, and ensure that bigotry and discrimination based on gender, sexual orientation, disability or national origin are not part of our Association, classrooms, educational curricula, classroom management, school policies and discipline practices.
- Our Association and schools must be safe for all students, and free from state-sanctioned, racialized, and gender-based violence. Our work must actively divest from prison cultivation and invest in counselors and positive discipline practices.
- Our work must result in action – programs, campaigns, policies, and capacity-building efforts for local NEA members that dismantle institutional racism now and into the future. Initiatives should create sustainable infrastructures that can continue to create systemic change and hold decision-makers, elected officials, and institutions accountable.
- Our current governance leaders must recruit, engage, and promote leadership by educators of color to share the ladder of opportunity because we are stronger together.
- Programs, campaigns, and projects must be driven by goals that are clearly outlined, tracked, and measured, and that have accountability systems that explicitly promote racial justice.
- Our work must promote education policies, professional practices and curricula which highlight and honor the histories and cultures of people of color and indigenous peoples.
- We must work to ensure that all students have access to a safe and quality education, regardless of their country of origin or immigration status.
- Our work must promote and support the engagement of students of color and LGBTQ students in shaping policies that directly impact their educational experience, and foster safe and inclusive schools.
- We must work to dismantle discipline systems that create the School to Prison Pipeline and replace them with practices that encourage inclusion and are free from racial and ethnic bias.
It is our belief that these framework principles are essential to accomplishing our vision of racially equitable and just schools.

**APPLYING A RACIAL EQUITY LENS**

Racial equity and justice in education is a critical element to achieving our mission and vision. It demands that we view our collective work through a Racial Equity Lens. Racial Equity Lens, when applied authentically, enhances choices, decision-making and allocation of resources.

**Our ability to apply a racial equity lens, means that we are:**

- Effectively and more thoroughly analyzing what is not working around racial equity in public education;
- Identifying and actively supporting solutions that are working to increase racial equity and preventing racial injustice in public education;
- Shifting our choices and decision-making about racial equity in public schools;
- Transforming and healing ourselves, the structures within the public education system and our own institution.

**EQUITY TO JUSTICE**

Throughout our history, the NEA has joined in partnership to move policies that would address inequities in education, but we understand now that racial justice in education requires movement beyond racial equity which is where we find ourselves; at the precipice of doing a lot with limited ability to sustain it.

**That movement will require that:**

- We have a deep understanding of racial history and the trauma caused and are able to acknowledge its presence throughout systems, cultural norms, practices and policies.
- We focus on solutions that will build power (civic, political, economic, community) for the most sharply impacted communities and people.
- We effectively use racial impact assessment tools & develop racial justice action plans
- We shift and share power, program, & resources
- We adopt anti-racist and racial justice protocols & practices
- Culture and narrative shift
- Data is used to drive results/impacts

**FRAMEWORK**

The NEA Racial Justice in Education Framework was developed in conjunction with the principles and concepts embedded in the “Wheel of Change” model. This framework centers and guides our systems change work, which includes our behaviors/practices, organizational culture and our strategies to impact the hearts and minds of the people. The framework also identifies the organizational “levers” that must be engaged to create transformational change to develop and build a more knowledgeable, more skilled racial analysis and a deeper commitment towards racial justice and equity.

**THREE ELEMENTS OF THE FRAMEWORK**

**The Framework Core**

**Awareness – Goal:** to develop and strengthen our collective awareness and understanding of the causes and impacts of systemic (institutional and structural) racism in education and the necessity for racial justice and the centrality of racial justice in achieving NEA’s mission.

- Build racial equity awareness and analytical capacity across our Association
- Fostering understanding of key concepts such as systemic (institutional and structural) racism, implicit bias, racial equity and multiracial systemic solutions.
- Develop shared knowledge and conceptual clarity that supports normalizing explicit and constructive conversations about race.

**Capacity building – Goal:** equip and prepare members and leaders with skills to use the strategies to take action to advance racial justice.

- Equip members, leaders, staff and partners with the skills, tools, strategies, resources and relationships to be effective leaders and advocates in the fight for racial justice in education.
- Develop tools and resources to support organizational and cultural change through policy, practice and behavior changes.
**Action – Goal:** to engage members and stakeholders to advocate, organize and mobilize to combat institutional racism and advance racial justice in education.

- Engage and activate members, leaders and stakeholders in on-the-ground efforts to combat institutional racism and advance racial justice.
- Support external organizing efforts to advance changes in our schools and communities.
- Support internal opportunities to implement equitable practices that positively impact the Association’s work and promote culture change.

**ANALYSIS & INTERVENTION:**
Identification & Implementation

**Wheel of change** – A systems approach to organizational change and impact.
- Hearts & Minds
- Behaviors
- Structures

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**ORGANIZATIONAL CHANGE & IMPACT LEVERS**

- **Organizational culture (OC):** Shared values and beliefs (National, State and Local Affiliates)
- **Learning climate & environment (LC&E):** Development and investment in staff and leader capacity (National and State Affiliates)
- **Data, assessment, evaluation & strategic research:** Comprehensive strategy to develop assumptions, test, assess and evaluate outcomes (National)
- **Senior staff leadership (SL):** Individuals in formal staff leadership roles (NEA, State Affiliates and Local Affiliates)
- **Governance – officers/ec/board of directors/committees, councils, constituencies & caucuses (GOV):** Governance structure of the organization (NEA, State Affiliates and Local Affiliates)
- **Management (MGMT):** Staff that oversee the operationalizing of budgets, programs and teams (NEA, State Affiliates and Local Affiliates)
- **Members (MEM):** Association members, across all categories
- **Community/partners/allies (CPA):** Education and community stakeholders (National, State and Local)
UniServ consultants are sometimes called on to present training to members regarding advocacy issues. NJEA staff have developed training packets for your use. Following is a brief overview of how the UniServ division views training, the principles of training adults, and what you need to consider when presenting an advocacy workshop.

### TRAINING VERSUS TEACHING

Training is problem-oriented; teaching is subject-oriented. In teaching, you prepare a subject in detail and present it as effectively as you can. In training, you bring skills, ideas, and techniques to help others solve their own problems. You work with the trainees’ problems and so label what you do as problem-oriented.

### THE TRAINING DESIGN PROCESS

1. **Needs assessment.** What are people doing now? What would people do if they were doing it well? What do people need to be able to do “it” better? Is it a problem of not knowing something or not knowing how to do something? Is it a problem of not being willing to do something? Or what combination of these areas is it?

2. **Behavioral objectives.** What should the participants be able to know, do, or feel as a result of the training? What is an acceptable behavioral standard for how well they need to “know,” “do,” or “feel” by the end of the training?

3. **Participant characteristics.** What is the background of those to be trained? What abilities, interests, and attitudes do people have? How well do you know them? Do you need more information from them before the training?

4. **Strategy selection.** What media, personnel, and materials will be used? What are the appropriate objectives, the time, and the participant make-up?


6. **Sequencing of activities.** Where do you need to start with people? How ready are they to learn? How active an activity can you start with? What is the central learning, how do you build to it, and what follows? What activity will bring about maximum learning? What activity will bring all the learning together at the end?

7. **Presentation.** Is the room set up to support the training (equipment, chairs, tables, etc.)? Are you ready? Now that the participants are here, do your assumptions about who they are and what they need still make sense? What do you need to do that you didn’t think of before now that could assist the learning?

8. **Evaluation.** Have participants achieved the desired level of performance at the end of the training? Based on participants’ performance, what changes do you need to make in the training design to improve it?

9. **Validation.** Back on the job, or in the situation are people different? Are they doing well what you trained them to do? Is the problem solved? If so, why? If no, why not?
KEY PRINCIPLES OF TRAINING ADULTS

Learning takes place on three levels: Knowledge, skills, and attitudes. Generally, learning can be described as:
1. The amount of information, facts, or concepts that a person knows;
2. The skills that a person is able to use; and
3. The attitudes a person develops and imparts to others.

Learning is concerned with the acquisition of habits, knowledge, and attitudes. It enables the individual to make both personal and social change. Since the concept of change is inherent in the concept of learning, any change in behavior implies that learning is taking place or has taken place. Learning that occurs during the process of change can be referred to as the learning process.

The learner needs to experiment and explore, try things out for him/herself, to learn by doing.

Training exists to bring about learning. Training is a structured process, a sequence of experiences, a series of opportunities to learn, in which the trainee is exposed in some more or less systematic way to certain materials or events. The trainee's behavior is supposed to be modified by means of this process so that after it is completed, he/she behaves in some way that is different from the way he/she behaved before training.

The more involved a person is in a learning activity, the greater possibility that the intended learning will take place.

Training activities are effective to the degree that they involve the trainee to learn new knowledge, skills, or attitudes.

Learning occurs when a person engages in some activity, looks back at the activity critically, abstracts something useful, and puts the result to work.

THE EXPERIENTIAL LEARNING CYCLE

The steps of active learning are:

1. Experiencing. The initial stage is the “doing” part of the learning cycle. It is the step that is often associated with “games” or fun. Almost any activity which has people talking to each other about important feelings or ideas; or trying something new by either asking themselves questions or making choices, will bring out new information to the people involved. These activities can be carried out by individuals, pairs, trios, small groups, group-on-group, or large groups.

2. Publishing. In the second stage of the cycle, people have done an activity, and now they are presumably ready to share what they saw and/or how they felt during the event. The idea here is to make available to the group, the experience of each individual. A number of methods help to facilitate the publishing, or declaring, of the reactions and observations. They include: quick free-association go-arounds on various topics concerning the activity, subgroup sharing and generating lists, recording total-group ideas on newsprint, interviewing people about their experience during the activity, and asking each other what and how questions about the activity.

3. Processing. This is the key stage in the learning cycle. It is the systematic examination of commonly shared experiences by the participants. This talking-through part of the cycle is critical, and it cannot be ignored or designed spontaneously if useful learning is to be developed. Unprocessed feelings can be experienced as unfinished business by people and can distract them from further learning. Following are some techniques to use in this stage: have observers report out or serve as members of a panel discussing shared experiences, look for recurring topics from the reports of individuals and have a thematic discussion, focus attention on the effect of the behaviors of people in the activity, or have individuals complete sentences like “Participation in this activity led to . . . ” and share their responses with one another. Participants should be led to look at what happened in terms of dynamics but not in terms of meaning.

4. Generalizing. A leap has to be made at this point in the experience, from the reality inside the activity to the reality of everyday life outside the training session. The key question here is, “So what?” This step is what makes learning practical, and if it is omitted or glossed over, the learning is likely to be superficial. Here are some strategies for developing generalizations from the processing stage: guide people to imagine realistic situations and determining what they have learned in the discussion that might be useful there, write statements from the processing discussion about what is true about the real world, and have people write “what I learned” statements. It is useful at this stage for the group interaction to result in a series
of products – generalizations that are presented not only orally, but also visually.

5. **Applying.** The final stage of the experiential learning cycle is the purpose for which the whole experience is designed. The central question here is “now what?” The trainer helps participants apply ideas to actual situations in which they are involved. Several practices can be incorporated into this stage. They are: have participants work in pairs or trios and help each other with back-home problems, write goals and action steps to achieve the goals, make explicit promises to each other about doing something, and role playing.

**DESIGNING TRAINING**

Training is designed to change attitudes, skills, or knowledge. When you are designing a program keep in mind what you want to accomplish and remember that it is best to have only one objective each hour of training. The amount of time you spend setting the climate and the content of the training depends on the objective.

When designing a training, you must consider which type of activity best fits the different training goals. The basic requirement for **altering knowledge** (concepts, ideas, facts, etc.) is that information be presented clearly and that the learner have plenty of opportunity for questioning and clarification. Appropriate techniques for communicating information include lecture followed by a question period, open discussion, listing of questions on cards, movies, video tapes, or readings with the opportunity for analysis by the group being trained.

If an **attitude change** is desired, it is appropriate to utilize small, informal, open-ended dialogue, or discussion groups where the individual will not feel threatened. Other training methods that are helpful for bringing about attitude change include interview situations, in which one member listens carefully to another's description of their attitudes and problems, role playing, and use of an inspirational speaker.

**Changing behavior** usually requires guided practice with feedback about the success or failure of the practice. Many people believe that group-relevant skills, such as keeping a discussion on the topic, can be learned by talking about or reading about techniques for coping with particular problems. However, skills must be learned through practice. Methods using video or audio recordings and playback are helpful for improving skills in group behavior. Also helpful is intermittent process analysis, use of group observers, coaching sessions, and role playing.

No matter what your training objective is you want to create an atmosphere in which everyone feels free to participate, question, react, learn, and apply their learning. A positive physical and emotional climate should be established at the beginning and maintained throughout the session.

You have an important role in setting the climate of the training session. You should make sure group members become acquainted with one another. Extending a warm and friendly attitude toward all group members encourages participation. Begin the session on time, state the general purpose of the training, announce the topic clearly and concisely, and explain the discussion procedures and define its limits.

Since the first need of most people in a new situation is to obtain information about what is going to happen, begin orienting participants to the course by presenting an overview. This can be followed by expectation exercises that require participants to identify some of their needs and hopes for the course and helps them begin to build relationships with each other. As the training program progresses, use other climate-setting activities such as energizers and breaks.

The order of training activities should be determined by the objectives of the session, by the type of training, and by the training goals. There must also be a logical progression from one activity to the next.

Part of good training is the ability to orchestrate different techniques and activities so that the overall program has variety, change of pace, and a logical development. You should strive to have a balance among affective, behavioral, and cognitive learning, and be sensitive to different learning styles.

Your role is to guide the discussion. Encourage participation by all participants. Control the over-talkative member and draw out those who are shy. Deal tactfully with irrelevant contributions and avoid personal arguments. Keep the discussion on the subject and keep it moving.

Summarize the discussion frequently by reviewing highlights or conclusions which have been reached. Make clear what has been accomplished by the discussion. Restate any minority viewpoint. Get agreement for any action proposed. End on a high note.
ADULT LEARNERS

Adult learning principles are important for you to know and to use as a trainer. If you use adult learning principles both to develop training designs and to facilitate your groups, you will increase the likelihood that your adult group members will learn, be committed to the group’s goals, and generate more solutions to problems. Adult learners:

1. Decide for themselves what is important to be learned.
2. Need to validate the information based on their beliefs and experiences.
3. Expect what they are learning to be immediately useful.
4. Have much past experience upon which to draw. Their experiences can be a resource for you in the training or a blocker to their learning as they may have fixed viewpoints.
5. Are problem centered.
6. Actively participate.
7. Function best in a collaborative environment.

When training adults:

1. Focus on real world problems.
2. Emphasize how the learning can be applied.
3. Relate the learning to the learners’ goals.
4. Relate the materials to the past experiences of the learners.
5. Allow debate and for the challenging of ideas.
6. Listen to and respect the opinions of learners.
7. Encourage learners to be resources to you and to others.

Source: NEA UniServ Pre-employment Development Program
READING

- **How to Get Your Point Across in 30 Seconds of Less**: Milo O. Frank; Pocket Books, 1986.
- **Freakonomics**: Levitt and Dubner; Harper, Perennial, 2009.
- **Community: The Structure of Belonging**: Peter Block; Berrett-Koehler Publishers, Inc. 2008.
- **Conversational Intelligence: How Great Leaders Build Trust and Get Extraordinary Results**: Judith E. Glaser; Bibliomotion, Inc., 2014.
- **Smarter, Faster, Better**: Charles Dehigg; Randon House, 2016.
- **So You Want to Talk about Race**: Ijeoma Oluo; Seal Press, 2019.
- **Me and White Supremacy**: Layla Saad; Sourcebooks Inc., 2020.
• This is the Fire: What I Tell My Friends about Racism; Don Lemon; Little, Brown, & Co., 2021.

• Why are the Black Kids Sitting Together?: Dr. Beverly Daniel Tatum; Basic Books, 2017.

• Lies My Teacher Told Me; James W. Loewen; The New Press, 2018.

• The Warmth of Others Suns; Isabel Wilkerson; Random House Inc., 2010.

• Tell Me Who You Are; Priya Vulchi & Winona Guo, 2019.

• Teacher Unions and Social Justice; Rethinking Schools, 2021.

ARTICLES / POETRY


• A Litany for Survival by Audre Lorde – https://www.poetryfoundation.org/poems/147275/a-litany-for-survival

VIDEOS / PODCASTS

• How to Understand Power – https://www.ted.com/talks/eric_liu_how_to_understand_power?language=en

• REAL Storytellers Season One – http://hyperurl.co/1x6nqp

ONLINE REFERENCES

• The Future of Our Schools: Teachers Unions and Social Justice – http://www.haymarketbooks.org/pb/The-Future-of-Our-Schools

• Unions, Inequality, and Faltering Middle Class Wages – http://www.epi.org/publication/ib342-unions-inequality-faltering-middle-class/

• Racial Equity Tools: Glossary – https://www.racialequitytools.org/glossary


OTHER RESOURCES & LINKS

• NJEA homepage – njea.org
  • Collective Bargaining Manual
  • Trendsetters
  • Research Publications
  • List of pamphlets and other NJEA publications
  • “My Web Apps”
  • Contract Search
  • SDIS (School District Information System)
  • Magic Money
  • Evaluation Organizing Playbook: https://www.njea.org/achievenjorganizing

• NJEA Social Media Platforms
  • facebook.com/NewJerseyEducationAssociation
  • twitter.com/njea
  • youtube.com/njeaweb

• Department of Education webpage: www.state.nj.us/education
  • School Performance reports (new report card) – http://education.state.nj.us/pr/
  • Data Collection Information Center – www.state.nj.us/njded/data/
  • Evaluation Materials – http://www.state.nj.us/education/AchieveNJ/

• (PERC) Public Employment Relations Commissions www.state.nj.us/perc
  • Public sector contracts – http://www.perc.state.nj.us/publicsectorcontracts.nsf

• NEA Member Benefits www.neamb.com/

• NJEA member benefits http://www.njea.org/members/member-benefits-public
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