

Position Paper #10: **Collective Bargaining**

Introduction

The relationship between a local board of education and the various employee organizations with which it must negotiate requires a delicate balance between meeting the educational needs of children and protecting the rights of employees. There is much evidence that school boards and employee organizations have become partners in efforts to improve learning opportunities for children and working conditions for employees. Local boards of education and employee groups have collaborated on a variety of issues, including curriculum, pedagogy, textbooks, technology, employee evaluations and other fundamental components of the educational program. This kind of cooperation has helped school systems as they work to improve student achievement and increase employee satisfaction.

However, there are also examples where employee organizations have not supported efforts designed to bring about genuine educational reform and have, in fact, attempted to prevent their adoption. Moreover, employee groups have tried either through legislation or negotiations or both to transfer the legal authority of the superintendent, the local board or even the State Board to their organizations as in the case of a proposed labor relations board. When such actions succeed, the delicate balance is lost and the educational program for children is adversely affected.

Sections 6-408(b) and 6-510(b) of the Education Article permit employee organizations to bargain with local boards of education with regard to “salaries, wages, hours and other working conditions.” However, the right of the employees to bargain is circumscribed by Section 6-411(a) which states that a local board’s duty to engage in collective bargaining “does not supersede” its statutory authority to determine and implement educational policy. The right of employee organizations to negotiate working conditions and the local boards’ statutory authority to determine educational policy has been the subject of much debate. Local boards wanted direction as to the scope of collective bargaining, and asked whether they were required to bargain matters that admittedly involved working conditions but that also affected the educational process, such as the assignment and transfer of teachers, class size and the like.

The State Board responded with a series of decisions that held that local boards were prohibited from bargaining or allowing arbitration of any subject to which statutory authority had been given to local boards or their superintendents. For example, although teacher assignments and transfers are clearly working conditions, employee organizations are prohibited from bargaining them because 6-

201 of the Education Article gives that authority exclusively to superintendents. This authority may not be superseded or restricted in any manner by the bargaining or arbitration process. Additionally, the State Board ruled that even in the absence of a specific grant of authority to either the local board or its superintendent, bargaining and arbitration may be prohibited if the subject “predominantly concerned the determination of educational policy.” Class size is one such example. Although class size can affect working conditions, the State Board held that it predominantly concerned educational policy and refused to permit bargaining or arbitration of it. The Maryland Court of Appeals endorsed the State Board’s decisions.

The enactment of a new collective bargaining bill in 2002 expanded the scope of bargaining beyond the traditional areas of wages, benefits and working conditions and provided both public school employers and certain employee organizations the opportunity to define additional, permissive subjects, “matters that are mutually agreed to”, that could be negotiated. It reaffirmed, however, the exclusion of the school calendar, the maximum number of students assigned to a class and any matter precluded by statutory law. These exceptions were further delineated in the Hughes Letter of April, 2002. The Eastern Shore Superintendents continue to oppose any legislation that might *mandate* new subjects to be negotiated. There is no doubt that employee unions will lobby vigorously for legislative victories in order to avoid having to “give up” something at the bargaining table. If unions gain through legislation what they fail to gain through negotiations, the whole concept of collective bargaining is undermined.

There are many responsibilities for which the school board or superintendent must retain sole authority. For example, current law delegates the power to hire, discipline and dismiss teachers to the board of education, and delegates the authority to assign, evaluate and transfer them to the superintendent. This fundamental authority must not be eroded or transferred to employee organizations by statute or through negotiations. The entire structure of school system governance would change dramatically if legislation were passed that weakened the authority of local school boards and superintendents in these matters.

Review of Issues

Within this philosophical framework, the Eastern Shore Superintendents have developed legislative positions on the following issues:

Binding Contract Arbitration: Both employee organizations and boards of education endeavor to negotiate a contract that simultaneously satisfies the needs of students while addressing and resolving employee issues. Although at times these interests are the same, they often differ and one can negatively impact the other. Consequently, collective bargaining is a challenging process. However, history

demonstrates that when both the board and the employee organization are committed to working together, they succeed in reaching a settlement. Such settlements rarely satisfy everyone's interests, yet, the give and take of negotiations "in good faith" compels both sides to work together and to at least attempt to develop a collaborative relationship. This is an important relationship that must not be disrupted by legislation that requires differences to be decided upon by a third party.

If legislation should require that issues unresolved at the negotiations table automatically go to an arbitrator, the results would not be positive for the school system or its employees. Typically, an arbitrator finds a mid-point that both sides can accept or at least consider to be fair. Although this strategy might work during private sector negotiations, it would have a highly negative impact on negotiations in public school systems. School boards have difficult decisions to make about competing needs and are charged with balancing the amount of money to be devoted to wages and benefits with the amount of money to be devoted to other aspects of the educational program. This is a responsibility of the board with which third parties should not interfere. Arbitrators often focus on dividing the available dollars without regard to consequences to instructional programs.

Binding Grievance Arbitration: This is a permissible topic of negotiations as a result of the expanded collective bargaining law of 2002. Under this concept, a grievance over misapplication of provisions in an existing contract may be taken to a neutral third party whose decision is final and binding on both the employee and the employer. Superintendents oppose any legislation that would require local boards to accept binding arbitration decisions on grievances.

Since 2002, several local jurisdictions have accepted binding grievance arbitration provisions through collective bargaining. Other jurisdictions have not implemented any form of binding arbitration. Efforts by employee organizations to amend the law to make school boards bargain such provisions should be defeated. If a local board agrees to bargain grievance arbitration, that is its legal prerogative and it should be protected. Any legislation that mandated binding grievance arbitration is inappropriate and would undermine the collective bargaining process.

Public School Labor Relations Board: Eastern Shore Superintendents vehemently oppose any legislation that would replace the Maryland State Board of Education with a Public School Labor Relations Board for deciding controversies and disputes related to collective bargaining including the determination of mandatory, permissive and illegal subjects of bargaining. It has been the role of the State Board of Education to render decisions on education matters for decades and the establishment of a labor relations board would effectively ignore thirty-three years of debate, interpretation, application of education law and even court decisions that have established precedent and expectations for all stakeholders. The State Board's

responsibility is to act in the interests of all key stakeholders on education issues, rather than in the best interest of any particular constituent group of employees. Matters of educational policy must be considered in the context of what most benefits students and teaching and learning. Such a body would have neither the responsibility nor the accountability for the success of our schools and our students. Its adoption would effectively transfer significant authority to employee organizations, and would have a far reaching and negative impact on our state school systems.

Teacher Strike Laws: Eastern Shore Superintendents oppose any change in Maryland law that might permit teacher strikes. The penalties for a teacher strike imposed on the employee organization include the revocation of the exclusive representation designation for two years and the loss of payroll deduction rights for membership dues for a one year period. Challenges to this law have come in two forms including the total elimination of said penalties and the inclusion of language in the statute that would permit local boards to impose penalties or decline to do so.

Either change would be detrimental to the educational program. Local boards of education should not be placed in a position where there is an option regarding the strike penalty. The collective bargaining laws are State laws; the same should hold true for the imposition of the strike penalty. The pressure that striking employees could place on local boards to waive penalties as part of an agreement that ends a strike would place extraordinary power into the hands of employee organizations. Further, once a board makes this concession, the pressure on other boards in future strikes would be greatly increased. In addition, strike penalties may become subject to negotiations by adding it to the list of collective bargaining subjects in one or more districts. Boards of education have the responsibility to provide a meaningful instructional program on a daily basis. Legislative action that would change strike penalties could negatively affect the ability to fulfill that responsibility.

Agency Shop/Agency Fee: The Eastern Shore Superintendents are opposed to any legislation that would require a local board to implement agency shop or any form of a representative service fee for non-members of employee associations.