

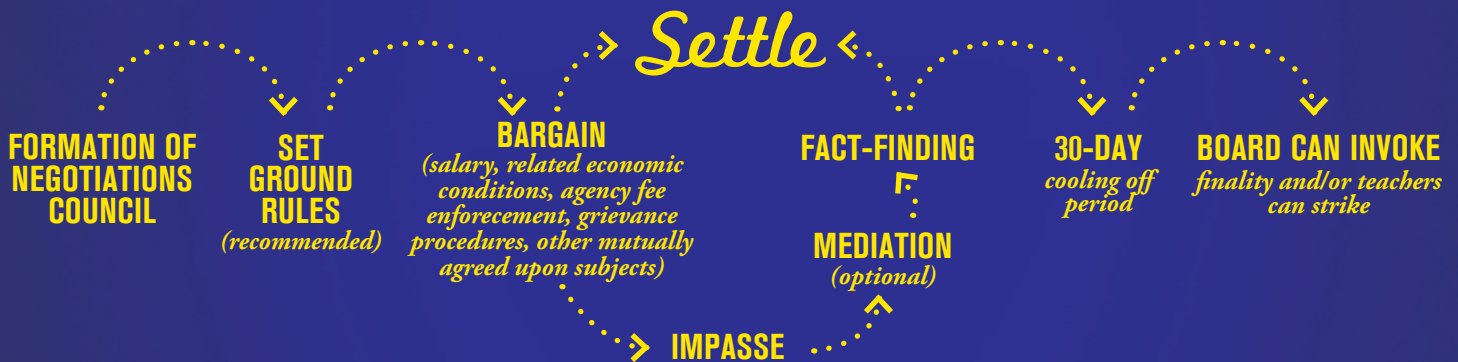
Guide *to* Collective Bargaining

A resource from the

**VERMONT
SCHOOL
BOARDS
ASSOCIATION**

Great Governance, Excellent Education, Strong Communities

Flow chart of the negotiations process:



ABOUT THIS GUIDE

This guide is intended to provide school boards and administrators with general guidance and information to assist them in their role as negotiators. It includes a discussion of Vermont's collective bargaining law, an overview of the

steps necessary to prepare for bargaining, insights into contractual provisions that relate to student achievement, and some basic bargaining tips. This document should not be relied upon for legal advice. We recommend all boards consult with their attorney prior to the start of negotiations to discuss legal and strategic concerns.

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Collective Bargaining in Context

THE TRANSFORMATION OF EDUCATION AND THE ROLE OF THE TEACHER

Our education system was created to respond to the needs of children and families in the 19th century Industrial Age, and now struggles to keep up with the changing learning environment brought about by the Information Age of the 21st. Technology has changed how our children learn, the tools available for teaching, and the skills they will need for the future.

Teachers are no longer purveyors of information and knowledge, but curators, guides and facilitators. In a world where information is available 24/7, education need no longer be confined to the walls of a classroom. Advancements in technology provide the tools we need to bring our students out of the 19th century lectures-and-blackboard model of education and into a structure that is tightly focused on student mastery of applied and academic skills through a flexible, personalized approach. It is critical that our collective bargaining agreements facilitate and not interfere with the evolution of the education profession to meet the anytime, anyplace learning needs of today's students.

Contracts matter, because in many ways they reflect the norms by which schools operate. But the practices and norms embodied in many contracts have not kept pace with the changes education has made or needs to make. Collective bargaining in many ways takes a conservative approach to change - incrementalism is the norm. But we are at a point in time where education systems change cannot happen on an incremental basis. Education is in a period of unprecedented transformation as we adapt to the needs of our students in the digital information age. And as Nicholas Negroponte, founder of MIT's Media Lab has said, "Incrementalism is innovation's worst enemy."

This incremental approach grew out of industrial-style collective bargaining that served an important role for teachers, giving them voice and influence when they had none, and substantially improving their economic conditions.¹ But this industrial-style bargaining process puts both union and management in the position of defending the status quo, even when both parties recognize the need for change.

¹ Koppich, Julia E., *The As-Yet-Unfulfilled Promise of Reform Bargaining: Forging a Better Match between the Labor Relations System We Have and the Education System We Want*, in *Collective Bargaining in Education: Negotiating Change in Today's Schools*. Harvard Education Press (2006).

² *Ibid.* ³ *Ibid.*

Industrial bargaining has also resulted in rigid contracts that fail to recognize teachers' expertise as professionals, their need and desire to exercise professional judgment in the performance of their duties, and the interests they legitimately share with management.²

In industrial bargaining, labor relations are often contentious, with union and management vying for the upper hand in negotiations. Making changes that support innovation such as increasing the length of the school day and calendar year, sub-contracting with community organizations that provide real-world learning experiences, and creating well-structured professional development and evaluation programs will be virtually impossible using an industrial-style bargaining process, especially in a time of diminished resources. Creative solutions may not even be raised at the table for fear of one party losing some sort of bargaining advantage. Within this construct, opportunities for teachers and administrators to explore mutual professional values, goals, expectations, and solutions are lost.³

Educational innovation requires a culture of shared responsibility and leadership among educators – in classrooms, administrative offices, our communities, and at the bargaining table. The separateness of labor and management should be replaced by a sense of the collective aspect of the work: the well-being and academic success of students. At the VSBA, we believe that in order to transform and elevate the teaching profession in ways that create conditions for innovative schools we will need to support bargaining that is:

- ✓ **STUDENT-CENTERED**
- ✓ **COLLABORATIVE**
- ✓ **EVIDENCE-BASED**
- ✓ **FLEXIBLE**
- ✓ **TRANSPARENT**

The Federal Mediation and Conciliation Service (FMCS) provides free support and training to teams of local leaders who want to design a collaborative negotiations process that is student-focused. For more information on the resources available to districts through FMCS, visit: www.fmcs.gov.

THE ESSENTIAL WORK OF BARGAINING

The VSBA model of good governance, *The Essential Work of School Boards*, identifies seven major components of the role of the school board. They are:

- ✓ **ENGAGE THE COMMUNITY**
- ✓ **CREATE A VISION FOR EDUCATION IN THE COMMUNITY**
- ✓ **ESTABLISH POLICY PARAMETERS TO CARRY OUT THE VISION**
- ✓ **HIRE A SUPERINTENDENT TO PROVIDE LEADERSHIP AND MANAGEMENT**
- ✓ **MONITOR PROGRESS TOWARD THE VISION**
- ✓ **DEVELOP AND ADOPT A BUDGET TO SUPPORT THE VISION**
- ✓ **NEGOTIATE CONTRACTS THAT ARE ALIGNED WITH THE VISION, COMMUNITY EXPECTATIONS, AND STUDENT NEEDS**

It is critical that school boards and administrators view collective bargaining in the context of their essential work - what boards are trying to achieve for both students and taxpayers. To be successful in any negotiation, a board needs to be clear about where it wants to go and why. It does no good for a board to articulate a bold, innovative vision and transformative policies if those elements are in conflict with provisions of their master agreement. Boards and negotiating councils need to understand and be able to clearly articulate any barriers within the current contract that make it difficult for the administration and teachers to achieve the district's vision. ■

Vermont Labor Relations Law

LABOR RELATIONS FOR LICENSED EDUCATORS

Under Vermont law, school board negotiations councils are the bodies responsible for bargaining collectively with the employees in their districts. According to 16 V.S.A. §1981(8), a “school board negotiations council” is:

- ✓ **FOR A SUPERVISORY DISTRICT, ITS SCHOOL BOARD**
- ✓ **FOR DISTRICTS WITHIN A SUPERVISORY UNION, A BODY COMPRISED OF REPRESENTATIVES DESIGNATED BY EACH BOARD TO ENGAGE IN NEGOTIATIONS WITH THE TEACHERS ORGANIZATION NEGOTIATIONS COUNCIL**

But while bargaining within supervisory unions happens at the SU level, Vermont law states that final ratification of any agreement remains “the sole responsibility of the school board.”⁴

16 V.S.A. §1981(9) defines a “Teachers organization negotiations council” as the body designated by the teachers organization within a supervisory district or supervisory union to act as its representative for negotiations. The law requires school boards to recognize an organization as the exclusive representative of all teachers or administrators in the district when that organization has proved its claim to sole and exclusive status under 16 V.S.A. §1992.

The law also prohibits school administrators from serving as negotiating agents for the teachers’ organization.⁵

Bargaining begins when the teachers’ or administrators’ organization makes a request for commencement of negotiations. Under Vermont law, this request to the board must occur no later than 120 days prior to the earliest school district annual meeting within the supervisory union.⁶ Once bargaining commences, the law requires both sides to negotiate in good faith.⁷ The Vermont Labor Relations Board (VLRB) has identified some specific elements of good faith bargaining, including requirements that the school board:⁸

- ✓ **PARTICIPATE ACTIVELY IN DELIBERATIONS WITH AN OPEN MIND AND A SINCERE DESIRE TO REACH AGREEMENT**
- ✓ **MAKE HONEST CLAIMS, INCLUDING ASSERTIONS ABOUT INABILITY TO PAY AN INCREASE IN WAGES**
- ✓ **MAY COMMUNICATE DIRECTLY WITH EMPLOYEES SO LONG AS THE COMMUNICATIONS ARE NOT COERCIVE, CONTAIN NO “THREAT OF REPRISAL OR PROMISE OF BENEFIT”, AND DO NOT UNDERCUT THE AUTHORITY OF THE UNION AS BARGAINING REPRESENTATIVE**
- ✓ **MAY NOT DISCLOSE OR PUBLICIZE CONFIDENTIAL PROPOSALS OR DISPUTES IN VIOLATION OF GROUND RULES**

⁴ 16 V.S.A. §2009
⁵ 16 V.S.A. §1991(a)
⁶ 16 V.S.A. §2003

⁷ 16 V.S.A. §2001
⁸ Noonan, Timothy. *The Evolving Vermont Labor Relations Law* (2009).

The VLRB has held that the duty to bargain in good faith extends through the period after the board invokes finality and before a final settlement is reached.⁹

School boards are required to negotiate a limited number of matters with the teachers organization. According to 16 V.S.A. §2004, the school board shall negotiate the following matters with the organization:

- ✓ **SALARY**
- ✓ **RELATED ECONOMIC CONDITIONS OF EMPLOYMENT**
- ✓ **AGENCY SERVICE FEE ENFORCEMENT**
- ✓ **PROCEDURES FOR PROCESSING COMPLAINTS AND GRIEVANCES**
- ✓ **ANY MUTUALLY AGREED UPON MATTERS NOT IN CONFLICT WITH STATE LAW**

The items listed above are known as the scope of bargaining. The VLRB has held that the scope of bargaining under the Teachers Act includes specific items such as: freezing wages, altering the grievance procedure, changing procedure for taking personal leave, and transferring bargaining unit work to non-bargaining unit employees. The test to use in the case of work transfer is whether the work has been allocated in such a way as to cause the bargaining unit to lose work, which in light of past practices, it would otherwise be expected to perform.¹¹

Absent a waiver by either the actual terms of the collective bargaining agreement or through negotiations, the employer has a duty to bargain changes in mandatory bargaining subjects during the term of a contract regardless of the state of negotiations. That is, boards and administrators cannot decide to unilaterally impose terms of employment that are within the scope of bargaining.

The fact that a matter has been omitted from a master agreement or has not been discussed in negotiations does not mean that an employer can make a unilateral change, particularly in cases where an established past practice is concerned. The VLRB has stated, “a collec-

tive bargaining agreement cannot cover every aspect of the working relationship between management and employees,” and “to a large extent that relationship is governed by past practices which are too numerous to be included in the agreement.” The Vermont Supreme Court has held that a past practice is established when “the conduct of the parties encompasses a continuity, interest, purpose and understanding which elevates a course of action to an implied contractual status.”¹²

DISPUTE RESOLUTION PROCEDURES

The law provides several dispute resolution procedures to assist the parties in resolving negotiations disputes. The first step is for either or both parties to declare impasse. A declaration of impasse does not mean the parties have reached a deadlock; rather, it means that either or both parties have decided that third-party assistance is needed to continue productive bargaining.¹³ After the parties declare impasse, they may jointly agree on the services of a mediator to help reconcile differences and resolve issues on terms which are mutually acceptable.¹⁴ If agreement cannot be reached on who the mediator should be, either party can request that the mediation be conducted by the American Arbitration Association (AAA) or its designee.

If mediation fails to resolve all issues or is not used, either party may request that unresolved issues be submitted to a fact-finding committee.¹⁵ Under law, the fact-finding committee shall consist of one member selected by each party, who shall together choose a third member to chair the committee; if the parties cannot agree on the third member the AAA will be asked to appoint someone. The fact-finding committee shall hear from both parties and issue a written report within 30 days after all three members are appointed. The report is advisory only, and shall be made public 10 days after delivery if issues remain in dispute.

If the parties still cannot come to agreement on all issues after 30 days of receipt of the fact-finders’ report, then the school board can invoke finality, often referred to as “imposing a contract.”¹⁶ The right to invoke finality is limited, however. Matters that are not in dispute cannot be unilaterally changed through an ‘imposition.’

⁹ *South Burlington Board of School Directors v. South Burlington Educators’ Association & Vermont-NEA*, 32 VLRB 56 (2012).

¹¹ Noonan at 112.

¹² *Gallipo v. City of Rutland*, 163 Vt. 83 (1994).

¹³ Noonan at 117.

¹⁴ 16 V.S.A. §2006

¹⁵ 16 V.S.A. §2007

Furthermore, the VLRB has determined that school boards cannot impose financial terms that decrease teacher compensation and/or benefits retroactively, only prospectively, and that those terms can be imposed for one school year only.¹⁷

One issue that arises in this context is the duty to pay experience step increases upon expiration of the contract. The VLRB has found that receiving step salary increases is an entitlement of teachers under the legal requirement of maintaining the status quo, with the following limitations:¹⁸

- ✓ **THERE IS NO REQUIREMENT TO PAY STEP INCREASES WHEN THE EXPIRED CONTRACT HAS NOT PROVIDED FOR SUCH INCREASES.**
- ✓ **THERE IS NO REQUIREMENT TO PAY STEP INCREASES, OR ANY OTHER SALARY INCREASES, IF THE EXPIRED CONTRACT SPECIFICALLY CONTAINS A PROVISION THAT STATES THAT NO INCREASES SHALL OCCUR UNLESS THEY ARE EXPRESSLY PROVIDED FOR IN A SUCCESSOR AGREEMENT.**
- ✓ **IF NEGOTIATIONS CONCLUDE WITHOUT A SUCCESSOR AGREEMENT, BOARDS ARE ALLOWED TO IMPOSE SALARY RATES WITHOUT PROVISION FOR FUTURE STEP INCREASES SO LONG AS THE SCHOOL BOARD IS OTHERWISE ACTING IN GOOD FAITH.**
- ✓ **TEACHERS' ENTITLEMENT TO STEP INCREASES UPON EXPIRATION OF THE CONTRACT MAY BE WAIVED IF THE TEACHERS' UNION IS RESPONSIBLE FOR AN UNREASONABLE DELAY IN THE PROCESS.**

This issue arises because contract negotiations do not proceed expeditiously and extend beyond the expiration date of the contract, a situation that has occurred with increasing regularity in recent years. As part of both parties' obligation to bargain in good faith, the VLRB has instructed school boards and teachers organizations to take affirmative steps to ensure neither party hinders

the progress of negotiations. Boards who believe the teachers' organization is responsible for an unreasonable delay should consider addressing the concern with an unfair labor practice charge.

Teachers also have the right to strike after 30 days of receipt of the fact-finders' report, unless both parties have submitted the dispute to final arbitration.¹⁹ Once the teachers strike, a board may seek a "restraining order or temporary or permanent injunction" in connection with or relating to pending or future negotiations from a "court of competent jurisdiction" in Vermont. Such a court will hold a hearing and issue an injunction or restraining order only if it finds that "the commencement or continuance of the action poses a clear and present danger to a sound program of school education, which in the light of all relevant circumstances it is in the public interest to prevent."²⁰

As a general rule, courts are reluctant to get involved in labor disputes and so the availability of an injunction or restraining order is limited and unlikely. Boards may have difficulty demonstrating a "clear and present danger to a sound program of education" unless the strike occurs at the end of a school year and it threatens to prevent the completion of that school year. However, boards should be aware that the provision of special education services to students may be required in order to fulfill a school district's obligations under federal law, which could constitute grounds for an injunction.

Another form of dispute resolution available under Vermont's Labor Relations for Teachers Act is binding interest arbitration.²¹ Arbitration only occurs upon mutual agreement of the parties. When the parties submit one or more issues to binding arbitration, they must mutually agree upon one of the following limitations on the jurisdiction of the arbitrator:

- ✓ **ARBITRATION IS CONFINED TO CHOICE BETWEEN ONE OF TWO LAST BEST OFFERS FROM EITHER PARTY IN ITS ENTIRETY, OR**
- ✓ **ARBITRATION IS CONFINED TO A CHOICE BETWEEN ONE OF THE TWO LAST BEST OFFERS ON AN ISSUE-BY-ISSUE BASIS**

¹⁶ 16 V.S.A. §2008

¹⁷ Noonan at 121.

¹⁸ *Northeast Kingdom Elementary Teachers Association v. Brighton Board of School Directors, et al*, 19 VLRB 146, 161-62 (1996).

¹⁹ 16 V.S.A. §2021(c)

²⁰ 16 V.S.A. §2010

²¹ 16 V.S.A. §2021 *et seq.*

Once the parties decide to invoke arbitration, they have five days to mutually decide on an arbitrator, who will hold a hearing and decide all disputed issues submitted to him or her by the parties. The arbitrator shall have the power to determine all issues in dispute, except at any time the parties may jointly file statements outlining which contract provisions both parties agree to accept. In reaching a decision, the arbitrator is required by law to consider multiple factors, including “the interest and welfare of the public and the financial ability of the school board to pay for increased costs of public services including the cost of labor.”²²

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VERMONT MUNICIPAL LABOR RELATIONS ACT

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School boards and their negotiating councils must also bargain with municipal employees, which are governed by a separate body of law. Municipal employees are defined as any employee of a municipal employer, except elected officials, supervisors, probationary employees, and licensed school employees.²³ School districts are municipalities, and as such, any employee of the district who is not a supervisor or licensed employee is covered by the Municipal Labor Relations Act (MLRA).

There are a couple of differences that are important for boards to be aware of as they prepare to bargain with these employees. The first is that the scope of bargaining is different. Under the MLRA, the parties are required to bargain “wages, hours, and conditions of employment.”²⁴ The statute defines this phrase as “any condition of employment directly affecting the economic circumstances, health, safety, or convenience of employees but excluding matters of managerial prerogative.”²⁵ The VLRB has found that examples of issues included in this scope of bargaining include: the timing of lunch breaks, the day on which employee is paid, and a drug-free workplace policy where discipline of employees is involved.

Under the MLRA, dispute resolution procedures include mediation, fact-finding, and arbitration. Unlike the Labor Relations for Teachers Act, a municipality could vote by referendum to adopt binding arbitration

procedures to resolve matters in dispute, rather than leaving the decision solely to the mutual agreement of the parties.²⁶ No finality provision exists in the MLRA that would clearly allow school boards to impose terms that are in dispute. The right to strike is limited; a strike can be enjoined if a board can demonstrate danger to health, safety, or welfare of the public.

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UNFAIR LABOR PRACTICES

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Under Vermont law the VLRB has power to determine whether an unfair labor practice has been or is being committed. 21 V.S.A. §1726 spells out what constitutes an unfair labor practice on the part of both employers and employees. Some examples include:

- ✓ **FAILING TO BARGAIN IN GOOD FAITH**
 - ✓ **INTERFERING WITH, RESTRAINING, OR COERCING EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS OR EMPLOYERS IN THE SELECTION OF THEIR REPRESENTATIVES AT THE BARGAINING TABLE**
 - ✓ **DISCHARGING OR DISCRIMINATING AGAINST AN EMPLOYEE FOR FILING AN UNFAIR LABOR PRACTICE CHARGE OR BELONGING TO THE UNION**
 - ✓ **REFUSING TO APPROPRIATE SUFFICIENT FUNDS TO IMPLEMENT AN AGREEMENT**
- An unfair labor practice charge must be filed with the VLRB within six months of the time the practice occurred. The board may waive the six month requirement if it finds that:²⁷
- ✓ **THE PERSON WAS PREVENTED FROM FILING THE CHARGE BY REASON OF SERVICE IN THE ARMED FORCES.**
 - ✓ **THE AGGRIEVED PERSON DID NOT UNDERSTAND THAT AN UNFAIR LABOR PRACTICE HAD BEEN COMMITTED AGAINST HIM OR HER;**

²² 16 V.S.A. §2025

²³ 17 V.S.A. §1722(12)

²⁴ 21 V.S.A. §1725

²⁵ 21 V.S.A. §1722(17)

²⁶ 21 V.S.A. §1733(a)

²⁷ 21 V.S.A. §1727(a)

OR,

✓ **THE OFFENDING PERSON HAD ACTIVELY CONCEALED HIS, HER, OR ITS PERPETRATION OF THAT UNFAIR LABOR PRACTICE.**

The VLRB has the power to take testimony under oath, the power to subpoena witnesses, and to demand the production of documents related to the matter of inquiry.²⁸ If, upon a preponderance of the evidence, the VLRB finds that an unfair labor practice has happened or is happening, it shall state its finding in writing and issue an order on the offending person requiring him or her to cease and desist from the unfair labor practice.²⁹ Enforcement of a VLRB order can be made through superior court in the county where the unfair labor practice occurred. Any person aggrieved by an order of the VLRB may appeal questions of law directly to the Vermont Supreme Court.³⁰ ■

²⁸ 21 V.S.A. §1727(c)

²⁹ 21 V.S.A. §1727(d)

³⁰ 21 V.S.A. §1729(e)

The Bargaining Process

PREPARING TO BARGAIN³¹

Preparing adequately for bargaining is a key to the success of your district's collective bargaining negotiations. Boards have to view collective bargaining as a vehicle to help their school districts accomplish a vision, and must take steps to clearly link the two. Well before the negotiations process begins, boards should be holding structured conversations with students, teachers, administrators, parents and community members. Those conversations should address the following questions:

- ✓ **WHAT DO YOU WANT FOR OUR STUDENTS?**
- ✓ **WHAT DOES THAT MEAN FOR OUR SCHOOLS?**
- ✓ **THE TEACHING PROFESSION?**
- ✓ **WHY IS THIS IMPORTANT TO YOU?**

In those conversations, boards and administrators should be explicit about what any new directions might mean for specific provisions within collective bargaining agreements.

These conversations help build relationships, trust, common understanding and buy-in regarding what changes the district or supervisory union needs to make in order to best meet the needs of students.

In addition to these conversations, other preparatory steps must be taken prior to the start of negotiations. The more your negotiations council knows about the history, budgetary realities, and educational goals of each member district, as well as any legal, social, and

political implications of a given proposal, the more likely it is that they can be prepared to design creative solutions. Being well prepared also allows the district to address management concerns and respond to union proposals more quickly and efficiently.

ANALYZING YOUR CONTRACT

An important step in preparing for negotiations is reviewing the current contract. Superintendents must help boards and negotiating councils understand any barriers associated with the current contract that make it difficult to achieve the district's vision for students. Boards and superintendents should understand which contract provisions are vague or ambiguous, limit board action, or restrict future plans.

Particular attention should be paid to any contract provisions relating to student achievement or teacher accountability. Any provisions related to teacher evaluation procedures should be reviewed against the 2012 *Guidelines for Teacher and Leader Effectiveness*,³² to ensure the language is consistent with the expectations set by the State Board of Education regarding local teacher evaluation systems.

Superintendents, working with principals, should review the contract to identify any provisions that are causing difficulties. Articles that are unclear or that unreasonably restrict management discretion should be noted. Some examples are provisions which prescribe in detail the school calendar, the length of the school day, as well as those that limit subcontracting and the ability of management to make reduction in force decisions based on the needs and numbers of students, rather than seniority alone.

³¹ This section borrows heavily from the "The Negotiators Notebook", published by the Oregon School Boards Association in 1997.

³² Available at: http://education.vermont.gov/documents/EDU-SBE_2012_05_15_Item_1_Guidelines_for_Teacher_and_Leader_Effectiveness.pdf

Administrators should also identify contract provisions that are the target of frequent employee complaints. Identifying these provisions will help identify potential issues the union may present at the bargaining table. Administrators also may have suggestions for changes based on their experiences in other school districts.

Having an outside party, such as the district's attorney and human resources director, review the contract prior to beginning negotiations can be very beneficial. A third party can provide a balanced perspective on areas of potential concern and can identify contract provisions that are vague and ambiguous or are contrary to state or federal law.

REVIEWING INTERNAL AND EXTERNAL POLICIES AND PRACTICES

Make sure current and proposed policies, including strategic planning documents, do not conflict with the collective bargaining agreement. Review changes in state and federal law to make sure the district is able to comply both with the law and the collective bargaining agreement. Occasionally, changes in state or federal law invalidate certain contract provisions. Other times, state and federal laws create a new obligation or standard that the employer must meet. Implementation of supervisory union negotiations councils is one recent example of changes to state law that employers must be aware of. School districts should also review any new or amended administrative rules to make sure the contract does not prohibit compliance.

Boards should also review the results of grievances or unfair labor practices during the term of the contract. Consider changing or improving contract provisions that were subject to a grievance procedure or unfair labor practice. Also review any grievances or unfair labor practices that the union lost. This review could provide insight into issues the union may bring to the table.

Boards should also review unwritten issues that are not directly addressed in the collective bargaining agreement. In some cases, unwritten practices are as binding on the parties as if they were written into the collective bargaining agreement. When these practices rise to a level where they become binding, they are referred to as

a past practice. Single instances of a practice occurring are not enough to elevate it to "past practice" status. The Vermont Supreme Court has held that a past practice is established when "the conduct of the parties encompasses a continuity, interest, purpose and understanding which elevates a course of action to an implied contractual status."³³ Because these practices usually are not written down, they may vary from building to building or exist on a district-wide level. The district must bargain any change to a past practice if it affects a mandatory subject of bargaining. Consequently, it is crucial that districts review everything that may be considered past practice prior to beginning negotiations.

REVIEWING COMPARABLES

Review wage and benefit increases for the past two or three years granted by districts similar to yours. Comparisons usually are raised at the bargaining table. All public school contracts can be found in the VSBA Contract Database at:

<http://vermontschoolcontracts.com/Login/Login>

Using comparative data you can put the union's claims and/or demands in perspective. Review wage and benefit increases in other school districts, including districts in the local geographical area, districts statewide that are the same size as your district and other districts the union representative in your district serves.

In reviewing other districts' salaries and benefits, be sure to note back pay, teacher reimbursement, early retirement benefits and any other intangible benefits. When comparing employee groups, review the entire compensation package: salary (base and step increases), insurance, leave, holidays, early retirement, tuition reimbursement and other components. Be aware of raises given to other employee groups in the district. What percentage raise did non-represented employees and administrators receive? What is proposed for these employee groups for the upcoming contract year?

Compare salaries and benefits with other public sector employees, such as city, county and other municipal employees. What percentage raises are these groups

³³ *Gallipo v. City of Rutland*, 163 Vt. 83 (1994).

getting? What is proposed for the future? What type of benefit packages do these employee groups have? How much leave time is available to these employee groups?

Be aware of the current inflation rate, which is reflected in the consumer price index (CPI). There are several different CPI standards. The CPI-W is the national index for Urban Wage Earners and Clerical Workers and often is used with classified staff. The CPI-U is the national index for All Urban Consumers and often is used with licensed staff. Another CPI sometimes considered in Vermont is the New England Economic Project CPI. The national CPI comes out monthly. The CPI often is used to help determine a reasonable salary increase for an employee group. Be sure to specify which CPI the parties agree to use.

BUILDING YOUR INFORMATION BASE

Have copies of your contract and those of surrounding districts. Often the union's proposals originate in other districts' contracts. By reviewing other contracts, you will recognize whether the union proposal is unique to your district or copied from another district.

Be familiar with the workings of the relevant salary schedule. Know the current placement of district staff and the anticipated placement for next year. Determine the number of staff eligible for step and column movements and then calculate the cost of step and column increases.

Examine the insurance benefits programs. Where applicable, contact VEHI or your insurance carrier for an idea of what increases are expected for the coming year. Be aware of other personnel expenses associated with each dollar of salary spent, such as Vermont Municipal Employee Retirement System (VMERS) contributions, FICA, workers' compensation and unemployment insurance. If the district has a set amount of resources available for salary increases, be sure to calculate those expenses in costing out proposals.

Understand the implications of any proposed changes to your health insurance benefits, given the requirements of the federal Affordable Care Act and related state laws. One important consideration to be aware of is whether maintaining "grandfathered" status is a prior-

ity for the district. A "grandfathered" insurance plan is one that existed on March 23, 2010, and it is exempt from certain provisions of the federal Affordable Care Act. To maintain grandfathered status, a plan cannot decrease the percent of premiums the employer pays by more than five percentage points. If your district purchases insurance plans from VEHI, you should contact them directly to understand the impact of the recent health care laws as you prepare to bargain.

Project your revenue for the next fiscal year. Will it be up, down, or stay the same? Are there specific expenditures or projects that will impact the district's revenue picture for the next fiscal year? Are any funds included in the budget "one-time only" allocations, such as for capital expenditures? Have copies of the budget document available as soon as the budget is put together. This will help provide a blueprint of program expenditures for the coming year.

Be aware of any program changes in the upcoming school year, such as new instructional programs, longer school year or modification of the school day. These changes could have bargaining implications. The implications should be determined early enough to allow the district to complete any required negotiations prior to implementation.

Gather relevant community data. Is a major employer going out of business? Is a major company moving into town? Is the community experiencing a growth or decline in overall economic well-being? What is happening to enrollment?

SELECTING THE DISTRICT'S BARGAINING TEAM

School district boards must determine who will represent the board on the negotiations council. The composition of the bargaining team depends on several factors, including the history of bargaining, the size of the team, the designation of a spokesperson or chief negotiator, the bargaining model to be used, the negotiations style, team effectiveness characteristics and other stylistic themes.

The continuity and stability of the negotiating team is crucial. Negotiations often extend beyond the expira-

tion of the contract, and these issues must be considered in selecting both board members and other team members. A board member whose term expires before negotiations are expected to conclude probably is not the most appropriate person to assign to the team. Likewise, administrators or other personnel who may be leaving the district probably aren't the best choices.

Bargaining sometimes becomes as much a public relations matter as it is a collective bargaining matter. The parties in school district negotiations must take into account this politically charged environment.

UNDERSTANDING NEGOTIATIONS STYLE

The board's goals for bargaining may determine which board members are the best choices for the bargaining team. Often there is a correlation between the board's goals and the bargaining styles of individual team members. For example, if the goals are to win major improvements in management rights and concessions in wages and salary benefits, a more assertive and aggressive style of bargaining probably is indicated.

On the other hand, if the overriding concern is the relationship between the parties and there are no major economic pressures, then a more collaborative approach may be best. The dilemma in every negotiation is to decide which issues require a cooperative approach and which call for a more competitive strategy.

Competitive negotiators usually view negotiations as a means to obtaining as advantageous a settlement as possible. A competitive negotiator pursues the district's interests from an assumption that the items being bargained are a matter of how to divide the pie. This type of bargaining has been called zero-sum bargaining. In other words, whatever one side gains, the other side loses. This often-adversarial style is successful in dealing with a distribution of economic matters in a single negotiation.

John Wilson, in an *Education Week* commentary on collective bargaining in the 21st century, stated, "Twenty-first century bargaining must be collaborative. Adversarial bargaining has passed its time. Collaboration is a 21st

century skill that is as relevant at the bargaining table as it is in the schoolhouse."

Collaborative negotiations work from the assumption that the negotiations should serve the parties' mutual interests in an atmosphere that maintains good relationships. Reducing conflict and creating trust is a desired outcome. In those districts where boards have worked with the community to establish a clear vision for their schools and the working conditions for teachers within those schools, a more collaborative approach to collective bargaining is likely to yield more substantive, student-centered results.

Most negotiations involve a mixture of styles. On some issues, the board may choose to be very competitive. On other issues, it may want to be more collaborative. A mix of both competitive and collaborative negotiators tends to enhance the overall effectiveness of the team.

The team's ability to engage in multiple strategies, depending upon specific issues, is critical to the negotiations' success. It also is important in determining what the bargaining mix will be and the positions (realistic, optimistic or pessimistic) the board takes on specific issues. Consequently, the team must engage in strategic choices or situational tactics strategies, based upon the board's goals and the union's style. Each negotiations style can be effective and provides another tool in the tool box to achieve more desirable settlements.

CHIEF SPOKESPERSON/DESIGNATED REPRESENTATIVE

Selecting the team's chief spokesperson is a critical step. The chief spokesperson should have good communications skills, sensitivity to the nuances of language, a grounding in contract administration and a comprehensive background in school negotiations as well as labor relations. He or she should be personable and dynamic and have considerable patience and stamina. As the board's representative in crucial negotiations with employees, the spokesperson's knowledge of your particular district and the situations inherent to your negotiations is critical.

Designating an in-district representative or your profes-

sional negotiator as the chief spokesperson is a key decision. Professional negotiators can be valuable because of their expertise in the process and because of their ability to act as a lightning rod to buffer the board and administration. On the other hand, hiring a professional negotiator involves a significant commitment in time and money.

TRAINING THE BARGAINING TEAM

Training team members is crucial to the success of bargaining. Because of the complexity of the rules and because rules often change, each team member must have a firm grounding in the Vermont Teachers Labor Relations Act, the Vermont Municipal Labor Relations Act, and the most recent Vermont Labor Relations Board rulings.

Knowledge of the strategies and tactics used in negotiations also is important. Individuals' negotiating styles, in combination with legal requirements and the bargaining goals and parameters established by the board, all interact at the bargaining table. These complexities quickly can submerge inexperienced bargainers into a confusing sea of disadvantageous settlements.

There are a number of opportunities for negotiating team members to receive training. Individual training workshops can be arranged with VSBA's staff. Other possibilities include specialized regional workshops and training opportunities provided at VSBA's Annual Fall Conference.

COMMUNICATIONS PLANNING

The negotiations council should designate a spokesperson to respond to public inquiries and to release information to the media on behalf of the board(s). The first choice for this spokesperson is a board member. An elected board member usually has a high degree of credibility and status within the community, as well as the ability to personally speak for the board. The next best choice is the superintendent and/or administrator who can speak for the district but has an operational perspective. The third choice is a professional negotiator who

has had experience in dealing with the media. Communication during bargaining is an important component that is often overlooked.

KEEP THE BOARD(S) UP TO SPEED. Regular communication between the negotiations council and the board(s) is essential in re-examining or redefining bargaining parameters. This also allows the board to identify additional areas for fall-back positions, alternate solutions or new positions on issues identified during the course of bargaining. As the pressure increases and conflict between the negotiations council and the union becomes more intense, board members have a tendency to re-evaluate their positions on issues (particularly economic issues) and how the teachers' morale problems will affect children. The question most often asked is: "Does the cost of this bargaining activity and its relationship to children balance against the value of the district's positions?"

Once this process starts, there is a tendency to second-guess the council's positions. This is especially true with issues that have not had a significant amount of discussion. Consequently, thorough discussion of various issues at the board level is imperative. This discussion helps create ownership and solidarity among board members and boards.

Communication with the board also allows the opportunity to reaffirm or reassess priorities. Other advantages include preparing the board for the nature of the settlement. This regular communication prevents surprises and allows the board to discuss new union proposals.

KEEP ADMINISTRATORS INFORMED. When necessary to communicate developments to administrators, use confidential memos after bargaining sessions or brief them at meetings. Keeping administrators in the information loop about negotiations can help them support the board's positions with parents and other members of the public. They also can provide relevant data and offer input to the board on emerging issues.

USE YOUR COMMUNITY'S INFORMAL COMMUNICATIONS NETWORK. Every community has a number of individuals who might be designated as key communicators. Key communicators are individuals whose opinions others trust. They are part of a community network that can support the school district. Some examples include: business leaders, religious leaders, civic organization leaders, and elected officials. You may want to consider establishing a special negotiations newsletter or bulletin to keep them informed about the district's bargaining goals and the collective bargaining process. Remember that ground rules may constrain boards in the amount of information they can share with the public, especially in the early stages of bargaining.

The VSBA has a communications support service available to boards that need assistance in this area. We are able to connect boards with a communications specialist who can help develop a communications strategy and plan, including talking points. This communications resource can help boards convey information to the public in a manner that is clear, consistent, and timely, a challenging task to perform in a highly pressurized and emotionally charged environment.

ESTABLISHING BROAD BARGAINING GOALS

Public support is crucial during labor negotiations, and there are a number of ways to encourage it. One critical way is to include discussions about labor agreements during overall strategic/long-range planning conversations with the community. Districts should use their strategic planning process as an opportunity to focus on the learning needs of students, to develop a plan to adapt systems to be more flexible, dynamic, and to articulate any implications for the teaching profession generally and collective bargaining agreements specifically. Boards should draw upon these conversations to establish broad goals for their next collective bargaining cycle.

Setting broadly based bargaining goals that are congruent with the district's strategic plan allows the district to develop clear and articulable objectives. By linking the district's strategic plans with bargaining goals, the board provides a basis for the entire negotiation process. These goals should be made clear to teachers and classified staff,

as well as to your public and the community. Specific board parameters should be consistent with these goals.

SETTING SPECIFIC BARGAINING PARAMETERS

After broad bargaining goals and objectives are set, specific bargaining parameters must be identified for the bargaining team. Three elements should be considered:

- ✓ **EXAMINING OPERATIONAL IMPERATIVES;**
- ✓ **EVALUATING ENVIRONMENTAL INFLUENCES;**
- ✓ **IDENTIFYING PROGRAMMATIC DIRECTIONS.**

A number of operational imperatives could affect bargaining, including any current conflicts identified from your audit of the internal and external policies and practices, including existing policies, changes in state and federal law, results of grievances during the term of the contract and the district's past practices.

In looking at either a one-year or multi-year contract, consider the implications on economic parameters and needed improvements in language. For instance, some districts are facing a considerable reduction in resources, so it's likely that layoffs will be necessary. An examination of reduction in force language in those situations would be reasonable.

An examination of environmental influences may provide additional information on short-term changes. This is a way to identify parental concerns, community perceptions and pressures, as well as statewide trends regarding overall financial resources.

Finally, it's important to identify program directions or changes and how they impact employees. For instance, the movement to flexible scheduling, off-campus learning opportunities, and instructional practices integrated with virtual learning platforms may have implications on your sub-contracting articles and provisions on staff development and evaluation. All of these factors must be considered in providing management the flexibility necessary to implement programs. In establishing bargaining parameters, there are a number of general considerations:

SETTING CLEAR AND REALISTIC EXPECTATIONS

Individual board members need to ask questions, offer ideas, consider options and, in conjunction with other board members, decide what is best for the district. Setting board expectations should be based on relevant facts, comparative data, costs, and documentation of problems. You will be challenged at the bargaining table to prove and justify the positions you take. Facts and figures to back up your assertions are essential to be persuasive.

Objectives should be as concrete, specific and as measurable as possible. Vague objectives like “reduce the compensation program” often are so ambiguous and subjective that they provide no guidelines for a bargaining team. A more precise objective might be: “Establish a cap on insurance at the previous year’s contribution level and increase the cap no more than 5 percent during the course of a two-year contract.”

Identify a range of positions for each issue you bring to the bargaining table. Your initial position can be viewed as an optimistic goal or a goal that is taken from the management wish-list. However, initial positions cannot be so far out-of-bounds that they are off-handedly dismissed by the opposing party. Your initial position, like all positions, must have some data and documentation to back it up. A second range of positions is your targeted, or preferred, position. This is a realistic assessment of what can be gained through the bargaining process. The third level is your bottom line, your minimally acceptable level on the issue (or perhaps your pessimistic view of what you will be able to achieve).

Distinguishing between tangible and intangible goals (relationships, reputation, etc.) is also necessary. Negotiations are a continual sequence of opportunities to bargain. Make a realistic assessment of resistance points and the priorities of the other party and how those will impact your ability to achieve your goals.

PRIORITIZING PROPOSALS

Proposals need to be ranked as high, medium and low priorities. High priority items should be stated as realistically as possible and identified as such to

the bargaining team. These issues should be carefully selected and incorporated into the overall bargaining mix. The bargaining mix is the list of issues that define the negotiations. This list includes not only the board’s list of issues, but also the anticipated union’s list of issues.

One strategy sometimes employed by unions is to put too much on the table at once and try to raise too many issues. If management also puts a large number of issues on the table, negotiations will be prolonged. On the other hand, a longer list of issues provides opportunities for more combinations and trade-offs among issues.

The bargaining process also includes a number of throw-away issues that may be proposed and then withdrawn for strategic advantage as the negotiations proceed. Deciding which issues proposed by the union are throw-away issues and which are of substance is a critical task for the bargaining team. That determination should be made on the basis of the facts, arguments and data that support the issues.

Determining which issues are connected or dependent upon one another and which are medium- and low priority issues is important in deciding what trade-offs can be made and what packages can be obtained in the bargaining mix. With each issue, you must determine its acceptability by the other party in terms of needs and priorities and make an assessment of their resistance points. Combine this assessment with the anticipated price tag for the proposal. These assessments can, in turn, lead to prioritized goals.

At some point in the negotiations, inform the union which issues must be achieved. Then the discussion can focus on how those interests are going to be satisfied, rather than a discussion of the validity of those interests. However, boards should avoid drawing a line in the sand until it is time to do so. As negotiations proceed, there will be a tendency to take positions that have fewer options. As both sides harden their positions, the likelihood of a conflict increases. The more rigid the position, the higher a priority it should be for the board.

BASIC BARGAINING TIPS³⁴

ESTABLISHING GROUND RULES

Before negotiations begin, parties often agree to a series of ground rules that will govern the conduct of the negotiations process. The substance of the ground rules varies, but some common provisions include agreements to: set a fixed calendar of meeting dates or a specific number of meetings between the parties; resolve all language issues before discussing economic issues; or keep confidential the status of negotiations and/or specific proposals.

Deciding when to make issues in dispute public is an important consideration when setting ground rules. Boards that have done significant work to engage the community and educators in developing a common vision may want some flexibility to communicate with those stakeholder groups throughout the process.

When establishing the ground rules, the parties should also discuss what negotiations model they will follow. The traditional model – positional bargaining – entails the exchange of specific proposals and counterproposals. Another approach is collaborative bargaining, where the parties discuss issues they want to address, identify their underlying interests, and generate options to address shared interests. If consensus is reached on an option it becomes the basis for proposed contract language. The aim of collaborative bargaining is to find, through discussion, mutually acceptable solutions to labor relations issues.

When selecting a bargaining model and establishing ground rules, remember that flexibility, imagination, and creativity are important. As a general rule, inflexible and overly restrictive ground rules are unproductive. Because there are often legal implications associated with ground rules, negotiation councils should consult with their attorney when developing them.

SUBJECTS OF BARGAINING

A proposal may be a mandatory, permissive, or illegal subject of bargaining. Under the Vermont Labor Relations for Teachers Act, the mandatory subjects of

bargaining are: salary, related economic conditions of employment, agency fee,³⁵ and procedures for processing complaints and grievances relating to employment. Mandatory subjects must be bargained to impasse and submitted to a factfinder if disputes remain. Permissive subjects include any matter that falls outside of the statutory list, but is not contrary to law. Permissive subjects may be proposed in negotiations but need not be bargained to impasse.

The negotiations council should carefully review the association's initial proposals to determine if each proposal is mandatory or permissive. If a proposal is permissive, the council must decide whether it is willing to discuss it during negotiations and at what point those discussions will end. Councils should also be aware that a proposal could contain both mandatory and permissive elements and that the board is only required to bargain those elements of the proposal that are mandatory.

CAUCUSING

An important tactic in negotiations is the effective use of a caucus, which is where either party withdraws temporarily from direct negotiations with the other side.

One of the most important reasons to call a caucus is to resolve concerns or conflicts within the negotiations council to assure a uniform message is being delivered at the table. If there are disagreements about issues or tactics among council members, those disagreements should be resolved away from the bargaining table. If members have questions about a particular approach or issue, those should be raised in caucus. Whenever it appears that council members are advocating conflicting positions, the lead negotiator should call for a caucus. Internal conflict should be resolved away from the bargaining table, not in the presence of the union.

A caucus can also be used as a means of regaining control of the bargaining agenda and controlling the pace of negotiations. If emotions get out of hand, a break in the tension may be necessary. A caucus may also be used to increase the pace of negotiations. If a session moves off course into discussions unrelated to the substance of negotiations, a break in the process may be a useful mechanism for refocusing attention.

³⁴ Adapted from the Iowa School Boards Association's Collective Bargaining Guide.

³⁵ As of this writing, the Vermont General Assembly is deliberating a bill that would require all non-dues-paying members of a bargaining unit to pay an "agency

service fee" to the union. If it passes, this bill would eliminate agency fee from the scope of bargaining.

Whenever the association puts a major proposal or counterproposal on the table, the negotiating team should take time to review that proposal in caucus. Similarly, before the team decides to revise its position on an issue or accept a proposal put forward by the union, there should be an opportunity for internal review and discussion of that position among the negotiations council.

Either party to the negotiation has the right to call for a caucus at any time, and a caucus can be called for by any member of the negotiations team, not just the lead negotiator. Members need not give a reason for the caucus, and the other side cannot prevent a team from caucusing.

PRACTICAL TIPS FOR NEGOTIATORS

The following are some practical tips for productive negotiations:

- ✓ **BE HONEST AND DEMONSTRATE INTEGRITY.** Don't be afraid to say "I don't know." It enhances credibility and respect.
- ✓ **LISTEN CAREFULLY.** If negotiators cannot explain their proposals or the reasons for them, the proposals are not essential. Listening is the most effective strategy - the image of the effective negotiator as a tough-talking, table-pounder is a myth.
- ✓ **DON'T TAKE IT PERSONALLY.** Approach negotiations as an open and candid discussion of bargaining proposals. Discussions may get unpleasant, but they should never get personal.
- ✓ **BE CLEAR AND CONSISTENT.** If a proposal is unacceptable, say "no" firmly once, and move on. Saying "final offer" more than once is not effective.
- ✓ **BE REALISTIC.** An initial economic proposal should not be so "far out" as to insult the association and polarize negotiations.
- ✓ **KNOW YOUR ASSOCIATION.** Seek to determine - as early as possible - the association's priorities and interests. Understand the reasons or politics behind association proposals.
- ✓ **PAY ATTENTION TO TIMING.** Your judgment as to when a proposal should be dropped, an offer improved, or position reaffirmed, is critical.
- ✓ **BE PREPARED TO COMPROMISE.** Any agreement which promotes trust and creates a mutually beneficial long-term relationship requires compromise on both sides.
- ✓ **AVOID IMPRECISE LANGUAGE.** It usually works to the employer's detriment.
- ✓ **DON'T FINALIZE COMPLEX LANGUAGE IN A HURRY.** Get agreement in principle, then draft, redraft, and jointly finalize.
- ✓ **EXPLAIN THE RESULTS.** After ratification, thoroughly review and explain all contract provisions with administrators. ■

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WORKING TOGETHER TO MEET THE NEEDS OF STUDENTS

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In order to improve labor-management relations and to establish the trust that will be required if we are to quickly adapt our systems to meet the needs of today's students, every district should put in place a system for labor-management problem-solving and joint planning. Employee involvement in decision-making processes generally improves job satisfaction and may increase the likelihood of employees being supportive of changes to their working conditions that better meet the needs of students.

One such system is a labor-management team. These teams try to promote trust and allow for continuous communication between the parties during non-negotiation time periods. The parties work collaboratively to improve conditions for employees and the operations of the entire school district. By enhancing trust and communications, these teams can help ease bargaining issues by having problems discussed over the life of an agreement rather than only at the end of it. In addition, these teams could do any or all of the following:

- ✓ **SOLVE EMPLOYEE GRIEVANCES WITHOUT HAVING TO GO TO ARBITRATION,**
- ✓ **DISCUSS AND RESOLVE UNION AND MANAGEMENT PROBLEMS THAT EXIST IN THE DISTRICT,**
- ✓ **PLAN SCHOOL DISTRICT IMPROVEMENT PROJECTS,**
- ✓ **JOINTLY COLLECT INFORMATION AND COMPARABLE DATA RELATED TO BARGAINING ISSUES.**

For more information about labor-management teams, visit fmcs.gov. ■

Conclusion

The education system of the 20th century served our nation and state well, setting a global standard for universal access to education no matter one's life circumstances. The fast-paced, dynamic, global world of the 21st century is rapidly changing public education systems and the role of the teacher from classroom presenter to educational coach.

This new world has significant implications for how boards should approach the collective bargaining process. Boards must work closely with administrators, teachers, parents, students, and community members to chart a bold course forward for their schools. That work should lead to a very clear vision for the district. This vision should provide the underpinning for all collective bargaining discussions. The focus of the parties in negotiations should be to devise strategies that contribute to improving student learning. Within these strategies for student improvement would be the professional employment conditions that enable teachers to be effective practitioners.

In addition to a clear vision, boards must understand the legal and strategic elements of the collective bargaining process. Superintendents must work closely with boards to ensure they understand what changes need to be made to master agreements and why. Bargaining objectives must be conveyed through clear and consistent communications to keep the community apprised and engaged. Boards must not shy away from difficult positions, but should be able to explain them and stand up for them. Using the vision to ground the board's proposals and reactions to proposals builds credibility and support.

This Guide to Collective Bargaining is designed to provide boards and superintendents with an overview of the legal and strategic elements of the process. Collective bargaining provides a critical framework for employees and employers to negotiate and settle issues of importance to both sides. Working together, Vermont's school boards and teachers have an opportunity to modernize this decades-old process from one that is often adversarial and incremental, to one that is collaborative, student-centered and facilitative of the changes our schools need to make. ■



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