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OHIO ASSOCIATION OF PUPIL SERVICES ADMINISTRATORS

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“Pupil Services Items & Issues in Negotiations”

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I. Introduction

II. Choosing the Ideal Negotiations Format

A. Traditional.

1. A bargaining model in which the parties work toward an agreement by presenting specific positional proposals to the other party to change a collective bargaining agreement, with each party focusing on their respective interests by assessing the strength, interests, and commitment of the other party and by trading interests through compromise when a mutually beneficial solution is not available.
2. Typical format used by boards of education.

3. Language is prepared and provided to union in complete form.
4. Usually scheduled after employee work day.
5. Does not create more conflict than other bargaining models.

B. Interest-Based Bargaining (“IBB”).

1. A bargaining model in which the parties use joint problem-solving techniques to find solutions to organizational issues by focusing on mutual interests and creative options, using objective criteria to find mutually acceptable solutions which result in mutual gain.
2. Number of issues is limited by agreement of parties before bargaining begins.
3. Usually scheduled during employee work day.
4. Only used when conditions are right.
5. Bargaining teams are trained by FMCS/SERB.

C. Intensive Bargaining.

1. Bargaining format that usually takes place on a Friday, Saturday, and Sunday and incorporates traditional or IBB bargaining process into a compressed format.
2. Number of issues is limited by agreement of parties before bargaining begins.
3. Parties agree ahead of time what happens if agreement is not reached by the end of the weekend.
 - a. Continue bargaining.
 - b. Start over.
 - c. Be at impasse.
4. When successful, it condenses bargaining and reduces disruption to school work day and year.

- D. Significant differences between IBB and Traditional.
 - 1. Scheduling and length of meetings.
 - 2. Format of initial proposals.
 - 3. Length and detail in ground rules document.
 - 4. Interaction between the parties during negotiations.
 - a. Collaborative versus positional.
 - b. Open communications by team members versus controlled communication.
 - 5. Joint training sessions conducted by neutral facilitator on IBB problem-solving techniques versus no formal training for the participants.
 - 6. Released time versus after-work meetings.
 - 7. WIN/WIN versus WIN/LOSE.
- E. Other bargaining formats.
- F. Important points to remember.
 - 1. No bargaining format is a panacea.
 - 2. Some degree of conflict is inherent in all bargaining models.
 - 3. Ultimately, the bargaining model does not cause the parties to settle; the parties settle when they are ready.

III. How to Maximize Your Board's Effectiveness in Negotiations

- A. Approach Each Negotiations from a Unique Perspective.
 - 1. Don't let past negotiations dictate your approach to bargaining.
 - 2. Assess current organizational problems and dynamics, and choose a path to negotiations appropriate to these dynamics.

3. Be proactive in your approach to bargaining by choosing a theme(s) for bargaining goals.
- B. Use Negotiations to Improve Your District and Fix Organizational Problems.
1. Improve communications with employees.
 2. Create necessary management rights to correct problems.
 3. Think of negotiations as an opportunity rather than a burden.
 4. Never agree to a proposal that makes the District less efficient or that wastes money.
- C. Have a Long-Term Perspective When Making Decisions at the Bargaining Table.
1. Define the long-term organizational effects of language changes on your District (e.g., changing the percentage on severance pay, teacher seniority bidding rights for vacancies).
 2. Calculate the long-term financial effects of economic decisions on your District (e.g., index changes, STRS pick-up, insurance changes).
 3. Don't succumb to the short-term fix at the expense of the long-term health of your District.
- D. Make Simplicity and Transparency a Goal for Bargaining.
1. Don't agree to ambiguous language just because ambiguity is easier to bargain.
 2. Don't defer organizational issues to the grievance process.
 3. Don't collude with the Union to hide raises from the public (e.g., STRS pick-up, hidden compensation schemes, run W-2s to identify current hidden compensation).
 4. Don't create complex language that is hard to administer and difficult to interpret.

"Simplicity is the ultimate sophistication" – Leonardo da Vinci

- E. Prepare your Board and Administrative Team Both Technically and Emotionally for the Bargaining Process.
 - 1. Conduct in-service meetings with your Board and Board team to analyze the current Negotiated Agreement.
 - 2. Discuss organizational problems which could be fixed or improved through bargaining.
 - 3. Review Union tactics with the Board and Board team to lessen the effectiveness of these tactics.
 - 4. Work to increase Board unity and mutual trust before beginning the bargaining process.
 - 5. Provide an opportunity for meaningful input from building Administration to the bargaining process.
- F. Don't Reward Bad Behavior by the Union in the Bargaining Process.
 - 1. File unfair labor practice charges when appropriate.
 - 2. Avoid the appeasement mindset when bargaining.
 - 3. Don't allow aggressive or coercive Union tactics to extract unwarranted concessions from the Board.
 - 4. Don't validate or legitimize unethical or militant Union leadership.
 - 5. Don't rationalize agreeing to a harmful proposal due to fear or self-interest.
- G. Have a Proactive Media Strategy for Negotiations.
 - 1. Go public to correct misinformation put out by the Union.
 - 2. Use the District web site for negotiations updates as appropriate.
 - 3. Have one spokesperson communicate with the media.
 - 4. Issue skillfully drafted press releases to inform the public about negotiations.

5. Demonstrate to your community that you are fiscally responsible and that you are “watching the store.”
- H. Establish Clear but Flexible Parameters for the Board’s Team.
1. Establish concrete, but flexible, financial goals for salary and medical insurance (e.g., define the amount of savings needed but not the manner in which savings is achieved).
 2. Give direction to the Board's team to increase management rights but delegate specific decision making to the team.
- I. Never Agree to a Proposal that Wastes Money or that Hurts Children or the Educational Program.

IV. Selecting the Board’s Bargaining Team

A. Conflicts.

1. Comply with the conflict of interest statute (O.R.C. §4117.20).

O.R.C. §4117.20 Conflict in bargaining participation
 - a. No person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining or who has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining process except that the person may, where entitled, vote on the ratification of an agreement.
 - b. The public employer shall immediately remove from his role, if any, in the collective bargaining negotiations or in any matter in connection with negotiations any person who violates division (A) of this section.
2. Do not let family relationships or friendships weaken board resolve on bargaining issues.
3. Since administrators usually get the same percentage raise and have the same insurance plan, an inherent conflict exists. Do not let self-interest

harm the bargaining process (e.g., administrators get the same raise as teachers and have the same medical and insurance benefits).

4. Administrator contracts that are tied directly to teacher salary increases.
5. Do not allow political considerations to lessen board resolve on bargaining issues.
6. Professional negotiators whose effectiveness is reduced because they do not want the union to attack them publicly.

B. Board members on the team.

1. Board members who do not have conflicts may be on the team.
2. Although legal pursuant to O.R.C. §4117.21, it is not recommended that the team include a majority of board members.

C. Superintendent, Treasurer and/or other administrators.

D. Professional negotiator.

E. Number of persons on team.

1. Collective bargaining agreement may limit the number.
2. Too many makes it difficult to reach consensus.

F. Should the union have input?

1. No.
2. It is an unfair labor practice for the union to influence or attempt to influence the composition of the Board's negotiating team.

V. Identifying the Negotiations Issues

- A. Identify a negotiations theme for negotiations that is coordinated with district goals.
- B. Identify organizational issues that may be corrected in negotiations.

- C. Review the collective bargaining agreement and identify current contract language that has prevented efficient operation of the district.
- D. Review all grievances and litigation that have occurred during the past five years related to the collective bargaining agreement.
- E. Meet with district administrators and board members to identify their concerns with contract language.
- F. Review the board policy manual for impact on contract provisions.
- G. Obtain detailed data from the district's insurance administrator on recommended changes to current insurance coverage.
- H. Determine the effect of changes in the law on the collective bargaining agreement.
- I. Establish financial parameters for negotiations.
- J. Identify items that affect special education or where improvements are needed.

VI. Data to be Gathered

- A. Obtain a list of recent W-2 salary amounts for all district employees ranked highest to lowest.
- B. Identify at least ten (10) comparable districts and obtain copies of the current collective bargaining agreement for each district.
- C. Update five (5) year financial forecast.
- D. Prepare leave utilization data for the bargaining unit for each of the last three (3) years.
- E. Prepare a current training and experience grid.
- F. Identify costs of miscellaneous provisions of the collective bargaining agreement (i.e., severance pay, tuition reimbursement, insurance premiums, etc.).
- G. Identify the names and number of employees who will be eligible to retire during the anticipated life of the new collective bargaining agreement.

- H. Identify other data that may be useful during negotiations.
 - 1. What does a 1% increase cost?
 - 2. What is the total cost of the step increases year over year?
- I. Consult the State Employment Relations Board Health Insurance Report as evidentiary support to modify the Board's insurance plan or increase employee contributions consistent with state averages.

VII. Negotiations Ground Rules

- A. Note taking procedures.
- B. No tape recording of sessions.
- C. Rules for press releases and public discussion of negotiations.
- D. Release time for participants.
- E. Identify spokesperson(s).
- F. Tentative agreement sign-off procedures.
- G. Other areas of mutual concern.

VIII. Current Issues and Trends in Ohio Public School Negotiations

- A. Shift in OEA Approach to Bargaining.
- B. The Strike Threat and Strike-Related Issues.
 - 1. Union tactics during negotiations– what's old is new.
 - 2. Why keep schools open during school strikes?
 - 3. Court intervention in negotiations during a strike.

C. Simple Suggestions for School Negotiations.

1. Don't waste money; don't erode management rights; and don't hurt the educational program when negotiating.
2. Keep negotiated language as simple as possible.

D. Salary and Compensation

1. Traditional salary schedules.
2. Merit-based raises.
3. Hybrid compensation.
4. Tools in the toolbox.
 - a. Freezing steps which are not restored in the future.
 - b. Freezing columns, at least temporarily.
 - c. Lowering the BA-0 base salary.
 - d. Two-tier wage schedules where new teachers are paid according to a lower salary schedule or where newly hired nonteaching employees will be paid twenty-five percent (25%) less.
 - e. Eliminating salary schedule advancement for coursework not in the teacher's teaching assignment.
 - f. Eliminating the teacher salary schedule, thereby making all increases merit-based.
 - g. Expanding authority for Boards of Education to pay additional salary to fill hard-to-staff positions (e.g., supply-and-demand model).
 - h. Eliminating Board pickup of the employees' share of State retirement contributions.
 - i. Contract changes that often affect salary costs:
 - Reducing planning time requirements.

- Eliminating class size restrictions.
 - Number of days special education teachers are granted for writing IEPs or developing progress reports – release time/planning time, earn extra leave days, receive extra pay for additional work, or have a substitute cover daily duties.
 - Expanding Superintendents' authority to assign employees (both certified and classified).
 - Eliminating all "featherbedding" language where unneeded work is required by contractual language.
 - Simplifying work rule language directed at making the District more efficient.
 - Eliminating caseload restrictions/ratios (e.g., limitation on number of preparations or number of students).
- j. Reduction in force changes to no longer be bound by seniority.
- k. Labor contract language can lead to unnecessary costs by:
- Increasing employee absenteeism due to leave rights.
 - Increases substitute costs.
 - Disrupts educational program.
- m. Restrictive work rules which lead to inefficient operations.
- Class size/caseload restrictions.
 - Limited assignment rights for management.
 - Granting teachers rights to determine curriculum (for both regular and special education students).
 - Seniority bidding rights for vacancies.
 - Requiring paid work or overtime for work that is not needed or useful to the organization.

- Prescribing an inflated and inappropriate salary and fringe benefit package.
- Limited number of meetings where administrators may require attendance beyond the contracted instructional day.
- Requiring specific numbers of aides per classroom or special education teacher.
- Job descriptions or contractual provisions that prohibit or do not require certified employees to assist with functional supports, toileting, feeding or assisting with daily life functions of students with disabilities.
- Contractual language preventing administration from making accommodations or modifying IEPs.

E. Insurance Considerations – Strategies for Negotiating Changes in Health Care Benefits

1. Increase employee contributions. (Average employee contribution for schools in Ohio is 12.4% for single plans and 13.4% for family plans)
2. Make it clear at beginning that the Board is tying all future increases in salary and wages directly to Union concessions in insurance coverage.
3. Do not “buy” insurance concessions with unreasonably high salary increases or restrictive contract language. (Note: The amount of projected cost savings resulting from a change in insurance should result in a net benefit to the Board.)
4. Offer to have plan benefits administrator attend a collective bargaining session with the Union for questions and answers.
5. Do not delegate negotiating insurance issues to a committee that has binding authority over the Board.
6. Avoid delegating to the Union in a labor agreement the power to choose insurance carriers/providers/administrators. Bargain the right to change insurance carriers, HMOs, or to self-insure as the Board deems appropriate so long as the new coverage and benefits are “relatively similar” to the coverage currently in effect.

7. Propose cost containment/cost sharing measures.
8. Include a wellness benefit or program.
9. Implement a disease management program/services.
10. Eliminate/reduce full coverage for part-time or short-hour employees. (The ACA only requires employers to offer insurance coverage to full-time employees.)
11. Establish a two-tier system with current employees “grandfathered” with regular coverage. (For instance, new employees can be required to pay larger share of insurance costs or join PPO.)
12. Increase single/family deductibles and out-of-pocket maximums to ACA limits.
13. Cap the amount of Board contribution at a fixed dollar limit or a fixed percentage.
14. Cash payments or other benefit for employees who elect not to enroll in the insurance plan.
15. Spousal Enrollment – Require spouses who can obtain health insurance from their employer to be covered under their employer’s plan.
16. Spousal Surcharge – Charge the employee a fixed monthly amount if spouse is enrolled in the Board’s plan.
17. Change plan design – increase employee co-payments, co-insurance, or deductibles.
18. Include provision for hospice or home health care benefit.
19. Restrict benefit for husband/wife employees to one family or two single plans.
20. Establish pre-certification procedures with financial penalties for failure to adhere to procedure.
21. Place restrictions on non-emergency weekend admissions to hospital or use of emergency room for non-emergency services.

22. Board pays for single plan and employee pays the difference between single and family plan or develop several different plans/tiers (employee only, employee and spouse only, employee and dependents only, family.)
23. "Across-the-board" employee contribution percentage. Require employees to contribute toward all types of insurance including dental, vision, and life.
24. Eliminate adult vision care coverage and divert the money saved to salary. (Note: Vision insurance is historically a very inefficient insurance. The aggregate benefit to employees is normally far less than the cost of the insurance.)
25. Due diligence: shop around for better rates from other carriers or consortiums.
26. Re-opener: Board and Union agree to enter into mid-term negotiations for salary and/or health insurance.

F. The Ohio Teacher Evaluation System.

IX. The Ohio Teacher Evaluation System ("OTES")

A. Ohio Teacher Evaluation System (OTES) Issues.

1. Negotiating evaluation policies and changes. Is negotiation required?
2. Student Growth Measure challenges.
3. Use of evaluations to support employment decisions.
4. Reduction in force and definition of "comparable."
5. Recent changes to evaluations.
6. ODE's new 600 Point System.

B. Negotiating Evaluation Policies and Changes.

1. Statutory Provisions.

- a. O.R.C. §3319.111(A): Not later than July 1, 2013, the board of education of each school district, in consultation with teachers employed by the board, shall adopt a standards-based teacher evaluation policy that conforms with the framework for evaluation of teachers developed under O.R.C. §3319.112 of the Revised Code. The policy shall become operative at the expiration of any collective bargaining agreement covering teachers employed by the board that is in effect on September 29, 2011, and shall be included in any renewal or extension of such an agreement.
- b. O.R.C. §3319.111(H): Notwithstanding any provision to the contrary in O.R.C. Chapter 4117, the requirements of this section prevail over any conflicting provisions of a collective bargaining agreement entered into on or after September 24, 2012.

2. SERB Decisions.

- a. *Sebring Local Education Association v. Sebring Local School District Board of Education* (December 12, 2013). Board of education unilaterally approved and implemented evaluation policy, and union filed a ULP claiming the board failed to bargain over a mandatory subject of bargaining. SERB held, “[i]nformation gathered during the investigation revealed that under the totality of the circumstances, it appears the Charged Party’s actions were in accordance with the mandate under O.R.C. §3319.111, and therefore do not constitute a violation of O.R.C. Chapter 4117.”
- b. *Parma Education Association v. Parma City School District Board of Education* (January 9, 2014). Union claimed district violated O.R.C. §4117.11(A)(1) and (5) by failing to maintain the status quo when it unilaterally implemented a new teacher evaluation procedure while the parties were still in negotiations for a successor agreement. SERB determined, “House Bill 153 and Senate Bill 316 specifically state that O.R.C. §3319.111 regarding teacher evaluation implementation, supersedes the provisions outlined in Chapter 4117. . . . Therefore, it does not appear that the District’s actions of implementing the new teacher evaluations, rises to the level of an (A)(5) statutory violation.”

- c. Lucas Teachers Association v. Lucas Local School District Board of Education (May 15, 2014). Union filed an unfair labor practice charge against Board, alleging Board violated O.R.C. §4117.11(A)(1) and (5) by unilaterally implementing a teacher evaluation procedure. SERB determined that, “even though Rootstown upholds the previously established status quo ante regarding expired contracts, it goes on to state that ‘RC Chapter 4117 prevails over any and all other conflicting laws except as otherwise specified by the General Assembly.’ House Bill 153 and Senate Bill 316 specifically state that O.R.C. §3319.111 regarding teacher evaluation implementation supersedes the provisions outlined in O.R.C. Chapter 4117. O.R.C. §3319.111(A) and (H) require that the new evaluation procedures in the policy supersede conflicting terms in a CBA when the CBA ‘naturally expires,’ and since that statute sets forth the time when the statutorily required procedures are to take effect, it appears to ensure that those procedures are not subject to Chapter 4117. Therefore, it does not appear that the District’s actions of implementing the new teacher evaluations rises to the level of an (A)(5) statutory violation. . . . Accordingly, the charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated.”
- d. In the Matter of Career & Technical Association v. Auburn Joint Vocational School District Board of Education (July 24, 2014). SERB stated, “Ohio Revised Code §3319.111(A) & (H) require that the new evaluation procedures in the policy supersede conflicting terms in a CBA when the CBA ‘naturally expires’ and since that statute sets forth the time when the statutorily required procedures are to take effect, it appears to ensure that those procedures are not subject to Chapter 4117 of the Revised Code.”

C. Student Growth Measure Challenges.

- 1. O.R.C. §3313.112(A)(1): Provides for multiple evaluation factors. One factor shall be student academic growth which shall account for 50% of each evaluation, except as otherwise prescribed by the alternative framework under O.R.C. §3319.114. When applicable to the grade level or subject area taught by a teacher, the value-added progress dimension established under O.R.C. §3302.021 or an alternative student academic progress measure if adopted under division (C)(1)(e) of O.R.C. §3302.03 shall be used in the student academic growth portion of an evaluation in proportion to the part of a teacher’s schedule of courses or subjects for

which the value-added progress dimension is applicable. If a teacher's schedule is comprised only of courses or subjects for which the value-added progress dimension is applicable, one of the following applies * * *.

2. O.R.C. §3313.112(A)(1)(b): On or after July 1, 2014, the entire student academic growth factor of the evaluation shall be based on the value-added progress dimension. In calculating student academic growth for an evaluation, a student shall not be included if the student has 45 or more excused or unexcused absences during the full academic year.

D. Frequency of Evaluations.

O.R.C. §3319.111(C)(1): The board shall conduct an evaluation of each teacher employed by the board at least once each school year, except as provided in division (C)(2) of this section. The evaluation shall be completed by the first day of May, and the teacher shall receive a written report of the results of the evaluation by the 10th day of May.

E. Observations and Walkthroughs

1. O.R.C. §3319.112(A)(3): Requires observation of the teacher being evaluated, including at least two formal observations by the evaluator of at least thirty minutes each and classroom walkthroughs.
2. O.R.C. §3319.111(E)(1): The board shall require at least three formal observations of each teacher who is under consideration for nonrenewal and with whom the board has entered into a limited contract or an extended limited contract under O.R.C. §3319.11.

F. Other formal requirements

1. O.R.C. §3319.112(B)(1): Must be assigned a rating of: (1) Accomplished; (2) Skilled; (3) Developing; or (4) Ineffective.
2. O.R.C. §3319.111(D): Evaluations must be conducted by a credentialed evaluator.
3. O.R.C. §3319.112(G): The board annually shall report to the department of education the number of teachers for whom an evaluation was conducted under this section and the number of teachers assigned each rating * * *. The department shall establish guidelines for reporting the information required by this division. The guidelines shall not permit or

require that the name of, or any other personally identifiable information about, any teacher be reported under this division.

4. O.R.C. §3319.112(A)(1)(b): In calculating student academic growth for an evaluation, a student shall not be included if the student has forty-five or more excused or unexcused absences during the full academic year.

G. Use of Evaluations to Support Employment Decisions.

1. Statutory Provisions.

O.R.C. §3319.111(F): The board shall include in its evaluation policy procedures for using the evaluation results for retention and promotion decisions and for removal of poorly performing teachers. Seniority shall not be the basis for a decision to retain a teacher, except when making a decision between teachers who have comparable evaluations.

2. The nonrenewal process has not changed. However, if you do not complete the evaluation cycles as mandated by law, you may hinder your ability to nonrenew a teacher/principal (at least three observation cycles for teachers in final year of contract, at least two written evaluations for principals in the last year of a contract – 60 and five days).

H. Reduction in Force and Definition of “Comparable.”

1. Statutory Provisions.

O.R.C. §3319.17(C): In making any such reduction, any city, exempted village, local, or joint vocational school board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools, who shall, within each teaching field affected, give preference to teachers on continuing contracts. The board shall not give preference to any teacher based on seniority, except when making a decision between teachers who have comparable evaluations.

2. How should districts define “comparable”?
3. Should definition be included in policy, through an MOU, the CBA?

I. Recent Changes to Evaluations.

1. HB 362 Exceptions.

a. Statutory Provisions.

- O.R.C. §3319.111(C)(2)(a): The board may evaluate each teacher who received a rating of “Accomplished” on the teacher’s most recent evaluation conducted under this section once every three school years, so long as the teacher’s student academic growth measure, for the most recent school year for which data is available, is average or higher, as determined by the department of education.
- O.R.C. §3319.111(C)(2)(b): The board may evaluate each teacher who received a rating of “Skilled” on the teacher’s most recent evaluation conducted under this section once every two years, so long as the teacher’s student academic growth measure, for the most recent school year for which data is available, is average or higher, as determined by the department of education.
- O.R.C. §3319.111(C)(3): In any year that a teacher is not formally evaluated pursuant to division (C) of this section as a result of receiving a rating of “Accomplished” or “Skilled” on the teacher’s most recent evaluation, an individual qualified to evaluate a teacher under division (D) of this section shall conduct at least one observation of the teacher and hold at least one conference with the teacher.
- O.R.C. §3319.111(C)(2)(d)(i): Beginning with the 2014-2015 school year, the board may elect not to conduct an evaluation of a teacher who . . . was on leave from the school district for 50% or more of the school year, as calculated by the board.
- O.R.C. §3319.111(C)(2)(d)(ii): Beginning with the 2014-2015 school year, the board may elect not to conduct an evaluation of a teacher who . . . has submitted notice of retirement and that notice has been accepted by the board not later than the first day of December of the school year in which the evaluation is otherwise scheduled to be conducted.

- b. If a district elects the “Accomplished” or “Skilled” exemptions, what must be done in the off year(s)? Districts must collect SGM each year, and complete growth plan.
 - c. What kind of observation is to be conducted in the off year(s) when a teacher is rated “Accomplished” or “Skilled”?
 - d. What kind of conference is to be held with a teacher in the off year(s) when a teacher is rated “Accomplished” or “Skilled”?
2. HB 362 Alternative Framework.
- a. Statutory Provisions.
 - O.R.C. §3319.114(A): Beginning with the 2014-2015 school year, a district or school may choose to use the alternative framework prescribed by divisions (B) and (C) of this section when evaluating teachers under O.R.C. §3319.111.
 - O.R.C. §3319.114(B): If a district or school chooses to use the alternative framework for the 2014-2015 school year . . . the teacher performance measure, as defined by the department of education, shall account for 42-1/2% of each rating . . . The student academic growth measure, as defined by the department, shall account for 42-1/2% of each rating. . . Only one of the following components shall account for 15% of each rating . . . student surveys, teacher self-evaluations, peer review evaluations, student portfolios.
 - O.R.C. §3319.114(C): If a district or school chooses to use the alternative framework for the 2015-2016 school year or any school year thereafter, that district or school shall calculate ratings assigned for teacher evaluations according to the following . . . The teacher performance measure, as defined by the department, shall account for 42-1/2% to 50% of each rating . . . The student academic growth measure, as defined by the department, shall account for 42-1/2% to 50% of each rating . . . The remainder shall be one of the following components . . . student surveys,

teacher self-evaluations, peer review evaluations, student portfolios . . .

O.R.C. §3319.114(C)(4): The teacher performance measure and the student academic growth measure shall account for an equal percentage of each rating.

J. Framework – ODE’s New 600 Point System.

ODE recently announced that it will calculate a teacher’s final summative rating using a new 600 point scale.

K. Evaluating bargaining unit members who do not fall under OTES.

1. O.R.C. §3319.111: OTES applies to any person who is employed under a teacher license issued under this chapter, or under a professional or permanent teacher's certificate issued under former section 3319.222 of the Revised Code, and who spends at least fifty per cent of the time employed providing student instruction.
2. O.R.C. §3319.112(E): Substitute and adult education teachers also exempt from OTES.

X. Suggestions for Improving Negotiated Leave Provisions

A. Sick Leave Provisions.

1. Limit and clarify the definition of “immediate family.”
 - a. Avoid an overly broad definition of immediate family.
 - b. Avoid ambiguity in definition of immediate family.
2. Require a doctor’s statement to justify absences of three or more consecutive days, or when abuse or falsification is suspected.
3. Prohibit employees from engaging in other gainful employment while on sick leave.
4. Add a provision which states that an employee may be disciplined and/or terminated for falsification of a sick leave statement pursuant to O.R.C. §3319.141.

5. Avoid expanding the maximum sick leave accumulation limit.
 - a. Aggregate sick leave accumulation is considered an unfunded liability of the school district for underwriting purposes and must appear on the district's financial statement.
 - b. Employees who are disabled are advised by STRS and SERS to exhaust sick leave before going on disability retirement even though immediately eligible. Increasing the sick leave accumulation limit also increases the board of education's financial exposure.
6. Avoid adding a sick leave bank to the negotiated agreement.
 - a. Sick leave banks reduce employee's incentive to accumulate sick leave; and
 - b. Results in an increased cost to the board of education since employees contributing days to the bank are usually at maximum accumulation and would have lost the days anyway.
 - c. The existence of a sick leave bank could result in a delay of an employee applying for disability retirement for which they may be eligible, thus increasing costs to the board.
7. Require employees to contact their immediate supervisor directly when calling off sick.
8. If using an electronic procedure for calling off, make it clear that final approval rests with a supervisor.
9. Require routine, non-emergency doctor's appointments to be scheduled, if possible, at a time which does not conflict with work schedules.

B. Personal Leave Provisions.

1. Include restrictions on the use of personal leave.
 - a. Limit the number of employees that can be on personal leave at the same time, by building, grade level, or classification.

- b. Restrict use of personal leave for recreational purposes such as shopping, hunting, golfing, fishing, or attending the county fair.
 - c. Restrict the use of personal leave for other gainful employment.
 - d. Restrict the use of personal leave to personal business which cannot be accomplished at a time which does not conflict with the employee's work schedule.
 - e. Restrict personal leave to extend a weekend, holiday or vacation.
 - f. Restrict use of personal leave during the first week of school or the months of May and June.
 - g. If reasons are not required to be given by the employee, require the employee to sign a statement certifying that the leave is not for a restricted purpose.
 - h. Avoid provisions which allow for carryover of personal leave from year to year.
 - i. Compile personal leave utilization data to identify trends in the use of leave.
- 2. Do not agree to increase number of personal leave days in exchange for employees not receiving a salary increase.

C. Jury Duty/Court Leave Provisions.

- 1. Ohio law requires employers to release employees for jury duty. A board of education is required to pay a full-time employee the difference between such employee's regular compensation and the remuneration received for serving as a juror. (O.R.C. §3313.211). Avoid contract language that would allow an employee to receive full pay and keep jury pay.
- 2. Avoid court leave provisions which keep employees on the payroll who are embroiled in personal litigation or in litigation against the board of education.
- 3. Avoid witness leave provisions which allow employees to be off the job with pay to appear at a legal proceeding against the board of education.

4. Good Samaritan provisions.

D. Bereavement Leave.

1. Under current Ohio law, sick leave may be used for a death in the immediate family. Therefore, a separate category of bereavement leave (which does not result in a reduction of sick leave accumulation when used) is unnecessary.
2. If this provision already appears in the agreement, add restrictions on the number of days which are automatically approved, and create a different entitlement for local versus out-of-state funerals.

E. Unpaid Leave of Absence for Illness or Other Disability (O.R.C. §3319.13).

1. Board of education must grant such leave for illness or disability -- usually appropriate after sick leave is exhausted.
2. Employees are entitled to return from leave to the same contract status held at the time of the leave.
3. Extensions to the leave period may be approved by the board.
4. Avoid contractual language which guarantees the employee to return to the "same" position. Return to the "same or similar" position gives more flexibility to the board in staff assignments.
5. It is advisable to negotiate a provision requiring the employee to notify the board of education thirty (30) days in advance of their return from leave or 30 days prior to the end of the approved leave period.
6. Requiring employees to return only at the start of a new semester can lessen disruption to the education program.

F. Deduct/Dock Days.

1. A growing trend is contracts that allow employees to take "dock days" for absences for which there exists no applicable leave provision.
2. The pro-rata share of medical insurance premiums should also be deducted in addition to salary compensation at the per diem rate.

3. Dock days are not an entitlement for employees and must be pre-approved to be properly authorized.
4. To avoid disruption to the organization, applications for dock days should be evaluated on a case-by-case basis and should be infrequently approved unless the interests of the organization are served by their approval.

G. Federal Family and Medical Leave Provisions.

1. Avoid adding provisions to a negotiated agreement which expand the number of employees eligible for FMLA leave beyond the criteria established in the federal law. For example, "All employees are eligible for FMLA."
2. Negotiate restrictions on employees' use of intermittent leave allowed by federal law for educational institutions.
3. Coordinate other negotiated leave provisions with FMLA, but do not grant greater rights than those provided in the law.

H. Sabbatical Leave.

1. Under Ohio law, sabbatical leave is permissive and is discretionary with the board of education and superintendent (O.R.C. §3319.131).
2. Teachers must have completed five (5) years of service to be eligible for sabbatical leave.
3. The teacher must prepare a plan for professional growth prior to approval of the leave, and at the conclusion of the leave must provide evidence that the plan was followed.
4. The teacher may be required to return to the district for one year at the end of the sabbatical leave period, unless the teacher has completed 25 years of teaching in Ohio.
5. The board of education may not grant this leave unless there is a satisfactory substitute available, may not allow more than five percent (5%) of the teaching staff to be on sabbatical leave at the same time, and may not pay a salary to persons on sabbatical leave in excess of the difference between the substitute's pay and the teacher's expected salary.

6. Other statutory restrictions on sabbatical leave include:
 - a. May not be longer than one school year.
 - b. May not be granted to the same teacher more than once in a five (5) year period.
 - c. May not be granted a second time to the same staff member when other members of the staff have filed a request for the leave.
 7. Negotiated provisions can be different from the statutory criteria for sabbatical leave since the parties may negotiate contrary to law (O.R.C. §4117.10(A)).
 8. Sabbatical leave may be a short-term alternative to RIF or may be used as a low-cost alternative to termination to assist a nonperforming employee in preparing for another line of work.
- I. Assault Leave Provisions (O.R.C. §3319.143).
1. The maximum number of days of assault leave per incident should be limited to a modest number (i.e., 30 days).
 2. Due to the existence of workers' compensation, disability benefits, sick leave, etc., assault leave is redundant and unnecessary.
 3. Boards of education should avoid adding "emotional" or "verbal" assault to the scope of application of assault leave due to the ambiguous nature of emotional problems and the potential for abuse by employees.
- J. Severance Pay.
1. Keep severance pay benefits at twenty-five percent (25%) of the accumulated sick leave days paid at the per diem rate. O.R.C. §124.39 sets severance at 25% of 120 days.
 2. Cap the number of severance days eligible for severance pay at a reasonable level.
 - a. Pros of establishing low caps for severance.
 - b. Cons of establishing low caps for severance.

3. Only offer retirement incentive where there is a clear WIN/WIN outcome.

K. Released Time for Union Business.

1. IBB Negotiations.
2. Limited Association Leave benefit.
3. Permanent released time for union president.

XI. Suggestions for Improving Vacancies, Assignments, and Transfer Provisions

A. Vacancies.

1. Remove seniority bidding rights, especially for certified positions.
2. Avoid provisions that create a “ripple effect” when a vacancy is filled.
3. Create timelines that allow a vacancy to be rapidly filled.
4. Provide for Internet postings rather than posting on bulletin boards or including them with pay mailings.

B. Assignments and Transfers.

1. Maintain the right to implement an involuntary transfer in the best interests of the district.
2. Avoid language that creates an employee’s right to a transfer.

XII. General Contractual Provisions

A. Maintenance of Standards.

1. Contractual Provisions.

“For the duration of this contract, the . . . Board of Education shall maintain all terms, conditions, and benefits of employment not less than the level in effect as of the effective date of this contract. . . .” (Language from current agreement between board of education and union.)

2. Management Rights Which Could be Hindered by a Maintenance of Standards Clause.
 - a. Transfers and assignments.
 - b. Reduction in force.
 - c. Suspensions.
 - d. Nonrenewals.
 - e. Class size.
 - f. Job duties and descriptions.
3. Specific vs. general contract language.
- B. Nonrenewal, Reassignment, and Transfers.

Effect of Just Cause Standards for Discipline and Contract Nonrenewal:

1. Since Ohio law does not require a board to meet the just cause standard to nonrenew an employee's contract, it becomes more difficult to nonrenew.
 2. Depending on the collective bargaining agreement, administration may have to meet the just cause standard before implementing an oral or written reprimand, not only for disciplinary suspensions or termination.
- C. Tuition Reimbursement
1. Only offer tuition reimbursement in teacher's field of study or to pursue an advanced education degree.
 2. Eliminate/suspend tuition reimbursement and redistribute funds as increase in compensation for other items.

XIII. Employee Discipline

- A. The Importance of Disciplinary Documentation
1. Provides Feedback to the Employee to Improve Behavior.

2. Demonstrates Effort by Management to Improve the Employee's Performance.
 3. Lays Foundation of Proof if Disciplinary Action is Challenged.
- B. Tips for Writing Effective Letters of Reprimand
1. Letter should Clearly State that it is a Disciplinary Document.
 2. Facts Detailing the Infraction or Problem should be Included.
 3. Letter should Contain a Directive to the Employee Regarding How the Employee's Behavior should be Adjusted.
 4. Letter should Detail Consequences if the Employee's Behavior Does Not Improve.
- C. Progressive Discipline – A system of escalating responses intended to correct negative employee behavior.
1. Typical Stages of Progressive Discipline
 - a. Oral warning.
 - b. Written reprimand.
 - c. Suspension.
 - d. Termination.
 2. The Appropriate Step to Begin Progressive Discipline Depends on:
 - a. Severity of the infraction.
 - b. Previous work history of the employee.
 - c. How the choice will affect others in the organization.
 3. Progressive Discipline Procedures should be Simple, Unambiguous, and Fair.

D. Teacher Termination/Discipline.

1. Statutory grounds under O.R.C. §3319.16.

- a. “The contract of any teacher *** may not be terminated except for *** good and just cause ***. The Board may suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrants such action ***.”
- b. “Notwithstanding any provision to the contrary in O.R.C. Chapter 4117, the provisions of this section relating to the grounds for termination of the contract of a teacher prevail over any conflicting provisions of a collective bargaining agreement entered into after the effective date of this amendment.”
- c. The Ohio Revised Code is silent as to other forms of discipline, such as written reprimands and suspension without termination of an employment contract.

2. Negotiated Agreement.

- a. Disciplinary and termination procedures.
- b. Conflicts between Ohio law and collective bargaining agreements regarding standards or procedures.

3. Generally accepted seven tests to satisfy just cause standard.

- a. Arbitrator standards (“Daugherty Test”).
 - Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?
 - Was the employer’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the company’s business, and (b) the performance that the employer might properly expect of the employee?
 - Did the employer, before administering discipline to an employee, make an effort to discover whether the employee violated or disobeyed the rule or order of management?

- Was the employer's investigation conducted fairly and objectively?
 - At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
 - Has the employer applied rules, orders, and penalties evenhandedly and without discrimination to all employees?
 - Was the degree of discipline administered reasonably related to (a) the seriousness of the employee's offense and (b) the record of the employee's service with the employer?
- b. A negative answer to any of the inquiries within the test signifies that good or just cause is not present.
- c. Summit Cty. Children Servs. Bd. v. Communication Workers of Am. Local 4546, 113 Ohio St. 3d 291 (2007).

Arbitrator considering union grievance over county's discharge of employee could use Daugherty test, including determination of whether degree of discipline imposed was reasonably related to the seriousness of the offense and the employee's record, to determine whether dismissal was for "just cause," where collective bargaining agreement did not define "just cause," and agreement did not specifically prohibit arbitrator from using the test or forbid consideration of mitigating factors.

- d. Newbury Educ. Assn. and Newbury Local School Dist., AAA Case No. 53 390 00262 09 (Nov. 24, 2009).

"Just cause generally requires persuasive proof that the rules or policies cited for the discipline were violated and that, under the totality of the circumstances, the discipline is proportionate to the offense, i.e., within the zone of reasonableness. Usually, the just cause standard favors progressive discipline, which gives an employee an opportunity to correct behavior and provides notice that failure to do so will lead to more severe discipline. However, progressive discipline need not always follow an oral warning, written warning, suspension, and discharge sequence in lock step order. The facts and circumstances of each particular case dictate the appropriate disciplinary level. Progressive discipline concepts, however, do not apply in the face of gross misconduct, such as

dishonesty, that warrants summary discharge in the first instance. Finally, no citation is needed for the principle that employees have the initial discretion to impose discipline for proven misconduct. Generally, arbitrators will not second guess management so long as the penalty imposed is within the zone of reasonableness under the totality of the facts and circumstances.” ***

E. Nonteaching Employee Termination/Discipline (Non-Civil Service District).

1. Grounds under O.R.C. §3319.081.

- a. “The contracts as provided in this section may be terminated only for violation of written rules and regulations as set forth by the board of education or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance.”
- b. Instead of termination, board may, alternatively, “suspend an employee for a definite period of time or demote the employee ***” on same grounds.

2. No specific reference to just cause in statute.

F. Termination/Discipline of Civil Service Employees in City School District where Civil Service Applies.

1. Grounds under O.R.C. §124.34.

- a. “No employee shall be reduced in pay or position, fined, suspended, or removed, or have the *** employee’s longevity reduced or eliminated, except *** for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty *** or any other failure of good behavior or any other acts of misfeasance, malfeasance or nonfeasance in office, or conviction of a felony.”
- b. Check local Civil Service Commission regulations.

2. No specific reference to just cause in statute.

3. In most Districts, the law allows for the elimination of civil service by joint agreement of the Board of Education and City Council.

G. Other Discipline Considerations

1. Investigation of Employees.
2. Use of Expert Witnesses in Discipline Cases.
3. Political Considerations in Discipline Cases.
4. Collective Bargaining Considerations.
5. Strategies for Obtaining Employee Resignations.
6. Personnel File Considerations in Employee Discipline Matters.
7. Last Chance Agreements.

XIV. Negotiating IEP Language – Does Your Contract Violate a Student's Legal Rights?

A. Failure to Have the Proper Persons Present Throughout the IEP Meeting.

1. An initial IEP must be developed within whichever of the following time periods is the shortest:
 - a. Within thirty calendar days of the determination that the child needs special education and related services;
 - b. Within ninety calendar days of receiving parental consent for an evaluation; or
 - c. Within one hundred twenty calendar days of the receipt of a request for an evaluation from a parent or school district. O.A.C. 3301-51-07(K)(2).
2. Each school district must ensure that, subject to the conditions below, the IEP Team:
 - a. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

- b. Revises the IEP, as appropriate, to address:
 - Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - The results of any reevaluation conducted under O.A.C. 3301-51-06;
 - Information about the child provided to, or by, the parents, as described under O.A.C. 3301-51-06(F)(1)(b);
 - The child's anticipated needs; or
 - Other matters. O.A.C. 3301-51-07(L)(2)(a).
- 3. An IEP is developed by a team comprised of the following persons: O.A.C. 3301-51-07(I).
 - a. The parents of a child with a disability.
 - b. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).
 - c. Not less than one special education teacher, or where appropriate, not less than one special education provider of the child.
 - d. A representative of the district who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the school district.
 - e. An individual who can interpret the instructional implications of evaluation results who may be a member of the team as described above.

- f. At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.

The determination of the knowledge or special expertise of any individual as described above must be made by the party (parents or school district) who invited the individual to be a member of the IEP Team. O.A.C. 3301-51-07(I)(3).

- g. Whenever appropriate, the child with a disability.

- Additionally, the school district must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. O.A.C. 3301-51-07(I)(2)(a).

- If the child does not attend, the school district must take other steps to ensure that the child's preferences and interests are considered. O.A.C. 3301-51-07(I)(2)(b).

- To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. O.A.C. 3301-51-07(I)(2)(c).

- h. If the child has been, or will be placed by the public school district in a nonpublic school or facility, the district must ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the district must use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls. O.A.C. 3301-51-07(M)(1)(b).

4. A mandatory member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. O.A.C. 3301-51-07(I)(5)(a).

5. A mandatory member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
 - a. The parent, in writing, and the school district consent to the excusal; and
 - b. The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. O.A.C. 3301-51-07(I)(5)(b).
6. Do not agree to contract language that requires the student's teacher, counselor, aide, etc. to approve the IEP.
7. Do not agree to contract language that dictates which teacher, counselor, aide, etc. will be assigned to the IEP team.

XV. Properly Training Paraprofessionals and Other Personnel Providing Services to Students with Disabilities

- A. Each school district must ensure that personnel necessary to carry out the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. O.A.C. 3301-51-09(H)(1).
- B. This must include qualifications for related services personnel and paraprofessionals that are consistent with state certification and licensing requirements and that allow paraprofessionals and assistants to assist in the provision of special education and related services to students with disabilities under the IDEA as long as they are appropriately trained and supervised in accordance with state laws, regulations, and written policies. O.A.C. 3301-51-09(H)(2).
- C. Each school district must also take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities under the IDEA. O.A.C. 3301-51-09(H)(5).

D. Restraint and Seclusion Policy/Training.

1. A school district shall develop written policies and procedures concerning the use of seclusion and restraint that are consistent with the policy on positive behavior interventions and support, restraint and seclusion, as adopted by the state board of education. O.A.C. 3301-35-15(H).
2. A school district shall ensure that an appropriate number of personnel in each building are trained in crisis management and de-escalation techniques. Training on positive behavior intervention and supports is encouraged. O.A.C. 3301-35-15(G).

XVI. Complying with Mandatory Reporting Requirements.

- A. Ohio law imposes a duty on a wide variety of professionals, including every school teacher, school employee and school authority, who is acting in an official or professional capacity, to report known or suspected child abuse or neglect. O.R.C. 2151.421(A)(1).

- B. What children are protected?

Applies to any child under 18 years of age, or a physically or mentally handicapped person under 21 years of age. O.R.C. 2151.421(A)(1).

- C. When does the duty to report arise?

1. When the school employee “knows or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect” that the child has “suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child.” O.R.C. 2152.421(A)(1)(a).
2. Caution needs to be used in asking questions of the child if you get information that leads you to know or suspect abuse or neglect.
 - a. The better procedure is to ask the child to repeat the information to verify.
 - b. Do not suggest facts/circumstances if the child cannot remember or does not state the details.

- c. Report the information immediately. Consider coordination of investigations.

D. When must the report be made?

- 1. The school employee shall not “fail immediately to report . . .” O.R.C. 2151.421(A)(1)(a).
- 2. Purpose of statute is to prevent harm to children.

E. To whom are reports to be made?

The knowledge or suspicion of child abuse must be reported to the children services agency, or to a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. O.R.C. 2151.421(A)(1).

F. How is the report to be made?

Any report shall be made “forthwith” by telephone or in person, and shall be followed by a written report, if requested by the receiving agency or officer. O.R.C. 2151.421(C).

G. What must the written report contain?

- 1. The names and addresses of the child and his/her parents or the person or persons having custody of the child, if known.
- 2. The child’s age and nature and extent of the child’s injuries, abuse or neglect, or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect.
- 3. Any other information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect. O.R.C. 2151.421(C).

H. The report is confidential.

- 1. Although children services must inform the alleged child abuser that a report has been filed, the agency shall not provide the alleged child abuser any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports. O.R.C. 2151.421(H)(5).

2. No person shall permit or encourage the unauthorized dissemination of the contents of the report of child abuse/neglect. O.R.C. 2151.421(H)(2).

I. Good Faith Immunity.

Anyone participating in good faith in the making of reports under this section or anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. O.R.C. 2151.421(G).

J. Penalties for failure to make report.

1. Anyone who violates the duty imposed by O.R.C. 2151.421 to report known or suspected child abuse is guilty of a fourth degree misdemeanor. O.R.C. 2151.99 A fourth degree misdemeanor is punishable by imprisonment for not more than 30 days and a fine of not more than \$250.00. O.R.C. 2929.24, 2929.28.
2. In addition, unauthorized dissemination of the contents of the report is also a fourth degree misdemeanor.
3. Violation of these provisions of the statute may also give rise to civil liability.

K. Penalties for making a false report.

1. A separate criminal statute, O.R.C. 2921.14, makes it a first degree misdemeanor for anyone to knowingly make or cause another to make a false report alleging child abuse/neglect. A first degree misdemeanor is punishable by imprisonment for not more than six months and a fine of not more than \$1,000.00. O.R.C. 2929.24, 2929.28.
2. O.R.C. 2921.44 deals with the crime of dereliction of duty. Said statute provides in part that no public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office.
3. The term "public servant" has been broadly defined and probably does include a teacher, school employee, or school administrator.
4. Dereliction of duty is a 2nd degree misdemeanor which is punishable by imprisonment for not more than 90 days and a fine of not more than \$750.00. O.R.C. 2929.21.

XVII. Call your School Board Attorney Before a Mess is Made

- A. The school board attorney cannot and should not advise on educational decisions. Those should be left to the educational professionals.
- B. However, the attorney can advise on legal parameters, obligations, and limitations.

XVIII. Recognizing Best Opportunity for Settlement

- A. Time of year that bargaining occurs is often as important as the issues being bargained.
 - 1. End of school year.
 - 2. End of summer.
 - 3. Holidays approaching.
 - 4. Contract expiration date.
- B. Passage of time usually impacts the parties' desire to settle.
 - 1. Number of meetings between parties.
 - 2. Length of time parties have negotiated and/or parties' relationship.
- C. Bargaining history often determines when/how negotiations will conclude.
 - 1. Team make-up.
 - 2. Declaration of impasse.
 - 3. Strike vote taken.
 - 4. Strike notice filed.
 - 5. Settlement at or away from the table.
 - 6. Grievance/litigation history.

- D. What takes place away from the table is sometimes as important as what takes place at the table.
 - 1. Information provided by union to its members.
 - 2. Communication by either party with the public.
- E. Settlement occurs when both parties' "window of acceptability" is reached.
 - 1. Economic issues are often the last to be agreed upon.
 - 2. Have the parties achieved their respective goals?
 - 3. Do the Board's parameters result in more or less "take home" pay?

XIX. Techniques for Successfully Achieving Settlement

- A. Supposals are a useful tool for exploring options ("what ifs").
 - 1. Often used by federal/state mediators.
 - 2. Can be used in sidebars or at table.
- B. Reopeners provide a method for getting past the affordability roadblock.
 - 1. Salary.
 - 2. Insurance.
 - 3. Other provisions – OTES changes?
- C. Packaging proposals and repackaging proposals effectively.
 - 1. All or nothing packages.
 - 2. Smaller versus larger proposal packages.
 - 3. Making the old look new again by repackaging.

- D. Declaring impasse can be a highly effective step toward settlement.
 - 1. Declaration sends message that help is needed to reach settlement.
 - 2. Effective use of federal/state mediators once impasse declared.
 - a. What you tell the federal mediator depends on the mediator.
 - b. Parties who are having trouble getting along do not have to be in same room to negotiate.
- E. Interest arbitration can be used when the parties will not or cannot reach agreement on their own.
 - 1. Binding.
 - 2. Advisory.
- F. Proposing the last best offer when the union will not or cannot sign a tentative agreement.
 - 1. Timing of last best offer is critical.
 - 2. Provisions to include in board's last best offer.
 - 3. Is unilateral implementation being considered?
 - 4. What happens after last best offer is proposed?
 - 5. Is there such a thing as a second to last best offer?
- G. Using unilateral implementation to end negotiations.
 - 1. Has the board bargained in good faith?
 - 2. Are the parties at ultimate impasse?
 - a. The parties' bargaining history.
 - b. The good faith of the parties in negotiations.
 - c. The length of negotiations.

- d. The importance of the issues in dispute.
- e. The contemporaneous understanding of the parties as to the status of negotiations.
- f. The exigent circumstances which require the board to implement its last, best offer.
- g. Whether there has been a strike or union has consulted the employees about one; although a strike does not necessarily create ultimate impasse and may even foster further negotiations.
- h. The fluidity of the parties' positions.
- i. Whether bargaining is continuing at any level.
- j. The duration between negotiating sessions.
- k. The number of bargaining sessions.
- l. Statements or understandings of the parties concerning impasse.
- m. Who last said what in the process (i.e. "we'll get back to you" versus "we're through!").
- n. Demonstrated willingness to consider the issues further.
- o. Pendency of unfair labor practice charge.
- p. Union animus as evidenced by prior or concurrent acts.
- q. Other actions inconsistent with impasse.

XX. Conclusion