



Strategies for Successful Negotiations

From Congenial Start . . .
To Rewarding Completion

- Obtaining a Fair Contract
- Compensation
- Conditions of Employment



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Your personal and financial future
depends on it.*

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Strategies
for
Successful Negotiations
Part I
Obtaining a Fair Contract



Obtaining a Fair Contract

In negotiating public sector labor contracts today, three immediate observations are relevant.

1) Negotiating collective bargaining contracts has become quite complex due to tax ramifications and pension considerations. These personal finance issues change frequently, and the SAANYS Legal Department keeps abreast of these changes. Members should use one of SAANYS' experienced negotiators and/or attorneys to review their contracts and offer suggestions.

Educators would not expect an attorney to design a fourth-grade curriculum. Neither should curriculum experts attempt to navigate alone complicated tax and retirement consequences as they negotiate a new contract. SAANYS is available to review all contracts and make recommendations.

2) Administrators have less time to devote to negotiations. DASA and APPR requirements, both as evaluators and recipients of evaluations, are only part of the additional bureaucratic morass in which school leaders are entangled.

3) Many administrators can fully recite chapter and verse of the current teachers' contract because their job responsibilities depend on it. But these same school leaders are unable to articulate critical provisions of their own bargaining agreements.

For its members, SAANYS will research contracts of comparable districts, conduct an intra-district analysis, provide negotiating strategies, draft proposals, and can, if requested, act as spokesperson for a negotiating team. SAANYS negotiation services are flexible, and the level of support that would be most effective will be determined in consultation with the bargaining unit.

SAANYS retains highly trained and experienced regional labor negotiators. These professionals have negotiated more than 1,500 collective bargaining contracts on behalf of both management and labor and can serve a variety of roles at a bargaining unit's request. They review contracts and highlight areas in need of improvement. They understand regional trends. The negotiators research comparable districts and assist in the drafting of proposals that reflect current compensation and benefits. SAANYS also uses retired administrators as labor negotiators, when appropriate. These men and women receive extensive training and possess a keen understanding of the daily pressures of educational administration. This practical experience serves the bargaining unit well at the negotiating table.

SAANYS' attorneys also negotiate contracts depending on client needs and desires. All in-house attorneys, as well as three regional SAANYS law firms, are involved in collective bargaining. Many SAANYS units utilize both a SAANYS negotiator AND a SAANYS attorney, and all units are entitled to do so.



Relevant History of Administrative Collective Bargaining

The era of the “gentlemen’s agreement” is dead . . . almost. Years ago, many contracts were privately negotiated between an administrator and a superintendent in an informal setting over lunch or dinner. There has been a significant change in the way administrators negotiate contracts. With the complexities of tax, pension, and evaluation ramifications in administrators’ contracts, educators are no longer willing to substitute personal judgment for professional advice. In the present negotiating climate, SAANYS negotiating services are essential to members.



Strategic Planning Paves the Way to an Excellent Contract Now and for the Future

When a bargaining unit begins contract negotiations, members should look at the immediate contract and also project how current proposals will meet the needs of unit members in the future. It is a daunting challenge to reform neglected contracts in one negotiation. A prudent and effective strategy is to survey the unit and identify current member needs, and then project anticipated needs in three, five, and ten years. Unit members should incorporate current and future demands into negotiations over several contracts.

A good illustration of strategic planning occurred in the Capital District. The administrators association grievance procedure ended with a final and binding decision by the board of education. Recognizing that the leap to binding arbitration would likely be impossible to negotiate in one contract, the negotiating team wisely proposed adding advisory arbitration in this contract. Looking down the road, the unit agreed to propose binding arbitration in the next contract. Such strategic planning will benefit the association in the long term.



Knowledge is Power: Use of Statistical Information is Critical to Successful Bargaining

Statistical documentation to support contract proposals is critical. SAANYS most often uses a two-pronged statistical approach, an intra-district analysis and an inter-district analysis. An intra-district analysis involves comparison of the salary and benefits of administrators with those of central office personnel, teachers, and non-certificated bargaining unit members. To facilitate this analysis, one must procure copies of central office employee contracts (including the superintendent’s), the teachers’ contract, and the non-certificated staff contract. A common misunderstanding is that these documents must be requested under the Freedom of Information Law (FOIL). Disclosure of all such contracts is mandatory under the good faith bargaining provision set forth in the Taylor Law, and exchange of this information should be an established procedure in the collective bargaining process.

To accurately ascertain the total compensation of all certificated personnel, the unit must request the income reported to TRS and IRS. These numbers should reflect not only the contractual salaries but, equally important, the total amount paid to each employee. The total amount paid to all certificated employees includes all stipends and additional monies that the employees received that fiscal year. With these documents, an employee bargaining unit can examine the overlap of salaries between teachers and administrators on the one hand, and the central office staff on the other. Be careful to examine the time periods the reports cover, because they might not be the same.

Historically, there is inequity among the salaries of central office personnel, administrators, and teachers. In many districts, between ten and twenty percent of the teachers earn more income than the lowest paid administrator. The gap between the lowest paid central office person and the highest paid administrator is usually between five and fifteen percent. An argument that can be made for higher administrative salaries is that the gap between the highest paid teacher and the lowest paid administrator should be similar to the gap between the highest paid administrator and lowest paid central office official. Using this type of intra-district analysis, an administrative bargaining unit can persuasively advocate for higher salaries for themselves.

In contrast, inter-district analysis compares an administrative unit with other administrative units in the county or region. The State Education Department provides income and property wealth data for all school districts, which compares a district's ability to pay with other local districts. Use of this data will assist in identifying three to five school districts that a particular district should be compared with. Other comparative source literature includes the regional BOCES salary survey and SAANYS' own salary and benefit analysis. Be careful to scrutinize all source literature; individuals and/or districts reporting the information do not necessarily report it similarly or accurately.

A further measure to assure accurate comparable information is comparison of similar district administrator contracts. It is important to compare apples to apples and oranges to oranges. If District A has higher administrative salaries than District B, but District A works a 12-month work year while District B works an 11-month schedule, the comparisons may not be equal. An inter-district analysis will effectively compare compensation packages with work year, workday, evening/weekend work requirements, and vacation schedules.

Together, the combination of an intra-district analysis and inter-district analysis makes a powerful argument for higher salaries and better benefits.



Use of Litigation as an Effective Bargaining Tool

In some circumstances, use of litigation during negotiations proves to be effective in obtaining better salaries and benefits. At the inception of bargaining and as the process proceeds, units are asked whether they are willing to fight long and hard to obtain the salary and benefits they desire. Units must determine whether they are willing to go to impasse and be without a contract for a few years. Impasse involves mediation and fact-finding – two non-binding processes that ultimately may lead to a successful resolution of negotiations with improved benefits.

Another form of litigation involves the threat of filing contract grievances and improper practice charges. A Nassau County district threatened litigation during negotiations that culminated in a lucrative 18 STEP salary schedule. Units that threaten or do litigate ultimately obtain better salary and benefits than units that capitulate at the table without truly pushing harder for their contractual needs.



History Often Repeats Itself: Keep Meticulous Records

In every contract negotiation the unit should designate a recorder to transcribe significant events. The recorder should create a history of the proposals. This person should also retain a copy of the sta-

tistical backup used to support the proposals as well as a record of the discussions about each proposal both at the table and in the caucus. The recorder should also retain the final settlement document. Negotiations do not end with the ratification of the contract. Each bargaining unit should continuously consider new proposals for the next negotiations. Shortly after ratifying a new contract with the assistance of a SAANYS negotiator, one unit president commenced outlining proposals for the next round of bargaining. The exercise was a follow-up to the recently completed bargaining. Similarly, a different administrators association earmarked several changes to its contract over the past three years to address various issues which arose during separate litigations.




Communication, Communication, Communication

In both large and small bargaining units, the negotiating process is dynamic and fast-moving. Even with the very best statistical research and preparation, the negotiating team must balance essential confidentiality with keeping members informed if and when priorities need to be adjusted. As SAANYS provides assistance with the types of research and advice described above, SAANYS can also provide suggestions concerning the setting of priorities so that the bargaining unit will know how to communicate with confidence concerning decisions that need to be made as the negotiating process moves forward. Both the content and timing of communication with all members of the bargaining unit are essential in achieving an agreement that will be satisfactory to all members.

With the assistance offered by SAANYS, school leaders can vastly improve their chances of obtaining a great negotiated agreement. Attend workshops and ask questions of SAANYS in order to determine which of the available services may be appropriate for an individual bargaining unit situation.







Contract

*Strategies for
Successful Negotiations*

Part II – Compensation





Compensation

The cornerstone of any successful negotiation is appropriate compensation. In the era of the two percent property tax cap, it's more important than ever to go into negotiations properly prepared. Some bargaining units in a particular year may be less concerned with the size of their raises than with preserving health insurance or maintaining an attractive work year. Whatever the priority, compensation involves both intra-district and inter-district analyses. The use of the Consumer Price Index as reported by the United States Department of Labor for New York/Northern New Jersey, and particularly the category of Urban and Clerical Workers, is also important in determining annual salary percentage increases presented at the bargaining table.

Often, school districts seek to negotiate low annual salary increases in order to avoid negative public reaction to perceived high salaries of school administrators. With rising property taxes, and with only 17 to 25 percent of any community (a NYSUT estimate) having children who attend public schools, district negotiators fear the repercussions of higher raises. The negotiation strategy becomes one of achieving reasonable salary increases while keeping the reported percentages low. Some possible approaches are suggested within.

Initial dialogue with district negotiators should determine the position of each side concerning where the administrative salaries are currently and where they should be by the end of the contract, considering such factors as seniority of staff and the need to attract and retain quality new administrators. Key indicators include the relative salary positions of central office staff and the teachers union, the income and property wealth of the district relative to other districts in the geographic area (frequently determined by county or BOCES unit), and the ability of the district to pay its administrative staff. Once there is an agreement concerning administrators' relative position in the county or region, discussion should center on how the unit can attain that level or retain its current position. Below are some suggestions concerning the structure of compensation packages.



Salary Step Schedules

Like teacher unions, some administrator units have successfully negotiated the establishment of step schedules as the basic form for compensation. Negotiation of first-time step schedules, or expanded existing schedules, have received renewed interest because these schedules can show salary increases ranging from 2.5 percent to 4 percent annually and also have a yearly step movement that may add an additional 1.5 to as much as 3 percent in salary each year. It may appear that administrators have received a 3 percent salary increase; in actuality, with a 2 percent step movement the annual raise is 5 percent. Many districts resist the step schedules. In districts with high administrative staff turnover, however, the step schedule serves as an incentive to recruit new people and helps to retain incumbent staff.



Straight Increments or Differentials

A common variation seen in some districts is an annual increment/differential in addition to the percentage raise rather than a traditional step schedule with an annual salary increase. This means a base adjustment of x dollars prior to the application of the negotiated percentage increase.



Career Levels

An entirely different salary construction is the use of career or professional proficiency levels. This approach is used to correct some deficiency in salaries. The negotiation first involves agreement between the parties concerning where the administrators' salaries should be by title within the county. Once agreement exists concerning the targeted payment range (for example, 75 percent quartile), the next question becomes how long should it take a particular position to reach career professional proficiency level. Some career professional proficiency levels take as many as nine years and some may take as few as five years. Negotiation must next focus on the mechanism to reach career level/professional proficiency within the agreed upon time frame, recognizing that each year the gap between an administrator's current salary and career professional proficiency must be reduced by an equitable amount.



Equitable Adjustments

As you may realize, starting salaries for new employees are a management prerogative unless there is a contractual provision that describes the starting salary of a unit member. Frequently, in setting proposals for negotiation, new bargaining unit members ask for equitable adjustments because they undersold their value at the time of hiring. To establish equity among unit members, adjustments are frequently negotiated.

Imbalance in administrative salaries has also been felt when new hires receive starting salaries equal to, or greater than, incumbent employees in order to successfully recruit qualified candidates. Understandably, the professional pride of incumbents is hurt when new employees receive greater salaries than their more senior coworkers. However, such inequitable treatment provides an incentive to obtain significant equitable salary adjustments for incumbents, especially since the new hires will not receive salary increases in the year they were hired.



Longevity

Longevity payments are monies provided after various periods of service. They may be paid in conjunction with other salary structures. It is important to note that not all forms of longevity are pensionable. A few forms of longevity are not added to compensation to determine an individual's final average salary. As an example, longevity payments made in a lump sum in June of each year will not be calculated as part of FAS. However, longevity added to the base salary (the preferred method) or that paid continuously and cumulatively (included throughout the year in one's paycheck) will be calculated for pension purposes. Longevity payments should increase each year of the contract. If longevity is added to the base it is done automatically. If the longevity payments are continuous and cumulative, such payments need to increase each year (and certainly each contract) by a sum certain or by the same rate as the annual salary increase. Such increases ensure that the longevity payments remain competitive in the relevant geographical area.



Employer Non-Elective Contributions Into IRC § 403(b) Accounts

Another option is the negotiated employer non-elective contribution for employees into IRC § 403(b) accounts. Negotiation of this provision into a collective bargaining agreement gives unit members additional income (in addition to annual salary increases) that is tax-free and acts as a forced savings mechanism.

Units negotiating this provision should be aware that, under Section 431 of the New York Retirement & Social Security Law, this additional money is not includable in a member's three- or five-year final average salary (FAS) calculation. Hence, where such contributions total \$3,000 to \$4,000, the absence of that money from pension calculations could mean lost pension benefits of between \$50,000 to \$100,000 over a person's lifetime. (As of 2012, the average life expectancy is 81 years for women and 76 years for men.) Another potential downside is that the employer non-elective contribution does not escalate each year of the contract unless the unit specifically negotiates an escalating clause, such as either a flat dollar increase or a percentage to its annual salary increases each year.

As a result of these possible downsides, some units are now negotiating to convert the employer non-elective contribution into base salary, thereby increasing the member's base salary and hence, larger annual salary increases. Equally important, the inclusion of non-elective contributions directly into base salary will increase a person's FAS and result in larger pension benefits over an individual's retirement. A bargaining unit should convert such employer non-elective IRC Section 403(b) contributions into the base salary only when a unit has a significant number of non-Tier 1A members who will retire at the end of the contract or within the next four years. However, members of the bargaining unit should recognize that by converting this non-taxable contribution into taxable income, a person will pay income and payroll taxes on this money.



Stipends

Administrative stipends, unlike longevity, are not usually included in FAS calculations. The New York State Retirement System (TRS) has decided that administrative stipends are usually not part of regular compensation because they are subject to annual appointments. This rationale appears to be arbitrary and capricious since teachers who coach or perform certain other stipend duties on an annual basis have their stipends added into this final average salary calculation. One way to ensure these administrative stipends are included for final average salary purposes is to contractually add the stipends to the base salary. Another way is to make the stipends permanent and escalate in amount each year.



Evening/Weekend Supplemental Stipends

A new part of an administrator's salary is a stipend for evening and/or weekend work. This type of compensation recognizes that administrators are not required under the law to work 24 hours a day, 7 days a week – a common misunderstanding frequently embraced by board of education members. Hence, negotiations for this stipend involve quantifying the number of nights and weekends administrators are away from their families working. In some districts, administrators receive a set dollar amount depending upon whether they occupy secondary, elementary, or special education titles. In other districts, administrators receive an hourly rate of pay for extra work. Some other districts define a certain amount of evening/weekend events and include them in their base salaries, but any events over that amount will be compensated at a set price per event. A good way to lead into negotiations for this stipend is to negotiate defined work hours first with evening/weekend supplemental pay. The introduction of a defined work hour proposal will get district negotiators' attention and may encourage them to discuss this stipend in exchange for the unit team dropping their demand for a defined workday.



Annual Cash Payouts – Unused Vacation Leave

Another technique for increasing compensation in a contract is to negotiate annual cash payments for unused sick or vacation leave. A provision of this type gives members a way to receive more money each year without showing it in an annual salary increase. Not every negotiated agreement has vacation leave. An annual sick or vacation leave payment is a taxable event. This additional taxable income may push the employee into a higher tax bracket. One way to avoid taxes is to negotiate the payment as an employer non-elective contribution into the employee's IRC Section 403(b) plan.

Since 2005, the IRS has allowed employer non-elective contributions for unused vacation and/or sick leave each year, provided no employee has the choice to take the money as cash. One administrators unit negotiated an annual employer non-elective contribution for seven unused sick days.



Deferred Compensation Plans

Almost every school district in New York offers its employees an opportunity to participate in IRC Section 403(b) tax-sheltered annuity plans. These plans have traditionally been set up on an elective basis, for example, the employee elects to defer income on a pre-tax basis into selected tax sheltered annuities. Elective IRC Section 403(b) contributions are subject to payroll taxes (7.65 percent) prior to deposit. Non-elective plans are not.

A benefit of a non-elective 403(b) plan is that payment of payroll taxes is completely avoided. Neither employer nor employee is required to pay 7.65 percent in payroll taxes on the money earned. Like elective 403(b) plans, the employee will not pay income taxes on this money until withdrawal of the money from the plan, usually after retirement when his/her tax bracket is significantly lower. Negotiating a non-elective plan into a contract for retirement/separation payments should be a priority for every bargaining unit.

An additional deferred compensation plan available to all public employees is the IRC Section 457 plan. Until 2001, it did not make sense for public school employees to have both a 403(b) plan and a 457 plan because the cap was set at the limit of either plan. However, as a result of federal legislation in 2001, public school employees can legally deposit the maximum amount under each plan (no longer the aggregate). By negotiating an IRC Section 457 plan to compliment a 403(b) plan, administrators approaching retirement can defer pretax dollars. By investing money pre-tax, an administrator significantly reduces his/her tax liability during his/her highest income-earning years.



Benefit Trusts

Another less obvious way to provide financial benefit in a contract is for the employer to contribute, usually as a non-taxable fringe benefit, a sum certain into a benefit trust for the benefit of unit members. Many benefit trusts have been established to provide optical, dental, life, or liability insurances. Some trusts allow expenses for car insurance and health club memberships. Since benefit trust payments are not taxed, they are not included in an administrator's FAS. Some administrator units recently converted benefit trust payments into base salary to increase final average salary amounts, and hence their pensions. Bargaining units must carefully consider each approach.

After reviewing contracts throughout the state, it has become apparent that some of these benefit trusts are not in compliance with Internal Revenue Code and its attendant regulations. Some trusts are not established in accordance with those laws and specific trust documents, dedicated accounts,

or provided duly appointed trustees to manage the trust. That names a few of the fatal errors. Should the IRS audit a non-compliant benefit trust, the trust account holder could be exposed to excise taxes, penalties, and interest on the money previously received. Any SAANYS unit that needs to be sure its trust is properly designed should call the SAANYS Legal Department for advice.



Professional Dues

Many bargaining units negotiate district compensation for administrator memberships in one national and one state professional organization. The district payment is a non-taxable fringe benefit. As such, that money cannot be used or credited for FAS purposes.



Professional Development

Continuing education credit for administrators is now law. New administrators hired after September 1, 2007 need 175 hours of continuing education credits every five years. Since continuing education will benefit the district, the district should pay for the cost of professional development and also compensate administrators for their time attending such courses. Remember to negotiate provisions that will cover these contingencies.

The above issues most directly impact the compensation administrators receive and the issues surrounding the delivery of compensation. Other benefits and circumstances of employment have significant economic impact and may influence the priority a bargaining unit places on the percentage of raise itself. Some of these other issues – work year, health insurance and benefit packages, grievance procedures – will be discussed in the next section of specific contract provisions.





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Part III – Conditions of Employment





Conditions of Employment

In Part II of Strategies for Successful Negotiations, the discussion most directly related to compensation. Part III will focus on other conditions of employment, both economic and non-economic, that are essential to a successfully negotiated agreement.



Work Year

Throughout New York State school administrators' bargaining units are facing proposed increases in the length of an administrator's work year. If administrators are not interested in increasing the length of their work year, the bargaining unit must simply state "We have carefully considered your proposal and will not negotiate it further." However, if the unit is willing to negotiate for a longer work year, the increase in work time should result in fair compensation above expected annual salary increases for the present work year.

Calculation of "fair compensation" might follow this process: (1) Determine the actual number of days a position is required to work. Excluding weekends, 261 workdays are possible. (2) Subtract paid holidays and vacations. Don't forget to exclude teacher recess periods if administrators are not required to work those. Some school districts try to avoid payment for vacation days by claiming that their administrators are 11-month employees, even though administrators must work from September 1 through June 30 each year and an additional 20 days in the summer. (3) Analyze this work year closely. If there are 14 paid holidays and administrators do not get school recess periods off, an administrator under such a system will work 226 days (261 possible workdays minus 14 paid holidays and a maximum of 22 summer days off). This is hardly an 11-month work year. Compare it with a 12-month administrator who gets 14 paid holidays and 25 vacation days with the same assumptions. The 12 month employee actually works less at 222 days.

When a district makes a proposal to increase the work year, calculate the work increase a couple of different ways to determine which method results in the higher potential salary increase. One approach calculates the actual per diem rate of pay for the proposed increase in work year. Another analysis considers the proposed increase in work year as a percentage of the administrator's current work year. For example, suppose an administrator works 200 days and the district wants to add five additional days or 2.5 percent more workdays. Calculate 2.5 percent of the administrator's annual salary, and determine if it is greater or less than the total per diem amount of five additional days.

Some units negotiate to graduate increases in work year over the life of the contract. Be sure to escalate the cost of the additional days each year that additional days are added to the work year. Adding two additional days in year one does not yield the same per diem or percentage increase in the third year when three additional days have been added since the annual salary of the affected administrators has increased in year one and year two. Use the proposed salary for year three to arrive at the accurate valuation of the three additional days in year three. This approach properly takes into account escalation in salary to accurately measure the value of the three workdays in the third year of the contract.



Health Care

Rarely do insurance companies lose money, and health insurance companies are no exception. Since the conversion of Empire Blue Cross-Blue Shield from a not-for-profit to a for-profit company, the cost of health care to school districts has increased from 8 percent to 14 percent annually. School districts focus on increasing the employee percentage contributions to health insurance as a way of reducing costs. There are several considerations in negotiating health insurance premiums:

- (1) Keep health insurance contributions for active employee as low as possible. Employee unions usually negotiate to contribute a percentage of the total cost for health insurance. A percentage-based contribution passes increases directly to the employee each year as the cost of health insurance increases.
- (2) In contrast, a flat dollar contribution fixes the amount of money an employee pays for health care. A flat dollar contribution is a good way to hold down the employee share of health costs. The unit should also negotiate specific contract language regarding insurance co-pays, deductibles, and prescription drug costs. The cost of prescription drugs is the largest contributor to increases in health insurance premiums.
- (3) A good contract includes an IRC Section 125 Plan as part of the health care package. A 125 Plan enables employees to use pre-tax dollars to pay for health insurance contributions. A few districts have established arrangements by which the district actually funds the plan. One contract reflects that its administrators contribute 10 percent (up from 5 percent), but the district actually funds the increase by increasing its contribution into the plan to cover the employees' increased premium contribution.
- (4) A significant consideration in any administrative contract is the difference in contribution levels between active employees and retirees. One strategy is that active employees pay a larger percentage of health care than retirees. An active employee can afford to pay a higher percentage for health care than a retiree on a fixed income. Through use of premium insurance or IRC Section 125 plans, an active employee can actually pay a lesser net amount for health insurance than a retiree who is not eligible for such plans.

Many current contracts are frequently silent on changes in premium percentage payments for retirees when the percentages change for active employees. It is important to contractually set retirees' contributions (percentage or fixed sum) by including contractual language that establishes retiree contribution in retirement at the same amount he/she contributed in his/her last year of employment. The insertion of this contractual language protects the contribution rate of retirees for life.



Types of Insurance Plans

Generally, school districts offer individual or family health insurance plans. Some insurers offer two-person insurance, and as employees work longer and retire later, two-person plans will become more prevalent.



IRC Section 125 Plans for Unreimbursed Medical Expenses and Dependant Care

Unlike IRC Section 125 plans set up to pay employee contributions for health insurance on a pre-tax basis, these types of plans also provide a mechanism by which employees can set aside pre-tax dollars (in a use it or lose it format) to be reimbursed for medical co-pays, deductibles, and out-of-pocket expenses. Also, under an IRC § 125 an employee can set aside up to \$5,000 for dependent care. These plans are available if units propose them during the negotiation process. Usually districts agree to these plans since they are a relatively inexpensive benefit that will help every employee, including the district's own negotiating team.



Health Insurance Buyouts

Many school districts offer their employees a financial incentive for opting out of the district health insurance plan. The most lucrative health care buyouts involve a fixed percentage, usually ranging between 40 and 50 percent, of the annual cost of district individual health insurance. A percentage formula automatically increases the buyout amount each year as the cost of health insurance rises.

Another type of health care buyout is a flat dollar amount. Flat dollar buyouts result in less money for the opting-out employee than a percentage amount because the dollar amount does not annually increase. Unless the parties negotiate increases in the amount of the flat dollar buyout, they do not escalate during the life of the contract. Health insurance buyouts are includable only in a five-year FAS for Tier I members.



What Does Retirement Health Care Really Mean?

Many unit members believe that they will enjoy their retiree health insurance coverage forever. That is not necessarily accurate; public school administrators/supervisors will switch health insurance to Medicare Part B upon reaching age 65. The employee's school insurance becomes secondary. All eligible health claims will be processed under the federal Medicare Part B program before application, if any, to the district insurance plan.

It is important to know, prior to negotiations, who pays for the Medicare Part B insurance. Upon reaching age 65, does the employee pay this cost? Does the district bear this expense, either directly by paying the cost of Medicare Part B or indirectly by reimbursing the retiree for the cost of Medicare Part B insurance? This information will determine how the union drafts its proposals regarding health insurance for prospective and current retirees. Remember also that by statute, a school district cannot alter health insurance for retirees, unless the same change is implemented for active employees.



Cost Savings and Sharing

Some districts seek to reduce the overall cost of health insurance by switching insurers (e.g. from BCBS to CDPHP) or plans (e.g. indemnity to preferred provider organization (PPO)) in addition to having employees pay a larger percentage of their health insurance. Changes in insurance carriers and/or plans result in significantly greater savings to districts than having employees pay a larger share of the premium. It is critical to remember that an employer cannot unilaterally change health care insurers or plans without first negotiating the changes with the affected units. In negotiating changes in health insurance plans, ask for the "Summary of the Plan" documents for the proposed plan, and

compare it to your current plan. Are participating physicians in the plans the same or substantially the same? Compare the covered expenses, out-of-pocket costs, deductibles, co-pays, and in-network and out-of-network costs in order to determine the similarities and differences of the plans.

If members accept a new health insurance plan offered through the same insurer or a different vendor, the final aspect to negotiate is sharing cost savings with the employer. One SAANYS unit agreed to switch from a traditional indemnity plan to a PPO plan, and the savings from switching plans was used to fund increased longevity payments and other contractual benefits.



Eligibility for Retiree Health Care

The right to health care in retirement and the terms that will apply, should be clearly specified in the contract so the retiring employee's rights legally vest upon retirement. Employees relying upon district policy or practice in this area are at great risk to having their retirement benefits unilaterally reduced at some point in the future.

Due to the increasing numbers of retirees covered in retirement, districts are seeking to reduce that number by making eligibility for retirement health insurance coverage more difficult to attain. One way districts attempt to reduce retiree health insurance cost is by increasing the years of service necessary to be eligible for retiree health insurance. Many districts are negotiating longer years of service for eligibility for retiree health insurance. Districts now typically require administrators to serve in the district at least 10 years (up from 5 years) in order to be eligible for retiree health care coverage.

Units must carefully weigh whether increasing the required years of service is desirable. Going forward, it is anticipated that the average administrator will be employed by four different districts during his/her professional career in education. Thus, by increasing the service years criteria for retired health insurance, districts may adversely impact administrators' economic mobility.

Districts do not usually receive any direct cost savings from the insurer by increasing the years of service for eligibility for retiree health care, but such a requirement is designed to result in fewer eligible retirees. It does make it more difficult for an administrator to receive retiree health insurance. Increasing the length of service requirement may make administrators less likely to change districts as they reach their late forties. Negotiating team members must decide whether increasing the years of service requirement hurts or helps the unit.

Near the end of their careers, some administrators desire to work in higher paying school districts to increase their FAS. These individuals should compare the retirement benefits offered by their current employer and prospective employer, including eligibility for retiree health insurance, and determine if it fiscally makes sense to switch districts.



One Way to Promote Long-Term Service

To counter districts seeking increases in employee contributions for health insurance and years of service for eligibility for retiree health insurance, several recent contracts demonstrate a clever way to accomplish paying less for health insurance in retirement. The unit negotiated a retiree contribution to health insurance based on a sliding scale related directly to years of service in the district. The provision rewards employees for long-term service to the district with a lower contribution for health insurance in retirement. For example, a district initially sought to increase active administrators'

contribution rate to 20 percent over the four-year contract (an increase of 5 percent) and to require retirees to contribute the same amount as active members. The unit countered with a 5 percent increase for active employees over the life of the contract, and more significantly, the unit proposed, and the district agreed, to a new formula for retiree health insurance contributions based on years of service in the district.

Years of Service	Contribution
7 to 10 years of service	Health Insurance at the rate of contribution in last year of employment
Over 10 to 15 years of service	15% contribution
Over 15 to 20 years of service	12% contribution
More than 20 years of service	10% contribution

This structure is designed to retain quality administrators and will attract new administrators who seek attractive retirement benefits.



Grievance Procedures

Most of administrator contracts have a grievance procedure. However, a number of collective bargaining agreements have a grievance procedure that culminates with the board of education making the final determination. This redress is insufficient. It is important to develop a negotiating strategy which will ultimately conclude with the bargaining unit obtaining binding arbitration. Strategic planning may require negotiating for binding arbitration in more than one contract. One example of long-term planning toward binding arbitration was recently accomplished by using the multiple-contract strategy. The predecessor contract had provided for final determination by the board of education. In the unit's recent successful negotiations, the administrators negotiated advisory arbitration after the board stage. In the next contract negotiations, the unit will seek binding arbitration.

In addition to multi-contract planning, grievance language should include a provision for reciprocal disclosure. Without such a provision, when a unit grieves to arbitration unit members occasionally discover documents the district possessed that were not turned over. Be sure to include provision for reciprocal discovery of all documents necessary and relevant to the subject matter of the grievance. Such a disclosure procedure frequently results in settlement before the arbitration. To put teeth in a reciprocal discovery clause, there should also be an exclusionary provision included in the contract that will exclude any relevant evidence that was not properly disclosed except for good cause. This provision provides an incentive for both the district and the unit to fully disclose evidence they intend to offer at arbitration at the earliest possible time upon request.

Another aspect of the grievance procedure that frequently needs attention is the arbitration process itself. Instead of using the expensive American Arbitration Association, the unit and district may agree upon a list of, for example, four arbitrators who would arbitrate any contractual grievance. The grievances will be processed in accordance with the rules of the American Arbitration Association, though not requiring the grievance to be filed with that organization. In that way, the prosecuting party, usually the unit, can avoid the filing fee with the American Arbitration Association.

When reviewing the grievance procedure, a bargaining unit should also determine whether the administrators' association has the exclusive right to decide which grievances are taken to arbitration. Some contracts allow individual members or groups of members to decide to proceed to

arbitration. A unit should review the contract language and cross-reference its constitution and by-laws to determine whether the association has the exclusive right and hence ownership over grievance at the arbitration stage. In order to function effectively, the administrators' unit should have the unfettered control of grievances at the arbitration stage so it can avoid questionable grievances taken to arbitration. In this context, a unit must balance an individual member's right to fair representation with the good of the entire group when the unit decides not to pursue an alleged contract violation to arbitration.

As should be evident from this discussion, there are many approaches to negotiating a successful collective bargaining agreement. Both the content and the process of bargaining are important to successful negotiations. The experience SAANYS has with content knowledge and the negotiation process can benefit any bargaining unit as it fulfills the professional responsibility of achieving the best contract possible in the culture and context of a particular school district. Be sure to consult the SAANYS Legal Department in order to determine how SAANYS negotiating services can help your bargaining unit achieve the best possible contract.



*This document was prepared for SAANYS members by
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