Navigating Negotiations in the Impending Economic Tsunami

by Kurt Jaeger, Assistant Superintendent for Business, Saratoga Springs City School District

“Sailing is the fine art of getting wet and becoming ill, while going nowhere, slowly, at great expense.”

...a Sailor’s Dictionary

Sailing? That sounds more like negotiations. I’ve been sailing so long that I’m sea-sick and feeding the fish. Are your negotiations going nowhere slowly at great expense? Does the union want salary increases beyond the three percent already built into the salary grid? Do they tell you they already own step increases and want more? Does the Board of Education want to pay less than step increases because they think they can’t raise the tax levy enough to pay for it? Are your talks on a collision course with a burdened vessel without the right-of-way?

We are in unprecedented times, sailing through unchartered waters. Unfortunately, the seas are likely to churn before they settle down due to the impending economic tsunami. It will take time for the large waves to subside and for all of the ships to find a safe harbor in the “new normal.” As a school business official, take a deep breath and relax because you are not alone. We are all in the same BOAT (break out another thousand).

There are clearly conflicting currents causing massive riptides. How can the Triborough doctrine--named after the 1972 case involving Triborough Bridge and Tunnel Authority employees--coexist with a property tax cap? The follow-up case of BOCES vs. PERB (1977), gave public employees a major victory in the applicability of the Triborough doctrine to step increments. [O’Neil p.15] So where are we now, when districts cannot levy adequate taxes to pay for this “old money”? Some unions approach the bargaining table believing we have loads of booty as ballast weighting us for smooth sailing, or they believe we can retrieve a golden trunk from Davy Jones’ Locker. What they don’t realize is that we have to send a few employees over the side to do that.

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Some districts have essentially said that they are already done—educationally bankrupt. Electives are gone and the ship is in disrepair. Many districts do not even have enough money for mandated courses. The combination of these pressures is forcing school districts to look at reorganization options. Reorganization is a complex issue accomplished in different ways—regional high schools, distance learning, centralization, annexation, consolidation etc. One aspect they all have in common is the difficult task of merging contracts through some aspect of collective bargaining.

Given these swells on the waterfront, it is quite likely that one or more of your negotiations will end in disputes. Resolving these disputes will probably involve the Public Employment Relations Board (PERB). There are rocky shoals all around that likely can slash our hull, possibly sink our ship, and send us to PERB. The Frequently Asked Questions section of PERB’s website contains a wealth of information. As a business official, here’s what you need to know about PERB:

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### Declaration of Impasse and Mediation

When you have a dispute that can no longer be resolved, either the employer, or the bargaining unit, or both jointly, can file a Declaration of Impasse with the Public Employment Relations Board (PERB). In preparation for doing this, it is important for the chief negotiator and school business official to keep detailed accounts of the history of the dispute. This should include dates of meetings and offers presented by both sides.

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PERB will appoint a mediator to attempt to facilitate a settlement. Mediators are paid by PERB. A specific mediator can be requested if both parties file a joint request. This requested mediator will generally be assigned if availability and budgets allow. For budgetary reasons, the mediator’s assignment is generally limited by PERB to three days. It continued
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Far fewer disputes are settled through fact finding compared to mediation. According to PERB’s website, of the 333 disputes filed with PERB in 2006-07, 13 were by the fact finder and 26 were settled by negotiations based on the fact-finding report.

Experienced negotiators offer the sage advice that when both parties feel disappointed, there has likely been a fairer settlement. After fact finding, both parties have an independent report to support their decision to settle. As a practical matter, carefully weigh the risk of “improving” the report to your liking. Before you know it, you will be right back where you started having circumnavigated the bargaining globe. Pierce my ear again, Matey. However, the reality exists that as an administrator you still may not be able to bring the parties to agree on a third party report.

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Super Conciliation

The parties can request PERB to authorize the appointment of a conciliator if one or both parties do not accept the fact finder’s report. Authorizing the conciliator is at the discretion of PERB. This process is known as super conciliation (or, super-love-in). Super conciliation is similar to mediation, after the fact finding process has failed to produce an agreement.

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Some conciliators like to have the Board of Education and union leadership present in order to finalize a long-awaited deal with the crew. Long meetings are not unusual. Beware! As a practical matter, if at all possible, super conciliation meetings should be scheduled early in the day. A meeting that starts at 6 PM and goes all night is likely doomed to failure. Board members have been known to refer to all nighters as “stupid conciliation.” Fond memories come to mind of a Board of Education president who had a classic silver and gold alarm clock that he brought to board meetings. The alarm was set for 10 PM. When the alarm clock sounded, he told everyone to wrap in up in ten minutes because the board never made good decisions after 10 PM, and he was right.

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If the parties cannot resolve the dispute after these three steps, there are no additional steps to resolve the impasse through PERB. Moving the impasse to public interest arbitration is not an option for school districts. The lack of a final impasse resolution process is unique to school districts. The only way to resolve the impasse in school districts is by reaching an agreement between the parties. If both sides have not had enough sense to settle, you are officially back docking in the same port again where you may be viewed as shark bait. Shiver me timbers.

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Insights about Good Faith Bargaining

Much like pirates or crew dividing the loot, both parties should come to the table with an open mind. This may not equate to an open money bag. There has to be a willingness to meet and discuss issues. Creating a table for a collective
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bargaining process that shows each demand of the union and the correlated number of employees that would have to be cut to reach that demand can be effective. This can help open their eyes to the fact there is no booty in the ballast.

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A rotten crew member can spoil a voyage and so it behooves us to remember we need to focus on issues rather than people. Avoid public humiliation of any and all crew members or you will likely be a target for mutiny. Working with “interests” is usually more effective than arguing over positions.

As an old salt, I have sailed my turbulent seas with all sorts of crew members. I’ve sung chanteys and dirges. We’ve docked in ports of PERB and Super Conciliation where everyone chooses a wide berth. There is no predictability as we face the future of collective bargaining seas. As captains, figureheads, or first mates, we all just need to know the rules, have read the sailing plan, and done our financial homework—or we will end up like the Costa Concordia. Safe sailing!

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References


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