

# Preparing For Collective Bargaining

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## Disclaimer:

The information in this presentation is provided for training and educational purposes only and should not be considered legal advice.

# Agenda

- Brief Refresher on Complying with the Open Meeting Law
- Good Faith Bargaining and Mandatory Subjects of Bargaining
- Establishing a Bargaining Team and Initial Steps
- Comparable Communities and Competitor Districts
- Budget and Financial Information
- Proposals

# Brief Refresher on Complying with the Open Meeting Law

# Subcommittees Must Comply with the Open Meeting Law

- All meetings of the subcommittee **including bargaining sessions** must be posted.
  - Post meeting of the subcommittee
    - Open Session and Executive Session pursuant to MGL c. 30A, sec. 21(a) purpose(3)
  - Post meetings for collective bargaining with the union
    - Open Session and Executive Session pursuant to MGL c. 30A, sec. 21(a) purposes (3) and (2)
  - Add purpose (7) to the executive session when you are reviewing and approving executive session minutes from the prior executive session meeting(s).
- Minutes must be taken for each open and executive session. Take and keep open session minutes separate from executive session minutes.

# Open Session Motion for Executive Session

Move to convene in executive session pursuant to Massachusetts General Laws chapter 30A section 21(a) for the following purposes:

\_\_\_ Purpose (3) to discuss strategy with respect to and in preparation for collective bargaining with the **(Insert Name of Union)** because an open discussion may have a detrimental effect on the bargaining position of the Committee;

\_\_\_ Purpose (2) to conduct a collective bargaining session with the **(Insert Name of Union)**; and;

\_\_\_ Purpose (7) to review and approve the executive session minutes from the following negotiating subcommittee meeting(s): **<insert date(s)>**.

The motion was made by \_\_\_\_\_.

The motion was seconded by \_\_\_\_\_.

The vote was taken by roll call and the following votes were recorded [record each vote individually in the minutes]:

[Remember: The above motion and roll call vote must be included in the open session minutes.]

# Chair's Statement in Open Session Following the Roll Call Vote for Executive Session

The Negotiating Sub Committee will be entering into executive session pursuant to M.G.L. c. 30A section 21(a) for the following purposes:

\_\_ Purpose (3) to discuss strategy with respect to and in preparation for collective bargaining with the **(Insert Name of Union)** because an open discussion may have a detrimental effect on the bargaining position of the Committee;

\_\_ Purpose (2) to conduct a collective bargaining session with the **(Insert Name of Union)**; and;

\_\_ Purpose (7) to review and approve the executive session minutes from the following negotiating subcommittee meeting(s): **<insert date(s)>**.

The Negotiating Subcommittee will not be reconvening in open session.

[Remember: The above statement must be included in the open session minutes.]

# A Note About Google Docs and The Open Meeting Law

To comply with the open meeting law, a quorum of the negotiating subcommittee **cannot** work or comment on documents including draft proposals and counterproposals outside of posted meetings.



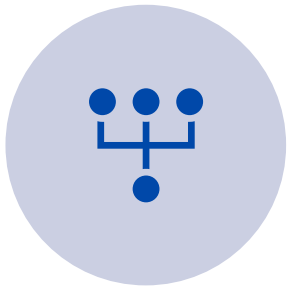
# Open & Executive Session Minutes



Subcommittees are required to take minutes of all open and executive sessions including negotiation sessions.



The open session minutes must include the names of all subcommittee members who are present.



The executive session minutes must include the names of all subcommittee members who are present, all administrators, labor counsel and others present for the Committee, and all individuals present for the Union.



All documents, including proposals, must be maintained as part of the minutes.

# Good Faith Bargaining and Mandatory Subjects of Bargaining

# Good Faith Bargaining

- Meet at reasonable times
  - But not during the employees' working hours
- Prepared to bargain
  - To make and respond to proposals
- Have authority to reach tentative agreements subject to approval by the Committee
- Provide information when requested
- Remember:
  - At this time, negotiation sessions can be virtual (Google, Zoom, or other similar link).
  - Post sessions in accordance with MGL c. 30A section 21(a) Purposes (2) and (3)
  - No quorum of the School Committee at the bargaining table.

# Good Faith Bargaining

- Does not require concessions
- Requires bargaining over mandatory subjects of bargaining
- Providing information

# Mandatory Subjects of Bargaining

- Wages
- Hours
- Terms & Conditions of Employment
  - For example: layoffs (if not already in the CBA; contracting out bargaining unit work; furloughs; class size; compensation for added duties; health insurance benefits; initial wages for new positions; length of school day; teaching lead
- Performance Evaluations
- **Note: Do not give up management rights during bargaining!**

# Non-Mandatory Subjects of Bargaining

- Core managerial rights such as:
  - Decision to abolish positions
  - Decision to reorganize
  - Level of service decisions
  - Right of Superintendent to appoint teachers
  - Curriculum
  - Staffing levels
- Ground Rules

# Non-Mandatory Subjects of Bargaining

- If the District is not required to bargain because the issue is a core managerial decision, Districts may still have an obligation to bargain over the impacts of the decision on employees' wages, hours, and other terms and conditions of employment.

# Satisfying Your Bargaining Obligations

- By Agreement *or*
- By Completing the Impasse Procedures:
  1. Mediation
  2. Fact Finding
  3. Bargaining over Fact-finder's Report
  4. Implementation of the Committee's last best on the record offer



# Mediation & Factfinding

## Mediation

- Parties may file a petition for mediation jointly or unilaterally.
- The DLR assigns a mediator.
- The mediator determines whether the parties are at impasse and attempts to help the parties reach agreement.
- If the parties cannot reach agreement at mediation, the mediator will report to the DLR with a recommendation for fact finding.

## Factfinding

- The DLR initiates fact finding based on the mediator's report.
- The appointed fact-finder holds a hearing and issues a report.
- Parties share equally in the fee for the fact-finder
- The fact-finder's report is private (only the parties see the report) for 10 days.
- If the parties do not reach agreement within 10 days after the DLR receives the fact-finder's report, the report becomes public.
- The parties may be directed to return to mediation unless the DLR believes that additional mediation would not resolve the impasse.
- **If no agreement is reached the DLR certifies that the bargaining obligations have been satisfied and the Committee can implement its last best on-the-record offer.**

# Establishing a Bargaining Team and Initial Steps



# Establishing the Committee's Bargaining Team



Follow the Committee's policy to appoint members to subcommittees



Remember to have fewer than a quorum of the full school committee on the bargaining team



Everyone on the bargaining team is required to support (i.e., vote to approve) the agreement reached in negotiations as part of the obligation to bargain in good faith.



The bargaining team should have support from:

the superintendent/assistant superintendent,  
the school business administrator,  
the Human Resources Director  
The Committee's labor counsel

# A Note about the Municipal Representative

[M.G.L. c. 150E section 1]

- The Municipal Representative has a right to:
  - Attend all meetings of the full school committee where collective bargaining is being discussed;
  - Vote on collective bargaining matters
- The Municipal Representative does **NOT** have a right to:
  - Be on the bargaining team for the Committee, but the Committee may designate the Municipal Representative as one of its bargaining team members.
- The Municipal Representative has no more and no fewer rights than any other member of the School Committee with respect to collective bargaining.

# Initial Steps – Preparation

Once the Committee has assembled the bargaining team:

Communication  
Strategy

Collect Data &  
Gather Input

Review District CBAs

Review Litigation  
Matters

Establish Short-Term  
and Long-Term Goals  
and Draft Proposals

Determine Funding  
Resources

Be Prepared to  
Calculate Costs

Work with the  
Committee's  
Labor Counsel

# Communication Strategy

Bargaining objectives should be aligned with District goals

Communicate the Committee's goals to the public (open session)  
Do not engage in direct dealing with employees represented by a Union

Anticipate the union's message and proactively communicate the facts that support the Committee's goals

# Communication Strategy

- For example, if you are negotiating with an instructional assistant union and the union has publicly cited increased vacancies and unfilled positions, review data from competitor/comparative districts to put the information into context. For example, at an open session meeting, the Committee may ask the HR Director for an update on
  - Instructional assistant vacancies and hiring efforts
  - Comparison of the market rate in the area for wages and the wages paid by the District
  - Low unemployment in the area and
  - Vacancies in the same position in comparable and neighboring districts

## Obtain Input from Administrators

Consult with the Superintendent and Human Resources Director

Principals and other non-unionized administrators should be asked by the Superintendent/Assistant Superintendent to provide input.

Ask administrators to identify speedbumps and barriers delaying or preventing the District from making progress on goals



# Review All District CBAs



- Is there language that the District wants to change or eliminate in multiple collective bargaining agreements?
- Is there illegal language in the CBAs?

# Review Litigation Matters



- Review grievances, arbitrations, and unfair labor practice charges from the prior contract term.
- Determine if there are grievances, arbitrations and/or unfair labor practice charges the District may want to resolve through bargaining.
- Review to determine if there are trends in litigation.

# Goals and Draft Proposals



Establish or review short-term and long-term objectives.



Prepare and review initial draft proposals and interests with the full school committee.

# Determine Funding Resources

- Determine funding resources.
  - Identify likely and possible reductions in anticipated revenues and increases in costs.
  - Determine if the funding is one-time or recurring
- **Calculate the cost of a zero**



# Remember no increase on the salary table still has a cost!

For example, a teacher at Masters+45 Step 12 this year earned \$93,703. Next year, this teacher moves to Step 13 at \$97,451 in the same column/lane. This is an increase of \$3,748 (4%) increase to the teacher even if there is no increase to the salary table.

Step	Bachelor	Masters	M+15	M+30	M+45	M+60 Doctorate
1	\$54,080	\$55,702	\$57,373	\$59,095	\$60,868	\$62,694
2	\$56,243	\$57,931	\$59,668	\$61,458	\$63,302	\$65,201
3	\$58,493	\$60,248	\$62,055	\$63,917	\$65,834	\$67,809
4	\$60,833	\$62,658	\$64,537	\$66,473	\$68,468	\$70,522
5	\$63,266	\$65,164	\$67,119	\$69,132	\$71,206	\$73,343
6	\$65,797	\$67,770	\$69,804	\$71,898	\$74,055	\$76,276
7	\$68,428	\$70,481	\$72,596	\$74,774	\$77,017	\$79,327
8	\$71,166	\$73,301	\$75,500	\$77,765	\$80,098	\$82,500
9	\$74,012	\$76,233	\$78,520	\$80,875	\$83,301	\$85,800
10	\$76,973	\$79,282	\$81,660	\$84,110	\$86,633	\$89,232
11	\$80,052	\$82,453	\$84,927	\$87,475	\$90,099	\$92,802
12	\$83,254	\$85,751	\$88,324	\$90,974	<b>\$93,703</b>	\$96,514
13	\$86,584	\$89,181	\$91,857	\$94,612	<b>\$97,451</b>	\$100,374

# Remember no increase on the salary table still has a cost!

For example, a teacher at Masters Step 3 this year earned \$60,248. This teacher now has 15 additional credits and moves to M+15 Step 4 next year at \$64,537. This is an increase of \$4,289 (7%) increase to the teacher even if there is no increase to the salary table.

Step	Bachelor	Masters	M+15	M+30	M+45	M+60/ Doctorate
1	\$54,080	\$55,702	\$57,373	\$59,095	\$60,868	\$62,694
2	\$56,243	\$57,931	\$59,668	\$61,458	\$63,302	\$65,201
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12	\$83,254	\$85,751	\$88,324	\$90,974	\$93,703	\$96,514
13	\$86,584	\$89,181	\$91,857	\$94,612	\$97,451	\$100,374

# Longevity

Years of Service	Annual Longevity Payment
10 but less than 15	\$2,500
15 but less than 20	\$5,000
20 but less than 25	\$7,500
25 or more	\$10,000

# Scattergram #1

Step	Bachelor	Masters	M+15	M+30	M+45	M+60/Doctorate	TOTAL
1	2	1	2	0	0	0	5
2	0	2	0	15	0	0	17
3	0	3	0	20	0	0	23
4	0	5	6	23	0	0	34
5	0	8	15	16	0	0	39
6	0	0	20	12	0	0	32
7	0	10	0	10	0	0	20
8	0	0	6	2	0	10	18
9	0	3	5	22	0	0	30
10	0	5	0	28	15	0	48
11	0	7	1	30	20	21	79
12	0	12	0	25	5	9	51
13	8	25	30	75	40	30	208
<b>TOTAL</b>	<b>10</b>	<b>81</b>	<b>85</b>	<b>278</b>	<b>80</b>	<b>70</b>	<b>604</b>



# Scattergram #1

- 604 FTEs
- 34% are on the top step in their column
  - 208 employees are on Step #13
- 66% are still advancing through the steps
  - 396 employees have not reached the top Step
- 11.5% are in the highest paid column
  - 70 employees are in the highest paid column

# Scattergram #2

Step	Bachelor	Masters	M+15	M+30	M+45	M+60/Doctorate	TOTAL
1	0	0	0	0	0	0	0
2	0	1	0	1	0	0	2
3	0	0	0	2	0	0	2
4	0	5	1	3	0	0	9
5	0	0	1	6	0	0	7
6	0	0	5	2	0	0	7
7	0	5	0	0	0	0	5
8	0	0	5	0	0	10	15
9	0	0	3	10	0	0	13
10	0	0	0	12	15	0	27
11	0	3	0	3	20	21	47
12	0	1	5	5	5	9	25
13	10	66	65	234	40	30	445
<b>TOTAL</b>	<b>10</b>	<b>81</b>	<b>85</b>	<b>278</b>	<b>80</b>	<b>70</b>	<b>604</b>

# Scattergram

- 604 FTEs
- 74% are on the top step in their column
  - 445 employees are on Step #13
- 26% are still advancing through the steps
  - 159 employees have not reached the top Step
- 11.5% are in the highest paid column
  - 70 employees are in the highest paid column

# Seniority List

- The Scattergram shows placement on the salary table. Steps do not necessarily correspond to years of service.
- New employees to the District may be placed on steps based on their prior experience.
- Look at the District's seniority list to determine longevity.
- For example:
  - Terry Teacher is on step 10 this year. Terry has only been in the District for 5 years but was placed on Step 5 when she started because she had 5 years of teaching experience in another public school District in Massachusetts. Terry must work for the District for another 5 years to be eligible for longevity

# What is the Cost of a Zero?

4% for each employee advancing through the steps

Plus

3% for each employee advancing a column/lane

Plus

Employees entering the first Longevity gate (10 years of service)

Plus

Employees advancing from one longevity gate to the next

# Be Prepared to Calculate Costs

- Cost of step advancements, lane/column advancements, and longevity
- Cost out each proposal from the Union and the District)
  - Wages, Stipends, Hourly rates, etc.
  - Fringe Benefits
  - Increased leave
- Be prepared to analyze the cost beyond the contract term

# Comparable Communities and Competitor Districts



# Identify Comparable and Competitor Districts

Districts can identify comparable/competitor districts by reviewing:

Municipal population	Municipal tax base	District size (student population) and grades	Percent of residential, commercial, and industrial property supporting tax base	Median household income
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The Massachusetts Division of Local Services website is a resource available to access each of these data points and compare communities. (<https://www.mass.gov/service-details/community-comparison-report>)



# Collect Internal and External Data

## Internal

- Internal salary/wage comparisons
- Number of days in the work year
- Number of steps and lanes
- Health insurance premium contribution rates
- Paid leave time and paid parental leave days

## External

- External salary /wage comparisons
- Number of days in the work year (each extra workday =  $1/2^0/0$ )
- Number of steps and lanes
- Health insurance premium contribution rates
- Paid leave time and paid parental leave days

# Collecting External Data

Collective bargaining agreements are often available on school district websites

Organize the data to determine where your District falls compared to comparable districts

Organize the data to determine where your District falls compared to competitor districts

When reviewing external collective bargaining agreements look at total compensation (total number of workday, work hours, health insurance premium contributions rates, etc.)

# Comparable Districts Comparison at MA Column

Districts	Number of Workdays	First Step MA	Top Step MA	MA Top Step Daily Rate	Ranking by Daily Rate at MA Top Step
Your District	182	\$55,702	\$91,181	\$500.99	3
Baldwin	184	\$59,999	\$93,500	\$508.15	2
Cortland	183	\$57,500	\$89,750	\$490.44	4
Empire	184	\$61,000	\$94,500	\$513.59	1
Fuji	181	\$52,435	\$84,500	\$466.85	6
Gala	183	\$55,500	\$88,200	\$481.97	5
<b>Average</b>	<b>183</b>	<b>\$57,023</b>	<b>\$90,272</b>	<b>\$491.84</b>	

# Comparable Districts

## Comparison at MA Column Top Step

Districts	Number of Workdays	Hours Per Work Day	Top Step MA	MA Top Step Daily Rate	Rank by Daily Rate	Hourly Rate	Rank by Hourly Rate
Your District	182	6.75	\$91,181	\$500.99	<b>3</b>	\$74.22	<b>1</b>
Baldwin	184	7.00	\$93,500	\$508.15	<b>2</b>	\$72.59	<b>2</b>
Cortland	183	7.00	\$89,750	\$490.44	<b>4</b>	\$70.06	<b>6</b>
Empire	184	7.20	\$94,500	\$513.59	<b>1</b>	\$71.33	<b>5</b>
Fuji	181	6.50	\$84,500	\$466.85	<b>6</b>	\$71.82	<b>3</b>
Gala	183	6.75	\$88,200	\$481.97	<b>5</b>	\$71.40	<b>4</b>
<b>Average</b>	<b>183</b>	<b>6.866</b>	<b>\$90,272</b>	<b>\$491.84</b>		<b>\$71.90</b>	

# MIT Calculator & Living Wage

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There has been an increased emphasis by Unions on ensuring that the lowest paid employees are provided with a “living wage”

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“Living wage” has also served as a political tool and rallying point for unions

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BUT there are differing views on what a “living wage” is and how to calculate it

# Living Wage as a Union Goal in Collective Bargaining

Calculated at 5 geographic levels:

- Metropolitan, county, state, regional, and national levels

Adjusts the living wage according to twelve different family compositions

- Expenses and incomes vary depending on the number of children and the number of working adults in a family

# Problems with the MIT Living Wage Model as a Guide for Collective Bargaining

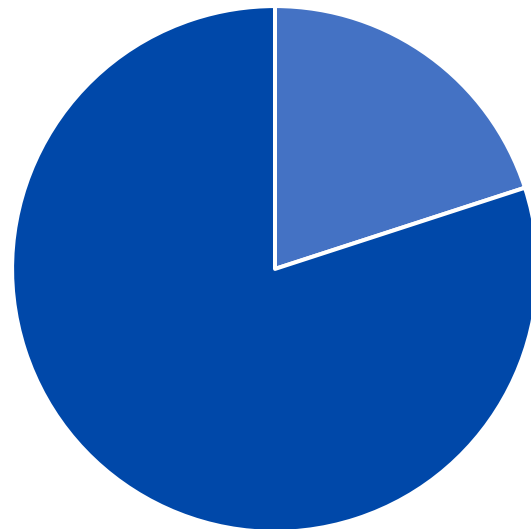
- Key assumption:
  - An adult works full-time which is considered 2,080 hours per year. (40 hours/week x 52 weeks/year= 2080 hours/year)
- Fluctuates dramatically based on family structure
  - Living wage for 1 adult with 3 children in Suffolk County is \$73.05/hour
- Many school employees work less than full-time
  - For example, a paraprofessional may work 6.5 hours/day for 182 days which is 1,183 hours per year or 57% of a full-time employee's work year.  
$$\frac{1182}{2080} = \frac{N}{100} \quad N=57\%$$
- Calculated costs may be more than actual costs
  - For example, the model assumes that employees spend \$3,048 per year toward health insurance.

# Budget & Financial Information



# Collective Bargaining & Committee's Budget

- 75% - 85% of the Committee's budget will be consumed by employee costs; most of the employees are covered by a collective bargaining agreement.



■ Cost of Employees

# Be Prepared with Information

- Budget or proposed budget
  - What is available?
  - What are the limits?
  - Communicate with your municipalities' Finance Committee.
- Cost of step and lane advancement and longevity
  - What is the cost of wages without a COLA?
- Cost of a 1% increase
- Number of employees at each step and lane on the salary table  
(This is referred to as a scattergram)
  - Are a majority of employees at the top step?

# ESSER & ARPA Funds in Collective Bargaining

Many unions are proposing higher cost of living increases or increased compensation and suggesting that the Committee use ESSER and ARPA as a source of funding to meet their demands.

Districts should be prepared to show:

- The limitations on use of these funds
- That the money is one-time money;
- How the funds may be used to support ongoing Covid-related expenses.

# Specific Uses of ESSER Funds

## ESSER I

(must have been obligated by 9/30/2022)

Three broad buckets of use:

- Academics
- Social-Emotional
- Operations

## ESSER II

(must be obligated by 9/30/2023)

- Same allowable uses as ESSER I, plus:
  - Improvements to school ventilation systems
  - Assessing and addressing learning loss

## ESSER III

(must be obligated by 9/30/2024)

- Must reserve not less than 20% of total ESSER III allocation to address learning loss
- Remaining ESSER III funds may be used for the same allowable purposes as ESSER I & II

# Possible Uses for ARPA Funds by Schools

Direct COVID related costs (testing, contact tracing, masks and other PPE, etc.)

Restoring the number of staff to pre-pandemic levels

Updating HVAC systems

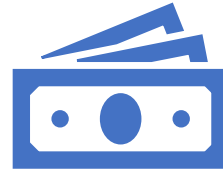
Addressing educational disparities exacerbated by COVID-19

- Early learning services
- Educational services such as tutoring or after school programs
- Support for students' social, emotional, and mental health needs

# ESSER & ARPA Funds in Collective Bargaining



These funds may be used to support one-time payments that are authorized by the Act.



These funds should not be used to provide employees with higher cost of living increases as this funding source will expire.



## CAUTION

Before any ARPA or ESSER funds are committed to one-time payments (premium pay/bonuses) you must check that the payment is permissible under the Act.

# Be Prepared with Information

- Municipality's or District's anticipated reductions in revenues:
  - Chapter 70 funds
  - Local Receipts
  - State aid to the municipality
- Municipality's free cash and stabilization funds – Be prepared to explain why these are not sources of revenue that can be depleted to support on-going obligations such as salary increases

# Free Cash & Stabilization Funds

- Free cash
  - Free cash is a municipality's remaining, unrestricted funds from the previous fiscal year.
  - Free cash is a one-time, non-recurring revenue source and should not be relied upon for funding wages (which continue to build and recur).
- Stabilization Funds
  - Stabilization funds are created to save capital for emergencies or unforeseen expenses (i.e. a “rainy day fund”).
  - Stabilization funds are for future use and should not be relied upon for funding wages.



## Anticipate the following Proposals from the Union:

Temporary/Permanent Change in Lieu of higher COLAs

Work year reduction (*“if you can’t give us money give us back time”*). *Each day equals 0.50% in salary.*

Increase in paid leave entitlements – parental leave, bereavement leave, sick leave and personal leave

Reduction in/elimination of less desirable duties.

Reduction in certain after school meetings or other requirements

# Setting Limits

## Consider:

- Shorter contract duration
- Pilot programs
- Sunset provisions
  - Expiring upon a specific date or condition

## Remember:

- Do not agree to proposals that are bad policy
- Watch out for proposals that are in lieu of COLAs
  - Increases in leave time or expansion of leave use
  - Permanent reduction in the number of days in the work year
  - Elimination of duties, after-school meetings, parent conferences, etc.

# Drafting Proposals and Counterproposals

# Proposals and Counterproposals

- Draft clear proposals to avoid future litigation. If current language exists in the contract, the proposed changes should show the deleted language and the new language
- Have the Committee's labor counsel draft/review the Committee's draft proposals
- Avoid lazy drafting (For example: *The Committee will maintain the practice with respect to transfers in effect on April 1, 2022.*)
- If certain changes are temporary be sure to include the date on which they expire. For example, if the Committee has a counterproposal to increase the number of personal days from 2 to 3 for the duration of the 3-year contract only, the language might read as follows:

*The Committee will increase the number of personal days from 2 to 3 per work year for the 2023-2024 and the 2024-2025 and 2025-2026 work years only.*

It should not read as follows:

*The Committee will increase the number of personal days from 2 to 3 per year of this contract.*

# Ground Rules

# Ground Rules



Ground rules are a permissive not a mandatory subject of bargaining



No ground rules are better than having ground rules that limit the Committee.



Never agree to interest arbitration as a method for resolving impasse.

# Ground Rules For Traditional Negotiations

## Some ground rules to include:

- Bargaining is conducted in executive session
- All agreements are tentative until an entire successor agreement is reached (i.e., nothing is agreed to until everything is agreed to)
- The successor agreement is subject to ratification by the union membership and approval by the School Committee.

## Some ground rules to avoid:

- Bargaining sessions will be open to the public (and the media)
- No new proposals after the third (or whatever number) session
- The union may have silent observers (often unlimited number)
- No public communications regarding negotiations

# Ground Rules For IBB Negotiations

- Some ground rules to include:
  - Bargaining is conducted in executive session
  - All statements are “unofficial” and cannot be attributed to either party as bargaining history.
  - All agreements are tentative until an entire successor agreement is reached (i.e., nothing is agreed to until everything is agreed to)
  - The successor agreement is subject to ratification by the union membership and approval by the School Committee
  - **Separation from IBB and return to traditional bargaining unless one or both parties believes they are at impasse at which time they can file a petition for mediation with the DLR.**



# Remember



No quorum of the Committee at the bargaining table.



What are the costs to each proposal



How will the proposed change impact the education of students in our district?

# Hypothetical Questions & Hypothetical Answers

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