



Valerio
Dominello &
Hillman, LLC

Preparing For & Trends in Collective Bargaining

November 10, 2023

Elizabeth B. Valerio

Eric T. McKenna



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 in negotiations
- Good Faith Bargaining and Mandatory Subjects of Bargaining
- Establishing a Bargaining Team and Initial Steps
- Comparable Communities and Competitor Districts
- Budget and Financial Information
 - The Inflation Argument, COLAs, and the MIT Calculator
- Proposals
- Expanding Bargaining Units
- Unfair Labor Practice Charges
- Strikes
- Some of the Latest State Union Strategies



Brief Refresher on Complying with the Open Meeting Law in Negotiations



Subcommittees Must Comply with the Open Meeting Law

- All meetings of the subcommittee **including subcommittees for collective bargaining** 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.]



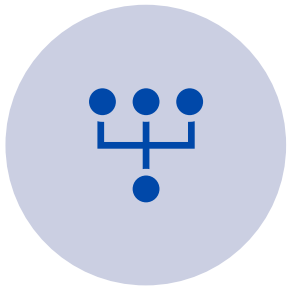
Open & Executive Session Minutes



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

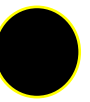
- Meet at reasonable times
 - But not during the employees' working hours
- Prepared to bargain
 - To make and respond to proposals
- Have authority to reach tentative agreements subject to approval by the Committee
- Provide information when requested
- Remember:
 - At this time, negotiation sessions 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
(via 150E requests)



Mandatory Subjects of Bargaining



Wages



Hours



Terms & Conditions of Employment

For example: layoffs (if not already in the CBA); contracting out bargaining unit work; class size; compensation for added duties; initial wages for new positions; length of workday



Performance Evaluations



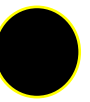
Note: Do not give up management rights during bargaining!

Non-Mandatory Subjects of Bargaining

Core managerial rights such as:

- Decision to abolish positions
- Decision to reorganize
- Right of Superintendent to appoint teachers
- Curriculum
- Level of Service Decisions - staffing levels

Non-Mandatory Subjects of Bargaining and Impact Bargaining Obligations



If the School Committee is not required to bargain because the issue is a core managerial decision, the Committee may still have an obligation to bargain over the impacts of the decision on employees' wages, hours, workload, and other working conditions.



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





Initial Steps – Preparation

Select a 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

Prepare proposals and proposed Ground Rules



Establishing the Committee's Bargaining Team



Follow the Committee's policy to appoint members to subcommittees



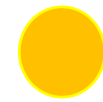
Remember to have fewer than a quorum of the full school committee on the bargaining team



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 and 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.



Ground Rules

Ground Rules



Ground rules are a permissive not a mandatory subject of bargaining. Either party may refuse to bargain over ground rules.



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 [default]
- 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. [default]

Some ground rules to avoid:

- Bargaining sessions will be open to the public (and the media) [i.e., open bargaining]
- No new proposals after the third (or whatever number) session
- The union may have silent *observers* (often an 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.**



Communications Strategy



Communication Strategy



Bargaining objectives should be aligned with District goals



Communicate the Committee's goals to the public (open session).



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 a union representing paraprofessionals 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



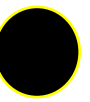
Consult with the Superintendent and Human Resources Director



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



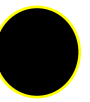
Ask administrators to identify speedbumps and barriers slowing or preventing the District from making progress on goals



Review All District CBAs



- Is there language that the District wants to change or eliminate in multiple collective bargaining agreements?
- Are benefits identical or different in each CBA (i.e., number personal days or sick days)?
- 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.

Establish Goals and Draft Proposals



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



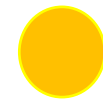
Prepare and review initial draft proposals and interests with the full school committee.



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 (i.e., no change to the wage table)**

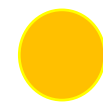




Remember **no** increase to the salary table still has a cost!

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	\$93,703	\$96,514
13	\$86,584	\$89,181	\$91,857	\$94,612	\$97,451	\$100,374



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

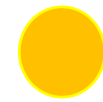
For example, a teacher at Masters Step 3 this year earned \$60,248. This teacher now has 15 additional credits and moves to M+15 Step 4 next year at \$64,537. This is an increase of \$4,289 (7%) increase to the teacher even if there is no increase to the salary table.

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
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	\$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



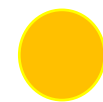
Scattergram #1

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
TOTAL	10	81	85	278	80	70	604



Scattergram #1

- 604 FTEs
- 34% are on the top step (highest paid 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
TOTAL	10	81	85	278	80	70	604



Scattergram #2

- 604 FTEs
- 74% are on the top step (highest paid 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 experience prior to employment in the District.
- 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?

For example:

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

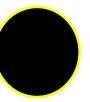
Employees advancing from one longevity gate to the next

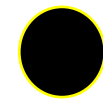


Be Prepared to Calculate Costs

- 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
- If the proposal is to provide more preparation/collaboration time during the student day, calculate the cost of the additional educators needed to teach the students in order to provide for the additional prep/collaboration time during the day
- Be prepared to analyze the cost beyond the contract term

Comparable Communities and Competitor Districts





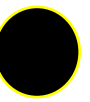
Identify Comparable Districts

Districts can identify comparable 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
----------------------	--------------------	---	---	-------------------------



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>)



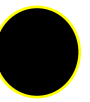
Competitor Districts



NOT NECESSARILY COMPARABLE
DISTRICTS



THEY ARE NEIGHBORING
DISTRICTS WHERE YOUR DISTRICT
COMPETES FOR EMPLOYEES



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

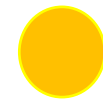
Organize the data to determine where your District falls compared to comparable districts

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 workdays, 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
Average	183	\$57,023	\$90,272	\$491.84	



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	3	\$74.22	1
Baldwin	184	7.00	\$93,500	\$508.15	2	\$72.59	2
Cortland	183	7.00	\$89,750	\$490.44	4	\$70.06	6
Empire	184	7.20	\$94,500	\$513.59	1	\$71.33	5
Fuji	181	6.50	\$84,500	\$466.85	6	\$71.82	3
Gala	183	6.75	\$88,200	\$481.97	5	\$71.40	4
Average	183	6.866	\$90,272	\$491.84		\$71.90	

A Note About the DESE Data on Average Teacher Salary



Average salary does not reflect the salary table for teachers; it reflects the District's scattergram –i.e., where teachers fall on the salary schedule.



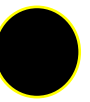
A District will have a higher average teacher salary when most of their teachers are at the highest step on the salary table.



A District will have a lower average teacher salary when most of their teachers are in the steps but not at the highest step.

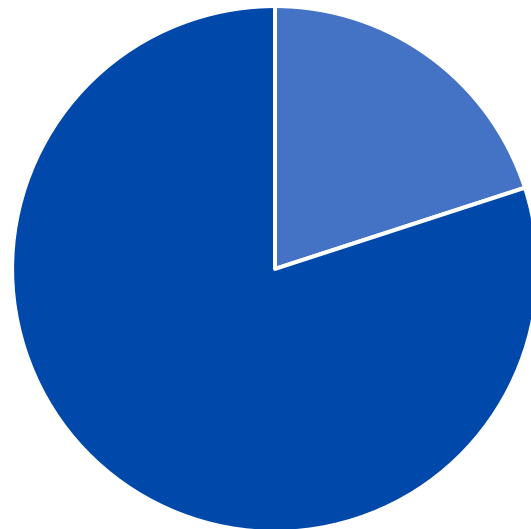


Budget & Financial Information



Collective Bargaining & Committee's Budget

- Generally, 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



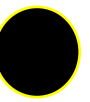
Be Prepared with Information

- 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?

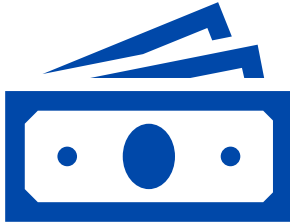


Be Prepared with Information

- ❑ 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



Municipality's 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 recurring expenses such as wage increases.



Municipality's Stabilization Funds

Stabilization funds are created to save funds 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 and continuing obligations.



Responding to the Inflation Argument



Inflation and Collective Bargaining

Unions have used high rates of inflation as a justification for higher COLAs

Unions are proposing COLAs of 7% or higher per year for teachers and 10% or higher per year for paraprofessionals

Employers should be prepared to show their budget limitations

Employers should be prepared to show the overall increase including the value of step increases in addition to any cost-of-living increase

Historical National Inflation Rates



Year	Inflation Rate (%)
September 2008	4.9%
September 2009	-1.3%
September 2010	1.1%
September 2011	3.9%
September 2012	2.0%
September 2013	1.2%
September 2014	1.7%
September 2015	0.0%
September 2016	1.5%
September 2017	2.2%
September 2018	2.3%
September 2019	1.7%
September 2020	1.4%
September 2021	5.4%
September 2022	8.2%
September 2023	3.7%



Cost of Living Adjustment (COLA)

- COLA increases are applied to the salary table
- Unions want to tie the COLAs to the rate of inflation
- Inflation is at 2.5% as of September 2023 in New England Region
 - The inflation rate for the Boston area is 2.6% as of September 2023
- Remember:
 - Employees receive increases with step and lane advancements
 - COLAs do not need to be the same for all steps and lanes
 - COLAs do not need to match the rate of inflation and when inflation was close to zero, unions still received COLAs



Living Wage and Responding to the MIT Calculator



MIT Calculator & Living Wage

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

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

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 and geographic location.
- 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.

$$\frac{1183}{2080} = \frac{N}{100} \quad N=57\%$$



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 or certain after school meetings or other requirements.

Additional time for preparation and/or collaboration during the student day, often requiring additional teachers.

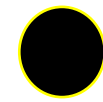


Adjusting the Salary Table as an Approach to Changes in the Market Rate for the Position

Adjusting the Salary Table

One approach to addressing changes in the market rate for the position is by adjusting the existing salary table.

To do this, employers will typically eliminate the entry step in the salary table, add a new top step, and add a cost-of-living adjustment.



There are different methods for adjusting the salary matrix

Example 1 (Step 1 Elimination)

STEP in FY23	STEP in FY24
Step 1	ELIMINATED (New hires to start at Step 2)
Step 2	Step 2
Step 3	Step 3
Step 4	Step 4

Example 2 (Add New Top Step)

STEP in FY23	STEP in FY24
Step 1	Step 1
Step 2	Step 2
Step 3	Step 3
...	...
Step 15	Step 15
N/A	Step 16



Use Clear Examples

Changes to the Salary Table can be confusing and result in future grievances or litigation.

Examples are an important for clearly expressing how employees will be placed on the new salary table and move throughout that table.

Examples can include:

- Movement charts based on placement on existing scale to new scale
 - Examples in written proposal
 - Full chart to supplement

Dos and Don'ts

Do



- Use examples to ensure everyone understands how changes to the salary table will be implemented.
- Supplement with a full movement scale chart that describes where employees will be placed on the new scale and how they will advance on that scale.
- Use clear language when drafting a MOA that describes the change to the table and/or include the new table in the MOA. Include examples if appropriate.
- Take contemporaneous notes during bargaining.
- Assess everyone's understanding of how the new salary table will operate.

Don't



- Don't use unnecessarily complicated language in drafting
- Don't take short cuts
- Don't assume that the union understands the implementation
- Don't finalize a MOA where there are different interpretations of how the new salary table will be implemented.



Drafting Proposals and Counterproposals



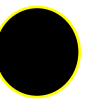
Proposals and Counterproposals

- 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 2024-2025, the 2025-2026, and the 2026-2027 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.



EXPANDING BARGAINING UNITS

Expanding Bargaining Units

There is a recent trend of specialist positions accreting into existing bargaining units or creating new bargaining units. Positions such as:

OTA (occupational therapy assistant)

SLPA (speech language pathology assistant)

RBT (registered behavior technician)

Generally, unions begin this process by asking employers to voluntarily accrete the non-unionized employees into the existing bargaining unit or by filing CAS petitions at the DLR.

The CAS petition seeks to amend an existing bargaining union by adding the non-unionized position to the existing union

Notes:

The Union may be seeking to accrete the positions into an inappropriate unit. For example, SLPA should not be accreted into a Teachers Unit.

Employees whom the Union seeks to accrete into the bargaining unit may not have requested to be represented by the Union.




Defenses
to a CAS Petition:

Contract Bar:

Except for good cause shown, a CAS petition must be filed no more than 180 days and no fewer than 150 days prior to the termination date of the current collective bargaining agreement.

This 30-day period is referred to as the **open period**.



Creating a New Unit

Certification by Written Majority Authorization (WMA):

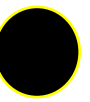
- The Union collects cards from a majority of the nonunionized employees in the proposed new unit.
- The cards must be signed and dated by the employees within 12 months from the petition for certification by WMA to the DLR.
- ***Caution: Employers should not look at the cards.***



Defenses
to a Certification by
WMA

Employers may challenge a petition for certification by WMA when the petitioned-for bargaining unit:

- Is inappropriate; the employees lack a community of interest;
- Contains managerial, confidential or casual employees, or workers who are not “employees” within the meaning of MGL c. 150E; or
- There was fraud or coercion obtaining the written majority authorization cards.



Representation Cases Move Quickly...

Contact your labor counsel immediately when you receive notice of a CAS or WMA petition

Look at the job descriptions for the positions in the petition

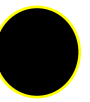
Determine how long these positions have existed

Determine if the employees in the positions have a community of interest with each other

Determine if there are professional and nonprofessional employees in the proposed unit

Consider the contract bar rule for CAS petitions

Identify and consider options before responding



What terms and conditions of employment apply?

• New Unit

- The starting position is what terms and conditions of employment apply at the time of unit creation.
- Start at status quo.
- Cherry Picking: Unions often seek to have the same terms and conditions as other bargaining units within the District

• Accretion Into Existing Unit

- All terms and conditions of the existing CBA *may* not apply to the newly added positions
- Start at status quo
- Examples:
 - Separate salary table
 - Different hours of work
 - Different assignment/transfer language



Unfair Labor Practice Charges and Strikes

Unfair Labor Practice Charges

Examples of Violations of Ch. 150E:

Unilateral Change

Direct Dealing

Transfer of Bargaining Unit Work

Failure to Provide Information



Increase In Teacher
Strikes

Strike Statistics

- 2019: 1 strike
- 2020: 3 strikes
- 2021: 0 strikes
- 2022: 3 strikes
- 2023: 2 strikes

Massachusetts prohibits Public Employee Strikes

M.G.L. c. 150E
Sec 9A

Massachusetts law **prohibits** public employees and employee organizations from engaging in a strike.

This includes encouraging or condoning any strike, work stoppage, slowdown or withholding of services.

When a strike occurs or is about to occur, employers are required by law to petition the DLR to investigate.

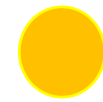
If, after an investigation, the DLR determines that an impermissible strike has occurred or is about to occur, the DLR immediately sets requirements with which the Union must comply and the DLR may initiate enforcement proceedings in the Superior Court when the Union fails to comply

Penalties for Strikes

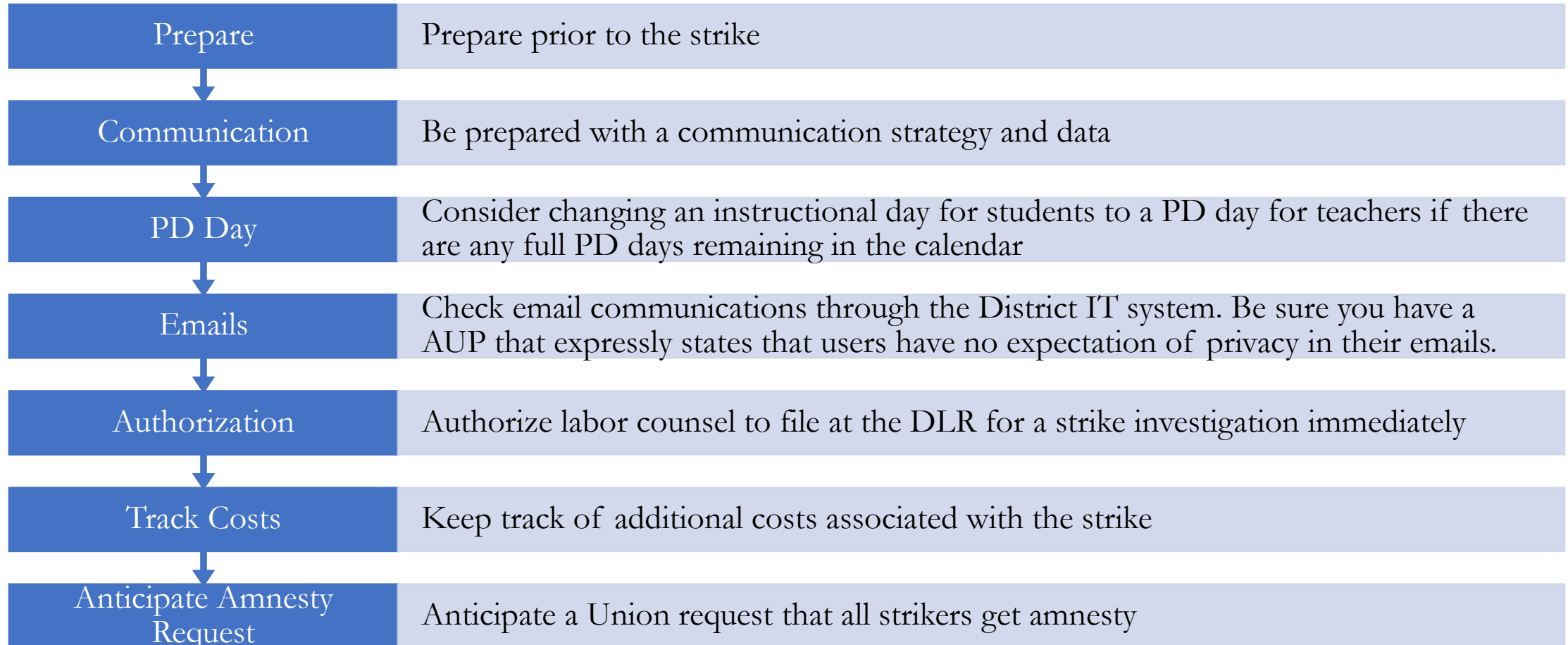
Contempt Fines: Financial penalties in the form of contempt fines imposed by the Court have done little to dissuade unions from striking especially where the contempt fines are only imposed after the union violates the order of the superior court.

Discipline and Discharge of Strikers: MGL c. 150E section 15 provides that

“[a]ny employee who engages in a strike **shall be** subject to discipline and discharge proceedings by the employer.”

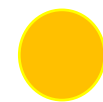


Preparing for and Responding to Strikes



Some of the Latest State Union Strategies





Refusing to bargain about ground rules

Ground Rules are not a mandatory subject of bargaining. The School Committee cannot insist on ground rules. The law requires the parties to bargain in good faith whether or not there are ground rules.

Open Bargaining

The union cannot insist on open bargaining.
The Committee can refuse to bargain in public.

Stating that they will be bargaining multiple units together

Each unit is separate.
The union cannot insist that the employer bargain them all together.

Request to bargain in an auditorium with hundreds of “silent representatives”

The employer can decline to bargain with an unreasonably large group.



Filing a bad faith bargaining charge when the parties reach or about to reach impasse

This does not delay the declaration of impasse.

Objecting to Impasse and to the assistance of a state-appointed mediator

The DLR will investigate whether the parties are at impasse. If the parties have met for a reasonable period of time, the DLR usually recognizes the impasse and assigns a mediator.

Remember



Have a communication strategy



Plan for addressing work actions including strikes



Remember



No quorum of the Committee at the bargaining table.



Calculate the costs for each proposed change



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

Hypothetical Questions and Hypothetical Answers



Valerio
Dominello &
Hillman, LLC

Elizabeth B. Valerio, Esq.
Elizabeth.Valerio@VDHBoston.com

Eric McKenna, Esq.
Eric.McKenna@VDHBoston.com

Valerio Dominello & Hillman, LLC
One University Avenue, Suite 300B
Westwood, MA 02090
(617) 862-2005

VDHBoston.com