



Preparing For Collective Bargaining & Recent Trends

November 7, 2024

Elizabeth B. Valerio

Nicholas J. Dominello



Disclaimer:

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

Agenda

General Bargaining Overview

Current Union Proposals

Current Union Strategies

No Movement? Now What?



General Bargaining Overview

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.

Types of Bargaining

- Main Table Bargaining (typically decisional based bargaining)
 - Wages
 - Duration of Workday
 - Duration of Contract Period
 - Longevity Pay
 - Leaves
- One Off Bargaining (typically impact bargaining)
 - Decision to Reorganize
 - Decision to Abolish a Position
 - Decision to Create a Position
 - Reductions in Force
 - Curriculum
 - Staffing Levels

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
- Curriculum
- Staffing levels

Ground Rules

- Neither party is required to bargain over ground rules

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



Initial Steps – Preparation





Bargaining Team



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;



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.



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 in negotiation updates to the public



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
 - Paraprofessional 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

Dos and Don'ts for Engaging in Communications

Do

- Obtain input from administrators
- Assign one spokesperson to communicate with media outlets
- Ensure messaging is consistent with District goals
- Stick to the facts
- Remain committed to efforts to achieve an equitable and fiscally responsible contract

Do Not

- Use infrequent or inconsistent messaging
- Use charged language when discussing negotiations.



Communication Strategy

Your community, will want to know the answers to these questions:

1. How did we get here?
2. Why don't we have a contract yet?
3. Where are we in negotiations?
4. Where do we go from here?

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 Status of CBAs and Litigation

- Review 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 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 earns \$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

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 (if longevity gate starts at 10 years)



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

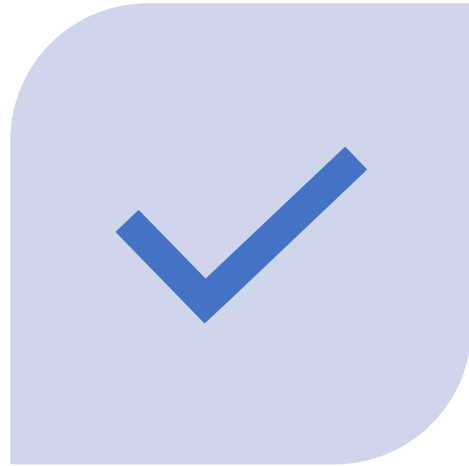
Districts can identify comparable districts by reviewing:

Municipal population	Municipal tax base	District size (student population) and grades	Percent of residential, commercial, and industrial property supporting tax base	Median household income
----------------------	--------------------	---	---	-------------------------

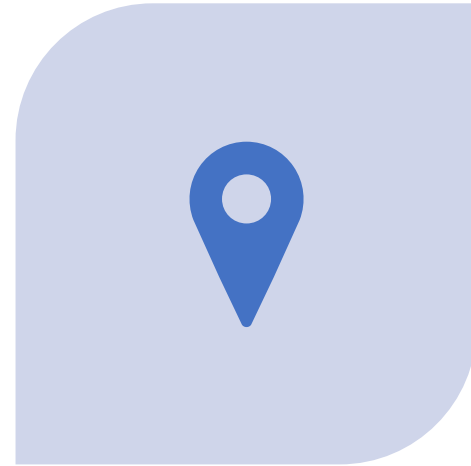


The Massachusetts Division of Local Services website is a resource available to access each of these data points and compare communities. (<https://www.mass.gov/service-details/community-comparison-report>)

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 = 0.5%)
- Number of hours in the workday
- 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	Top Step MA	MA Top Step Daily Rate	Ranking by Daily Rate at MA Top Step
Your District	182	\$91,181	\$500.99	3
Baldwin	184	\$93,500	\$508.15	2
Cortland	183	\$89,750	\$490.44	4
Empire	184	\$94,500	\$513.59	1
Fuji	181	\$84,500	\$466.85	6
Gala	183	\$88,200	\$481.97	5
Average	183	\$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 senior teachers at the highest step on the salary table.



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



Budget & Financial Information

Be Prepared with Information

Budget	What is available? What are the limits? Communicate with your municipalities' Finance Committee.
Cost of a zero	Cost of step and lane advancement and longevity with no change to salary table
Cost of 1%	Cost of a 1% increase
Number of employees	Number of employees at each step and lane on the salary table (This is referred to as a scattergram)

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



Responding to the Inflation Argument

Historical National Inflation Rates



Year	Inflation Rate (%)
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%
September 2024	2.4%

Current Rate of Inflation



Consumer Price Index (CPI) measures the change in prices paid by consumers for a wide range of commonly bought goods and services. It is a key measure of inflation.



Nationally, the inflation rate rose 2.4% over the 12-month period ending September 2024.



The inflation rate rose 3.4% over the past 12 months in the New England area for the period ending September 2024.



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.

$$\frac{1182}{2080} = \frac{N}{100} \quad N=57\%$$

Living Wage Discussion

- Union may say, if you can't offer us the increased wages, then offer us:
 - Paid Holidays
 - Paid Vacation Time
 - Paid Lunch



Current Union Strategies

Open Bargaining

- Different from bargaining with silent representatives
- Open Bargaining is open to *anyone* to watch and/or be present
- Current trends are showing that the larger audience does not change the Union or Committee proposals

Many units in a single session

- More and more locals are asking to combine negotiations of all units (i.e., paraprofessional unit, teacher unit, and any other units under the Educational Association banner)
- One single *core* bargaining team (made up of different employees)
- The single bargaining team brings forth:
 - Common Proposals; and
 - Unit specific proposals
- Cannot condition one unit on another (coalition bargaining)

Issues To Be Aware Of – Early in the Process

- Timing of Negotiations
 - Not Starting until late spring
 - Not bargaining during summer
 - Only asking to bargain during workday
 - Only scheduling one session every few weeks
- Entire unit(s) as silent representatives
- Requests to meet in auditorium, gymnasium, library
- Proposals that both parties know are impossible
- Coordinated shirts at the start
- Union signs in the classroom (on school property)
- Work to Rule

Some of the Latest Union Strategies

Refusing to bargain about ground rules

Demand to have Open Bargaining
(Committee can reject this)

Stating that they will be bargaining multiple units together
(Committee can reject this)

Bargaining in an Auditorium with hundreds of “*silent representatives*”

Silent reps change from session to session and the Union refuses to identify them

Union has an extraordinary number of proposals

Union reps have prepared statements and talk over and interrupt management

Union makes the same/similar prepared statements at multiple sessions - playing to the new audience of silent reps

Some of the Latest Union Strategies

Union engages in work to rule and informational picketing
(Protected activity)

Taking votes of No Confidence in the School Committee and the Superintendent

Using the Committee's public comment portion of the meeting to lobby for a contract

Requesting students to speak for the union contract at Committee meetings during public comment

Engaging in a communication campaign on social media and the press
Including videos

Posting union signs in classroom windows and on school buildings where students can view them
(Consult labor counsel immediately)

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

Objecting to mediation
And asking the DLR to require additional bargaining



Current Union Proposals



Common Proposals

- Leaves
 - Full Paid Parental Leave (without deductions from the employee's sick leave)
 - Sick Leave
 - Family Sick Leave
 - Bereavement Leave
 - Personal Leave
- Just Cause Protections
 - Job protections
- Duration
 - All units on the same schedule



Unit Specific Proposals

- Teacher Units
 - Wages
 - Adding new positions to the bargaining unit
- Paraprofessional/Educational Support Units
 - Wages
 - Paid holidays
 - Paid vacations



Setting Limits

Consider:

- Shorter contract duration
- Pilot programs- Expiring upon a specific date or condition
- 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.
 - It's not necessary to incorporate state and federal laws into the CBA.



No Movement? Now What?



DLR – Mediation, then Fact-Finding

- Obligation of both parties to bargain in good until resolution or impasse
- If no more movement is achievable – file for impasse (unilaterally or jointly)
- DLR will assign an investigator (if impasse is contested)
- DLR will assign a mediator (if impasse is not contested)
- Parties will engage in mediation until resolution or the mediator is unable to get the parties to an agreement. All negotiations in mediation are off-the-record.
- If no more movement is achievable – mediator will recommend that the parties move to fact-finding
- Fact-finder will issue a report about contested contract terms, parties will bargain about the fact-finder report. This almost always results in an agreement
- If no agreement is reached, the Committee asks the DLR to permit it to implement its last best on-the-record offer.



Satisfying Your Bargaining Obligations

- By Agreement *or*
- By Completing the Impasse Procedures:
 1. Mediation
 2. Fact Finding
 3. Bargaining over Fact-finder's Report for 10 days
 4. Implementation of the agreement reached or if no agreement is reached the Committee's last best on the record offer

Mediation

- Continue to bargain in good faith
- Mediation does not change the fiscal realities
 - Do not rush into a proposal that is beyond the District's financial capabilities.
 - If a COLA of 5%/5%/5% was not possible under the budget before mediation, it will not be possible after mediation has concluded.
 - Maintain a level-head and make decisions with the same understanding of financial consequences of proposals.

Mediation

- Continue to complete cost-outs of proposals and consider management objectives
- Continue to evaluate union asks and management requests
- Do not be afraid to think creatively:
 - Consider one-time monetary benefits
 - Evaluate non-monetary benefits
 - Consider longer time-line (i.e.. 1 year contract plus a 3-year contract if the contract has expired)

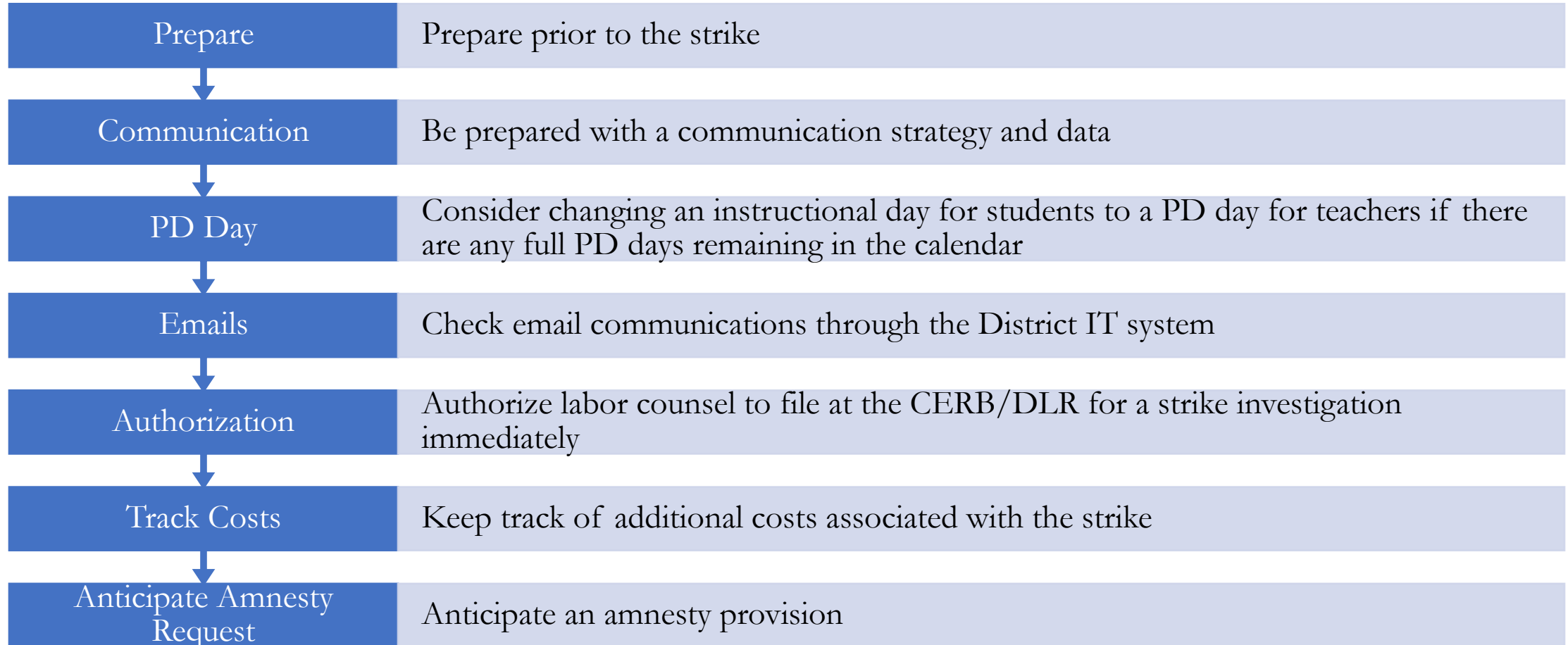


Mediation

- Fiscal objectives will largely remain the same
- District does not have an obligation to make concessions
- Continue to bargain in good faith
 - Consider areas where there is room for agreement



Preparing for and Responding to Strikes



Hypothetical Questions and Hypothetical Answers



Valerio
Dominello &
Hillman, LLC

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

Nicholas J. Dominello, Esq.
Nicholas.Dominello@VDHBoston.com

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

VDHBoston.com