



Negotiations with COVID-19

Good morning everyone. While some of you have already settled your negotiations for this year, I also know that many of you delayed starting negotiations this year hoping that we would have something more definitive from the Governor's office related to holdbacks for next year. That means that negotiations are starting late and will likely end later than usual. I am hopeful this email will provide you with some clarity on where we currently stand and offer some advice as you move forward with your negotiations for FY2021.

Holdbacks

We now know the Governor has imposed a 1% holdback for the year that we are currently in and has proposed a 5% holdback for next fiscal year that will begin on July 1. The legislature will need to approve the 5% holdback by including some "notwithstanding" language in the appropriation bill. That is just a fancy way of saying that the legislature will need to agree with the Governor's proposal. The legislature used this method a decade ago when we had the massive downturn in the economy.

CARES Act Funding

Most school districts and charters in the state are going to receive some CARES Act federal funds to help offset the loss of state dollars. However, those dollars will not be enough to cover both the 1% and 5% holdbacks.

Declaration of Financial Emergency

During the last downturn in the economy, then Superintendent of Public Instruction, Tom Luna, declared a statewide financial emergency two years in a row. That allowed school districts and charters to pay employees less than they earned the year before. For the most part, districts and charters did that by reducing the number of contract days by using "furlough" days. Without the declaration of a financial emergency, school districts and charters cannot pay employees any less than they were making in the previous year unless it is agreed upon in negotiations and is uniformly applied to all personnel. (See 33-515(3))

While the declaration of a statewide financial emergency would certainly take the pressure off local districts, there is no guarantee that Superintendent Ybarra will do so. That means that, if you need to reduce all certificated personnel compensation and/or declare furlough days, each local school district will need to make that declaration. **We strongly encourage you to contact legal counsel before declaring a financial emergency.** There are criteria to meet and several nuanced steps in the process that must be followed in order to do it correctly and within the confines of the law.

We also want to be clear that the issue of a financial emergency is different than the statutory reduction in force in which a district or charter may decide to eliminate a program and related teaching personnel. **We also strongly encourage you to contact legal counsel before declaring a reduction in force.**

One Time Funds vs Ongoing Expenses

We believe that your local bargaining units may be asking you to use reserve funds in addition to CARES Act funds in order to keep everyone whole. We know that there is a time and a place for using your reserve, or savings, funds. Just as you do in your home life, we would suggest that you consider the following before using your reserve funds:

- We would first caution you against using one-time funds to fund ongoing expenses. If our economy does not rebound as quickly as we hope, we could see more than one year of cuts to our budgets.
- Remember that once an increase in salary is made, it is extremely difficult to go backwards and reduce the compensation, likely necessitating an additional reduction in force process.
- We all know that not all reserve funds are created equal. Some reserve funds are statutorily earmarked for specific purposes and cannot be used to pay salary and benefits.
- The Board would need to decide if the District/School has sufficient reserves to use for this purpose.

Statutory Definitions and Board Policy

We have already seen one local bargaining unit attempt to include a definition of good faith bargaining in the Master Agreement. Good Faith bargaining is already defined in statute and should not be redefined. In fact, any definition that is already outlined in statute should not be included in a Master Agreement, and we would recommend that you not do so.

Even if you are inclined to define Good Faith in your agreement, please do not consider adding any prohibition of “regressive bargaining.” If you run into significant financial challenges throughout the school year, this type of language could prevent you from declaring a financial emergency, reopening the contract, and addressing furlough days.

The same is true for any your adopted policies. Local bargaining units often want to include Board Policy in the Master Agreement. They usually want to include things like your grievance procedure. It is important for you to remember that adopting Board Policy is one of the main jobs of the Board. When you adopt or amend any policy, it is important that you include those affected by the change into discussions at that time. If you include a policy in your Master Agreement, the Board has essentially removed their ability to amend that policy without first amending the Master Agreement. We would recommend that you never include a Board policy in the Master Agreement.

Considerations for Re-opening

The Center for Disease Control (CDC) has issues numerous guidelines related to return-to-work issues that could affect your master agreements. Those include staggered start times, no use of communal facilities, sticking in groups without change of class, bus schedules, and lunchroom meals. That may change things in your Master Agreement like the definition of workday, start of workday/end of work day, and duty free considerations. We know there are many more changes--too many to list.

We would strongly encourage you to read and understand the CDC Guidelines before finalizing your Master Agreement.

Questions

As always, we will do our best to answer any questions you may have. We also encourage you to work with legal counsel when working through negotiations.

Be well,

Karen