Eastern Shore Superintendents

Position Paper #10: **Collective Bargaining**

Introduction

The relationship between a local board of education and the various employee organizations with which it must negotiate requires a delicate balance between meeting the educational needs of children and protecting the rights of workers. There are countless examples that more than document the fact that school boards and employee organizations have become partners in efforts to improve learning opportunities for children and working conditions for employees. At times, boards of education and employee groups have collaborated on a variety of issues, including curriculum, pedagogy, textbooks, technology, employee evaluations and many other fundamental components of the educational program. The results of these collaborative efforts have greatly assisted school systems as they work to improve student achievement.

However, there are also many examples where employee organizations have either totally blocked or attempted to block measures designed to bring about genuine educational reform. There are numerous examples of employee groups attempting through either legislation or negotiations or both to transfer the legal authority of the board and the superintendent to organizational officers. When such actions occur, the delicate balance is lost and the educational program for children suffers.

Recent legislation that expanded the scope of bargaining beyond the traditional areas of wages, benefits and working conditions provides both school boards and employee organizations the opportunity to define additional areas subject to collective bargaining. Consequently, Eastern Shore Superintendents are opposed to any legislation that might mandate new subjects to be negotiated. There is no doubt that employee unions will lobby hard for victories in the legislature that will prevent them from having to "give up" something during negotiations. If the union gains through legislation what it fails to gain through negotiations, the whole concept of collective bargaining is undermined.

There are many responsibilities for which the school board or superintendent must retain sole authority. For example, current law delegates the power to discipline teachers to the board of education. Superintendents have the authority to evaluate, assign and transfer personnel. Such fundamental authority should not be transferred to employee organizations by statute or through negotiations. The entire concept of school system governance would change and change dramatically if legislation was passed that weakens the authority of local school boards in such areas.

Review of Issues

Within this framework that legislative positions have been developed on the following issues:

Teacher Strike Laws: Eastern Shore superintendents oppose any changes in Maryland law that might permit teacher strikes. The penalties for a teacher strike require that the employee organization loses the right to represent the employees for a two-year period and loses payroll deductions rights for membership dues for a one-year period. Challenges to this law have come in two forms:

- Total elimination of penalties for teacher strikes
- Inclusion of language in the statute that would “permit” each board of education to impose, or not to impose, strikes penalties.

Either change would be detrimental to the educational program. Local boards of education should not be placed in a position where there is an option to impose the strike penalty or not to impose the strike penalty. The collective bargaining laws are State laws; the same should hold true for the imposition of the strike penalty. The pressure that striking employees could place on local boards to waive penalties as part of an agreement that ends a strike would place extraordinary power into the hands of employee organizations. Further, once a board makes this concession, the pressure on other boards in future strikes would be greatly increased. In addition, strike penalties may become subject to negotiations by adding it to the list of collective bargaining subjects in one or more districts.

Boards of education have the responsibility to provide a meaningful instructional program on a daily basis. Legislative action that would change strike penalties could seriously damage the ability to carry out that responsibility.

Binding Contract Arbitration: Both employee organizations and boards of education struggle to negotiate a contract that simultaneously satisfies the needs of students while satisfying worker issues. Although at times these interests are the same, they frequently differ and one can negatively impact the other. Consequently, collective bargaining is not easy. However, history demonstrates that when both the board and the organization are committed to reaching a settlement, a settlement is in fact achieved. Such settlements rarely satisfy everyone’s interests. Yet, the give and take of negotiations “in good faith” forces both sides to work together and to at least attempt to develop a collaborative relationship. This is an important relationship that must not be disrupted by legislation that requires differences to be decided upon by a third party.

If legislation should require that settlements not achieved at the negotiations table automatically go to an arbitrator, the results cannot be good for the school system or in reality, employees. Typically, an arbitrator finds a mid-point by which both sides can find acceptance or at least consider him to be "fair" to both sides. Although this might work during private sector negotiations, it would have a highly negative impact on negotiations in public school systems. School boards have extremely difficult decisions to make trying to balance the amount of money to be devoted to wages and benefits and the amount of money to be devoted to other aspects of the educational program. This is a responsibility that boards have to decide and with which third parties should not interfere. Arbitrators often focus on dividing the available dollars without regard to consequences to instructional programs.

Agency Shop: Legislation that would force boards of education to accept agency shop provisions is unacceptable. First, any requirement that would force employees to join or pay dues to an organization as either a condition of employment or a condition of future employment is unsupportable. It is the responsibility of the organization to prove to potential members the benefits of belonging to such an organization and paying dues to it. Secondly, statutes that would force this concept would allow employee organizations to gain a major financial resource without giving back anything. A discussion of agency shop could be a negotiated topic if boards and organizations agree to discuss it, but it should not be legislated.

Binding Grievance Arbitration: This is a permissible topic of negotiations as a result of the expanded collective bargaining law of 2002. Under this concept, a grievance over misapplication of provisions in an existing contract may be taken to a neutral third party whose decision is final and binding on both the employee and the employer. Superintendents oppose any legislation that would require local boards to accept binding arbitration decisions on grievances.

Since 2002, several local jurisdictions have accepted binding grievance arbitration provisions through collective bargaining. Other jurisdictions have not implemented any form of binding arbitration. Efforts by employee organizations to amend the law to force school boards to bargain such provisions should be defeated. If a local board agrees to bargain grievance arbitration, that is its legal prerogative and it should be protected. It is inappropriate to legislate something that would undermine the collective bargaining process.