



SCHOOL NEGOTIATIONS WORKSHOP

Virtual Training
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“Fixing Troublesome Contract Language”

Presented by
Christian M. Williams, Esq.

I. Introduction

II. Class Size Restrictions

A. State Minimum Standards (O.A.C. §3301-35-05).

“The ratio of teachers to pupils on a district-wide basis shall be at least one full-time equivalent classroom teacher per twenty-five pupils in average daily membership. . . The ratio of teachers to pupils in kindergarten through fourth grade on a district-wide basis shall be at least one full-time equivalent classroom teacher per twenty-five pupils in average daily membership.”

B. Contractual Provisions.

1. Recommended: Do not include any reference to class size in the collective bargaining agreement.
2. Language to avoid: “The number of students assigned to a member for the purpose of instruction shall not exceed 25 for Grades K and 1, 26 for grades 2 and 3, and 29 for grades 4 through 6. An additional student may be added to an elementary classroom under the following circumstances. . . . In calculating the number of classrooms needed district-wide at each grade level one week before the beginning of the school year, the number of established classrooms multiplied by the maximum enrollment per class (less seats having to be subtracted due to

utilization of some classrooms which are limited in pupil capacity due to inadequate square footage) shall result in no less than six (6) available seats when compared to the projected district grade-level student enrollment lists. . .” (Language from agreement between board of education and union.)

C. Effect of Poorly Drafted Class Size Language on Management Flexibility.

1. Hinders board’s ability to lay off employees.
2. An extra employee may need to be hired to comply with provision.
3. More difficult to assign or accommodate new students in the district.

D. Alternatives to Strict Limits on Class Size.

1. Collective bargaining agreement silent on class size.
2. Use state minimum standards as a guideline.
3. Class size averaged over two or more grade levels.
4. Agree to discuss effects of any increase in class size over a certain specified limit with the union without the requirement that action be taken to reduce or sustain class size.

E. Do not agree to strict limits on class size which require the district to hire an extra teacher or aide because the class or grade level has one more student than is permitted by the collective bargaining agreement.

III. Maintenance of Standards Clause

A. Contractual Provisions.

1. Recommended: Do not include a provision in the collective bargaining agreement that requires the Board to maintain existing working or employment standards.
2. Language to avoid: “For the duration of this contract, the . . . Board of Education shall maintain all terms, conditions, and benefits of employment not less than the level in effect as of the effective date of this contract. . . .” (Language from agreement between board of education and union.)

- B. Management Rights Which Could be Hindered by a Maintenance of Standards Clause.
 - 1. Transfers and assignments.
 - 2. Reduction in force.
 - 3. Suspensions.
 - 4. Non-renewals.
 - 5. Class size.
 - 6. Job duties and descriptions.
- C. Specific vs. General Contract Language.

IV. Complex Discipline Procedures

- A. Contractual Provisions.
 - 1. Recommended: Do not include language that provides additional procedural due process rights for employees subject to discipline.
 - 2. Language to avoid: “With the express exception of allegations of items of a criminal or unlawful nature, any material job-related complaint made against a bargaining unit member by anyone, and the complaint is deemed to initially be valid, warranting further investigation and could lead to discipline, will be called to the attention of the bargaining unit member within one (1) school day. If the nature of the complaint is such that an investigation is warranted, the bargaining unit member will be afforded the following procedural due process: a written statement of the complaint (identifying the complainant and the specific nature of the complaint), a hearing before the appropriate administrator at a reasonable and mutually agreed upon time, representation, and a written decision from the administrator within five (5) days of the hearing. Any or all of these rights may be waived by the bargaining unit member at any time.” (Language from agreement between board of education and union).
- B. Management Rights Which May be Affected by Complex Discipline Procedures.
 - 1. Failure to meet a notice timeline may be deemed a denial of due process and eliminate the ability to discipline the employee.
 - 2. Early notice to the employee under investigation may hinder the investigation.

3. Restrictive timelines may limit the scope and breadth of the investigation, resulting in a rushed and/or incomplete investigation and a hasty discipline decision.

V. Student Discipline Procedures

- A. Ohio law places authority for the discipline of students in the hands of principals, superintendents, and Board members.
- B. Under Ohio law, teachers are only given specific authority to participate in student discipline when a student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on school premises.
- C. Contractual Provisions.
 1. Recommended: Do not include a provision in the agreement that references or governs student discipline.
 2. Language to avoid: “In compliance with provisions of Section 3313.661 of the Ohio Revised Code, the following is a code of pupil conduct, violations of which may result in disciplinary action, including suspension and expulsion, in the . . . School District. New rules that may be adopted by the Board will not conflict with existing language in this Agreement nor result in a lessening of current discipline standards . . . When a member makes a written referral of a student to an administrator regarding a disciplinary problem, said administrator shall make a written response to the member concerning the resolve or tentative resolve no later than three (3) days from the date of referral.” (Language from agreement between board of education and union).
- D. Effect of Contractual Provision Concerning Student Discipline.
 1. Possible limit of administration’s authority to impose student discipline as it sees fit.
 2. Employee may be able to grieve student discipline with which the employee disagrees.

VI. Calamity Days

- A. Pursuant to R.C. 3319.081(G), while non-teaching employees shall be paid for all time lost when the schools in which they are employed are closed due to an epidemic or other public calamity, nothing in that statute “shall be construed as requiring payment in excess of an employee’s regular wage rate or salary for any time worked while the school in which the employee is employed is officially closed for the reasons set forth in this division.”
- B. Ohio law does not define the words “epidemic” or “a public calamity.”
- C. While R.C. 3313.48 previously required a minimum number of days of education per school year, the statute was amended in 2013 to place school districts under a calendar requiring a minimum number of hours of instruction per year. Nonetheless, many negotiated agreements still contain language requiring that days of instruction be made up after five calamity days.
- D. Contractual provisions.
 - 1. Recommended: Consistent with R.C. 3319.081(G), no additional pay should be provided to employees who report to work on a calamity day.
 - 2. Recommended: Superintendents should retain sole discretion regarding whether to declare a calamity day.
 - 3. Language to avoid: Language which applies to the calamity day provisions district-wide when only one school building is closed.
 - 4. Language to avoid: Restrictions on administration’s ability to schedule makeup days to replace calamity days.

VII. First Consideration/Seniority Bidding Rights for Vacancies

- A. Contractual Provisions.
 - 1. Recommended: The superintendent has sole authority and discretion to determine which, if any, employee is qualified for a vacancy.
 - 2. Language to avoid: “Vacancies will be filled on the basis of proper qualifications except that, with respect to filling a bargaining unit position, preference shall be granted to qualified members of the bargaining unit who applied for the position on the basis of seniority (i.e., the most senior applicant will be offered the position).” (Language taken from agreement between board of education and union).

- B. First consideration of seniority for vacancies places an employee in a position in which you do not believe they belong and in which you did not envision when they were hired.
 - 1. Secretarial employees.
 - 2. Special education aides and teachers.
 - 3. Guidance counselors.
 - 4. Coaching assignments.

VIII. Assignment/Transfer Restrictions

- A. Pursuant to Ohio law, the superintendent of the district is given authority to “direct and assign teachers and other employees of the schools under the superintendent’s supervision, except as provided in section 3313.31 and section 3319.04 of the Revised Code.”
- B. Certain restrictions also apply to city school districts that adhere to civil service requirements for classified non-teaching employees.
- C. Contractual Provisions.
 - 1. Recommended: Employees shall be assigned and transferred pursuant to the sole discretion and authority of the superintendent.
 - 2. Language to Avoid: “No member shall be involuntarily transferred without just cause. Just cause may include, but is not limited to, teaching deficiency as identified through the evaluation procedure as an ongoing deficiency that has persisted at least one (1) school year and where such transfer should remedy the deficiency.” (Language from agreement between board of education and union).
 - 3. Language to Avoid: “All transfers, i.e., change in building, shift, bus route, or change in classification, shall be based on employee preference or in the event of more than one employee having the same preference, i.e., wanting to remain in current position or seeking same vacancy, seniority rights shall control, except when the specific needs of the school system necessitate a variance from preference and seniority rights and such needs shall be made known to the NEA, in writing.” (Language from agreement between board of education and union).
- D. Poorly written assignment/transfer provisions limit administration’s ability to assign or transfer employees to the positions in which they are needed.

IX. Just Cause Standards for Contract Nonrenewal

A. What is Just Cause?

B. Contractual Provisions.

1. Recommended: Do not include a provision in the collective bargaining agreement that requires the Board to meet just cause standards for contract nonrenewal.
2. Language to Avoid: “A member(s) shall not be disciplined, reduced in rank or compensation, demoted, non-renewed, or otherwise deprived of any professional advantage without ‘just cause’ and compliance with applicable provisions of this Contract.” [Emphasis added] Language from agreement between board of education and union).

C. Effect of Just Cause Standards for Contract Nonrenewal.

Since Ohio law does not require a board to meet the just cause standard to nonrenew an employee’s contract, it becomes more difficult to non-renew.

X. Expansive and/or Indefinite Grievance Language

A. Contractual Provisions.

Recommended: Do not include a provision in the collective bargaining agreement that allows a bargaining unit member to grieve board policy or Ohio law.

2. Recommended: Do include clear time limits on when a grievance must be filed and appealed, with a waiver of the right to pursue the grievance if it is untimely filed or appealed.
3. Language to avoid: “Grievance is a claim by the Association or by one or more teachers that there has been a violation, misinterpretation or misapplication of a provision of the Agreement, or a violation, misapplication or misinterpretation of Board policy.” (Language from agreement between board of education and union).

B. Effect of Expansive Grievance Language.

1. Employees file grievances on matters of managerial policy or discretion.
2. Employees file grievances that cannot be resolved through the grievance process.

3. Bargaining unit members file grievances that impact the rights of non-bargaining unit members.
- C. Effect of Indefinite Grievance Language.
1. Grievances are filed long after the event giving rise to the grievance
 2. Grievances thought resolved can be brought back to life.
 3. Grievances stack up unresolved, creating the threat of multiple arbitrations which unions use to extract concessions.

XI. Special Education Language

A. Contractual Provisions.

1. Recommended: Do not include any language regarding the provision of special education services.
2. Language to avoid: “Teachers who feel that students have been misplaced in special education programs, or who identify and report to the Board students who need testing, but have not been tested, or who have been tested but not placed, may, after consultation with the principal and subsequent inaction, appeal directly to the Union for corrective action.” (Language from agreement between board of education and union).
3. Language to avoid: “Any educational personnel involved with a special education student may be present and allowed input to the IEP Committee prior to the implementation of a student’s IEP.” (Language from agreement between board of education and union).

B. Effect of Special Education Language.

1. Labor contract language may conflict with State and/or federal special education law – Individuals with Disabilities Education Act (“IDEA”).
2. Labor agreement language regarding special education can increase costs and/or reduce management discretion.
3. Creates the possibility of a grievance by a special education teacher, which may involve a special education parent/student in the grievance process and destabilize the District’s relationship with a parent of a special education student.

XII. Other Ties That Bind

- A. Binding Interest Arbitration.
- B. Expanding Scope of FMLA.
- C. Subcontracting.
- D. Class Preparation Time.
- E. Academic Freedom provisions.

XIII. Conclusion