Bargaining Advisory

Bargaining a Return to Work During the COVID-19 Pandemic and Difficult Economic Times (Initial Advice)

Background

The COVID-19 pandemic and subsequent closure of all but essential services resulted in local education agencies (LEAs) suspending in person instruction and hastily engaging in distance learning for the remainder of the school year. As 2019-20 ends and thoughts turn to next year, student and staff safety remain of paramount concern.

Beyond health and safety, there are grave worries over the economy and resulting impacts on state finances, especially with the Governor’s May Revision to the proposed State Budget emphasizing the stark fiscal environment that lies ahead. With the dual challenge of a public health and economic crisis, CTA continues to work with state officials and others to guide LEAs throughout the pandemic. However, as understanding of the virus and our response to it changes rapidly, delays in expected guidance are more frequent than desired. Undoubtedly, the May Revise will change prior to passage of the state budget and the budget may be further revised throughout the year.

The combination of incomplete budget information and anxiously needed guidance necessarily make this advisory preliminary. Several revisions to this advisory will likely occur as further guidance is released. Please keep this in mind, always remembering to check back for possible updates.

Despite these monumental challenges, many chapters successfully negotiated school closure and distance learning memoranda of understanding (MOUs) at the beginning of the pandemic, and those agreements made our members’ lives significantly better. Therefore, because prior bargaining advisories, sample MOUs, and negotiated agreements remain relevant, as do those from the last recession, they will be referred to throughout this advisory.

Lessons from the Great Recession

The education community learned much during the Great Recession that began in 2008; unfortunately, in 2020 we also face the impacts of a pandemic. The economic fallout caused by COVID has resulted in a projected reduction to school funding for 2020-21, 2021-22, and possibly additional out years. In bargaining during what is projected to be a steep recession, chapters should remember that even though severe and possibly lengthy, the financial crisis will be temporary (See C4OB Bargaining Advisory: Extraordinary State Budget Crisis, 6/18/2009; all past advisories are available to chapter presidents and bargaining chairs at www.ctasearch.org).

What we learned during the last recession:

- Stay tuned for the latest information from CTA and in touch with your staff person frequently; otherwise, you will only hear the district’s side of the story and possibly be unprepared.
- Review your organizational capacity. In the difficult days ahead, build strength in your membership and leadership, districtwide and at the sites. That is the source of your power.
- Plan and act based on facts, not fear. Don’t rush to solve the district’s view of the problem, particularly now when the state budget has not even been adopted and passage of the HEROES act is still pending.
- Some districts will create fear among members by proposing drastic actions, such as issuing more RIF notices than are necessary, to secure concessions from our members. Resist bending to this pressure.
• Districts may attempt to implement cuts as soon as possible, before all the facts are known. Recognize efforts to quickly rush through bargaining to declare impasse and impose a Last, Best, and Final proposal (LBF). Organize well in advance to prepare for and possibly defuse this strategy.

• If your collective bargaining agreement (CBA) specifies sunshine and/or bargaining timeframes, make sure those requirements are followed by both parties. Districts may try to bypass these provisions to get to the table faster.

• Evaluate the district’s financial condition: do they want to fix the problem or exploit the crisis?

• Prepare thoroughly to respond intelligently to the district’s proposals. Assess the district’s financial position, including:
  o What is the state budget impact on the district in terms of dollars?
  o Do they have and have they provided you all current financial information (scattergrams and other budget documents)?
  o How large is the district’s reserve, and has it been growing or shrinking over the past years?
  o What reductions have already been made, if any, and what savings did they generate?
  o Are proposed cuts occurring as far away from the classroom as possible?

• The financial downturn will be temporary. Things will likely get worse before they get better, but they will get better. If concessions are necessary, they should be temporary as well. This is best achieved by including restoration language in any agreement (C4OB Bargaining Advisory: Restitution Language, 1/25/2010).

• Temporary concessions should be made in an MOU, not in the contract, with a short-term sunset date. Strongly resist district attempts to make permanent cuts.

• If furlough days are allowed by the state and you have determined they are necessary, the cuts should proportionally affect all staff. Remember, a day for certificated employees with a 185-day calendar (.54% per day) is not the same as a day for an administrator, whose work year is 220 days (.45% per day). Ensure management takes at least the same overall percentage cut.

• Many districts and locals emerged from the last recession stronger by working together. However, be wary of false promises of collaboration. In the past downturn, districts often invited chapter leaders to participate in making cuts (often through a budget committee) but left those same leaders out of decision making when funding was restored. Remember, truly good actors will be good actors even in down times, and bad actors will be bad actors even when money is flowing, so honestly assess whether you are serving as an equal partner or just there to absorb the blame.

**COVID-19 Bargaining Challenges**

In addition to dealing with funding cuts, chapters must consider COVID requirements and limitations. The following should be assessed prior to bargaining, as highlighted in recent C4OB advisories and model language related to the crisis:

• The impact of the recession and pandemic in determining bargaining priorities. What seemed minor at the beginning of this year may be very important now (e.g., the safety provisions of your contract), and what seemed plausible then may be very difficult to achieve now.
Changes in the learning environment:
  - Social Distancing and other on-site accommodations (for more details, see the section below).
  - **Contract language on distance learning** that includes proper training and support for educators, as well as limits on class sizes and preparations.
  - Language that protects proposed assignment changes, especially potential reassignment outside credentialed areas for subjects with limited or no sections (i.e., physical education and electives).

A recognition that any plan to address the pandemic will have implementation costs, including on-site learning, distance learning, or a hybrid of the two. Some additional costs may include:
  - More instructional materials to avoid student sharing.
  - Additional technology for distance learning.
  - Personal Protective Equipment.
  - Increased staffing to implement safety standards.

Include proposals related to future shelter-at-home orders in case there is another COVID flare-up, similar to language many bargained this spring:
  - Protection of members’ employment and compensation.
  - Transition time for appropriate distance learning.
  - Procedures for reopening school sites.

Health and Safety Concerns

As we return to school, staff and student safety will be at the forefront of everyone’s concerns. Chapters should review current safety clauses in their contract to assess how that language can ensure safety. Does it permit members to refuse to perform an unsafe directive or must they “obey now and grieve later”? Consult with your CTA staff person to review that language and plan strategies and options for the variety of situations we may face.

During the pandemic, district decisions and/or planned actions that would otherwise be considered outside the mandatory scope of bargaining may be within reach because of their impact on safety. Chapters should carefully evaluate district policies, procedures, and proposals for safety-related concerns. Thoughtful analysis of appropriate courses of action should be considered, including demands to bargain, cease and desist letters, and/or reliance on existing contract language. More detailed information on safety and health concerns in the COVID environment will be available in a separate C4OB advisory to be released very soon.

Learning Models in the COVID-19 Environment

Many options for learning under pandemic conditions during the coming school year have been proposed by various agencies. The common thread among these options is that they require changes in areas that are mandatory subjects of bargaining (and therefore require bargaining to implement). A few proposed models and related subjects of bargaining include:

- Staggered start times: affects work time and the workday
- Staggered school year: affects the work year and the number of days worked
• Limiting the number of students on campus: requires additional work to maintain the same or similar amount of instruction
• Distance Learning: requires significant additional preparation and equipment
• Extended school year: affects the work year and the number of days worked
• Grades TK-8 in person, 9-12 distance learning: affects the distance learning issues and workload issues noted above
• Hybrid models: affect multiple subjects of bargaining, including many, if not all, of those noted above
• Make no changes: affects safety conditions for members and students by unreasonably exposing them to health risks

These examples are not exhaustive. Each model will have some impact on a mandatory subject of bargaining. Even a district that decides to do nothing will invoke safety concerns that the chapter can and should bargain over, such as providing necessary Personal Protective Equipment (PPE) if the district has no plan to do so.

Although we await guidance from the state regarding the reopening of schools (and expect to receive it soon), we assume what we will get will be just that: guidance. We do not expect one-size-fits-all directives or mandates. More likely, the state will issue general guidance with options that permit maximum local control and/or that are heavily subject to county health department orders.

To be most effective in shaping the learning environment, chapters should gather data, such as surveys or polling information, to analyze what parents, students, and staff want and recommend. Is there demand for continued distance learning? Can we match students, grade levels, subjects, and teachers who desire to continue with distance learning? Is there overwhelming demand for PPE? How can we maximize physical distancing coupled with PPE to provide optimal safety for in-person learning? Thinking of these issues now will help construct effective bargaining proposals later.

Bargaining Implications and Advice

Chapters should carefully read all district documents related to the reopening of schools and monitor board agendas for issues that are mandatory subjects of bargaining. Remember, mandatory subjects include wages, hours, and working conditions, and many additional issues that the Public Employment Relations Board (PERB) has decided over the years are mandatory subjects. Even where an issue is a management right, if it has an impact or effect on a mandatory subject, the district has a duty to bargain in good faith.

One example in this area is Reductions in Force (RIFs), also called layoffs. If the RIF will cause an increase in class size or workload, the impact and effects of the RIF are negotiable. A layoff that increases class size when in-person learning requires physical distancing may also impact safety conditions. Changes to the student schedule that increase instructional minutes effect workload. Decisions to implement hybrid distance learning and physical learning can impact transfer policies (who teaches the distance learning class?). Think broadly and deeply about what is being proposed. When in doubt, demand to bargain. Force the district to tell you the issue is outside the scope of bargaining rather than concede the issue without question.

In addition to bargaining, chapters should exercise their right to consult on educational objectives, textbooks, and curriculum. Although the right to consult is not the same as the right to bargain, PERB has held that consultation must be meaningful. Many consult issues will also have an impact and effect on mandatory subjects of bargaining. When exercising a “get for the give” approach to bargaining concessions, locals should
consider strengthening or implementing consultation procedures language in the CBA (*C4OB Bargaining Advisory Local Control and Common Core, 7/1/2013*).

Regarding bargaining related to the budget shortfall, after determining the true need, if any, for district cuts, chapters should ensure they have proposals to get something in exchange for concessions. Generate proposals that are of little or no cost to the district and are of value to our members. Now is the time to secure language improvements that we have wanted for some time.

Some chapters may be concerned that their contract is closed for 2020-21 or have recently concluded bargaining. When the district seeks to make changes to the contract or to established past practice, it has an obligation to provide notice and an opportunity to bargain, despite the CBA being closed. In times like this, chapters will more likely experience the district requesting to bargain or to open the contract to make changes, even if it is closed. For more information on this subject, please refer to the *C4OB Bargaining Advisory: Interim Bargaining, 4/17/2018*.

**Conclusion**

We fully expect some districts to engage in the same poor behavior we experienced in the last recession. Their playbook is limited to familiar behavior: rush to impasse, move through impasse as quickly as possible, and impose changes as soon as possible. We may even find districts attempting to impose prior to the exhaustion of impasse (work with your CTA staff person, C4OB, and/or Legal staff if you and your staff person determine this may be the case).

Chapters must be well organized to engage in the strategy and tactics necessary to secure reasonable and rationale settlements, particularly during these unprecedented times. For example, during the last recession, the Capistrano Unified School District, dominated by a school board of zealots who openly bragged they were going to break the union, insisted through impasse on a permanent 10% salary reduction. The well-organized Capistrano Unified Education Association took on that fight and through unity and pressure tactics energized the membership, engaging in a three-day strike that forced the school board to accept a reasonable settlement and eventually forced the board out, along with much of the administration.

Chapters must organize as many work sites as possible now for the coming fight. This is not rhetoric or war stories; it is fact and experience. This is not just a recession; it is also a pandemic. Chapters that do not organize risk failing their students, communities, and members.

Questions about the issues discussed in this advisory should be directed to your CTA staff person.

For more information, the following advisories are available to presidents and bargaining chairs at [www.ctasearch.org](http://www.ctasearch.org):

- C4OB & Legal Advisory: Coronavirus 2019, 3/6/2020
- CTA Advisory: Distance Learning During COVID-19, 3/16/2020
- C4OB Bargaining Advisory: Interim Bargaining, 4/17/2018
- C4OB Bargaining Advisory: Local Control and Common Core, 7/1/2013
- C4OB Bargaining Advisory: Restitution Language, 1/25/2010
- C4OB Bargaining Advisory: Extraordinary State Budget Crisis, 6/18/2009

Sample language, letters, and MOUs may also be found at [www.cta.org/C4OB](http://www.cta.org/C4OB), on the C4OB COVID resource page.