

Introductions

Name: Joseph J. Perkoski (Speaker)
Attorney, Robbins Schwartz



Name: Dr. Brian O’Keeffe (Moderator)
*Assistant Superintendent for Business Operations,
Wheaton Warrenville CUSD #200*



Do Today **Right!**

 #iasboAC23



Collective Bargaining 2023

The Latest from the Bargaining
Tables



 #iasboAC23

 Do Today **Right!**

Fill in presentation here

Click here to add text

What's the Problem?

COVID-19 → the “Great Resignation”

In 2021, more than 47 million workers quit their jobs – CNBC

- Difficulties attracting and retaining employees
- Rising inflation



2023 ANNUAL CONFERENCE

Do Today Right!

#iasboAC23

Unique Problems Faced by School Districts

- As of August 2022, there are 5,301 open and unfilled school positions throughout Illinois. Source: ISBE.
 - “Lack of Qualified Applicants.”
- Increased competition from non-educational employers for individuals holding school support personnel positions.
- Collective bargaining obligations in order to attract new candidates and retain current staff.



 #iasboAC23

 Do Today **Right!**

How to Address the Staffing Shortage Problem?

- Mid-Term Bargaining
 - Wage/Benefit Adjustments
- Subcontracting
- Successor CBA Negotiations



2023 ANNUAL
CONFERENCE

Do Today Right!

 #iasboAC23



Mid-Term Bargaining Generally

- Section 10 of the Illinois Educational Labor Relations Act sets forth the scope of an educational employer’s duty to bargain:
 - “An educational employer and the exclusive representative have the authority and the duty to bargain . . . with respect to wages, hours, and other terms and conditions of employment, . . .”
- The Illinois Educational Labor Relations Board has held that an employer has a duty to mid-term bargain over issues not fully bargained over covered by the parties’ CBA, absent an express waiver of mid-term bargaining or “zipper” clause.



 #iasboAC23

 Do Today **Right!**

What Mid-Term Changes Must be Bargained?

- “Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of service, its overall budget, the organizational structure and selection of new employees and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives”



Do Today Right!



What if We Cannot Agree with the Union?

- You are not stuck. School districts have the right to propose changes to bargaining unit employees' wages or benefits during the term of the CBA provided it notifies the union and bargains in good faith to agreement or impasse. Should an impasse be reached, the employer may implement its last best offer.
- What is impasse?
 - A stalemate in negotiations process which may prevent an agreement.
 - The IELRB will review each negotiation on a case-by-case basis to determine whether impasse exists.
- Can the union strike if it does not like the implemented terms?
 - Short answer – no, not during the term of the CBA.



 #iasboAC23

 Do Today Right!

Mid-Term Bargaining Options & Strategies

- Consider market value for the position(s) in question
- Targeted wage adjustments
 - Contact union representatives to begin discussions for mid-term adjustments.
 - Explain nature of the problem, proposed adjustment, and rationale.
 - Make clear this is targeted based upon the problem and not for all union members.
 - Option – negotiate a one-time adjustment to the starting wage rate for the position category and extend the maximum wage range or top salary step.
 - Memorialize the adjustments via memorandum of agreement.

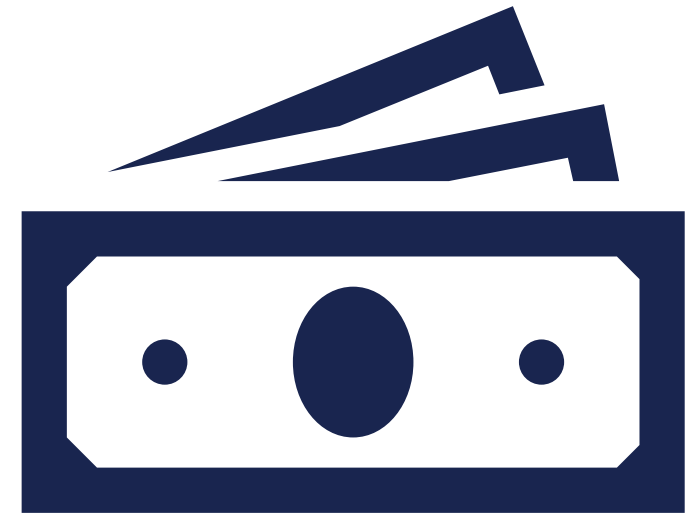


 #iasboAC23

 Do Today Right!

Mid-Term Bargaining Options & Strategies

- Signing bonuses
 - Consider the specific bonus terms.
 - Still have a bargaining obligation even though it is to be paid to new hires. Notify the union of the proposed plan and bargain upon request.
 - Be prepared for union proposal of a concurrent “retention” bonus for current staff.
 - Memorialize any plan and include a “sunset” provision.



2023 ANNUAL
CONFERENCE

Do Today Right!

Subcontracting Non-Instructional Services

- Districts may turn to third parties to provide non-instructional services, but there are both statutory and bargaining obligations when doing so.
- Section 10-22.34c of *The School Code* outlines procedural requirements for districts that contract with a third-party for non-instructional services.



2023 ANNUAL
CONFERENCE

Do Today Right!

 #iasboAC23

Subcontracting Non-Instructional Services

- A school district may enter into a contract with a third party for non-instructional services currently performed by any employee upon 90 days written notice to any affected employee.
- However, a third-party contract may not be entered into or become effective during the term of a CBA covering any employees who perform the non-instructional services.
- Thus, such a contract may only take effect upon the expiration of an existing CBA.
- Districts must also comply with other procedural requirements (e.g., bidding) before a contract can be awarded.



Do Today **Right!**

 #iasboAC23



Subcontracting Non-Instructional Services

- Emergency Exception
 - The statute contains a provision which allows a school district to enter into third-party contracts for non-instructional services currently performed by an employee or bargaining unit member for the purpose of augmenting the current workforce in an emergency situation that threatens the safety or health of the school district's students or staff.
 - In such cases, the contract may last no longer than three months.
 - Districts must also comply with all of its obligations under the IELRA before awarding emergency contracts.



 #iasboAC23

 Do Today **Right!**

Subcontracting – Labor Considerations

- Subcontracting is a mandatory subject of bargaining if members of the bargaining unit have a reasonable expectation of performing the subcontracted work.
- A school district should not subcontract any services which could be performed by union staff without negotiations unless:
 - The CBA specifically reserves the employer's right to unilaterally subcontract services; or
 - The union expressly waives its right to bargain over the subcontracting decision.



Do Today **Right!**

Subcontracting – Labor Considerations

- To satisfy bargaining obligations, a school district must:
 1. Notify the union that the district may consider subcontracting services.
 2. Meet with the union to provide an opportunity to discuss proposed decision.
 3. Provide necessary information to the union to allow it to prepare any alternative proposals.
 4. Give appropriate consideration to any union counterproposals.
 5. Memorialize any agreement to limit exposure to grievance or ULP charge.



 #iasboAC23

 Do Today **Right!**

Successor CBA Negotiations

- Planning for Bargaining
 - Reviewing comparable school district compensation packages is critical due to staffing shortages and high annual inflation rate.
 - Consider strategies to address high union wage and benefits demands given current CPI-U increases and greater number of retirements and resignations.
- Options?
 - Add or adjust range of annual CPI-U formula for salaries (*i.e.*, CPI-U “floor” and ceiling”).
 - Adjust starting salary if non-competitive with comparable school districts.
 - Consider longevity stipends to retain more senior employees.
 - Review post-retirement benefits to incentivize employees to remain with district and reward longevity.
 - Review and consider annual HSA contributions or addition of high deductible PPO/HSA plan.



 #iasboAC23

 Do Today Right!

Successor CBA Negotiations

- Planning for Bargaining
 - Share comparability data with the union – provided it supports the district's negotiation position and strategy.
 - Be prepared to respond to union contention that the district is understaffed and that employees are overworked and underpaid.



2023 ANNUAL
CONFERENCE

Do Today Right!

#iasboAC23

Successor CBA Negotiations



- Use this as an opportunity to address staffing shortages and employee turnover and retention problems if applicable to the district.
- Be armed with data to explain why targeted wage adjustments or signing bonuses are necessary for certain hard-to-fill positions.
- Review and consider any contract language changes which could address the employee staffing issue. Examples:
 - Increase internal sub compensation rate to ensure class coverage when substitutes are unavailable - but reserve administration's right to assign internal substitution if necessary.
 - Tighten personal leave restrictions if data shows high percentage of teachers taking personal leave on certain days (e.g., Fridays).

2023 ANNUAL CONFERENCE

Do Today Right!

 #iasboAC23



Successor CBA Negotiations

- **Tips and Pitfalls:**

1. Avoid long-term structural changes to contract to address current high inflation rate and staffing shortage. Example—Adding CPI-U formula with 5% ceiling if CBA has no CPI-U salary adjustment provision.
2. Reject union proposals which demand high percentage annual salary increases for each year of a multi-year contract based upon current high inflation rate.
3. Share any available data with union which shows that the employee turnover rate is lower and wages are higher compared to comparable districts.
4. Do not accept union bargaining table statements that the district will be unable to hire high quality employees unless there are significant salary adjustments or annual increases.
5. Consider other non-contractual options to address the short-term staffing shortage and high inflation (e.g., MOU, changes to current hiring practices).
6. Consider any contingent reopener provisions which could address the union's concern with potential continuation of an unusually high inflation rate.



Do Today Right!



Questions and Answers

We thank you for your time!



 #iasboAC23

 Do Today **Right!**

Presenters:

MODERATOR INFO:

Dr. Brian O’Keeffe, Asst. Supt. For Business Operations;
Wheaton Warrenville CUSD #200
(630) 682-2005; brian.okeeffe@cUSD200.org

PRESENTER INFO:

Joseph J. Perkoski, Attorney;
Robbins Schwartz
(312) 332-7760; jperkoski@robbins-schwartz.com



 #iasboAC23

 Do Today **Right!**