

NEGOTIATING WITH SCHOOL TEACHERS: ANATOMY OF A MUDDLE

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Philadelphia is a funny city. It doesn't try to be. It just is. W. C. Fields said he spent a week in Philadelphia in one night. Fred Allen said they held a contest; first prize was one week in Philadelphia; second prize was two weeks in Philadelphia. Last year Philadelphia hired a public relations firm to encourage people to visit the city. The best slogan they could come up with was: "Philadelphia Isn't As Bad as Philadelphians Say It Is." People stayed away by the thousands. Philadelphia was supposed to have a Bicentennial Celebration in 1976. It was to be an international world's fair costing at least \$200 million. By the time Philadelphia got through fussing about where it would be held and how it would be done, it was lost completely. Now we're going to celebrate the bicentennial by having three Boy Scouts light up sparklers and sing "God Bless America" in front of Independence Hall. And, of course, all of the Philadelphia sports teams are so bad as to be virtually unmentionable in mixed company.

It was almost inevitable, therefore, that when Philadelphia got involved in negotiating with school teachers it would end up in a mess. And so it has. Let me trace the saga of the 1972 school negotiations in Philadelphia. I do this not in criticism of any of the individuals involved, but because I think those negotiations illustrate a great number of the problems and pitfalls involved in all school negotiations and will set a framework for our discussion. Fortunately, I was not involved in this debacle and so can view it with an objective, though somewhat jaundiced, eye.

The Philadelphia school system embraces 280 schools, 13,000 teachers and 285,000 pupils. The projected cost of running the schools for the 1972-73 school year is \$373 million. Projected revenues for the year from local taxes are \$110 million. State subsidies will produce \$205 million and the federal government's contribution to the general fund is projected at six million. The school board, therefore, entered into negotiations ten months ago faced with a projected \$52 million deficit, even if there were no changes in the negotiated contract. Dire predictions were made that the schools would run out of money and would close in March of 1973. If this were to occur, the state would withhold some of its payments, which are based on pupil attendance, and the deficit would increase to \$68 million for the following year. The banks stated that they would not loan the school board money to meet its payroll pending receipt of the state funds and tax revenues, as they had done in prior years, unless

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the school board presented a balanced budget. Under the circumstances, this was impossible for the school board to do. In order to reduce this deficit, the school board sent its negotiators to the table with proposals which would provide for: no salary increases other than the \$600 longevity increments already built into the salary schedule; lengthening the teaching time in the high schools by 40 minutes (from four hours and five minutes); reduction of 385 teaching posts and approximately 200 non-teaching positions; and the imposition of non-teaching duties on junior and senior high school teachers, such as hall and lunchroom duty.

The negotiators for the teachers came to the table with 434 demands having a dollar value estimated at \$600 million. Included among these were demands for a 34 percent salary increase, which would have raised the starting teacher salary from \$8,900 to \$12,000, a reduction of class size to 25 pupils, additional preparation time for elementary school teachers (which would have required hiring 1,200 additional teachers), deletion of non-teaching duties for junior high school teachers (from 18 minutes per day), and an increase in the board's contribution to health and welfare benefits from \$110 per teacher per year to \$700 per year.

On this high note negotiations were begun in January 1972. They stumbled on to a deadline of September 5th with little progress, and on September 5th, which was supposed to be the first day of school, the teachers went on strike. After three weeks of strike, the union dropped 150 of its demands, retaining a mere 284, and the school board offered increases of \$330 to the teachers who were at the maximums of their salary levels. In return, the school board continued its demands for a longer school day and reduced staffs.

The mothers marched on City Hall, the students marched on City Hall, the football players and coaches marched on City Hall. Mayor Rizzo got into the act, Governor Schapp got into the act, the City Council got into the act, the newspapers got into the act and they all huffed and they puffed and nothing happened. On September 25th Community Legal Services and a lawyer named Joseph Fineman got into the act by filing suits in common pleas court to enjoin the strike. The suits sought to require the teachers to go back to work and continue negotiating, and to require the Philadelphia City Council to enact legislation providing sufficient taxing authority for the school district so that it could both meet its deficit and run the school system. This latter idea got the Mayor's attention, since he had been elected on a pledge of no increased taxes. Thus he came charging back into the arena.

On the evening of September 26th, following all day meetings in the judge's chambers, it appeared a settlement would be reached, but it blew up over a \$2 million item. The Mayor denounced the teachers' demands as selfish and unreasonable and said that an amateur like himself should stay

out of such things. Twenty-four hours later he ignored his own good advice, as he and the judge prodded the parties into a temporary solution of their problems. Under the settlement reached, the teachers returned to school under their old salary schedule, the school day was not increased and the cuts in staff were restored. The lost school days will be made up by cancelling the Christmas and Easter vacation periods. The teachers will suffer no salary loss from their strike because they will be paid for working on the former vacation days. Negotiations will continue until December 31, when the teachers can again go on strike, if they choose to do so. The expected deficit is still \$52 million. Several bills have been proposed to the state legislature to produce additional funds, but they have been defeated. As of today, no significant progress has been reported in the negotiations, and the Philadelphia newspapers have published editorials expressing the opinion that Public Law 195, giving teachers and other public employees the right to strike, might not have been such a hot idea after all.

Why have I recited this black comedy called "The Philadelphia Story" for you? I think that the Philadelphia experience is not atypical from the experiences which I and others have had in representing school boards at the bargaining table. Negotiations with school teachers contain many of the elements which are present in any labor negotiation, but also many which are frustratingly different. Negotiating with teachers is somewhat like kissing a cow—you may or may not like it, but you've got to admit that it's different. Some experienced negotiators have tried it and said "never again." I happen to enjoy the additional problems posed in school negotiations. Perhaps I am a masochist.

In my discussion I will not recite the various state statutes regulating bargaining with teachers. I am sure you can all read your own state's statutes and interpret them better than I can. Those from Ohio, of course, have no problem in this area, since the Ohio legislature, in its infinite wisdom, has not seen fit to pass any legislation authorizing or regulating negotiations between public employers and their employees. So negotiations with school teachers in Ohio continue on the "catch-as-catch-can" basis. I am also not going to delve into the philosophical questions involved in negotiating with school teachers. Rather, I will attempt to delineate what I see as the basic differences between negotiating in the private sector and negotiating with school teachers, explore some of the issues which are unique in school negotiations, and suggest some techniques which I have found helpful in those negotiations.

The primary factor which distinguishes school negotiations from private industrial negotiations is the complexity of the relationship of the interests involved. Industrial negotiations are arithmetic, one-on-one, labor versus management. School negotiations are geometric.

The employer is the school board, a group of elected or appointed officials from extremely diverse backgrounds, none of which may have prepared them to deal with negotiating collective bargaining agreements or, in fact, to deal with either the questions of educational philosophy with which they must grapple or the proper expenditure of public funds running into the hundreds of millions of dollars annually. Regardless of the size of the school system, school boards tend to be paternalistic and autocratic. They come from a tradition, stretching back into antiquity, in which the school board had virtual life-and-death control over administrators and teachers and their respective careers. In order to find an analogous situation in industry it is necessary to go back to pre-1935, prior to the passage of the National Labor Relations Act. Just as the transition from "the boss is God" was difficult for industry when the rights of collective bargaining were enforced in the early years under the NLRA, the transition is equally difficult in the public sector today. While school boards may intellectually accept the requirement that they bargain with their teachers, they have great difficulty accepting it emotionally. They still believe, and I am sure sincerely, that they know what is best for *their* school system, and that these young teachers with their demands for big salaries and a voice in the management of the schools must be kept in their place. In addition to resenting the presumptiveness of the teachers in asserting rights at the bargaining table and daring to threaten to strike, the board also is somewhat suspicious of the motives of its own superintendent and administrators. After all, these people are only glorified teachers who keep coming up with half-baked educational ideas that cost too much money. There is always the suspicion that the administrators have a tendency to be too easy on the teachers and to "side" with them when the going gets tough in order to make their own jobs easier.

As far as the administrators are concerned, they seem to be constantly confused by the balance between pleasing the board, accomplished by keeping costs down and staff discipline firm, and securing the cooperation of their teachers in advancing their concept of a proper educational program for the students. Basically all administrators are teachers at heart and they get very confused with respect to what their role should be in relation to the teachers, particularly when collective bargaining rears its vexing head. This confusion borders on schizophrenia at the level of the school principals. These poor devils are the line foremen of the school business and they really don't know where their loyalties lie, or where their personal interests are best served. They are told that they are "members of the management team," and yet they are rarely consulted on any major decisions affecting the operation of the school system. Such decisions come from the board via the superintendent. Traditionally, the salaries of principals have been pegged to the teachers' salary schedule. They get the maximum for a

teacher with a Master's Degree plus an additional percentage or dollar amount, and their fringe benefits are the same as the teachers'. Obviously, under such a system, if the teachers are successful in negotiating substantial pay raises and improved fringe benefits for themselves, the principal will also prosper. The principal's pocketbook, therefore, will tend to ally him with the teachers' bargaining demands. However, where the teachers' demands touch his authority to run *his* school the way he wants, he becomes quite incensed and demands that the negotiators strike down such impudence with an iron fist. For, you see, the principal has also traditionally been a paternalistic autocrat with tremendous power over his staff and their careers. For years he dictated hair styles, mode of dress, and the conduct and morality of his staff and his authority was rarely challenged.

At the superintendent level this dichotomy does not exist. The superintendent knows which side he is on: he is the school board's chief administrator. Yet he, too, is constantly frustrated by that group of non-professionals (in the educational sense) trying to tell him how he should run *his* school system. While he may be an absolute monarch to his staff, he must always answer to the housewives, undertakers and butchers on the school board because they sign his paycheck. When he gets thrust into a collective bargaining situation, he must constantly exercise care that the negotiated contract does not reflect both too much of his thinking as to what is proper for the school district and too little of what the school board thinks is proper.

This is also true for the chief negotiator. Brought in as an outsider, he is paid by the board, but he works most closely with the superintendent and the latter's administrators. He must negotiate a contract which not only will conform to the dollar limitations established by the board but also will procedurally allow the superintendent to run an efficient school system. Complicating his role, however, is the fact that school board members, unlike directors of most large corporations, tend to try to involve themselves in the day-to-day operation of the school system, thereby infringing on the area of administration. They also tend to have their own highly individualistic theories as to what is proper in education and what the teachers in *their* school system may do and shall get. Woe unto the negotiator who makes what appears to be an innocuous concession at the bargaining table, only to find later that, although it is satisfactory from the standpoint of the administrators, he has sacrificed a principle, minute as it might be, long held dear by a board member.

It is, in short, very difficult for the negotiator to determine the wishes of the board members (since there is rarely unanimity on every issue among the members) and to choose between the desires of the administrators and those of the board when they do not coincide. He often finds himself at the bargaining table with too few or conflicting directions on a particular

issue. As you can imagine, this adds an additional flavor of mystery and adventure to the negotiating process. This interaction of personalities on the management side is one of the factors which will either attract you to school board representation or send you screaming from it.

On the other side of the table are the teachers. While in large cities they may be represented by an attorney or other professional negotiator, too often they are not. More than likely you will be faced with a committee of terribly earnest young teachers spouting a strange jargon, who have gone through a seminar on negotiating conducted by the National Education Association (hereinafter NEA) or the American Federation of Teachers (hereinafter AFT), and who approach negotiating a contract with all the fervor and dedication of a religious crusade. They come with their formalized procedures calling for written agendas of meetings, exchanges of letters naming bargaining team members, canned NEA or AFT lists of demands, and the firm belief that all of their demands are of equal importance and must be met as written. This approach, as you may well imagine, makes for rather sticky negotiating. Firm in their conviction that they are the only ones who know how *their* school system should be run, compromise is not in them. All issues must be talked to death, not once but many times, since it is their firm expectation that you will eventually see the wisdom of their position and acquiesce in it. In short, you are not dealing with a grizzled old official of the Machinists or Teamsters who is schooled in the art of the possible, knows how hard and far to push, and knows when to let go. Your role as negotiator, therefore, also involves an educational aspect. You must not only educate your own people in the requirements and procedures of bargaining, but you must also, as subtly as possible, educate the other side's negotiators in the performance of their roles.

In the background, but very much a factor in the negotiations, are the invisible but often vocal other parties in interest — the taxpayers, the students, and the minority groups. They are not directly represented at the bargaining table, yet their interests are very directly affected by the results of the negotiations. Clearly, if a contract is negotiated which requires the expenditure of great amounts of additional funds, the taxpayers will be called upon to provide those funds. Many of the items concerning staffing and instructional policy will directly affect the students. To the extent that teacher aides or teaching specialists are increased or decreased, the education of the underprivileged minority groups will be enriched or depleted.

I am not suggesting that these groups should be directly represented at the bargaining table, since additional voices would only further complicate an already difficult bargaining process; but I do have some concern as to who really represents the interests of these groups in the bargaining. Both sides, of course, profess to have as their paramount goal "quality education

for the boys and girls," but each defines the means by which it is to be achieved in *their* school system in drastically different terms. When the two sides have finally hammered out an agreement, it must be one which the taxpayers will support and which will, in fact, provide a higher level of education for all of the students of the system, or the bargaining process will have failed. Of course, no such concern for third parties exists in private negotiating. Industry does not have to seek the approval of taxpayers to fund its agreements, and it does not have to concern itself with the future abilities of a group of children to cope with society and its demands.

In the area of finance the public negotiator is in an entirely different ballgame than the private negotiator. When a corporation bargains with its employees, it attempts to set financial limits which will hopefully allow it to get a contract agreement and beyond which it will not yield without a strike. It carefully calculates the cost of a strike, assesses alternative methods of supplying its product to its customers and reviews its production and pricing systems to determine how it can recoup the cost of its settlement. The last thing in the world which it wishes to profess is inability to pay, since that horrendous concept will require it to open its books to the union and disclose its most closely protected corporate fiscal secrets.

In negotiating for a public employer, the entire negotiation is conducted on the basis of ability or inability to pay. The sources of revenue to a school board are public knowledge and the amounts available can be calculated by both sides. There is no product whose price can be raised or which can be produced in greater volume to increase revenue. There are no stockholders for whom funds have to be withheld, and no profit-sharing or stock bonuses which have to be funded to attract and compensate executives. No one can make off with any of the money or spend it on fast blondes and slow horses. It is all accountable. But it is a limited amount. Given this established, limited amount of funds the school board and its superintendent must fashion a budget which, in their opinions, buys the best educational program for the dollars available. Since 85 to 90 percent of the school operating budget is spent for personnel, there is not a great amount of money available for the other needs of the school system. If the sides once agree on the total amount of money which is available, and sometimes such agreement is difficult to achieve, then they are really engaged in a discussion of "ordering priorities." This is educational jargon which translates into "Why are you spending money for building maintenance when you could be giving it to us in salary increases?"

One of the great difficulties in school bargaining is the fact that the school board and superintendent unilaterally establish the budget, sometimes at the same time as, or prior to, their negotiations with their teachers. Both sides come to the table, therefore, faced with a budget which has al-

ready designated an amount for staff salaries and related personnel expenditures. Bargaining by the teachers then can take the form of:

- A. Slicing up the pie established by the board into salary increases, fringe benefits and other personnel costs; or
- B. Throwing the pie away and demanding that the board provide a larger pie to slice.

Because of an inherent distrust of a budget-making procedure in which they are not involved, the teachers normally tend to follow plan B. They demand that money be taken from other areas of the budget and be used for salary increases—the “reordering of priorities” approach, or they demand that the board come up with more money than the budget states the board has access to. If the latter approach is followed to a successful conclusion, the board, as in Philadelphia, will be faced with a budget deficit. Faced with such a deficit, the board has three alternatives, all of which are equally unpalatable:

- A. Closing the schools early;
- B. Increasing local property taxes; or
- C. Praying for a handout from the state or federal government.

The disadvantages of plan A are obvious. Not only are the students deprived of educational days, but the school board's financial problem will be further aggravated by the loss of state foundation revenue due to the lesser number of pupil days. Increasing local property taxes is extremely unpopular with local taxpayers, particularly if the taxpayers, rightly or wrongly, feel their taxes are being increased because the board has knuckled under to the demands of those “long-haired, irreverent young kids” teaching in the local school system. In a state such as Ohio, where school taxes cannot be increased without the affirmative vote of the taxpayers, the sledding is even tougher. A school board which finds it has negotiated a contract which it can't afford, and then finds its proposed tax levy defeated by the voters, is in a very difficult bind. It must then hope that the state legislature will pass some sort of emergency legislation which will, once again, bail out the state's bankrupt school districts, or that some boon will be forthcoming from the federal government. Even if the Supreme Court should decide in *Rodriguez v. San Antonio Independent School District*¹ that the present system of financing local school districts primarily through local property taxes must be revamped to provide equality of educational opportunity throughout a state, the basic problem facing the school negotiator will remain—he will still be required to attempt to meet the financial demands made by the teachers from a limited financial source.

Assuming there is some money available, how do you negotiate a

¹ 337 F. Supp. 280 (W.D. Texas 1971), *prob. juris. noted* 40 U.S.L.W. 2398 (U.S. April 4, 1972) (No. 71-1332).

school contract? Let's follow the procedure from the designation of the appropriate bargaining unit to the completed contract. Twenty-nine states have statutes governing bargaining with public employees. Most of these have established a procedure for the certification of a bargaining unit and, by some definition or another, they exclude supervisors from the teacher bargaining unit. Whether under a statutory scheme or, as in Ohio, in the absence of a statute, I believe the single most important unit question for school boards is the status of the principal. In my view, it is mandatory that the principal *not* be a member of the teacher bargaining unit. The principal is the first line supervisor in the school, and he is the representative of the school board and superintendent in dealing with the teaching staff. He cannot be compromised in his role by being a member of the teachers' bargaining unit. Many principals are confused as to their status because of their closeness to the teaching staff, and because of their traditional membership in teacher organizations such as the NEA. Some school systems, early in the trend toward negotiated teacher contracts, allowed their principals to be members of the teacher bargaining units. I'm sure they have lived to regret that decision. I cannot imagine the schools being properly administered where the principal is in the same union as his staff. The handling of teacher grievances alone would be a mess under such a system. Since 80 to 90 percent of all grievances involve a decision of the immediate supervisor of the grievant, how could a principal defend his own decision, which provoked the grievance, and then enforce the contract against a fellow bargaining unit member? Such an arrangement is clearly untenable.

As far as other staff members are concerned, I think their inclusion or exclusion should depend upon their actual role as supervisors. Department leaders and curriculum leaders, if they really do supervise teachers and implement board policy, should probably be excluded. School nurses are ordinarily included in the teacher unit but may have a separate salary schedule. Teacher aides are non-professionals and yet they work very closely with the teachers. In most cases, they are not included in the teacher unit. In Ohio, they are usually represented, with the other non-teaching employees, by the Ohio Association of Public School Employees (hereinafter OAPSE). In some areas, these employees are members of the American Federation of State, County and Municipal Employees (hereinafter AFSCME). Since the number of aides employed and their utilization are matters which directly affect the teachers' working conditions, the teachers would like to bargain about the aides. Obviously, where the aides are represented in a separate bargaining unit this causes some confusion. Three years ago in Columbus it was necessary to reduce the number of aides by some 200 positions in order to recoup \$500,000 per year to fund the contract that had been negotiated. Since the non-teaching employees felt that

the lion's share of the negotiated increases had gone to the teachers, they resented this depletion of their ranks in order to fund those increases. OAPSE brought suit and it reached the Ohio Supreme Court before the cuts were finally held to be legal.

School secretaries usually fall in the same category as other non-professional employees and are not included in the teacher bargaining unit. Coaches, since they are teachers, are included in the teacher bargaining unit, but I find they very often constitute a splinter group within the unit. Since their demands for increased extra-curricular pay take away from the funds available for the rest of the staff in salary increases, there is sometimes a noticeable pulling and tugging on the teachers' bargaining team when the subject of coaches' salaries is raised. In fact, the coaches will often send a representative of their group into the bargaining sessions, even though he is not a regular member of the teachers' bargaining team. They are usually quite muscular, forceful young men, and I have never seen any successful resistance by the other members of the teachers' group to this intrusion.

Bus drivers, janitors, cafeteria employees and maintenance men are usually represented by OAPSE or AFSCME in bargaining units separate from the teachers. As with any situation involving multiple bargaining units, each unit claims the other is being favored in the negotiations and is receiving too great a slice of the pie. When the contracts with the teachers and non-teaching employees are being negotiated at the same time, as they usually are, the school board negotiator has the additional task of trying to assure both groups that they are receiving an equitable portion of the available funds. He must also avoid being whip-sawed by pre-arranged complementary demands, particularly in the area of fringe benefits. The "You get the life insurance increase while we get the hospitalization increase, baby" approach by the two groups can put a school board negotiator in a very awkward bind. Each group will, of course, be willing to provide the board's negotiator with reams of statistical data as to why their group is woefully underpaid, and with cogent reasons as to why the available funds should go to "us" and not to "them." This competition for the available buck is but another factor in making the school board negotiator's job a garden of delight.

Once the bargaining unit is decided upon, the main event begins. If you have never been involved in a school negotiation, you will probably be amazed at the degree of formality and feverish attention to ritual which are espoused by both the teachers' negotiators, particularly if they are the local teachers, and by the school board and administrators. I attribute this to the fact that both groups have attended seminars put on by the education associations, school board associations and administrators associations, at which people who have never negotiated a labor agreement tell them

how to negotiate one. From these sessions they return with their heads filled with such sugar plums as:

"If the school board has five members on its bargaining team, then the teachers can only have five."

"No item may be discussed during a negotiating session unless it is set forth on a written agenda previously agreed to by the respective chairmen of the negotiating teams."

"There may be a limited number of observers for each side in addition to the team members, but such observers may not speak while in the meeting."

"All items agreed to must be reduced to writing, initialled by the captains of the respective teams, and then approved by some governing committee which meets somewhere else and which does not know what went on at the negotiating table."

Needless to say, this insistence on a Kabuki-type of formalized negotiating, plus the school boards' traditional insistence that negotiations proceed only after the close of the school day, makes for very slow progress in the initial stages. It is only when the negotiators are able to strip off the straitjacket of these inhibiting rituals, roll up their sleeves and really address themselves to the issues at hand that any substantial progress occurs.

Who should do the negotiating for the school district? What should be the make-up of the school board's, if you'll pardon the expression, "team?" I believe a school board is best represented by a professional negotiator and preferably an attorney. I say this not merely as an exercise in enlightened self-interest, but because I sincerely believe it. The negotiating process in the public sector requires someone with the same peculiar temperament and qualifications to make it work that are required in the private sector. As Mayor Rizzo said, it is no role for an amateur. I believe a negotiator with experience in the private sector can more successfully make the transition to public sector bargaining, and achieve a better result, than can the amateur with no background in labor relations who assays the role of negotiator after attending one or more seminars in bargaining.

Some school districts have used their school solicitors as their negotiators on the theory, presumably, that since they are lawyers, they are qualified to negotiate contracts. In my opinion, the average school solicitor can be of great assistance to the board's negotiator, but, unless he has had previous collective bargaining experience, he should not *be* the board's negotiator. The school solicitor can be of great assistance in interpreting the many statutes which relate to school finance and school personnel policies, and which provide legal inhibitions in many of the areas to be negotiated. The school solicitor's background in this specialized area of the law is in-

valuable in steering the board's negotiator away from pitfalls into which his experience in the private sector might lead him. For example, I decided on one occasion that a demand that the board pay the difference between a teacher's military pay and his regular teaching salary while he was serving on temporary active duty with the National Guard was perfectly reasonable, only to be reminded that, under the applicable statute, a public employee could only be paid such monetary difference for a maximum of 15 days and that, therefore, the proposal was illegal. This is the type of item where an experienced school solicitor, with his background in the varied and peculiar statutory provisions relating to school employees, can be of immense assistance to the negotiator. But he should not be at the bargaining table.

It is also my firm opinion that members of the board of education should not be at the bargaining table. These wonderful people, who give so much of themselves without pay and normally at the price of an unbelievable amount of criticism and abuse from the people they best serve, just are not qualified to be bargainers. They normally have no background to qualify them. In addition, they are too emotionally involved in their school systems to make the objective and dispassionate decisions which are the stock in trade of a professional negotiator. As political figures, they are too sensitive to the heat which a clever group of school teachers can place upon them at the table to make the tough decisions which have to be made, or to agree to the compromises which are necessary to make a negotiation succeed. They are too much in the role of the corporate president who should be saved from emotional involvement in the rough-and-tumble of negotiations and withheld for the final, dispassionate decisions which mean the difference between success and failure in negotiating. Unfortunately, many school board members feel negotiations cannot be successfully completed without their personal involvement; since they fear public criticism if they do not exhibit their personal concern in this vital area. I would advise you to firmly state that board members should not be direct parties to the negotiations, and, if your advice is not taken in this regard, I would suggest you withdraw from the situation. While the board, as your client, must be kept advised as to the progress of negotiations, it is my opinion that a board member at the bargaining table is too vulnerable and will tend to destroy your effectiveness as chief negotiator. Keep them in that mysterious back room of ultimate decisions and they can serve you very effectively.

I feel the same way about the superintendent of schools. While he should be your chief source of direction as to the management and procedural provisions which should be included in the contract, he should not be at the bargaining table. He again, as the board members, brings too heavy an emotional charge to the negotiating atmosphere. Superintendents have a tendency to strike the pose of the autocratic despot—"I say it's so

and therefore it is, by God"—or the benevolent despot—"Take care of my people, they're good folks". Either pose at the bargaining table can be a real obstacle to a reasonable and proper bargain. He is better kept in the back room as a wise and powerful friend to the chief negotiator and a buffer with the board.

Principals can also be an excellent source of information, and their advice should be sought concerning those items which deal with the daily operation of the schools. After all, they will be the people primarily responsible for making the contract work. If you harness them with unworkable or unduly restrictive contract provisions, they will just not be able to do an effective job of managing their schools. However, I do not believe they should be at the bargaining table, at least, not until you are sure that they have resolved in their minds that they are part of management. Among those who should also not be parties to the negotiation process are mayors, city councilmen, judges and newspaper reporters. The extent to which any or all of these well-meaning but unqualified souls get themselves involved in school negotiations is the measure of the failure of the negotiating process.

Who should be involved in the negotiations for the school board in addition to the chief negotiator? My suggestion is that what you need with you at the table is a school administrator with a strong background in the educational and financial problems of the district. If there is no one person who can cover both areas, take two administrators in with you. If they can speak well and keep from giving the place away to the teachers, let them talk at the table. If not, have them feed you the information and keep extremely quiet at the table themselves. While I don't believe educators should make the mistake of fancying themselves as negotiators, I don't think a negotiator, unless he's had an awful lot of experience in the field, and perhaps not even then, should make the mistake of fancying himself as an educator. The intricacies and histories of school districts are too disparate for any negotiator to walk in and assume the mantle of expert. A really sharp administrator who has a teaching background and some understanding of the financing and workings of the school district can be of inestimable value to the school board's negotiator. I have always had such a person at my disposal in school negotiations and I wish you similar good fortune.

In order to guard against a gap between what the administrators say should happen to *their* school system and what the school board might want for *their* school system, I would suggest regular reports to the school board concerning the progress of negotiations, either directly or through a liaison committee of board members. Obviously, such reports should not be made at public meetings of the board.

Once you have selected your team, how do you prepare for school ne-

gotiations? The first thing to do, of course, is to have an analysis made of comparable school districts. What do their salary schedules look like, what fringe benefits do they offer, what types of leaves do they give, and what does their extracurricular pay schedule look like? Have this charted and also chart their tax rates and revenues and dollars of "effort" per pupil. Next, take a good, hard look at the school district's budget. Have it explained to you by a school administrator who really understands it. Ask searching questions concerning the projections of revenue and expenditures. Test the answers against previous years. If there are changes or discrepancies, find out why. If there is water in the budget, find out where it is and why it is. You cannot speak with assurance to the teachers' negotiators concerning the scarcity of funds for salary increases unless you are assured that there is, in fact, a scarcity and not just a smoke-screen for some pet project of the board or superintendent.

Next, have someone cost-out the economic proposals of the teachers. If you are involved in a first negotiation you may be very surprised and perhaps appalled at the teachers' lack of knowledge of the cost of their salary schedule and their fringe benefits. Since most school systems are on a single track salary schedule (in Ohio it is required by statute), the best way to cost a salary proposal is to establish a "staff profile." This is simply a chart showing where the teachers in the system are in terms of degrees and years of experience as of a certain date, and how many teachers are at each salary level. If the parties can agree on a profile which both will use in costing-out salary proposals, one area of confusion in your negotiations can be resolved. Teacher salary schedules are made up of degree achievement—Bachelors; Bachelors plus a number of graduate credits; Masters; Masters plus a number of graduate credits; and Ph.D.—and years of teaching. They set up a system of progression with an incremental increase per year up to an established maximum. Teachers, unlike other employees who must negotiate any increase which they achieve, have a built-in annual increase based on longevity and only negotiate whatever increase they will get *above* this increment by changes in the salary schedule. A school board, therefore, is faced each year with increased salary costs, even in the absence of a negotiated increase, and must make allowance for such increase before negotiating. In order to cost-out the salary proposal of the teachers, it is necessary to assume that the staff make-up for the projected contract year will be approximately the same as the staff on a date certain in the negotiation year and to project all salary data on that basis. By doing this, it is possible to chart, with a fair degree of accuracy, the cost of any salary proposal made by the teachers. Increases in starting salaries, changes in increments and decreases in the number of years to maximum in any degree category, can be applied to the staff profile and a fairly accurate appraisal of their costs in the contract year can be

established. Absent this device, the cost calculation can become a hopeless muddle.

The costs of fringe benefits are calculated in school negotiations as in any other negotiation. Contributions to hospital and surgical insurance, the purchase of life insurance, and contributions to school retirement systems are at established rates and should be easily calculated.

One of the deceptive cost areas for the uninitiated bargainer is the concept of reduced class size. Everyone is attracted by the idea of Johnny being in a class of smaller size so that, presumably, Miss Smith, his teacher, will be able to spend more individual attention on his problems. Miss Smith thinks this is a great idea, too, since the fewer Johnnies she has in her class, the easier the burden on her will be. What is too easily lost sight of is the tremendous cost implication of reduced class sizes. If you reduce class size by a contract restriction from 30 to 25, it means that for each former five classes you must hire another teacher at eight to ten thousand dollars and provide additional classroom space for the new classes. The costs of such changes can balloon perilously and eat up an entire school budget quite quickly. While smaller classes may have an educational value (although there are arguments pro and con), no one should be deceived concerning their cost, especially not the board's chief negotiator. Length of the teacher working day, length of the school year and pay for extra duties are additional cost items which must be dealt with.

Other cost areas which are involved in school negotiations to a much greater degree than private negotiations concern various leaves of absence. Teachers are provided by statute with sick leave days. The statutes normally provide for a minimum number of days which the teachers accrue each year and the total number which they may accumulate. Anything above the minimum number of allowable accumulated days is usually subject to negotiation. Sabbatical leaves are also usually specified by statute and the minimum conditions and limitations under which they may be granted are spelled out. Again, the board is usually free to negotiate more liberal terms with their teachers. Other leaves, such as funeral, personal, and religious leave days are not usually specified by statute, but are negotiable. The costs of all of these paid leaves are calculated by determining the cost of hiring substitute teachers to cover for the teachers on leave.

One type of leave which is currently in hot dispute in school negotiations is maternity leave. School boards seem to have a traditional view that their teachers, even married ones, should not become pregnant and that, if they do, they should be punished for their folly or carelessness. At one time, teachers who became pregnant were, in effect, terminated and had to apply for new employment when they were in shape to do so. This approach was succeeded by policies which required a teacher to take a leave of absence—unpaid, of course—at a time when she would not embarrass her

students by her unfortunate condition, usually the fifth month of pregnancy, and would not allow her return to teaching until she had gotten all of that business cleared up. The regulations of the Equal Employment Opportunity Commission relating to treating pregnancy as any other illness or injury have caused a considerable change in this approach. Most school boards, however reluctantly, have changed their policies, either voluntarily or through negotiations, to remove the mandatory departure and return dates for maternity from their policies, and to allow them to be treated as medical problems by the teacher and her doctor. What effect this will have on the boys and girls, heaven only knows. To date, no one has been bold enough to suggest that maternity leave be converted to a paid leave and sick leave days be allowed to be used, although I suspect we are all only one or two lawsuits away from this conclusion.

In the non-economic areas of bargaining, there are many issues peculiar to a school system which are not found in private negotiations. They relate to management rights such as the assignment of teachers to non-teaching duties—supervision of halls, study halls and cafeterias; the requirement that teachers attend after-school events such as PTA meetings; the right or non-right of teachers to leave the school building during non-duty periods; and similar ground rules which generally establish the relationship between the teacher and his principal. It is also possible to become involved in heated discussions concerning personal and academic freedom of teachers, evaluation of teachers' performance and the handling of disruptive students.

One of the big issues in teacher negotiations is the establishment of a grievance and arbitration system. Once the negotiator can convince his client that grievance and arbitration procedures are not un-American and do not constitute an illegal delegation of legislative authority to some wild-eyed liberal stranger, the negotiated result sounds pretty much like any other grievance procedure in the private sector. In my experience, once everyone gets over their awe or fear of the procedure, it works nearly as it does in the private sector and provides a means of problem-solving without open warfare. Principals and other school administrators have a tendency to be a little sensitive to criticism by their staffs and, therefore, are not delighted by the idea of teachers having the right to grieve their conduct. However, they usually adjust to it just about the time the teachers get over filing grievances for any and all reasons, just for the sheer joy of it. In Pennsylvania, the statute covering negotiations with public employees requires that the contract contain a provision for binding arbitration of grievances.

Assuming you have some money available, you are able to cut a deal on the salaries and fringes, and you reach agreement on maternity leave and a grievance procedure, all you have to do is write your contract in fairly comprehensible language, get it signed and ratified and sit back for the

next time. But suppose, heaven forbid, the generosity of your offers and the force of your personality have not overwhelmed the teachers and you find yourself at impasse; what happens now? Of the 29 states having public employee bargaining acts, only two, Hawaii and Pennsylvania, specifically recognize the right of public employees to strike; and Pennsylvania hedges this right with mediation and fact-finding procedures before the right to strike comes to fruition. Other state statutes range from Ohio, with its stringent Ferguson Act, which forbids strikes by public employees and establishes severe penalties for its violation, to New York's Taylor Act, which provides machinery for preventing strikes, but also penalties if they occur. Whatever the statutory procedure or lack of it, strikes by teachers do occur, and they occur with very serious consequences to the students and their parents. I firmly believe school teachers should not have the right to strike. Unlike Theodore Kheel, Mayor Lindsay's expert for all seasons, I don't think the right to strike is the *sine qua non* for effective bargaining in the public sector. I don't find the right to strike in the Bible or the Constitution or engraved on any stone tablets. I think effective bargaining can take place without it. I think Pennsylvania wishes it had never had the bright idea of handing the right to strike to its teachers, because they have certainly seized upon it and made a shambles of negotiations, as in the Philadelphia situation. A school system cannot really tolerate a strike, and its taxpayers should not be required to bear the burden, financially or emotionally, of a strike which deprives their children of the education which they are being called upon to finance.

What are the alternatives? The critics of punitive statutes such as the Ferguson Act say that they are so harsh that the courts will not enforce them and, therefore, they become meaningless. (Parenthetically, let me say that several years ago there was a movement in some quarters to strengthen the Ferguson Act. My reaction at that time was that the only way it could be strengthened would be to provide capital punishment for violations of it.) In any event, it is valid criticism to say that merely proscribing strikes by school employees without providing a procedure by which their legitimate demands might be met in the absence of a strike is short-sighted and punitive. On the other hand, it appears that some enforceable restriction on strikes is required. It must be observed that the New York teachers, who have access to the procedures of the Taylor Act and who are also subject to the punitive provisions of that Act, have seen fit to settle their differences with the board of education without a strike ever since Mr. Shanker spent some time in the local lockup and the organization got socked substantially in its pocketbook.

What is a proper procedure for settling an impasse in public bargaining? It seems to me that mediation is certainly appropriate. While it doesn't guarantee settlement, the intervention of a skilled mediator may

certainly assist the parties in many instances to focus on the issues and find solutions to them. How about fact-finding? This procedure is quite popular in public negotiations. It consists simply of each side presenting their positions and arguments to a panel of outsiders, preferably prominent citizens in the community, who have an interest in the educational system and who will make recommendations for solutions of the issues in dispute. While this device can also be helpful in resolving the problems involved, the recommendations of the fact-finders are not binding and may be ignored by either or both parties. The third alternative to an unwanted strike is binding arbitration. While there are dozens of reasons, some valid and some fallacious, put forth by the opponents of interest arbitration, I believe it is the only "viable alternative"—as my jargon friends would describe it—to a strike. Whatever its shortcomings, it is the only method by which the conflicting views of the parties can be tested before an objective tribunal and a result reached which will be binding on both parties. If the parties have valid reasons for their positions and financial data to support them, they should have no fear of exposing those positions to a tribunal which will fashion a solution, properly recognizing the valid interests of the teachers, the administrators, the school board, the students and the taxpayers, without the necessity of a strike destructive of the best interests of all of the groups involved. If we do not move in this direction, I am afraid the Philadelphia fiasco and others similar to it will become the rule and not the regrettable exception in school bargaining.

Faced with the absence of a statutory procedure in Ohio, I established in 1969, through bargaining with the Columbus Education Association, a three-step procedure involving negotiation, fact-finding, and, as a last alternative, binding arbitration. The result was a contract fair to both sides. I believe that the existence of binding arbitration, coupled with an effective inhibition against strikes, will encourage effective collective bargaining rather than inhibiting it. Although we were criticized in some quarters for committing the school board to the possibility of binding arbitration, I feel its availability has been a major factor in Columbus' ability to secure equitable contract agreements with its teachers while remaining the only major school district in Ohio which has not had a teachers' strike. I would recommend it as an approach to be used in the absence of a statutory procedure, and I would recommend its consideration by the Ohio legislature if they ever seriously address themselves to formulating legislation in this area.

In conclusion, although I may have made some statements critical of all of the parties involved in school negotiations, I have done so primarily to exaggerate and dramatize the problems inherent in school bargaining. In truth, I am constantly amazed at the dedication and sense of mission which all of the people involved in the educational process possess. The

members of the school board with whom I have worked, whatever their backgrounds, have expended overwhelming amounts of time and energy, without pay and under almost constant criticism, to insure the children of their school districts the best education possible. Similarly, the administrators with whom I have been fortunate enough to work have spent untold hours in what has to be a labor of love to make their school system the best possible. Last but not least are the teachers. Neive, sometimes arrogant, occasionally aggravating in their presumption of infallibility, the negotiators for the teacher groups who have faced me across the bargaining table have all convinced me of their sincerity in seeking, through negotiations, a school system and educational program which will, in fact, provide a "quality education for the boys and girls."

It is rare that a labor negotiator gets the opportunity to deal with problems which transcend mere dollars and cents. In school negotiations you will have the opportunity and responsibility of acting as the trustee of public funds, the challenge of dealing with extremely diverse interests in highly complicated financial and managerial problems, and the hope that, even in some small way, you have made a contribution to one of the most important endeavors of our nation—the education of its youth. If the opportunity is presented to you, I hope you will seize upon it and bring to it all of your skills and abilities as a lawyer and professional negotiator.*

* [Ed. note]. In turning down the recommendations of a state appointed factfinder, the Philadelphia teachers went on strike on January 8, 1973. As of press date the strike is still unresolved.

