



New challenges and opportunities to bargaining: Adding AB 2756 into the process

Introduction

In response to the Oakland and Vallejo Unified bankruptcies, the Legislature and Governor adopted new legislation in 2004 that significantly expands AB 1200 fiscal oversight provisions. AB 2756 (Chapter 52 of Ed. Code, 2004) contains several provisions that will impact bargaining processes for school districts and how county offices provide oversight over those processes. The bill's provisions are applicable to all collective bargaining agreements starting in 2004-05.

AB 2756 significantly amends the AB 1200 process and broadens the authority of County Offices of Education (COEs) and the state. This paper will focus solely on the collective bargaining aspects of the new law. For additional information on the statute's other provisions, we recommend districts contact their COEs.*

AB 2756 and collective bargaining

Statute now requires all school district superintendents and chief business officials (CBOs) to certify in writing that the costs incurred under any collective bargaining agreement can be met during the term of the agreement. If the contract is adopted, any budget revisions necessary to afford the contract "shall" be adopted by the next interim report. If a district fails to adopt budget revisions necessary to meet the cost of the agreement, the county office "shall" issue a qualified or negative certification at the subsequent interim report. The certification shall itemize necessary budget revisions and be provided as a public document prior to final adoption by the school board.

New challenges

One could argue that fiscal affordability was always an underlying element of collective bargaining, but never front and center in the bargaining process. AB 2756 changes that perception. The statute interjects fiscal oversight directly into the collective bargaining process. All parties – labor and management - will have to recognize this new provision. In addition, budget revisions to fund the agreement must be itemized for public and county review. The certification or non-certification of the agreement and any necessary budget revisions must be available to the public prior to the governing board taking action on the proposed agreement. How a district will afford a new bargaining agreement will be open for all to see and for county offices to review.

New opportunities

Although new statutes often cause consternation among school districts, AB 2756 could become a tool to strengthen impasse procedures and lead to more reliable fact-finding reports. To understand this, we provide a critique of the current impasse procedures in Government Code Section 3548 et seq.

Critique of Current Impasse Procedures: When mediation is not successful, and the parties are certified for fact-finding, there is an expectation on the part of citizens and the parties themselves that an objective, non-political procedure will resolve the dispute easily and unanimously. Unfortunately, this is not always the case.

Several things can happen as a result of fact-finding. First, the panel itself, or the chair of the panel alone practices a form of mediation in an attempt to solve the dispute short of completing the fact-finding process and issuing a report. Second, the panel comes to unanimous agreement and signs a report making recommendations to the governing board that may result in a settlement. Third, the most common and problematical outcome, is that the representative for the district makes one set of recommendations, and the representative for the union makes a different set of recommendations. The chair of the panel then must break the tie and vote for one side or the other, or make a completely separate compromise set of recommendations. When such a report and recommendations go to the governing board and all parties at a public meeting one must question the term, "fact-finding." In reality, this step of the impasse procedures is nothing more than another element of negotiations.

If there is a "winning side" in the report, that party claims the facts were true, while the "losing side" claims they were not facts at all, but constructed arguments. In far too many cases, the chair's recommendations "cut the baby in half." This sometimes fosters the exertion of political pressure on the governing board to either give in to the union side, or to defend the district to the limit. In either case, the dispute is not resolved objectively or satisfactorily.

Adding AB 2756 into the Process: The above provision of AB 2756 provides a new consideration to current impasse procedures and can be used as a valuable tool in the bargaining process. Until, and if, a 7th criterion is added to the panel's list, districts are advised to thoroughly calculate the costs of all proposed collective bargaining agreements and provide that information to any fact-finding panel prior to the issuance of a report and recommendations. If a majority of the panel disagrees with the information, the district's representative on the panel must file a complete minority opinion/report that supports the district's position. When the report is presented to the governing board, and the public, complete information regarding the requirements of AB 2756 and the consequences of not meeting those requirements should be explained completely.

We also recommend that during the collection of information for the panel, special care should be taken to reflect the CPI of the local area, not the entire state, or the nation. Cost of living changes vary considerably according to specific areas. In providing comparability, one must be careful to use districts that are indeed comparable. For instance, the base revenue limits of elementary, unified, and high school districts are different and should not be mixed. In addition, within a specific type of district, for instance unified districts, the base revenue limits of any set of districts being compared can and do vary.

Finally, a review of past fact-finding reports almost never supports a district's contention that they do not have the ability to pay. The unions and the panel chairs are seldom sympathetic to districts' budget decisions. Unions often say that districts could cut programs and services if they wanted to do so.

Governing boards would be well advised to set firm bargaining policies in place prior to negotiations. Such policies should reflect the governing board's goals regarding programs, levels of service, and fairness to employees not represented by the union in question.

Helpful hints and suggestions

To maximize potential opportunities from AB 2756, we recommend the following:

1. Make all attempts not to bring forward a contract that is not positively certified by the district superintendent and CBO. We strongly encourage both individuals to work closely with one another and that the CBO either be included on the management bargaining team or as an advisor to the team.
2. Communicate often to your COE. It is imperative that districts and COEs maintain open and constant communication to avoid surprises and/or unnecessary disagreements.
3. Check and recheck budget numbers and assumptions. Certification will most likely involve an element of risk. That will be unavoidable. But the risk factor is diminished if districts' budgets are up-to-date and correct. We recommend districts make note of their assumptions on the certification statement. This will provide some element of professional "coverage" should assumptions not come to fruition.
4. Certification of an agreement is for the entire contract, not just the compensation components. Always consider the affordability of the entire contract.

Frequently asked questions

The following are several frequently asked questions regarding AB 2756.

Can a Governing Board approve a contract agreement without certification of the Superintendent and CBO?

We believe the answer is yes, so long as the superintendent and CBO (together or separate) have issued their own positive or negative certification on the agreement. AB 2756 requires that superintendents and CBOs first take action to certify if the agreement is fiscally good or bad for the district prior to the agreement going to the board. Governing boards retain their constitutional authority to ratify bargaining agreements even if the superintendent and/or CBO issue a negative declaration on the agreement. AB 2756 just requires that the superintendent and CBO certify one way or the other prior to the agreement going to the board for final action. We note, however, that a board's approval of an agreement not positively certified by both the superintendent and CBO will trigger a "red flag" for the county office. The county office will at that point conduct a thorough analysis as to the affordability of the agreement and take action pursuant to the statute.

What if the Superintendent and CBO disagree? Can the board approve a contract agreement with just one certification?

The answer to this question is similar to the one above. The board retains responsibility and authority over collective bargaining agreements. A board can approve an agreement without the joint positive certification of either party. We strongly recommend that the superintendent and CBO make all attempts to avoid this scenario. A disagreement of

this nature will likely create tension in the professional relationship between both parties. In the post-AB 2756 world it is imperative that the superintendent, CBO, and other management parties involved in the negotiation process work in concert with one another.

Could a positive certification be denied by the superintendent after the chief negotiator tentatively agrees to the new contract?

It could be determined that such an action would be deemed an unfair labor practice by the state Public Employment Relations Board (PERB). To date, no cases have been heard, nor any decision been made by PERB on this matter. Nevertheless, no district should want to be the first test case. We strongly recommend that districts avoid this situation. Any tentative agreement should be provisional and subject to certification by the superintendent and CBO. As with all negotiation processes, all affected parties within the management realm should be fully informed and up-to-date.

* FCMAT has developed an overview summarizing AB 2756. See <http://www.fcmat.org/>

About the paper: This paper was developed jointly by the Association of California School Administrators (ACSA) and the School Employers Association of California (SEAC). Additional assistance and insight was provided by Ken Hall and Ron Bennett at School Services of California, Inc. Additional copies of this paper are available at either www.acsa.org or www.seacal.org. For questions or additional information, please contact either association:

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