

# Working for Change:

*A Guide for Speech-Language  
Pathologists and Audiologists in Schools*



AMERICAN  
SPEECH-LANGUAGE-  
HEARING  
ASSOCIATION

# General Information

*Working for Change: A Guide for Speech-Language Pathologists and Audiologists in Schools* is published by the American Speech-Language Hearing Association (ASHA) as a resource on how to negotiate with school unions and school administrators to advocate for identified individual and local needs.

Any opinions contained herein are not to be construed as reflecting any official view of the American Speech-Language-Hearing Association.

Your comments or suggestions may be directed to [schools@asha.org](mailto:schools@asha.org).

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# Acknowledgments

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# Section 1

## Introduction

Anne was a speech-language pathologist in the Springfield County public school system. Although she loved her job, she was frustrated because she was required to provide services to more than 100 students. Because of her caseload, Anne did not feel that she could give the quality of service her students needed.

As a school-based speech-language pathologist (SLP) or audiologist, you may share Anne's concerns about caseload, or you may have other issues about your working conditions. Your ability to provide the most effective services and make the greatest impact on students' learning depends on such factors as caseload size, number of schools served, the space you work in, and your relationships with teachers and administrators.

You may also have ideas for new programs or enhancements to service delivery—but to introduce them, you will need to win the support of your administration, teachers, and others. How can you go about effecting these changes?

For some issues, you may be able to achieve the desired outcome by working with your colleagues and school administrators. In other cases, working through your local administration and union or employee association using the collective bargaining process may be the most effective way to solve problems or introduce improvements into your workplace. The purpose of this document is to give the school-based SLP and audiologist an overview of problem-solving processes in school settings. It will help you identify issues to address with your administrators, give tips on good negotiating techniques, and provide an overview of the collective bargaining process. The overriding goal is to give you tools you can use to advocate for your individual and local needs.

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<sup>1</sup> Collective bargaining units (the National Education Association and the American Federation of Teachers) are sometimes called unions and sometimes called employee associations. In this document, we will use "union/association."

# Collective Bargaining: When and Why

By reading and using the information in this resource, you will be better able to:

- Approach your administration effectively and appropriately with problems and ideas for improvements;
- Identify and describe the collective bargaining structure in your work setting;
- Analyze your workplace problems and issues in terms of their potential for successful resolution through collective bargaining;
- Use effective negotiation techniques in formal and informal settings;
- Build coalitions based on shared interests;
- Locate and use additional resources to learn more about collective bargaining and negotiation techniques.

A colleague suggested that Anne discuss the issue with her union, representative. Anne was reluctant to do this because she had never been involved in the union. Anne had always believed that the union looked after the interests of teachers in classrooms and was not especially interested in helping speech-language pathologists and audiologists. She knew, for example, that the union was advocating for smaller class sizes for classroom teachers, but it had never made caseloads for speech-language pathologists and audiologists an issue. Anne had always felt that being active in a union was somehow inconsistent with her personal standards for professional behavior.

Although the majority of school-based SLPs and audiologists work in states with collective bargaining for school employees, many have not participated in union activities or structures, sometimes for some of the same reasons as Anne. They may see the union as confrontational, or as representing teachers but not related service providers. Many times, SLPs and audiologists simply may not know much about how unions work, the structure of the bargaining unit in their locale, and how to participate most effectively.

As Anne began to explore the issue, however, she began to rethink her position. She read the ASHA Code of Ethics, the first principle of which is: "Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally." She saw that she was obligated to use "every resource" to "ensure that high-quality service is provided." Anne began to realize that if the union could help her reduce her caseload and better serve her students, she had an obligation to get involved and advocate for her ability to do her job well. Anne also read that the Code of Ethics requires that speech-language pathologists and audiologists "honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions." Anne began to realize that by staying out of union activities, she was passing up an opportunity to help her colleagues and her school administrators understand her work better and to advocate for proper resources.

Working through a collective bargaining unit can give you access to a workplace democracy that will advocate for your interests—provided you know how to work with the system. This resource is intended to increase your ability to access and use the power of collective bargaining to resolve problems, implement new ideas, advance your profession, and provide better services to students.

## **What You May Not Know About Collective Bargaining**

Anne decided to see what the union could do for her and her fellow SLPs. As the first step, she talked with her building representative, a teacher who'd been active in the union for some time. The building rep offered to arrange a meeting with representatives of the officers of the union and the bargaining team. In preparation, Anne talked with several SLPs and developed a list of their concerns, emphasizing how the caseload problem was affecting their ability to do the work they needed to do.

The meeting went well. Anne felt that the union representatives understood the SLPs' problem and respected their credibility. The union reps had real-life examples of how SLPs' caseload problems were impeding the district's goals. Most important, Anne felt that the union reps understood SLPs as a significant constituency.

It will be important for you to become sensitive to the style and climate of decision making in your system. In many places, unions/associations are moving away from the traditional model in which administrators and teachers are adversaries, and toward a new model of shared decision making. This resource will give you some tips and tools to assess the climate of your workplace and use effective negotiating strategies.

## **What's In It for You?**

Anne followed the ensuing contract negotiations with great interest. Ultimately, the bargaining team was not able to win an absolute cap on the number of students in any individual caseload, but they were able to secure a 10% increase in the number of SLPs and audiologists the county would hire. It was a good start, and laid the groundwork to do more the next time around.

Over and above the actual results of the negotiation, Anne saw the union as a new tool to advocate for her students and her profession, and saw herself as a more effective advocate. She resolved to stay involved in the union, and looked forward to a time when she or another SLP might be elected to the bargaining team.

# ***Section 2***

## **Understanding the Decision-Making System**

School-based speech-language pathologists and audiologists often express disappointment and frustration about their needs being ignored at the local level, primarily due to their relatively small numbers within school personnel. Professionals who are experienced with negotiations and decision-making will tell you that getting your needs met is directly related to your effectiveness in influencing the decision makers in the system. The following information will help you understand how the system works and how, through individual and collective efforts, your needs can be met.

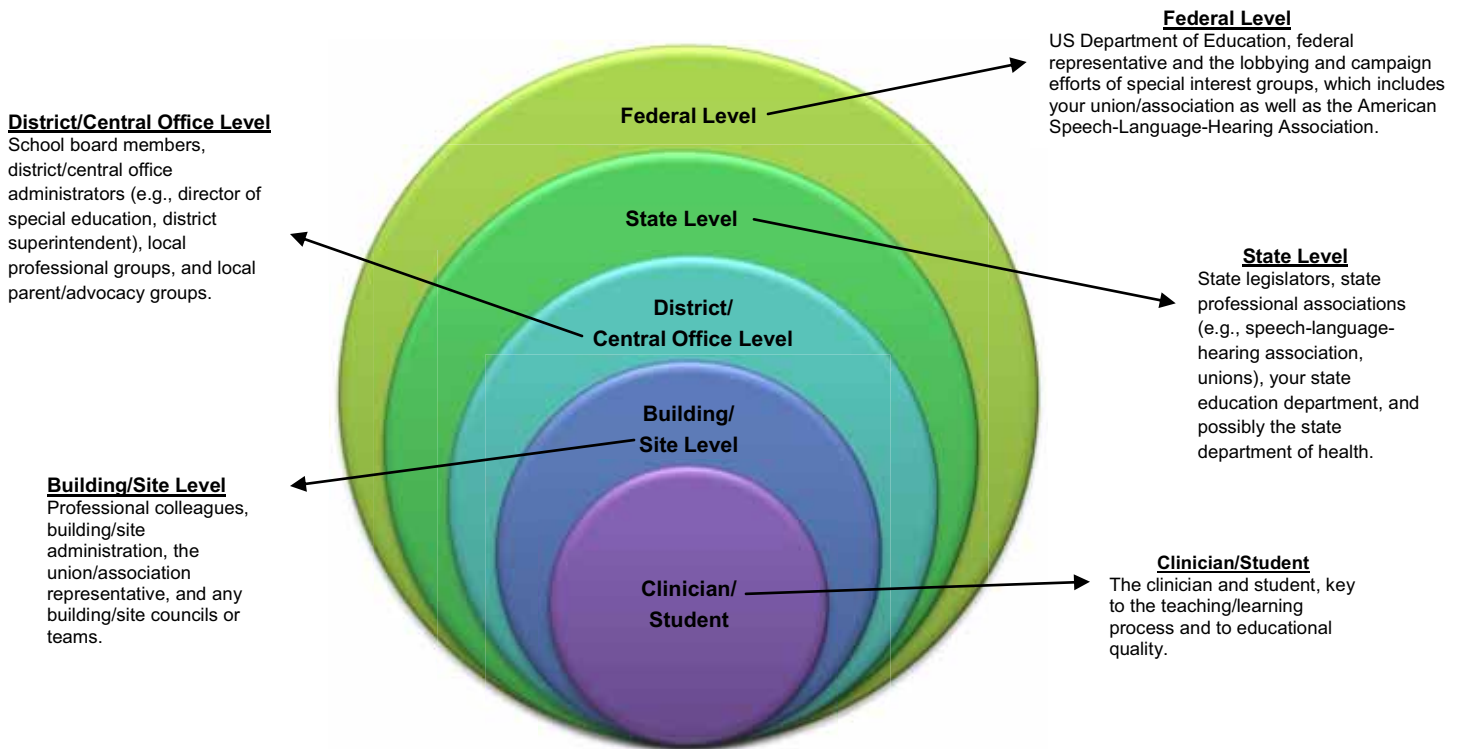
An effective system is one that meets the needs of all its constituents. In order for that to happen, all of the parties must advocate for their particular interests. This includes speech-language pathologists and audiologists. In order to effect change in the system, you must bring forward your interests and those of your students. This can be accomplished through effective representation of your needs and through negotiations and collaboration with other parties.



# Knowing the System and the Players

One way of looking at the decision-making process is represented in Figure 1.

**Figure 1.**



### **Clinician/Student**

The center of the figure represents the clinician and student, whose relationship is the key to the teaching/learning process and to quality of education. Of importance here is the support that the remaining outer circles provide for those individuals, in order to support a qualified teacher and a positive learning experience for the student. Decisions made in the outer circles determine the degree of success of the educator and the student. The interactions between the inner circle and the other circles are crucial to shaping decisions that are beneficial to the teacher and student.

### **Building/Site Level**

This level includes professional colleagues, building/site administration, the union/association representative, and any building/site councils or teams. Many of the decisions made at the building/site level can be affected by you and the collective influence of your colleagues. This requires that you build relationships with the other players who make up this level.

### **District/Central Office Level**

The third level of decision making is accomplished by school board members, district/central office administrators (e.g., director of special education, district superintendent), local professional groups, and local parent/advocacy groups. Your role as an active member of your union/association and your relationship with the district/central office administration will determine the amount of influence you will have at this level.

### **State Level**

This level involves state legislators, state professional associations (e.g., speech-language-hearing association, unions), your state education department, and possibly the state department of health.

### **Federal Level**

This level includes legislation passed by Congress and regulatory guidelines established by the US Department of Education. The key players are your federal representative and the lobbying and campaign efforts of special interest groups, which include your union/association and the American Speech-Language-Hearing Association.

Sometimes different issues are decided at specific levels. For example, scheduling is typically determined at the building/site level; the district/central office usually decides staffing assignments; the school board sets salary scales and the length of the workday. Conversely, some issues are influenced by decisions made at several levels. Caseload size may be affected at the building/site level by how students are scheduled, at the district/central level by the number of speech-language pathologists assigned to a particular building, at the school board level by the number of speech-language

pathologists hired throughout the district, and at the state level by guidelines or mandates regarding caseload size. Understanding how and where the decisions are made is crucial to making the system work for you.

It is also important to remember that there is interaction among the various levels. Officers of the union/association can be effective in bridging the levels through their structure, providing information to each level from the union or association parallel structure.

## **Making the System Work for You and Your Students**

The collective bargaining agreement and the administration of that agreement and other district policies are key factors in the decision-making process at the building/site and district/central level. Therefore, if you want these decisions to meet your interests, you must become actively involved in the union/association and other decision-making processes at each level. Here are several steps you can take to influence the decision-making process.

### **1. Correctly identify which parties are responsible for decision making around a particular issue or concern and how the decisions are made.**

Getting results that directly affect speech-language pathologists and audiologists depends on the ability to influence decision makers. It is not only important to know who the decision makers are, but how decisions are made in the situation in which you work. In some situations, decisions are made unilaterally by administration. For example, administration unilaterally decides matters involving service delivery, in-service programs, facilities/equipment, and special projects. Therefore, the speech-language pathologist or audiologist should use strategies such as persuading administration that what is being asked is \*scribed by law, is beneficial to the school, and/or will promote student achievement. In other words, the speech-language pathologist or audiologist needs to persuade the administrator that what is being sought is beneficial to both the speech-language pathologist or audiologist and the administration.

*Getting results that directly affect speech-language pathologists and audiologists depends on the ability to influence decision makers.*

On the other hand, many matters of concern to speech-language pathologists or audiologists are subject to bargaining between the union/association and school administration. To ensure that any contracts under

negotiation incorporate such matters in a manner consistent with their needs and desires, speech-language pathologists and audiologists must, at a minimum, inform their union/association negotiators of their position on the matters to be negotiated. An even more effective approach would be for the speech-language pathologists and audiologists to arrange with the union/association to join the bargaining team whenever subjects affecting their interests or working conditions are negotiated.

Once there is a collective bargaining agreement, it is the union /association's responsibility to enforce that agreement. A representative should be contacted when the speech-language pathologist or audiologist believes that administrative action violates the contract. The types of problems to bring to the union/association will vary by school district depending on the governing collective bargaining law and the specific contract. Some examples of kinds of matters typically appearing in a contract include duties, caseload, length of the workday, leave time, and planning time.

## **2. Determine your status within the union/association.**

Are speech-language pathologists and audiologists members of the local union/association? Are you represented by the employee bargaining agent at both the building/site level and district/central level decision-making processes? How speech-language pathologists and audiologists are classified in relation to the collective bargaining process is dictated by each state's collective bargaining law. Most state collective bargaining laws cover all public employees, including teachers, of any public employer. This includes speech-language pathologists and audiologists who are licensed or certified by the state education agency or other agency to provide services in the schools. Many collective bargaining laws, however, exclude administrators, supervisors, and, in some instances, educational support personnel (noncertified employees in public schools). To determine if you are covered by the collective bargaining process as part of labor or management, you need to refer to your state's collective bargaining law or discuss this with your local union/association leader.

Are you active in the union/association? Do you and your colleagues create internal coalitions to increase your influence with your employee organization and decision makers? Do you and your colleagues meet to clarify your needs and then communicate these needs to the bargaining agent? Does the bargaining agent adequately represent speech-language pathologists and audiologists at both the building/site and district/central level? As mentioned in #1 above, your relationships with colleagues and key decision makers will determine the amount of influence you will have on getting your issue supported. Speech-language pathologists and audiologists generally find themselves as a small minority of the total staff in an educational setting. Therefore, you must know not only the interests of other speech-language pathologists and audiologists but also how those interests are shared with other groups within the membership ranks. The union/association newsletter and regularly scheduled meetings are good opportunities to get your issues before the membership and into the agenda of the union. The success of your requests will be based in large part by how many people support your position. Too often in the past, interests of speech-language pathologists and audiologists have been ignored because of a failure to become involved with others in the decision-making process.

### **3. Provide information for the negotiating process**

The key to successful negotiation is careful and thorough preparation. Both parties in collective bargaining must be familiar with the issues, the events that caused them, and the reasons they are issues. The success of collective bargaining is directly related to the thoroughness of the preparation. If speech-language pathologists and audiologists want their issues considered at the collective bargaining table, it is important to participate in the negotiation preparations. In preparing for negotiations, the negotiating team or bargaining unit will obtain input from its members regarding issues or demands that should be made. Once these issues have been identified, the bargaining unit will collect data and information to support proposals that will be made during the bargaining sessions.

*The success of collective bargaining is directly related to the thoroughness of the preparation.*

# Section 3

## Achieving Successful Outcomes Using Union Resources

Audiologists and speech-language pathologists can achieve their desired goals by knowing how and when to use the resources provided by their union/association. This section presents a series of steps to help you gain the knowledge you need in order to understand how the union/association works in your district, with two real-life problem-solving scenarios to illustrate the process. Suggestions are made for establishing a district-wide committee to identify the issues, determining at what level the issues can be resolved, taking problems to the union/association leadership, and accessing state-level union/association representatives.

### Understanding Your System

#### Background knowledge

- Know your local contract
- Know your union structure and leadership.
- Know the decision-making process in your local building and school district.

#### **Establish a committee of district-wide speech-language pathology and audiology representatives to work with your local union/association representative and solve problems with the central administration.**

- Examine your local contract for any vehicle/committee for addressing needs of a specific group of professionals, either within a building or across a district; if this cannot be found, contact local union/association officials to ask what provisions exist.
- Obtain the support of the union/association to gather names and mailing labels for unit members in speech-language pathology and audiology job categories.
- Join with a small group to plan a meeting that would result in identifying common needs for audiologists and speech-language pathologists across the entire district and identify a representative group that is willing to meet regularly to solve problems around these issues
- Meet with the representative group and a representative of the union/association to set up meeting procedures (this may take several meetings):
  - Define how often the group will meet and set a schedule
  - Decide how to gather input from all speech-language pathologists and audiologists

- Determine a problem-solving process that will work for the group
- Decide how to establish and maintain contact with the district administrator for speech and hearing services, including regular meetings
- Determine how information on discussions and resolutions will be shared with all speech-language pathologists and audiologists
- Determine what support your union/association can provide in terms of staff support, clerical support, meeting space, funding
- Determine how the union/association will interact with this committee to make contractual gains specific to speech-language pathologists and audiologists.

## **Addressing the Issues**

### **Identify the Issue**

- Identify existing or potential barriers to your ability to provide adequate services to students and meet the needs of audiologists and speech-language pathologists in your district.
- Examine barriers to student achievement within the context of district policy and mission statements.
- Identify how the barriers directly affect student programs and prevent students from achieving Individualized Education Program goals, by gathering data that demonstrate how student programs are negatively impacted by the barrier.

### **Discuss with your union/association representative how your issue should be presented to the site-based decision-making body (administrator, union rep, etc.)**

- Determine the level that can affect change (building, central office, or union).
- Determine if the issue can be grieved on the basis of contract language or past practice; if it can be grieved, take the issue to the appropriate union/association official.
- Determine if a change is needed in practice, contractual language, policy language or regulations; follow through the process of advocacy for a change in the appropriate document (contract, policy, or regulation).

**If the issue cannot be resolved at the local school level:**

- Go to the district-wide speech-language pathology/audiology committee to take to the administration.
- Request that the union/association rep and speech-language pathology/audiology committee take the problem to the union/association leadership.

When there is limited union/association representation, contact the national offices of the National Education Association or the American Federation of Teachers to assist you in locating your state level representative.



# ***Scenario 1***

## **A Process to Gain Contractual Planning Time in Union Contract**

### **Understanding your system: know your local contract**

Terry worked in a suburban school district with 150 speech-language pathologists. Historically, when SLPs needed to plan, assess, consult with teachers, or call parents, they had canceled treatment sessions. However, IDEA regulations require more stringent record keeping regarding attendance and time in treatment. Parents were strong advocates, for direct service to their children and, when necessary, took cases into mediation or due process hearings when treatment sessions had been canceled for the speech-language pathologist's other duties.

In the district contract, teachers were guaranteed planning time within the student day, but SLPs were not. Caseloads averaged 60 students. With the changes in IDEA there was no time during the student day and minimal time during the workday to plan and evaluate lessons, gather materials, consult with teachers, write assessment reports, or for general record keeping.

### **Establish a committee**

Terry and her colleagues formed a speech-language pathology committee to represent them on this issue. They discussed how to delineate the issue of time to perform duties other than direct service to students, researched neighboring districts to determine how time was allotted, and benchmarked school districts that had contractually guaranteed time to perform service-related tasks.

The speech-language pathology committee went to the union/association office for the district to meet with the local president. They presented their issue and the information they had gathered from other school districts. They were told that the contract was changed through the process of negotiation. This process included several unit members who were appointed by the union/association

president to meet with the representatives of the Board of Education to lobby for better conditions for educators and, ultimately, for students.

## **Advocate for change in the contract**

The speech-language pathology committee asked to be included in the negotiation process. Although no committee member was appointed to the bargaining team, the committee kept in regular contact with the local president and union staff working with the bargaining team regarding whether their issues had been addressed in bargaining proposals. They were assured that the issues were, but no progress was made in gaining time for speech-language pathologists in that contract that year.

The duration of the contract was two years. During that time, the committee continued to meet and gather both local data and information from other districts. It developed proposals for cost-effective ways to address the issue. The members of the committee were in frequent contact with the local union/association officials regarding their issues.

As the time approached for the beginning of negotiations for a new contract, the speech-language pathology committee had built a coalition of other special education teachers. This broader coalition of union/association members secured a commitment from the negotiations team to make the speech-language pathology issues a priority. When the contract was being renegotiated, one hour of planning time during the student day per week and 4 additional hours of planning time within the work week were contractually guaranteed. This laid the groundwork for future improvements. The speech-language pathology committee continued to work closely with union officials, and several speech-language pathologists became active in union/association leadership roles.

# ***Scenario 2***

## **A Process to Gain Influence With Your Local Bargaining Agent**

### **Understanding your system: know your union structure**

Joanne was one of four educational audiologists in a regional educational facility that provides services to local school districts. She became concerned about the increasing numbers of requests for audiological evaluations of students. As technology was becoming more sophisticated, districts were asking for more consultative and evaluative services to help meet the needs of students with hearing loss in the mainstream. Four years ago, 35 requests were received during the school year. This past year, approximately 200 requests were received. Caseloads were now much larger and paperwork had increased dramatically. Some of the requests were for central auditory processing evaluations that take 2 hours to administer, with reports at least 5 pages in length.

Because there were only four audiologists working in a staff of 650 teachers and speech-language pathologists, the audiologists did not feel that their local union represented their interests. To remedy this situation, the audiologists met with the speech-language pathologists who recommended that they approach their local union representative. Although the local union representative was a teacher, the speech-language pathologists felt that the union would be receptive to the audiologists' concerns.

### **Discuss with your union/association representative how your issue should be presented to the site-based decision-making body.**

The union representative suggested that their first step would be to bring their concerns to their immediate supervisor. The audiologists said that the supervisor had already indicated that there was no additional funding available for any more staff. However, when approached again, she offered to meet with them to review their situation

and brainstorm solutions. During that meeting, the supervisor reiterated that there were no funds for additional staff, and she recommended that reports be written at home or during their 30-minute preparation time. The audiologists did not deem this to be a viable solution.

## **Request that your union/association representative take your issue to union/association leadership**

The audiologists returned to their union representative and reported that the situation could not be resolved in a meeting with administration. The representative went to the union leaders, who agreed to investigate the situation for the audiologists. They subsequently discovered that the local school districts relied on this group for audiological information and that districts were quite satisfied with the work of this group. The union reviewed the number of hours needed to complete evaluations and reports and to attend IEP meetings. A review of the numbers indicated that there was insufficient staff to meet the needs of the department, and the union requested that an additional audiologist be hired. Based on the documentation and the request from the union, another audiologist was hired.

As a result of this incident, the audiologists felt that the union better understood their needs and would more adequately represent them. They also began to be more involved in their union activities.

# ***Appendix A***

## **Excerpts from: “Collective Bargaining What Can It Do For You?”**

*by Stan Dublinske*

### **Are the National Education Association (NEA) and the American Federation of Teachers (AFT) professional associations or labor unions?**

Both. The NEA was formed in 1857 and the AFT in 1916. Although the evolution of the two organizations differed, over the decades they both engaged in direct activities to improve working conditions of their members. During the 1960s and 70s both organizations became more involved in promoting negotiation as a way to improve salaries and working conditions. Today both organizations are viewed as both labor unions and professional organizations because of their active support of the collective bargaining process and their activity in the broader interest of their members. Based on the NEA and AFT Web sites (2010), NEA has 3.2 million members and AFT has 1.5 million members.

### **What is collective bargaining?**

Collective bargaining occurs when groups of employees act together to advance their mutual job-related demands. To advance these demands employees usually create a labor organization or union to represent and negotiate their concerns. This negotiation process is called collective bargaining. According to the NEA, collective bargaining is a "democratic process for serving the public interest by allowing employees an effective voice in matters affecting employment." State public employee bargaining laws include similar language that governs private sector bargaining as defined by the Labor-Management Relations Act of 1947. Collective bargaining is "the performance of the mutual obligation of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an

agreement, or any questions arising there under, and the execution of a written contract incorporating any agreement reached if requested by any party, but such obligation does not compel either party to agree to a proposal or require the making of a concession ...."

### **How many states have collective bargaining laws for employees in the schools?**

According to the American Federation of State, County and Municipal Employees (AFSCME) website, (2010), 35 locations have collective bargaining laws. They are: Alaska, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin. The collective bargaining laws in the various states differ in terms of who is covered under the law, the scope of bargaining activities, management and employee rights, and the criteria for determining a bargaining unit. The laws include information on unfair labor practices, grievance procedures, and impasse procedures. For information on the specifics of your state's collective bargaining law you can contact your state's labor relations board.

### **Why doesn't ASHA negotiate my salary and working conditions?**

The ASHA Bylaws state that "The purposes of this organization shall be to encourage basic scientific study of the process of individual human communication, with special reference to speech, hearing and language, promote investigation and prevention of disorders of human communication, and foster improvement of clinical procedures with such disorders to stimulate exchange of information among persons and organizations thus engaged; and to disseminate such information." Thus ASHA's stated purpose is that of being a voluntary scientific and professional association. ASHA does not have any policy that would allow it to participate as an employee representative or bargaining unit in the collective bargaining process. The National Labor Relations Act of

1935 defines a labor organization or union as "any organization of any kind" that has "an agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Clearly, ASHA is not a labor union.

### **Must I pay AFT or NEA dues if they are designated as the local bargaining unit?**

No. But . . . AFT and NEA have unified membership dues. If you belong to the local unit then you also must belong to the state and national organization. Therefore, dues are paid to cover membership in all three levels of the organization. In some local education agencies there is sufficient pressure to belong to the local unit that individuals believe they are required to belong to the unit. However, any designated bargaining unit is required by law to bargain for all employees of the agency even if they do not belong to the bargaining unit.

Some states have passed an agency shop law that allows local bargaining units to charge nonmembers an agency shop fee that covers the cost of activities related to collective bargaining. In most instances these fees are lower than fees associated with full membership in the unit. If your state allows an agency shop fee to be charged, then you will be required to either join the local bargaining unit and become a member or pay the agency fee.

### **What items can be negotiated?**

The scope of bargaining, or items that can be negotiated as part of the collective bargaining process, are included in the state's collective bargaining law. Typically, bargaining items include salary, wages, hours, and other conditions of employment. Depending on state law, other items included may be insurance benefits, premium pay, holiday and sick leave, health and safety factors, staff reduction procedures, continuing education, sabbatical leave, wearing apparel, grievance procedures, evaluation procedures, class size, and standards of productivity and performance.

In relation to items that can be negotiated, the terms "mandatory," "permissive," and "nonbargainable" or

"excluded" are used. Mandatory items are those that both parties have a legal mandate to negotiate. These usually include salary and wages. Refusal to negotiate on mandatory items can result in a charge of unfair labor practice. Permissive items are those that are allowed but are negotiated by mutual consent of the parties. These might include ability to participate in development of educational policy and some working conditions. Refusal to bargain on permissive items is not considered an unfair labor practice. Nonbargainable, excluded, or illegal items are expressly prohibited from bargaining by law. Examples include duty to hire and fire and demand for inclusion of administrators in the teachers' bargaining unit.

Sometimes it is helpful to take an aggressive view toward items that are not included in the scope of bargaining. Many unions are able to make progress on nonnegotiable items by including them as memoranda of understanding or other noncontractual agreements. Being out of the scope of bargaining only means you cannot force others to go to impasse on the issue.

### **Can my caseload size be negotiated?**

Yes and no. In many states, class size is a negotiable item and therefore the caseload size for speech-language pathologists and audiologists could be negotiated if considered a bargaining issue by the bargaining unit. It will be the responsibility of the speech-language pathologists and audiologists to convince the local bargaining unit that caseload size is of major importance to the quality of education in the community and should be included in the bargaining process.

In some states caseload size is mandated by state rules and regulations. In those states where caseload size is mandated by state policy it cannot be a negotiable item at the local level. However, if a state rule indicates that caseload size should not exceed a specific number (e.g., 60), then the exact caseload size could be negotiated at the local level.



## **Will the local bargaining unit negotiate issues of concern to me?**

Maybe. It must be remembered that collective bargaining is a local political process. Labor (teachers) and management (the school board) are trying to arrive at a contract that is agreeable to all parties. The local bargaining unit, while representing all employees covered by the unit, will identify issues that are of greatest concern to the largest segment of the membership. Therefore, if a group of five speech-language pathologists goes to a union representing 300 teachers or if 60 speech-language pathologists go to a union representing 5,000 teachers and request that issues related to caseload size, release time for staff development, salary differential, or equipment and material needs be negotiated, the union will first look to see if the speech-language pathologists are members of the unit. If they are, the union may include the items as possible issues to negotiate. However, in selecting the final issues on which to negotiate, the union probably will go with those issues that are of greatest interest to the most members. Therefore, it is important that ASHA members be active in the union/association and the bargaining process. If the bargaining unit does put the speech-language pathology issues on the bargaining table, it is possible that the negotiators will not fight as hard for those issues as they will for issues covering more members. Also, it must be remembered that collective bargaining is a negotiation process. Thus, for items that management will agree to, labor may have to give up something.

Unfortunately, speech-language pathologists and audiologists usually make up a very small percentage of the persons covered by a bargaining unit. In some instances they may not even be members of the bargaining unit or may just pay agency fees. Thus, the chances of a bargaining unit spending a considerable amount of time and energy on an issue of concern to a small group of persons is limited unless the group is active in the union and has made a convincing case that the issue is of major importance to the education of children in the community.

## What is included in a negotiated contract?

The negotiated contract is at the core of labor-management relations. The contract is the written agreement that has been arrived at between the negotiating parties. It includes in detail the decisions that have been made on the various items that have been negotiated. The contract states explicitly the rates of pay, wages, hours, and working conditions that the negotiating units have agreed on.

The contract itself will contain a number of clauses. These may include:

- 1. Preamble and purpose.** This clause broadly outlines the general purpose of the agreement and makes general pledges of good will and confidence. Any "no strike" provision agreed on during the term of the contract is usually included in this section.
- 2. Security.** Clauses related to security usually make up the largest segment of the contract. Security clauses include such things as recognition of the union; management prerogatives; insurance benefits; reduction in force, discharge, and leave of absence procedures; and union rights, activities, and responsibilities under the contract.
- 3. Compensation.** These clauses cover incentive systems, job standards, sick leave benefits, methods of wage payment, overtime compensation rates, paycheck deductions, and any other matters related to compensation of employees.
- 4. Working conditions.** Included are clauses related to the work week, work hours, health and safety factors, special duties, class size, staff development, and other working conditions.
- 5. Enforcement.** These clauses include procedures on how the contract will be enforced and information on the grievance procedures and any arbitration methods that may be used.
- 6. Duration and termination.** Included here are items that deal with the length of time the contract is to run, methods of reopening, renewal, and renegotiation of the contract. A contract may be a one- or two-page

document dealing specifically with salaries, working hours, and working conditions, or could be a 100-200 page document that details the entire labor-management relation in the school system. To understand what is and is not negotiated in your local education agency, take a look at the existing negotiated contract for a listing of negotiated items.

### **What are the ground rules for conducting negotiations?**

In any collective bargaining activity the negotiating teams must establish the rules that will be used as a framework for conducting negotiations. Some of the items that may be discussed as ground rules include:

- when the negotiating sessions will be held and where
- when initial proposals will be submitted
- notification of who the chief spokesperson for the bargaining unit will be
- how either/both parties will issue press releases
- how official minutes, taping or other recording of the sessions will take place

Establishing ground rules is not a collective bargaining requirement. Clearly, certain ground rules are beneficial to starting negotiations off on a positive note. However, neither party has to agree to any ground rules they believe will be detrimental to their bargaining position.

### **How are negotiations conducted?**

There is no single way to conduct negotiations. Many of the questions regarding how negotiations will be conducted will be answered in the ground rules agreed on by the bargaining units. The negotiation process at the bargaining table consists of discussion of proposals and issues, which leads to a counterproposal or rejection by either party. Each side attempts to conduct the negotiations based on its own proposals in an attempt to persuade the other party to agree to its particular proposals. Persuasion, one major form of achieving a concession in negotiation, is based on rational discussion, sound reasoning, and the ability to point out the

problems that will be detrimental to both parties if the demands are not met.

Another way of gaining at the bargaining table is by giving the other side something in exchange for getting what you want. A proposal for granting a concession in return for receiving a concession is called a contingent proposal, which is either accepted or rejected as proposed.

An interest-based strategy for communications, problem solving, and negotiations is an approach to making decisions and working with others, whether groups or individuals, in a collaborative manner.

### **What is interest-based bargaining?**

Interest-based bargaining is based on the principles of focusing on issues rather than personalities, using reason to make decisions rather than power, and focusing on interests rather than positions.

An interest-based strategy relies on a series of components that help individuals and groups identify what it is they want to work on, what is important about the issue, how they might solve the problem, what is the most effective way to solve the problem for all concerned parties, and what solution will be implemented.

Unlike other problem-solving strategies, an interest-based strategy is based on two critical assumptions. First, an interest-based strategy assumes that the most effective solutions to problems are reached with all affected parties involved in the decision—and in determining the implementation of the solution.

*An interest-based strategy is based on two critical assumptions:*

- The most effective solutions to problems are reached with all affected parties involved in the decision;
  - The parties are in a relationship with each other and will continue in such a relationship.

Second, an interest-based strategy assumes that the parties are in a relationship with each other and will continue in such a relationship. The relationship could be work-related, family, social, recreational, or have some other basis for individuals coming together. Therefore, group decisions must consider the relationship aspect of a problem and its solutions just as much as the content aspect. Interest-based strategies are being used in public policy decision making, labor-management relations, environmental and economic development issues, community planning, counseling,

business, and government. An interest-based strategy is the basis for international relations decisions in both the Middle East and South Africa.

An interest-based strategy is most effective when implemented by all parties seeking to reach mutual decisions. Successful implementation requires joint training and commitment to the strategy. Successful implementation, especially for ongoing educational renewal and organizational development, also requires the parties to seek and use resources to support the strategy.

An interest-based strategy seeks a good solution, not just an agreement.

### **How do you resolve an impasse?**

Failure to agree in collective bargaining is known as an "impasse" and represents a situation when at least one of the negotiating parties believes that it is futile to proceed with negotiations. There are a number of ways to deal with an impasse:

- 1. Mediation.** A neutral third party helps negotiators settle the dispute through suggestions, advice or other such stimulation. Mediation is a voluntary process and the decision is not binding on either party.
- 2. Fact finding.** A third party conducts a formal hearing to investigate, assemble, and report facts in a dispute. Each side is given an opportunity to present its case with supporting evidence. Once the hearing is complete the fact finder issues a public report and recommendation. It is anticipated that the public will accept the recommendations of the fact finder and that there will be pressure on both parties to agree to the terms of the report.
- 3. Advisory arbitration.** The parties submit their dispute to an impartial third party who reviews the data and information presented through a fact-finding process and renders a decision. The advisory arbitration decision is not binding but carries a strong recommendation to the negotiating parties that they agree to the decision.

4. **Binding arbitration.** The process is similar to arbitrary arbitration and the final decision is binding and requires that both parties accept it.
5. **Strikes and slowdowns.** In this instance the union may call a strike or a work-to-the-contract slowdown. The intent is to put pressure on management to agree to the union's demands. Some state collective bargaining laws prohibit public employees from striking. However, some public employees do strike anyway.

### **What if a disagreement occurs over the negotiated contract?**

As part of the negotiated contract, union and employer typically list procedures for handling grievances or disputes that arise as a result of carrying out the negotiated contract. Grievances may cover an alleged violation of the agreement, an alleged violation of bargaining law, or a case of unfair treatment of an individual covered by the contract. Usually the collective bargaining agreement states a period of time after an incident has occurred in which the grievance must be initiated. The grievance procedure will usually provide for a number of steps that the person must go through to get resolution of his or her alleged grievance. The initial step may be bringing the concern to the attention of the immediate supervisor who may be able to resolve the problem. The last step of the grievance procedure, if the problem has not been resolved at any other level, may be the use of a third-party arbitrator, who will review the alleged grievance and render a decision. Although much of the negotiated agreement is drivable, certain provisions related to professional judgment or decision making may be exempt from the grievance procedure. However, if a party still feels aggrieved, litigation can be initiated.

Because the handling of grievances against the contract is of such great importance to the status of the contract, it is necessary that the grievance procedures or arbitration clause of the collective bargaining agreement specify what issues are to be included in arbitration and what the process is to be in resolving grievances. The entire process will probably be negotiated as part of the collective bargaining agreement. If speech-language pathologists and audiologists believe that they are not being treated fairly as specified

under the negotiated contract, they should see if it is possible to file a grievance. In most agreements, the union maintains ownership of the grievance process and reserves the right to make a decision regarding which items have sufficient merit to carry all the way to arbitration.

# ***Appendix B***

## **Negotiation Tips**

- Know your BATNA (best alternative to a negotiated agreement). In other words, what is the best you can hope to achieve, if you can't negotiate an agreement?
- If you don't feel comfortable meeting alone with your administrator, consider inviting your union/association representative or other staff members to provide support, data, or substantiation.
- Go into a meeting with a clear description of the problem and how it affects student progress or staff productivity.
- Be prepared to discuss problems openly — conflicts or anxieties should be acknowledged and discussed frankly. In fact, if any tension arises, be sure to face it calmly and honestly and not to take it personally.
- Separate the people from the problem. Recognize that people's egos become entangled with their stances/positions. Work side by side with the participants and attack the problem, not each other.
- Listen to the other parties' demands and then focus on what you think the other parties' interests and needs really are. People's stances/positions often obscure what they really want. Also, be clear about what your own interests and needs are and be persistent in pursuing them.
- Make it a habit to use active listening techniques in order to assure that what you are saying is what you mean and what is being heard is what is intended.
- Be sure to provide at least several solutions for each concern with a clear rationale on how each could be accomplished. Don't be afraid to provide opinions on which solutions you feel would be most desirable to yourself or to your staff.
- Use objective standards to determine the specific outcomes. Frame each issue as a joint search for objective criteria.



- Make sure that you or another participant takes notes that can be used for reference or back-up once a decision goes into effect. Be sure that all interested parties get a copy of those minutes, including the administrator.
- The biggest obstacle in meetings of this sort is when either or both parties forget that the discussion has nothing to do with personalities or feelings—it is about making the environment most conducive to student achievement and growth.
- If you are interested in exploring this topic further, read *Getting to Yes* by Roger Fisher and William Ury.

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