



EDUCATION

ALERT

THE PROS AND CONS OF EARLY BIRD CONTRACTS

As the difficulty of negotiating contracts with teachers' unions in elementary and secondary schools increases because of the overall economic conditions, many school entities believe that entering into an "early bird" contract negotiation will ultimately simplify the process and achieve the requested results in a much more expeditious and efficient manner. Though this is true in a number of circumstances, in many situations, the pursuit of an early bird contract can be fraught with problems for a school entity.

The obvious "pros" of entering into an early bird negotiation are as follows:

- An early bird contract gets the job of negotiating a labor contract done without expending a large amount of time, effort, and monetary and non-monetary resources in achieving the objective.
- It causes the school entity to focus early on its principal objectives in the process and eliminates a lot of discussion about what ultimately may be extraneous issues.
- An early bird contract (achieving a contract result in an expedited manner) can assist a school entity in formulating its budget for the upcoming school year since the teachers' salaries and benefits are approximately 50 percent of the school entity's entire budget.
- Entering into an early bird contract also fixes the increases that a school entity may have to expend over the next number of years and makes the predictability of future expenses known to both the school

administration and its board.

- Entering an early bird contract can also address significant benefits increases expected by a school district earlier versus later, which could mitigate the cost impact of the needed changes far earlier by focusing in on the principal issues in dispute.

There are some obvious "cons" to the early bird process that need to be carefully examined before the parties enter into the process. Those "cons" are:

- There needs to be a fundamental trusting relationship between the association and the district. In the absence of that relationship, early birds generally do not work and could cause some permanent damage to the process.
- The parties also cannot have a large number of difficult issues on the table. Both parties need to be prepared to hone down their issues to a manageable amount and work out solutions that would work for both sides in the process.
- Often, the early bird process does not result in the best deal for either side (particularly, management). This is because of what I call the "early bird" effect. The "early bird" effect is the situation where individuals on both bargaining teams fold their hands and say "well, if we hold out a little bit longer or if we take the negotiations to the 'brink,' we will be able to get more." This effect causes both sides to end up with a result that may not be as good as if the negotiations actually do go the "brink."
- An attenuated negotiations process certainly reduces predictability in budgeting and also may force the school entity to go into a status quo position following

the expiration of the collective bargaining agreement where it increases the possibility that the union can declare a status quo breach, raise the possibility of a lockout and unemployment compensation, and stultify educational innovation for the district while the negotiations go on.

- In the event the early bird process were to fail, a serious problem results. Through the early bird process, both sides “show their cards.” If it becomes apparent that the “cards” are too far apart, it makes negotiating following an early bird very difficult. There is a substantial risk following a failed early bird of negotiations breaking down very quickly and the likelihood of a potential work stoppage increases dramatically.
- In an Act 1 of 2006 environment in the Commonwealth of Pennsylvania (as well as in other states) where school entities are limited in what they can put on the bargaining table during the negotiations process, the likelihood of getting to an early bird where both sides get something in the process is severely limited. Unions like to go to an early bird process because it decreases the likelihood of public exposure to what is contained in their collective bargaining agreement and will often

force a school entity to come up with more dollars than they would otherwise do if they do a lengthy study of the collective bargaining agreement.

- An early bird also does not address multiple issues and language problems that may have resulted over years of collective bargaining. The focus is usually on the issues of salary, benefits, and time. The early bird process avoids some language changes, many of which may be very important to the school entity.

On balance, I believe that unless a school entity has an extremely good working relationship with its union and unless a school entity is prepared to spend a few more dollars than it otherwise would have to spend in conventional negotiations and limits its issues significantly, the process, particularly in the current economy, is a problematic one.

School entities should go into an early bird process with their eyes wide open recognizing both the positives and negatives of the process.

If you have questions about this Alert, please contact Jeffrey T. Sultanik at 610.397.6515 or jsultanik@foxrothschild.com or any member of Fox Rothschild’s Education Practice.



Fox Rothschild LLP
ATTORNEYS AT LAW

Attorney Advertisement

© 2012 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.