NSBA COUNCIL OF SCHOOL ATTORNEYS
2017 SCHOOL LAW SEMINAR
EARLY BIRD SESSION:
LABOR & COLLECTIVE BARGAINING
50 YEARS OF COLLECTIVE BARGAINING IN THE SCHOOLS: HISTORY, TRENDS, AND PRACTICAL APPLICATIONS FOR THE FUTURE

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INTRODUCTION/HISTORY

▪ National Labor Relations Act (NLRA) excluded public employees from coverage.
▪ Collective bargaining activities for public school employees evolved on a state-by-state basis.
INTRODUCTION/HISTORY

- American Federation of Teachers (AFT) and the National Education Association (NEA) – the two major national school employees’ unions.
  - Organizational differences.
  - Philosophical differences.
  - Strategic differences.

INTRODUCTION/HISTORY

- First law giving school district employees the right to self-organize, to affiliate with labor organizations, and the right to conference and negotiate with school boards “on questions of wages, hours, and conditions of employment” was passed in Wisconsin in 1959.
INTRODUCTION/HISTORY

- Duty of school boards to “bargain in good faith” followed shortly thereafter.
- Authorization of fair-share agreements (agency shop) became prevalent.

INTRODUCTION/HISTORY

- Prohibited practices/unfair labor practices expanded from school districts being prohibited from interfering with employees and the exercise of their rights to failure to bargain with school employee unions in good faith and violations of collective bargaining agreements.
INTRODUCTION/HISTORY

- The authorization or prohibition of school employees engaging in strikes was also addressed legislatively.
- In 1976, the U.S. Supreme Court decided *Hortonville School District v. Hortonville Education Association*, 426 U.S. 482 (1976), upholding a school board’s decision to fire striking teachers.

INTRODUCTION/HISTORY

- Impasse resolution procedures were adopted by state legislatures.
- State law and state labor boards determined mandatory subjects of bargaining, permissive subjects of bargaining, and illegal subjects of bargaining.
CHANGES IN THE PROCESS OF COLLECTIVE BARGAINING

- The role of the school district’s attorney in negotiations.
  - Traditional negotiations.
  - Collaborative negotiations.
  - Advising regarding mandatory versus permissive subjects of bargaining.

- Effect of state and federal law on traditional bargaining topics.
  - Minimum wage and overtime provisions.
  - Guaranteed leaves of absence.
  - Disability accommodations.
  - Employment non-discrimination laws.
CHANGES IN THE PROCESS OF COLLECTIVE BARGAINING

- Bargaining compensation with limited resources.
  - Legislative options for school boards:
    - “Qualified Economic Offer” in Wisconsin.
    - “Basic funding schedule” in Washington.

- Wage freezes or reductions in lieu of reductions in staff or hours.
- Reduction in student/employee days.
- Dramatic modifications to the scope of mandatory subjects of bargaining.
POLITICAL ACTION AND LITIGATION FOSTERED BY UNIONS

- Involvement in local school board elections.
- Statewide litigation to force legislative funding increases.
- Election of union-friendly state legislators and leaders.

- Legislative changes to make organizing easier (“card check” options instead of elections to organize bargaining units).
- Multiple litigation efforts to challenge restrictions on or restructuring of collective bargaining rights.
LABOR’S RESPONSE TO THREATS TO UNION DUES COLLECTIONS

- Layoffs of union staff.
- Reduced lobbying.
- Strategic emphasis upon political acceptance.
- 2016-2018 NEA strategic goals and core functions.

LABOR’S RESPONSE TO THREATS TO UNION DUES COLLECTIONS

- Anticipation of adverse rulings affecting fair-share (agency shop).
  - *Friedrichs v. California Teachers Ass’n*, 9th Cir. (Nov. 18, 2014); 136 S. Ct. 1083 (2016); 136 S. Ct. 2545 (2016).
BARGAINING ISSUES AND OPTIONS FOR NEGOTIATORS

- Differentiated compensation – merit recognition.
- Addressing the duty day.
- “Maintenance of standards” guarantees.

BARGAINING ISSUES AND OPTIONS FOR NEGOTIATORS

- Bargaining concessions.
- Utilizing legal principles.
  - Evaporation of permissive subjects of bargaining.
  - Repudiation of past practices.
CONCLUSION

Questions?