

TEACHER SALARY SUPPLEMENTS AND CATEGORICAL PAYMENTS

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I. Teacher Salary Supplements and the Combined Salary Schedule

Beginning in 1987 and following that in 2001, there were legislative efforts to increase teacher compensation. These efforts were known as the Educational Excellence Program and the Student Achievement and Teacher Quality Program. Both legislative programs included language making payments to teachers from program monies mandatory topics of negotiations. Under the Educational Excellence Program, the purpose of which was to promote excellence in education, there were three major phases: Phase I - the recruitment of quality teachers; Phase II - the retention of quality teachers; and Phase III - the enhancement of the quality and effectiveness of teachers through the utilization of performance pay. Iowa Code § 294A.1 (1987).

Phase II specifically was intended to raise teachers' salaries. *See* Iowa Code § 294A.9 (2007) ("Phase II is established to improve the salaries of teachers.") The Code required that local school districts negotiate with their local associations over the distribution of Phase II funds. *Id.* ("If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board of directors and certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the phase II allocation among the teachers. . . . Negotiations under this section are subject to the scope of negotiations specified in section 20.9.")

In 2001, the General Assembly embarked on another student achievement and teacher quality program established to promote high student achievement (the Student Achievement and Teacher Quality Program). The program included four major elements: (1) mentoring and induction programs to provide support for beginning teachers; (2) career paths with compensation levels to strengthen Iowa's ability to recruit and retain teachers; (3) professional development designed to directly support best teaching practices; (4) and team-based variable pay that provided additional compensation when student performance improves. Iowa Code § 284.1 (2001). The program included specific targeted appropriations, including appropriations to support increasing teacher salaries. *See, e.g.,* Iowa Code § 284.13 (2001). These appropriations came to be commonly known as Teacher Quality money or "TQ." The General Assembly continued on an annual basis to make specific appropriations to support the student achievement and teacher quality program.

Like Phase II, the Teacher Quality program required that local school districts bargain with local associations over the distribution of TQ money. *See* Iowa Code § 284.3A(2)(b) ("If the licensed employees of a school district or area education agency . . . are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining

representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers employed by the school district or area education agency. . . . Negotiations under this section are subject to the scope of negotiations specified in section 20.9.”)

Phase III was repealed in 2003 (Iowa Acts (80th G.A.) Ch. 180, § 70 (2003)) and Phase I was repealed in 2009. *See* Senate File 445, § 11.

In 2009, the General Assembly combined Phase II with Teacher Quality, and the combination of programs is now known as Teacher Salary Supplement (or “TSS”). *See, e.g.* Senate File 445, § 3 and Senate File 470, § 17 amending Iowa Code § 257.10(9)(a) (2009). The General Assembly updated sections 257.10(9) and 257.374(1) to provide that the Department of Management was to add together the Teacher Quality funds and Phase II funds, as those funds were allotted in 2009, to then compute the TSS district cost per pupil. The amended statute stated that the use of these funds is thereafter controlled by Chapter 284 and must be distributed pursuant to new section 284.3A of the Code. Senate File 445, § 4.

The bill added the following new section to Chapter 284 relating to Teacher Performance, Compensation, and Career Development:

SECTION 9. NEW SECTION 284.3A TEACHER COMPENSATION SINGLE SALARY SYSTEM.

1. a. For the school year beginning July 1, 2009, if the licensed employees of a school district or area education agency receiving funds pursuant to sections 257.10 and 257.37A are organized under chapter 20 for collective bargaining purposes, the school board and the certified bargaining representative for the licensed employees shall negotiate the distribution of the funds among the teachers employed by the school district or area education agency according to chapter 20.

b. . . .

c. . . .

2. a. For the school budget year beginning July 1, 2010, and each succeeding school year, school districts and area education agencies shall combine payments made to teachers under sections 257.10 and 257.37A with regular wages and create one salary system. . . . If a school district or area education agency uses a salary schedule, **one salary schedule** shall be used for regular wages and for distribution of payments under sections 257.10 and 257.37A, incorporating the salary minimums required in section 284.7.

b. If the licensed employees of a school district or area education agency are organized under chapter 20 for collective bargaining purposes, the creation of the new salary system shall be subject to the scope of negotiations specified in section 20.9. A

reduction in the teacher salary supplement per pupil amount shall also be subject to the scope of negotiations specified in section 20.9.

(Emphasis added).

This new section of the Code first mandated negotiations between the employer and the association regarding the distribution of all funds received by the employer including Phase II funds and Teacher Quality funds. (This was consistent with the prior acts.) Next, the new section mandated that, if a salary schedule was used, that salary schedule must include both regular wages and distribution of payments under Phase II and TQ. And to allay any doubt as to whether these matters were subject to negotiation, the new section once again stated with clarity, “the creation of the new salary system shall be subject to the scope of negotiations specified in section 20.9.” Finally, the new section mandated that any reduction of the TSS per pupil amount was also a mandatory subject of negotiations.

In 2010, the legislature amended Section 284.3A. *See* Senate File 2376, § 32. When amending the statute, the legislature made no change to the first subsection of the statute which requires the negotiations regarding the distribution of TSS funds. The 2010 amendment preserved the requirement that a reduction in the TSS per pupil amount shall also be subject to negotiations under Section 20.9.

The amendment to section 284.3A related to the second subsection where the language relating to “one salary schedule” was replaced with what is now called a “combined salary schedule.”

The amendment then sets out the one prohibition which relates to the combined salary schedule:

The combined salary schedule must use only the combined salary and cannot differentiate regular salaries and distribution of payments under sections 257.10 and 257.37A

(Emphasis added).

When it amended the statute, the legislature made no change to the first subsection of the statute which requires the negotiations regarding the distribution of TSS funds. Moreover, the 2010 amendment preserved the requirement that a reduction in the TSS per pupil amount shall also be subject to negotiations under Section 20.9.

The amendment to section 284.3A related to the second subsection where the language pertaining to “one salary schedule” was replaced with what is now called a “combined salary schedule.” The amendment then sets out the one and only prohibition which relates to the combined salary schedule: “The combined salary schedule must use only the combined salary and cannot differentiate regular salaries and distribution of payments under sections 257.10 and 257.37A.” No other language is included which prohibits any negotiations between school districts and teachers relative to wages.

During the negotiations for the 2010-2011 school year, many school districts found that their local education association took a very narrow and strict view of the scope of permissible bargaining regarding the single salary schedule. In my own experience, the issues that arose most frequently were: (1) whether the requirement of a combined salary schedule meant that there could only be one salary schedule with one set of salary figures in each cell of the schedule, (2) whether the requirement of a combined salary schedule prohibited the use of multiple or preliminary schedules which were then merged into a "combined salary schedule" (E.g., Schedule A - Salaries paid using Regular Program monies; Schedule B - salaries paid using TSS monies; Schedule C - Combined Salaries), (3) whether the requirement of a combined salary schedule prohibited the inclusion of a written provision explaining how the salaries in the salary schedule were calculated or how the monies distributed through the salary schedule were determined, and (4) whether a reduction in the Teacher Salary Supplement funds received by the district were subject to automatic reduction or to renegotiation.

II. Negotiability Issues

A. The Glenwood Case

1. The Proposals.

In its negotiations for the 2010-2011 contract, the Board of Directors of the Glenwood Community School District made the following proposals:

ARTICLE VI: WAGES AND SALARIES

A. Schedule

1. The [District] is proposing a combined salary schedule with a base of \$33,684, a generator base of \$28,215, and a supplemental salary base of \$5,469. Eligible employees will be allowed to move vertically and horizontally on the schedule.
2. On Schedule 2 the language about the career increments will remain the same except that the second paragraph will change to:

The increment for BA+15 or above will be 5% of the generator base of \$28,215 and the MA increment will be 7% of the generator base of \$28,215.
3. The [District] will continue to distribute the actual teacher salary supplement funding received equally among eligible bargaining unit employees minus the [District's] cost for IPERS and FICA.

F. Extended Year Contract Rate

4. The salary schedule is based upon a one hundred ninety (190) day work year. Any employee who is offered and accepts an assignment beyond the

the one hundred ninety (190) days shall be compensated at a per diem rate of his/her contracted salary on the combined salary schedule minus the teacher salary supplement money on that step.

SCHEDULE 2: COMBINED SALARY SCHEDULE

Base of \$33,684 Generator Base of \$28,215 Supplemental Salary Base of \$55,469

Language in second paragraph changed to: The increment for the BA+15 or above will be 5% of the generator base of \$28,215, and the MA increment will be 7% of the generator base of \$28,215.

As the PER Board explained, the "Schedule 2" referred to in the proposal was an attachment to the parties' agreement, on which the actual indexed salary schedule is set out. Paragraph A(1) of the District's proposal, set out above, restates the explanatory figures which appear at the top of its proposed Schedule 2, and paragraph A(2) proposes a change which also appears on Schedule 2 in the second unnumbered paragraph following the indexed schedule itself.

The Glenwood Education Association filed a petition for expedited resolution of negotiability dispute (PERB Case No. 8249) and contended in its petition that the Board's proposals were illegal subjects of bargaining.

2. The Positions of the District and Association.

The PER Board summarized the positions of the parties as follows:

The District argues that its proposal is in complete accord with all of the statute's requirements - it combines regular wages with TSS payments to create a combined salary (wage base of \$28,215 plus TSS of \$5,469), it distributes both regular salaries and TSS payments, and the proposed schedule uses only the combined salary figure without differentiating regular salaries and TSS payments.

The Association, although acknowledging that the District's proposed salary schedule itself uses only the combined salary figure (i.e., uses only one number, representing regular salary plus TSS, in each cell of the schedule), gives a broader interpretation to the "differentiation" prohibition than does the District and IASB. The requirement that the combined salary schedule "cannot differentiate regular salaries and distribution of [TSS] payments . . ." cannot be read literally, the Association argues, because to give the provision such a narrow interpretation would defeat what the Association argues was the legislative intent behind the 2010 amendments to the statute.

The Association maintains that the intent of the 2010 legislation was to require school districts and area education agencies to distribute the full amount of their TSS allocations, regardless of whether those funds were subsequently reduced or eliminated during the term of the collective agreement. The purpose of this requirement, according to the Association, was to

ensure that the legislature did not later reduce or eliminate the TSS funds allocated to employers by exposing it to strong negative pressure from employers (as well as employee organizations) should it take steps to do so.

3. The Position of the IASB.

The IASB intervened in the negotiability proceedings and supported the position taken by the School Board. The IASB's argument was that since Phase II and the Teacher Quality programs were first implemented, school districts and local associations have negotiated how these programs would impact teachers' salaries. Distribution of these funds to teachers in the form of wages is and always has been a mandatory topic of negotiations. Recent legislation has recast these programs as the "Teacher Salary Supplement" and has mandated that this supplement be included in the salary schedule. The wage proposal of the Glenwood Board includes a proper combined salary schedule. Although the most recent amendment to the law requires that the parties negotiate a "combined salary schedule" which does not differentiate between regular wages and the wages made possible through the supplemental programs, the law does not otherwise prohibit negotiations relating to the distribution of TSS funds, changes in distribution, renegotiations or reductions in salaries, or the wages paid for extended contract days.

4. The PER Board's Decision.

The PER Board provided its own analysis of the statute and then issued its ruling which held that the Board's proposals were mandatory subjects of bargaining:

[T]he Association's interpretation of section 284.3A(2)(a) is premised on the idea that the legislature's intent was to require bargaining over the distribution of the employer's TSS allocation and to require the employer's payment of that amount to teachers even if the legislature subsequently reduced or eliminated the TSS funding. According to the Association, the prohibition against differentiating regular salary and TSS applies to the entire agreement and renders illegal any proposal which differentiates these funds in any way. Accordingly, wage de-escalators which condition payment of the full combined salary shown on the combined salary schedule upon the employer's actual receipt of its full TSS allotment are illegal.

We think that this interpretation of section 284.3A(2)(a) puts it in conflict with Iowa Code section 20.17(6), which provides in relevant part:

A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

We think this portion of section 20.17(6) plainly authorizes proposals which condition the payment of a given level of wages upon the employer's obtaining

specified funds (such as the employer's full TSS allocation), and which provide for a reduction of those conditional wages in the event the specified funds are not obtained. Yet this is precisely the type of proposal, under the Association's interpretation, which the legislature sought to prohibit by section 284.3A, as amended.

Adoption of the Association's interpretation of section 2843 A would thus leave us with two statutes which address the legality of negotiating contractual provisions dealing with the consequences of an employer's failure to obtain specified funds. But under that interpretation, section 284.3A would be in direct conflict with section 20.17(6). This, we think, is persuasive reason to reject the Association's interpretation of the statute in favor of the plain-language interpretation advocated by the District and IASB, since the latter avoids such a conflict and harmonizes the statutes. The possibility that paragraph A(3) of the District's proposal might not be viewed as a wage de-escalator by a grievance arbitrator in a given case does not affect our view. The interpretation advanced by the Association, whether applied in this case or in another where a de-escalator provision is expressly labeled as such, would result in a situation where the statutes are in conflict, and would fail to give concurrent effect to both.

Accordingly, we conclude that the portions of the District's proposal at issue in this case are mandatory, rather than illegal, subjects of bargaining.

B. The Sheffield Chapin Meservey Thornton Case

Shortly after the Board issued its ruling in the Glenwood case, the Board issued a ruling in another negotiability dispute. This case involved the Sheffield Chapin Meservey Thornton Community School District (PERB Case No. 8255).

In the Sheffield Chapin case, the Board's proposal was different than the proposal reviewed by PERB in Glenwood. In this case the Board's proposal read as follows:

Single Salary Schedule Readjustment Clause - Should the District fail to receive any portion of TSS Dollars (\$214,734 total amount to District prior to reductions from FICA/IPERS) incorporated into the salary schedule for 2010-2011 in 2010-2011 or any subsequent year, the District may reduce teacher salaries dollar for dollar to represent the amount of the lack of funding and apportion the adjustment among remaining paychecks.

Although this proposal focused on a reduction in salary payments, the PER Board nevertheless found that the Board's proposal was a mandatory subject of bargaining and cited its decision in the **Glenwood** case as the controlling authority for its ruling.

C. The Negotiability of Reopener Proposals

If one of the parties proposes a contract reopener relating to wages, even wages based on TSS funds, such a proposal is a mandatory topic of bargaining. The PERB Board in *State of*

Iowa, PERB Nos. 1846 and 1855 (1931) ruled that a proposal for renegotiations of a contract if insufficient funds are appropriated is mandatory. In *Tri-Center Community School District*, PERB No. 1819 (1981) PERB ruled that a proposal stating that the Board agrees to reopen negotiations during the term of the Agreement to establish the appropriate salary for any new positions was mandatory. In *Burlington Community School District*, PERB No. 2157 (1982), PERB ruled that a proposal stating that, when additional money is received, contract negotiations will be reopened, was a mandatory topic of negotiations. See also *North Polk Community School School Dist.*, 1977 PERB 938; *Andrew School District*, 1984 PERB 2629.

Language proposing a reopener based on a change in TSS funding does not necessarily affect the combined salary schedule. The schedule remains intact until renegotiated. Therefore, a reopener based on the TSS is not illegal or inconsistent with the law.

D. The Negotiability of Escalator and De-Escalator Proposals

PERB has also consistently determined that de-escalator provisions, and escalator clauses, which decrease or increase wages based upon an employer's receipt of additional revenues, as mandatory topics of bargaining under the Section 20.9 subject category "wages." *Marion Independent Community School District v. Marion Education Association*, 1986 PERB 3237; *Charles City Community School District*, 1979 PERB 1395; *Burlington Community School District*, 1982 PERB 2157.

In the *Glenwood Community School District* case, the Association contended that wage de-escalator provisions which applied to TSS funds were an illegal subject of bargaining. The PER Board rejected this argument and ruled that de-escalator proposals were a mandatory subject of bargaining.

E. The Negotiability of Extra Pay for Extended Contract days

Some teachers are contracted to work into the summer on so-called "extended contracts." The wage rate for such days obviously is a mandatory topic of bargaining.

TSS funds may or may not be available to the employer to pay for these days, depending on whether all or just some of the TSS funds were applied to the regular contract year. Distribution of the TSS funds is a mandatory topic and the parties may agree that all TSS funds will be expended in the regular school year. This then affects the employer's position in negotiations regarding the rate of compensation for extended contract days. The Association claims that it is illegal to bargain a different rate for extended contracts, taking into consideration the availability of TSS funds, but PERB precedent holds that pay rates for extra days are "wages" and are therefore a mandatory topic of bargaining.

In the *Matter of State of Iowa v. State Police Officers Council*, 1997 PERB 5666, the Board considered SPOC's proposal for premium pay on holidays. SPOC argued that this was a holiday pay proposal, while the State argued that it was a "wages" proposal. In ruling for the State, the Board concluded:

Although the instant proposal makes reference to the term “holidays,” what it would require the employer to do is pay employees at a specified premium rate for work required to be performed on days that would otherwise be non-work days. The proposal is akin to “premium pay” proposals we have previously found mandatory under the section 20.9 category of “wages.” *See Marion Independent Community School*

The board should be able to negotiate regarding the availability of TSS funds for extra contract days since pay for these days is a mandatory subject of bargaining as “wages.”

III. Bargaining Issues

A. Salary Schedule Issues

1. Single versus Multiple Schedules

Iowa Code Section 284.3A now provides: “The combined salary schedule must use only the combined salary and cannot differentiate regular salaries and distribution of payments under sections 257.10 and 257.37A.”

The approach that some parties have used is to prepare and include in their collective bargaining agreement a separate salary schedule for the distribution of non-TSS monies (sometimes called the base or regular salary schedule), a separate salary schedule for the distribution of TSS monies, and a third “Combined Salary Schedule” which includes the amounts from the other two schedules and which complies with the legal requirement for a combined salary schedule. There may also be variations on this approach due to the fact that some parties have agreed to a blended distribution of TSS monies with some dollars distributed on a per capita basis and some dollars distributed on an indexed basis.

An example of this approach is the provision from the Underwood Community School District contract. In Underwood, all of the monies that are now referred to as TSS monies are distributed on an indexed basis, and so there was no need to provide additional explanation for the distribution of the TSS monies. In Underwood, this is the language that was agreed upon by the parties:

The salary schedule includes a separate salary amount representing salaries paid using State Aid and Phase II funds (Schedule “A”), a separate salary amount representing salaries paid using Teacher Compensation Basic Allocation and General Professional Development funds (Schedule “C”), and a cumulative amount representing the total salary paid by the District to comply with the State of Iowa’s single salary schedule legislation (Schedule “D”).

By contrast, in the Cedar Falls Community School District, prior to July 1, 2010, Phase II monies were indexed and TQ monies were distributed equally. There the parties agreed to separate schedules and to explanatory language to accomplish the distribution of TSS monies and the preparation of a combined salary schedule. In a separate appendix to their collective bargaining agreement, the parties included these statements:

TSS funds include funds formerly known as Phase II funds, plus Teacher Compensation funds. The Phase II component of TSS is indexed throughout the Total Salary Schedule (Appendix D) The Teacher Compensation component of the TSS is distributed equally among all qualifying recipients. The specific TSS amounts for each lane and step are reflected in the Teacher Salary Supplement Schedule (see attached).

TSS funds are distributed based on full time equivalency (FTE), with the maximum full time equivalency for purposes of distributing TSS being 1.0 FTE. TSS funds are paid assuming a standard contract year of 187 days for returning teachers and 190 days for beginning teachers. TSS funds shall be included for purposes of calculating pay adjustments in the event of unpaid leaves of absence. No TSS funds shall be paid for any days which extend a contract year.

Yet another example of multiple schedules is found in the Urbandale Community School District contract. In Urbandale, the parties included both a combined salary schedule and a "Schedule Detail of Calculations" which includes a "Base Salary" amount, a "TSS State Funding" amount, and a "10-11 Total Salary" amount for each cell on the schedule. The contract also includes the following language:

\$675 will be added to each cell of the 2009-2010 salary structure (minus the Phase II that is embedded in the schedule). \$525 of this \$675 will be funded by TSS spending authority from fiscal year 2010.

One unified salary structure has been created for 2010-2011, inclusive of TSS funding (which now includes what was formerly known as Phase II). The salary schedule fully expends all of the 2010-2011 TSS funding.

2. Generator Base

Some school districts have agreed upon a combined salary schedule which includes specific reference to a Generator Base or Base Generator and which then specifies the amount of TSS money to be distributed to teachers. Examples of this approach are found in the Carlisle Community School District contract and the Indianola Community School District contract. The provision in the Carlisle contract reads as follows:

Schedule 2 "2010-11 Combined Salary Schedule" includes a generator base that is used to generate the remainder of that schedule, and for the calculation of Supplemental Pay and Schedule 2 "Nurses salary Schedule."

Schedule 2 "2010-11 Combined Salary Schedule" is a summary salary schedule that is comprised of two components: Base Salary Schedule and the TSS Salary. The TSS Salary as presented in Schedule 2 is the 2010-11 TSS salary at the time of completion of negotiations.

In the Ankeny Community School District contract, the combined salary schedule contains a single salary figure in each cell, but it also contains the following key to interpretation of the schedule itself:

Base Generator:	\$26,737
Flex Amount:	\$ 2,626
Flex Cell TSS:	\$ 4,891
Indexed TSS:	\$ 598 This amount is included in the generator base above

3. Explanatory Language

Where the parties did not reach agreement on multiple schedules or a generator base language, they sometimes agreed to an explanation of the means by which the combined salary schedule was established. Two examples of this approach are found in the Sheldon Community School District contract and the Sheffield Chapin Meservey Thornton Community School District contract.

The Sheldon Community School District contract provision reads as follows:

The salary of each employee covered by the regular salary schedule is set forth in Schedule A, attached hereto, and made a part thereof. Schedule A reflects the district's Teacher Salary Supplement funds (TSS). The teacher quality portion (82.75%) of TSS funds received shall be placed on the base salary of Schedule A. The phase II portion (17.25) of TSS funds received shall be placed on the step and training lane increment of Schedule A.

B. Other Compensation Issues

In addition to the issue of a combined salary schedule, school districts were confronted with the question of what to do about the impact of a combined salary schedule on other aspects of compensation, most notably supplemental pay and extended contract pay.

In the Cedar Falls Community School District contract, the parties expressly excluded TSS monies from compensation for extended days and supplemental pay:

TSS funds are distributed based on full time equivalency (FTE), with the maximum full time equivalency for purposes of distributing TSS being 1.0 FTE. TSS funds are paid assuming a standard contract year of 187 days for returning teachers and 190 days for beginning teachers. TSS funds shall be included for purposes of calculating pay adjustments in the event of unpaid leaves of absence. No TSS funds shall be paid for any days which extend a contract year.

TSS funds shall not be paid for any employment for which supplemental pay is due including but not limited to, serving as department chair, extra-curricular activities, teaching "over loads", summer school teaching, serving as a teacher substitute, etc. In instances where a teacher shall receive additional pay based up

on a daily or hourly per diem rate, pay will be calculated using the Base Salary Schedule (see attached).

And in the Norwalk Community School District contract, the parties used a similar straight forward approach:

The TSS salary component only applies to the regular 190 teaching contract salary payments.

The TSS salary component is not used in the salary or per diem calculations for any of the following salary or extra duty pay calculations:

1. Supplemental Coaching or Co-curricular Salaries as determined on the Supplemental Duty Schedule;
2. Extended Contract Days;
3. Extra Class Periods;
4. Teacher Quality Professional Development.; or
5. Any other wages or salary payments that are based on per diem rate of pay.

Other districts simply noted in their contract that the supplemental pay schedule contained salary amounts which were calculated using a “generator base” instead of the base salary used in the combined salary schedule. *See*, for example, the Urbandale Community School District contract.

C. Readjustment Clauses

A very significant challenge for school districts is that they are required to bargain a contract with their teachers in the Spring and to do so with a projection of the number of teachers who will be employed in the Fall and the placement of those teachers on the salary schedule. In many, if not most cases, those projections do not prove to be completely accurate: sometimes teachers resign in the Summer and are not replaced, sometimes class sizes increase and teachers are added in the Fall, sometimes teachers advance horizontally on the salary schedule when they were not expected to do so, etc.

To respond to these unanticipated changes in the composition of the workforce and to insure that the district is not obligated to make TSS salary payments out of the General Fund, some districts negotiated provisions in their contracts which include a reserve or set aside to allow for an adjustment in salary payments that correctly reflects the actual composition of the TSS-eligible workforce.

The simplest form of an adjustment clause is the percentage reserve. This type of provision appears in several contracts. In the Carlisle Community School District contract, the provision reads as follows:

The District recognizes that the State of Iowa provides specific funding for teachers' and certain other certified employees' salaries called "Teacher Salary Supplemental Funds" (TSS) under SF 2329 enacted in 2008. TSS funding is 100 percent state funded revenue and shall be paid to all eligible employees as provided by law. The District's only responsibility will be to serve as the fiscal agent of TSS funds, providing a method of payment to eligible employees, and to ensure the funds are paid according to the requirements of the law. Distribution of the TSS funds will be determined by the following criteria below:

1. Minimum salaries for the first year beginning teachers, second year beginning teachers and Career 1 teachers will be paid according to the salary provisions of the law.
2. 99 percent of the remaining funds from the District's annual allocation will be distributed to all other teachers equally per FTE (including extended contract days in FTE calculation) after deducting the District's cost for FICA, Medicare and IPERS.
3. The 1 percent of the remaining funds will be distributed in the June pay check after adjustments are made based upon any employment changes during the school year that increases or decreases the FTE eligible for the funds.

Another example is the Indianola Community School District contract which contains this provision:

Distribution of the TSS funds will be determined by the following criteria below:

1. Minimum salaries for the first year beginning teachers, second year beginning teachers and Career I teachers will be paid according to the salary provisions of the law.
2. 95 percent of the remaining funds from the District's annual allocation will be distributed to all other teachers equally per FTE after deducting the District's costs for FICA, Medicare and IPERS.

The 5 percent of the remaining funds will be distributed in the May payroll after adjustments are made based upon any employment changes during the school year that increases or decreases the FTE eligible for the funds.

The Cedar Falls Community School District created a TSS reserve fund in its contract:

The total amount of TSS funds available for distribution shall be determined by formula as follows:

Current Year Estimated Ending Balance (2009-10 or subsequent school year) plus (+) Subsequent School Year (2010-II or following) State TSS Allocation minus (-) Amount Required to Raise the District Starting Base Salary Minimum to the State Established Minimum minus (-) Employer Contribution to FICA and IPERS minus (-) 2% of the Subsequent School Year TSS Allocation (referred to hereafter as the "TSS Reserve"): Net TSS Allocation to be divided among the current year eligible employees. In the event there is any money remaining in the TSS Reserve as of April 1st each year, such balances shall be distributed equally among all qualifying recipients, and paid out in the final contract payment of the year.

Other school districts chose to delay the finalization of the TSS distribution until a specified date in the Fall. An example of this approach is the Norwalk Community School District contract:

The above TSS Salary Schedule is an estimate of the dollar amounts to be paid that was determined during negotiations. The estimated TSS Salary Schedule amount for each teacher will be listed on the employee's teaching contract. The final TSS Salary Schedule amounts will be finalized as of September 1st to determine the actual payments based on new hires, retirees, and lane advancements. (Please refer to Article XII, Section 16.) The District will distribute a new Salary Schedule and a new TSS Schedule to employees in the fall, but revised contracts will not be re-issued.

D. De-Escalator Provisions

De-escalator provisions were a source of considerable controversy in the last year of negotiations. As noted above, in the Glenwood Community School District case, the Association contended that wage de-escalator provisions which applied to TSS funds were an illegal subject of bargaining. The PER Board rejected this argument and ruled that de-escalator proposals were a mandatory subject of bargaining.

Several school districts successfully negotiated some form of de-escalator provision into their collective bargaining agreement for the 2010-2011 school year. The straight forward, dollar-for-dollar approach is reflected in the provision found in the Underwood Community School District contract:

If the district fails to receive all Teacher Salary Supplement dollars originally incorporated into the salary schedule for 2010-II or in any subsequent year, the District will reduce teacher salaries dollar for dollar to represent the amount of the lack of funding and apportion the adjustment among remaining paychecks. Contrarily, if the District receives more Teacher Salary Supplement dollars than originally incorporated into the salary schedule for 2010-11 or in any subsequent year, the District will increase teacher salaries dollar for dollar to represent the increase in funding and apportion the adjustment among remaining paychecks.

A different concept was negotiated by the parties in Sheffield Chapin Meservey Thornton Community School District. That contract contains a dollar-for-dollar reduction for reductions in TSS monies which are in excess of \$2,000.

And in the Central Lee Community School District, Arbitrator Anna Duval Smith awarded the Board's position on wages which included the following statement:

Termination or reduction of TSS Funding will result in the base salary of Schedule G, Salary Schedule of Article X being reduced, if legally permissible in an amount the District fails to receive.

E. Impasse Item Issues

When school districts are bargaining over the issues related to TSS funds, it is important for negotiators to do an impasse item assessment of all proposals. At the beginning of the bargaining process, the characterization of a proposal as "wages" or "supplemental pay" may not seem important. But, at the end of the process, it is critical that the school district understand that a proposal for a re-opener or a de-escalator clause is most likely to be treated as a "wage" proposal for purposes of arbitration. That means that the District's final offer on the subject of wages will include not only the salary schedule but also all of the other "wage" proposals that it makes, such as the re-opener proposal, the adjustment clause proposal, and the de-escalator proposal. In order to prevail on wages, the Board's offer must be deemed to be the most reasonable offer on all of the components of this impasse item.

If a school district has had some form of a re-opener or de-escalator in its contract for a number of years, then a final offer which includes such a provision is one which simply maintains the status quo. It is much easier to prevail if you are the party seeking to maintain the status quo. In the Central Lee Community School District interest arbitration proceeding, this is exactly why the Board prevailed. Arbitrator Smith ruled in favor of maintaining an existing de-escalator provision and stated:

[T]he Association here is the moving party inasmuch as its proposal would eliminate a significant benefit to the Board, that being protection during the term of the Agreement against loss of state funding for teacher compensation. The Arbitrator therefore looks to the Association - as the party advocating change - to persuade her that change is warranted . . .

The District's proposal, on the other hand, preserves the protective mechanism the parties previously agreed to for adjusting to loss of state funding, modifying it only to adapt to the new state requirements and dollar amounts. Significantly, it provides predictability - as did the former language - should state funding be reduced or terminated. For these reasons I find the District's final offer to be the more reasonable and so award for it.

If the positions are reversed and the school district has never had a re-opener or de-escalator in its contract, then the Board would put its wage proposal at risk by coupling a

reasonable salary schedule proposal with a proposal for a new re-opener or de-escalator provision.

In terms of the characterization of the impasse item category of proposals, a more difficult question is presented by a proposal that compensation for extended contract days not include TSS monies. Is compensation for an extended contract day supplemental pay (extra pay for extra work) or is it wages (compensation for work performed)? Following the reasoning of the PER Board in *Matter of State of Iowa v. State Police Officers Council*, 1997 PERB 5666, the Board might well determine that such a proposal was a mandatory subject of bargaining as "wages" and not "supplemental pay." But until this issue is tested before the PER Board, school districts would be well advised to either seek an agreement with the Association concerning the impasse item status of an extended contract day proposal or to seek a ruling from PERB.

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