

**Collective Bargaining:
Strategies to Deal with Teacher Evaluation,
RIF/Recall, Salary, and Contract Reopeners**

Philip H. Gerner III

Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., Chicago

COLLECTIVE BARGAINING: STRATEGIES TO DEAL WITH TEACHER EVALUATION AND PERA, RIF/RECALL, SALARY, AND CONTRACT REOPENERS

I. TEACHER EVALUATIONS

A. PERA/Teacher Evaluation

1. Review evaluation provisions in teacher collective bargaining agreement (CBA) to ensure PERA/*School Code* compliance.
2. Key provisions to review:
 - a. Performance ratings categories.
 - b. Frequency and timing of observations and evaluations (Note: PERA regulations impose minimum requirements for teacher classroom observations effective upon PERA implementation date, *i.e.*, 9/1/16 for most Districts).
 - c. Professional development plans (PDP's).
 - d. Remediation plan procedures.
3. Primary school management objectives:
 - a. PERA/*School Code* compliance.
 - b. Consistency and alignment with District's teacher evaluation plan provision/procedures.
 - c. Avoid conflicts between contractual and statutory requirements which could result in grievances or lawsuits for violation of CBA or *School Code* requirements.
 - d. Clarity of procedural requirements for teacher evaluators to follow.

II. TEACHER EVALUATIONS - DUTY TO BARGAIN

A. Teacher Evaluation Plans

1. General Rule: Procedural components of teacher evaluation plans are mandatory subjects of bargaining. The Fourth District Illinois Appellate Court and the IELRB have ruled that the substantive criteria, weight, and areas evaluated in teacher evaluation plans are not mandatory bargaining subjects, but the procedural components and mechanical aspects of the evaluation plans are mandatorily negotiable. *Board of Education of Leroy Community Unit School District No. 2 v. IELRB*, 199 Ill. App. 3d 347, 556 NE2d 857 (4th District 1990); *Alton Community Unit School District No. 11*, 9 PERI 1085 (IELRB 1993).

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

- a. In addressing the issue of whether teacher evaluation plans are a mandatory subject of bargaining under the IELRA, the Fourth District Appellate Court concluded:

Article 24A of the *School Code* is designed to promote professional excellence. It is also designed to establish a statewide minimum-competency level. It ensures that local boards of education have the means to control the quality of teaching in their district and requires improvement plans. It provides a means to evaluate tenured teachers. We note the evaluation plans must meet the minimum standards set forth in the *School Code* and be reviewed by the Illinois Department of Education. Therefore, we find the criteria, including who conducts the evaluation, upon which an instructor is evaluated are not subject to mandatory bargaining.

However, appraisal procedures which involve the mechanics of evaluations are subjects of mandatory negotiation. The mechanical aspects of the evaluation process affect the instructors' day-to-day activities. Collective bargaining agreements concerning matters such as the timing of evaluations and appropriate remediation procedures would not involve the inherent managerial policy of a school district. We note article 24A sets forth the minimum content of remediation plans. It also does not foreclose collectively bargained remediation procedures which exceed the minimum plan.

- b. Procedural components of teacher evaluation plans include:
- frequency and timelines for observations or evaluations of non-tenured and tenured teachers;
 - timing of post-observation conferences and summative evaluations; and
 - tenured teacher remediation plan procedures.
- c. Compare: Non-procedural substantive provisions of teacher evaluation plans are non-mandatory subjects of bargaining. Substantive provisions include:
- performance ratings (*i.e.*, “excellent”, “satisfactory”, “unsatisfactory”);
 - evaluation criteria or standards (*e.g.*, instructional planning, instructional effectiveness, subject matter competency, classroom management, etc.); and

- decision whether tenured teacher successfully completed remediation plan.
- d. **Qualified Evaluators:** The *School Code* authorizes administrators qualified under Section 24A-3 to evaluate teachers. Evaluators must successfully complete a pre-qualification training program provided or approved by ISBE before conducting any evaluation of teachers. Caution: *School Code* Section 24A prohibits any qualified evaluator who is in the teacher bargaining unit from evaluating teachers unless the teachers' union agrees to permit the evaluator to evaluate other bargaining unit members.
- i. **Practical Significance:** Absent the teacher union's agreement, department heads/chairs who are members of the teacher bargaining unit will not have authority to evaluate teachers. Department heads/chairs often are involved in the teacher evaluation process, conduct classroom observations, and provide input to principals who prepare the teacher's summative evaluation. Unions often oppose efforts to allow department heads/chairs to evaluate teachers because unions believe that it is unfair and a "conflict of interest" for bargaining unit employees to evaluate other bargaining unit members.
 - ii. **District Options:** Although districts have limited negotiating leverage due to the statutory mandate that the union consent to bargaining unit department heads/chairs evaluating teachers, districts should not immediately discontinue their current practice of assigning department heads/chairs to evaluate teachers in their department. There are various options for districts to consider in confronting this issue, including:
 - removal of department heads/chairs from the teacher bargaining unit by adding sufficient supervisory responsibilities to qualify them as "supervisors" under the IELRA, and filing a unit clarification petition with the IELRB;
 - restructuring the department head/chair's evaluation responsibilities to clarify that their role is limited to providing evaluative input to the District's primary evaluator rather than signing off on evaluations for teachers; and/or
 - clarifying that department heads/chairs will not be responsible for determining the evaluation ratings for tenured teachers, or involved in deciding whether or not to reemploy a non-tenured teacher based upon their summative performance assessment.

III. TEACHER EVALUATIONS - CONTRACT LANGUAGE COMPLIANCE ISSUES

A. PERA/Teacher Evaluations

1. Performance ratings:

a. Performance ratings are not a negotiable issue but are mandated by PERA.

i. A teacher's performance evaluation rating is not a mandatory subjective of bargaining. *Alton Community Unit School District No. 11*, 9 PERI 1085 (IELRB 1993).

b. Tenured and non-tenured teachers must be rated "excellent," "proficient," "needs improvement," or "unsatisfactory."

i. Review District's teacher evaluation plan and CBA language to ensure they comply with PERA.

ii. Avoid Union proposals to add additional ratings categories (e.g., "superior," "exceptional," "very good," "commendable").

(a) Unintended Consequences: Addition of non-PERA evaluation rating categories results in several adverse consequences:

(1) The District's teacher evaluation plan could be challenged as non-compliant with PERA and any teacher rated "needs improvement" or "unsatisfactory" can object to their performance evaluation rating and allege that their PDP or remediation plan is invalid; and

(2) Teachers rated in non-PERA evaluation rating categories cannot be properly placed in RIF Groups for purposes of SOD list compliance and potential RIF layoff.

2. Timing of evaluation:

a. Minimum requirements are specified by PERA:

i. Non-tenured: Must evaluate at least once every school year.

ii. Tenured: Must evaluate at least once every two school years, except that teachers rated "needs improvement" or "unsatisfactory" must be rated at least once in school year

immediately following “needs improvement” or “unsatisfactory” rating.

b. Contract language should not limit the District’s right to evaluate non-tenured and tenured teachers more frequently than mandated by PERA.

i. Rationale: Administration needs to reserve the right to observe and evaluate:

(a) non-tenured teachers as often as necessary to determine teacher’s performance rating and right to reemployment; and

(b) tenured teachers in non-evaluation year if performance issues occur in off-cycle year or soon after teacher’s receipt of summative evaluation and rating.

ii. Examples of Union proposals to reject:

(a) Non-tenured teacher evaluation – Non-tenured teachers will be subject to no more than one formal classroom observation each school year.

(b) Tenured teacher evaluation – Tenured teachers will be evaluated no more than once every two school years, and shall not be formally or informally observed during non-scheduled evaluation years.

(1) Note: This proposal is overly restrictive of the Administration’s right to observe and evaluate tenured teachers as necessary to address performance issues. In addition, it does not comply with the PERA requirement for evaluation of tenured teachers rated “needs improvement” or “unsatisfactory” in the school year following any such rating.

3. Professional Development Plan (PDP):

a. PERA requirement: tenured teachers rated “needs improvement” must be: 1) placed on a PDP within 30 school days after receipt of “needs improvement” rating; and 2) evaluated at least once in the school year following the “needs improvement” or “unsatisfactory” rating.

i. Negotiable issues regarding PDP not addressed by PERA:

- (a) Duration of PDP (Contrast: a tenured teacher remediation plan must be ninety (90) school days or a shorter period negotiated by parties);
- (b) Process for assessment of teacher's performance during PDP (Compare: remediation plan requires evaluation and ratings at mid-point and end of 90-school day remediation period); and
- (c) Administrator's right to issue performance rating upon completion of PDP.

ii. Management contract language example:

Professional Development Plan (PDP)

The PDP period shall extend 90 school days. Evaluation conferences and ratings shall be scheduled to occur at 30-school day intervals. Teachers rated "unsatisfactory" after completion of the PDP period shall be placed on remediation for a 60-school day remediation period. Teachers rated "proficient" or better at the end of the PDP will be evaluated and rated during the school year immediately following the teacher's "needs improvement" rating.

iii. Union contract language example:

Professional Development Plan (PDP)

The PDP shall identify the evaluation components or criteria rated "needs improvement." The teacher's performance during the PDP shall be assessed and rated solely on those performance issues which are specifically identified as deficient based upon a "needs improvement" rating. The evaluator must provide specific guidance, assistance, direction, and sufficient administrative supports (including, but not limited to, a consulting or mentor teacher) which are designed to enable the teacher to improve their performance to achieve a "proficient" or "excellent" rating. Any teacher rated "proficient" or better will be reinstated to the regular tenured teacher evaluation cycle.

4. Remediation procedures:
 - a. Management option: Negotiate remediation period shorter than 90 school days for teachers who fail to successfully complete the PDP with a “proficient” or better performance rating.
 - i. Rationale: A shorter remediation period for teachers who have completed the PDP process is authorized by the School Code and PERA. In addition, it enables the Administration to terminate tenured teachers rated “unsatisfactory” more expeditiously.
 - b. PERA/*School Code* contract language compliance issues:
 - i. Evaluator must conduct mid-point and final evaluation which includes performance ratings during remediation period.
 - ii. Evaluator must provide written copy of mid-point and final evaluation and ratings and discuss with the teacher within 10 school days after date of evaluation “unless an applicable CBA provides to the contrary.” (Note: District should consider option of allowing more time after evaluation to meet with teacher and provide copy of evaluation and rating.)
 - iii. Any teacher who successfully completes remediation plan with “proficient” or better rating must be evaluated in school year immediately following “unsatisfactory” rating.
5. Content of evaluation:
 - a. PERA does not address whether teacher evaluations and ratings are grievable.
 - i. Management option:

Teacher Evaluation/Rating

The content and performance rating of the teacher’s summative performance evaluation are not grievable under Article V of the Collective Bargaining Agreement.

IV. RIF/RECALL

A. SB7 – RIF/RECALL

1. Revise teacher CBA to comply with SB 7 requirements and significant changes to RIF and RIF recall of teachers.
2. Key provisions to review:
 - a. Teacher vacancy appointment procedures.
 - b. RIF layoff process.
 - c. RIF recall provisions.
 - d. Teacher qualifications for sequence of dismissal (SOD) list position categories.
 - e. Seniority definition and “tie-breaker” provisions
3. Primary school management objectives:
 - a. SB 7/School Code compliance.
 - b. RIF layoff and RIF recall provisions/procedures conform to SB 7 requirements.
 - c. Maintain consistency between CBA and SB 7 provisions to avoid grievances or lawsuits.
 - d. Provide definitions of key terms (e.g., “qualifications,” “length of continuing service,” etc.) to reduce potential misinterpretation or contract violation.
 - e. Retain management discretion to implement RIF and reassignment of teachers consistent with District needs and SB 7 obligations.

B. Duty to Bargain - SB 7/Reduction in Force ("RIF")

1. Duty to bargain issue: Under Illinois law, an employer's decision to RIF or lay off employees for financial reasons (*i.e.*, cost savings) is a mandatory subject of bargaining.
 - a. Caution: Most RIF/layoff decisions are based in part upon economic or financial reasons.
 - b. Contrast: An employer's decision to RIF in order to reorganize or restructure its delivery of services is a matter of "inherent managerial policy" and thus not mandatorily negotiable.

2. Avoid: An employer should generally decline to agree to contractual restrictions on its ability to RIF or lay off bargaining unit employees. These types of "No RIF" clauses overly restrict an employer's right to lay off employees even if such layoffs are necessary based upon reduced student enrollment or necessary budget cuts.

C. Key Contract Language Issues

1. SB 7

- a. SB 7 RIF "grandfather" provisions no longer apply: SB 7 "grandfathered" existing RIF and RIF recall provisions in CBA's until the CBA expired or June 30, 2013, whichever occurred first.
 - i. Implications: All CBA provisions regarding RIF, seniority, and RIF recall must comply with SB 7 requirements. RIF and RIF recall must be based upon a tenured or non-tenured teacher's performance evaluation rating which determines their RIF Group placement and layoff order on the SOD list.
- b. Joint RIF Committee:
 - i. The scope of Joint RIF Committee is limited by SB 7 to the following issues:
 - Criteria for excluding a teacher from Group 2 and placement into Group 3;
 - Alternative definition for Group 4;
 - Including a performance evaluation rating from another District;
 - For performance ratings determined prior to September 1, 2012, the basis for assigning performance ratings to be used in sequence of dismissal; and
 - Upon request from a committee member, review of the SOD List to determine whether there is a trend of more senior teachers receiving lower performance ratings.
 - ii. Bargaining tips:
 - (a) Do not include Joint RIF Committee provisions in the CBA.

(1) Rationale: Union will attempt to negotiate expanded role of Joint RIF Committee and reduce authority of the Superintendent.

(2) Example of Union proposal to reject:

Joint RIF Committee – The Joint RIF Committee comprised of an equal number of teachers and Administration representatives, will determine which teachers are placed in RIF Groups 1-4. In addition, the Committee will review teachers’ qualifications for teaching positions and prepare the SOD list based upon the teacher’s certification, performance evaluations, and seniority. The Committee will submit the SOD list to the Superintendent and the Union for review. Teachers will receive a copy of the SOD list upon final review and approval by the Union and Superintendent.

(3) Caution - SB 7 compliance and management rights issues:

- The District’s Administration (not Joint RIF Committee) is delegated authority to review teachers’ qualifications, performance evaluation ratings, and determine RIF Group placement and order of layoff on the SOD list.
- The Joint RIF Committee’s authority is enumerated specifically by SB 7 and the District should not expand the Joint RIF Committee’s role and authority by negotiating language into the CBA.

(4) If the District negotiates provisions regarding the Joint RIF Committee in the CBA, the Union can negotiate different criteria for RIF Group placement even though deciding any alternative RIF Group criteria is exclusively the role of the Joint RIF Committee placement (not the Union) under SB 7.

- c. RIF recall rights:
 - i. SB 7 limits full RIF recall rights to tenured and non-tenured teachers in RIF Groups 3 and 4. Eligible teachers in RIF Group 2 (based upon a “needs improvement” on one of the teacher’s previous two evaluations) have limited RIF recall rights under SB 7.
 - (a) SB7 Implications: Tenured teacher rated “unsatisfactory” on either of the two previous evaluations is subject to RIF layoff before any non-tenured teacher in RIF Groups 3 or 4, and is not eligible for RIF recall to any vacant position during the RIF recall period.
 - (b) Example of Union proposal to reject:
RIF Recall – Tenured teachers in RIF Group 2 will be eligible for RIF recall based upon seniority.
RIF Recall Rights – RIF Group 2 teachers will be entitled to RIF recall rights if the teacher’s placement in Group 2 is based upon a “needs improvement” rating.
 - (c) Rationale for rejection: SB 7 limits full RIF recall rights to RIF Group 3 and 4 teachers based upon their seniority within each group. Teachers who have received an “unsatisfactory” rating should not be granted RIF recall when the District can hire a qualified teacher with “excellent” performance evaluations to fill the vacancy.
- d. SOD List - Teacher Qualifications:
 - i. SB 7 provides that teachers must be placed in RIF Groups “categorized into one or more positions the teacher is qualified to hold.” The teacher’s qualifications for positions are based upon the teacher’s “legal qualifications or any other qualifications established in a District job description.”
 - ii. Contract language tips:
 - (a) Reserve administrative right to determine the teacher’s qualifications for teaching positions in the District.

- (1) Impact: The District can adopt job descriptions which establish and identify teachers' qualifications for teaching positions.
 - (2) Example: The job description provides that junior high school science teachers must have previous teaching experience in science at the junior high or middle school grade level.
 - (b) Reject Union proposals which substitute "teaching certification" for "legal qualifications." This type of broad language could result in a teacher's placement in numerous teaching positions based upon their teaching certificate rather than their job description qualifications for the position.
- e. SOD List – New Definition for Group One Teachers:
 - i. SB 1762 (effective January 1, 2014) amends Section 24-12 of *The School Code* to clarify which teachers are to be placed into Group One.
 - ii. Group One teachers shall include those teachers who:
 - (a) Are not in contractual continued service (tenure); and
 - (b) Satisfies one of the following criteria:
 - Has not received a performance evaluation rating;
 - Is employed for one school year or less to replace a teacher on leave;
 - Is employed on a "part-time basis" as defined in *The School Code*.
 - iii. SB 1762 clarifies the issue as to whether part-time, non-tenured teachers could be placed in RIF Groups 3 or 4.

- f. Seniority:
- i. SB 7 provides that “length of continuing service in District” is the determining factor in deciding order of RIF layoff of teachers in RIF Groups 3 and 4.
- (a) Result: SB 7 retains seniority as the basis for determining order of layoff of teachers rated “proficient” or “excellent” and placed in RIF Groups 3 and 4.
- (b) Contract language implications:
- (1) Define “length of continuing service” in contract language to ensure clarity and consistency in determining teachers’ sequence of RIF layoff in RIF Groups 3 and 4.
- Advisable option: Define “length of continuing service” as beginning with continuous full-time probationary teaching service, count part-time teaching on a pro-rata basis, and exclude unpaid leaves of absence in excess of 90 days from calculation of service.
- (2) Include seniority “tie-breaker” provision: Add a “seniority tie-breaker” clause to determine the order of layoff if two or more teachers in same RIF Group have same length of continued service.
- Example: Total District service, salary lane placement, total teaching service outside District, etc.
- ii. SB 7 requires that SOD list be based upon each teacher’s RIF Group placement in each category of position they are legally qualified to hold.
- (a) SB7 requirement: In consultation with the teachers’ exclusive bargaining agent, the District must prepare a sequence of dismissal (“SOD”) list and distribute this list to the union no later than 75 days before the end of the school term. This SOD list is to be used for determining the rank order and RIF layoff order of teachers in RIF Groups 3 and 4.

- (b) Note: A date of hire seniority list may also be used for purposes other than for ranking teachers in Groups 3 and 4 (e.g., extra-duty appointments, overload assignments, etc.).
- (c) Contract language tip: Specify that SOD and seniority lists will be provided to Union President at least 75 days before the end of each school term per requirements of SB 7 and SB 1762.

V. SALARY ISSUES AND OPTIONS

A. Key Factors in Determining Level of Annual Salary Increases

1. District's current and projected financial condition.

Example: Review educational fund balances and fund reserves for previous 5-year period and projected balances and reserves for next 5-year period.
2. District revenue limitations and constraints.
 - a. Tax Capped Districts – CPI and projected CPI for period of multi-year collective bargaining agreement (According to PTELL, annual revenue for districts subject to tax cap is limited to annualized CPI increase as determined by county assessor each December, subject to maximum of 5.0%).
 - b. State Aid/State and Federal Grant Funds – Districts with high percentage of revenues dependent upon state aid and grant funds must establish realistic financial parameters for labor negotiations. Many districts have failed to receive annual state aid or grant funds or have received lower than anticipated state payments due to the state fiscal crisis. We anticipate that this trend will continue for at least the next 3-5 years.
 - c. Equalized Assessed Valuation (EAV) Declines – The economic recession and limited recovery has resulted in lower real estate valuations, property foreclosures, and declines in EAV.
3. Comparable district wage/salary schedules, benefits packages, and contract settlements.
 - a. School districts should review recent comparable district contract settlements to determine the range of settlements. Unions often cite high contract settlements in comparison districts to support their wage/salary demands.

- b. Practical Tips:
- i. Make sure what districts agree to as “comparables” are actually true comparable districts (e.g., high school district salary schedules are not comparable to elementary schedules and should not be agreed comparables in most instances).
 - ii. Comparable districts should be of similar size, budget, EAV, and location (e.g., comparing a small elementary district in New Trier Township to a large unit district in central Illinois is not beneficial).
 - iii. Reject the union’s attempt to add nearby “high-end”, outlier districts to the agreed list of comparable districts. Be prepared to rebut the union’s contention that the district which has a nuclear plant in its boundaries is comparable to your district which has no commercial property in its tax base.
 - iv. Comparison of salary schedules should not be limited to the starting BA, step 1 salary or the highest MA +60 step. A fair comparison includes salary cells at the bottom, mid-point, and top of each salary lane.
 - v. Fringe benefits comparisons are valid only if the specific benefit plans are compared, not simply the percentage of contribution by the board (e.g., health insurance benefits comparisons should include the type of plan options such as PPO, HMO, HDHP, and the specific plan benefits such as deductible and co-pay amounts, out of pocket maximums, and other issues).

B. Table Trends and Employer Negotiations Strategies

1. “Step Only” Contract Settlements.

Due to fiscal constraints, many districts are negotiating contract settlements in which teachers receive step movement on the teacher salary schedule, but no cell increase. Reason: Many teacher salary schedules have a built-in 3.0-3.5% vertical step increase in each salary lane, with teachers off schedule receiving a longevity payment of 1.5-3.0%. Because the CPI increases have averaged 2.2% in the previous 5-year period, many districts subject to the tax cap cannot afford to negotiate annual salary increases which exceed step. “Step plus” salary increases have resulted in depletion of tax capped districts’ annual educational fund balances and reserves.

2. Off-schedule salary payments.

Due to the significant cost of many districts' step schedules, some districts are negotiating contract settlements which grant teachers a fixed dollar increase, but do not advance teachers on the step schedule. This approach is beneficial to significantly cash-strapped districts because the salary increases are paid "off schedule" and are not cumulative (i.e., the off-schedule payment does not increase the teacher's base salary on the salary schedule for the subsequent contract year and, therefore, is only a one-time, non-recurrent payment).

3. Delayed step advancement or non-retroactive wage settlements.

a. Districts whose annual financial parameter is lower than the annual cost of vertical salary settlement step movement (e.g., maximum wage settlement is 1.5%, and vertical step advancement costs 3.0%), should consider a non-retroactive wage settlement or delayed implementation of the step increase. This approach may enable the board to reach a settlement within its maximum new dollar expenditure limits, while also meeting the union and teachers' need to obtain vertical step movement for its bargaining unit members.

b. Example: If Board and Union agree to implement the first year wage settlement mid-way through the first contract year (e.g., January 15th), the delayed implementation of the salary step movement reduces the salary cost to the Board by fifty percent (50%). If the annual vertical step cost is 3.0%, the mid-year implementation results in a reduced first year cost of 1.5%.

4. Salary reopener provisions.

a. Fiscal constraints have resulted in many districts negotiating multi-year contracts with salary reopener provisions in specified contract years. A salary reopener provision should clearly identify what contract year(s) are subject to the reopener, and the scope of the reopener, e.g., whether the reopener applies to health insurance, retirement, and other fringe benefits provisions, or only to salary.

b. Advantages:

i. Duration of Contract Extended – Salary reopener enhances ability to obtain multi-year contract.

ii. Reduced Risks – Board is able to negotiate annual salary increase with more current data regarding district's financial condition.

- iii. Union Ratification – Addition of salary reopener may better enable union to obtain membership ratification of longer-term contract.
 - c. Disadvantages:
 - i. More Frequent Bargaining – Annual salary reopener negotiations can be time intensive and difficult on administrative bargaining representatives.
 - ii. Risk of Strike or Work Stoppage – Because salary reopener provisions often include waiver of the no-strike provision if the parties declare impasse and cannot reach settlement after mediation, there is potential for a strike if no agreement is reached.
5. CPI-based salary increase provisions.

Many districts have previously negotiated CPI-based salary increase provisions for ESP bargaining units. The fiscal crisis and revenue limitations in tax capped districts have compelled districts to consider CPI-based salary provisions for their teacher collective bargaining agreements. Most unions, however, remain resistant to CPI-based salary increases for teachers because the CPI increase is often lower than the vertical salary increase. Accordingly, most unions are only willing to agree to CPI as an upward adjustment or factor in salary increase provisions, or alternatively, to increase the salary schedule (not teacher salaries) by the annual CPI increase.

- a. Options:
 - i. Negotiate CPI-based salary increase which provides that teacher salaries (including any step increase) increase by CPI within range with ceiling and floor. Example: If range is 1.0%-4.0% and CPI is less than 1.0% or more than 4.0%, teachers receive 1.0% or 4.0%.
 - ii. Negotiate a fixed percentage salary increase which is subject to reduction or increase depending upon CPI increase. Example: 2.50% salary increase for 2016-17. If CPI is less than 2.50%, percentage salary increase is reduced by 50% of amount CPI is less than 2.50% subject to 1.0% floor (ie., if CPI is 1.0%, salary increase is $2.50 - .75 = 1.75\%$). If CPI is greater than 2.50%, percentage salary increase is increased by 50% of amount CPI is greater than 2.50% subject to 4.0% ceiling (e.g., if CPI is 4.0%, salary increase is $2.50 + .75 = 3.25\%$).

6. Salary Schedule Elimination.
 - a. A number of districts have negotiated the elimination of the teacher salary schedule to avoid the ongoing significant cost of salary schedule step movement and lane advancement.
 - b. Options:
 - i. Negotiate a fixed percentage or dollar increase to teachers' current base salaries.
 - ii. Negotiate varying percentage or dollar increases based upon the teacher's current step placement (e.g., steps 1-5: 3.5%, steps 6-10: 3.0%, Steps 11-15: 2.5%, steps 16-20: 2.0%, steps 20+: 1.5%).
 - III. Negotiate fixed dollar increases for teacher's attainment of Master's Degree or each additional 15 credit hours of pre-approved graduate coursework.

VI. CONTRACT REOPENERS

A. Contract Reopeners

1. Non-Contingent Reopener: A reopener provision is designed to enable the parties the right to reopen the contract at a specified time (e.g., after 2nd year of 4-year CBA) for a specific purpose (e.g., salary and benefits issues).
 - a. Example: The CBA can include a provision that the parties will reopen the contract to negotiate annual salary increases for the final two years of a multi-year CBA.
 - b. Rationale: This type of salary reopener enables the parties to negotiate the salary increase when more timely relevant financial data is available (e.g., District's education fund balance and reserves, CPI, state revenue payments, etc.).
 - c. Caution: Most union proposals for salary or benefits contract reopener provisions will allow the union the right to strike if the reopener negotiations result in an impasse and the union's economic demands are rejected. This waiver of the no-strike clause in the CBA is a significant concession with negative consequences for the Board.
 - d. Note: Non-contingent reopener provisions essentially reduce the duration of a multi-year CBA because only the non-economic terms of the CBA not subject to reopener negotiations (e.g., contract language) remain in effect for the full term of the CBA.

2. Contingent Reopener: A contingent reopener provision allows either party to reopen the CBA only if a specified contingency occurs (*e.g.*, legislative or regulatory changes, loss of District revenue sources, imposition of unanticipated state mandates or penalties, etc.).
 - a. Examples:
 - i. “Pension cost shift” legislation.
 - ii. Property Tax “Freeze” legislation.
 - iii. “Cadillac” tax or ACA penalties or assessments.
 - b. Rationale: The District needs to reserve its right during a longer term CBA to reopen negotiations to address the financial impact of unanticipated costs or penalties imposed by state or federal legislation or mandates.
 - c. Management Proposal Options: District should consider negotiating contingent reopeners to allow the contract to be reopened mid-term for limited purposes if the identified contingency (*e.g.*, pension “cost shift” legislation) occurs and the District’s financial condition could be adversely affected unless the District can negotiate changes to remedy the issue (*e.g.*, health insurance plan design charges to avoid “Cadillac” tax liability) or reduce teacher salary and/or benefit costs.
 - d. Negotiation Strategy: An effective negotiation strategy is to condition agreement to a longer term CBA on the union’s agreement to contingent reopeners to protect the District’s financial risk. Most unions will favor a longer term CBA if the proposed salary and benefit terms are acceptable and will often agree to contingent reopener provisions.