

CUDDY & McCARTHY, LLP

Attorneys at Law

Bargaining in Difficult Economic Times

2011 NMSBA School Law Conference

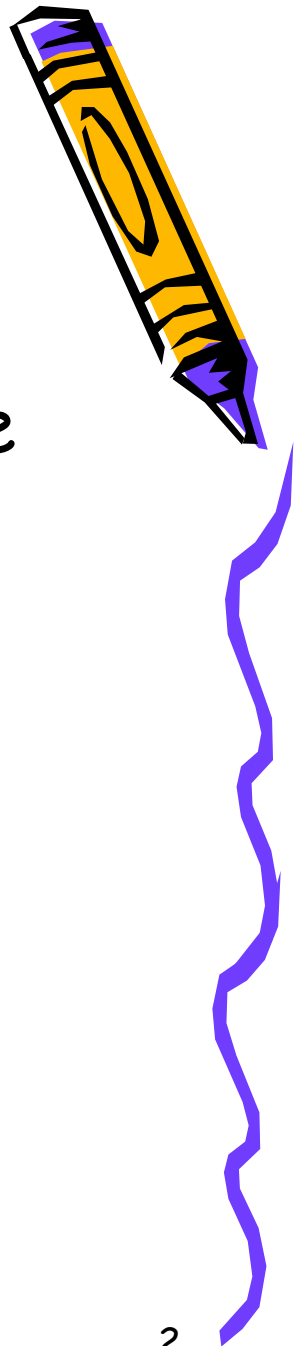
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Negotiations

- Bargaining involves complex issues
- Aspects of school district costs have not been widely discussed before
 - Step increases
 - Increments
 - Costs for benefits
- School funding is difficult to understand and changes yearly
 - Federal funding
 - State Funding formula



Communications

- Communications should occur frequently and throughout the school year whether as part of negotiations or not.
- Creates trust and allows for decisions to be made in context
- Waiting until negotiations or waiting until there is a problem creates suspicion.
- In tough economic times, it is even more important to engage in quality communications



Effective Negotiations



- How do the employees and the community view and think about the negotiations
 - Board effectiveness at the bargaining table
- What is the central issue in negotiations?
 - How the parties answer this question is very important



Conflict is not always bad

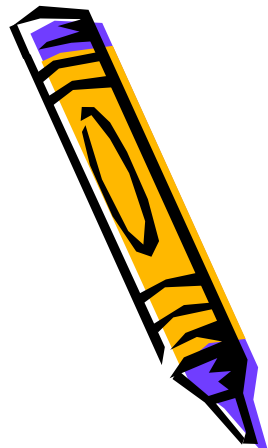


- **School boards are part of management.**
- "Clashes between parties are the crucibles in which creative solutions are developed and wise trade-offs among competing objectives are made."
 - Harvard Business Review (2005)



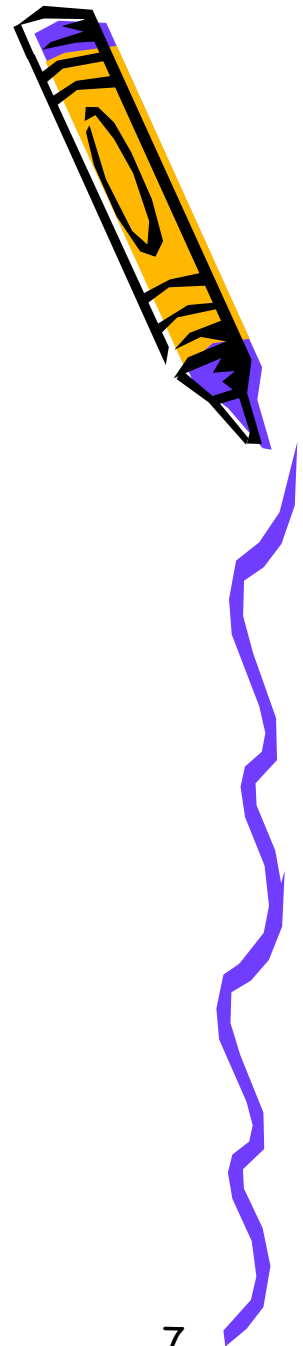
Conflict is not always bad

- Saving jobs while reducing costs
 - How can this be done?
 - Student performance evaluations
 - Expanding due process rights
 - Use of first three years of employment
 - Reductions in force
 - Quality teachers and seniority



A Picture is worth a 1000 words

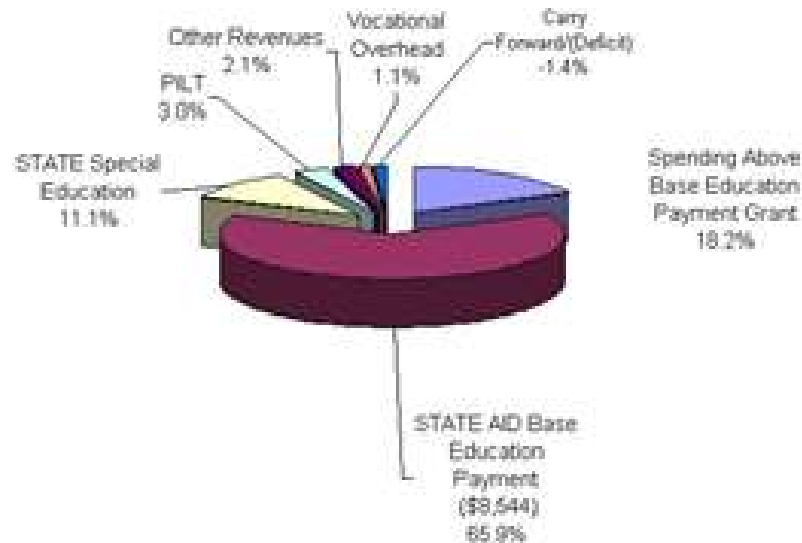
- It's about the kids



A Picture is worth a 1000 words

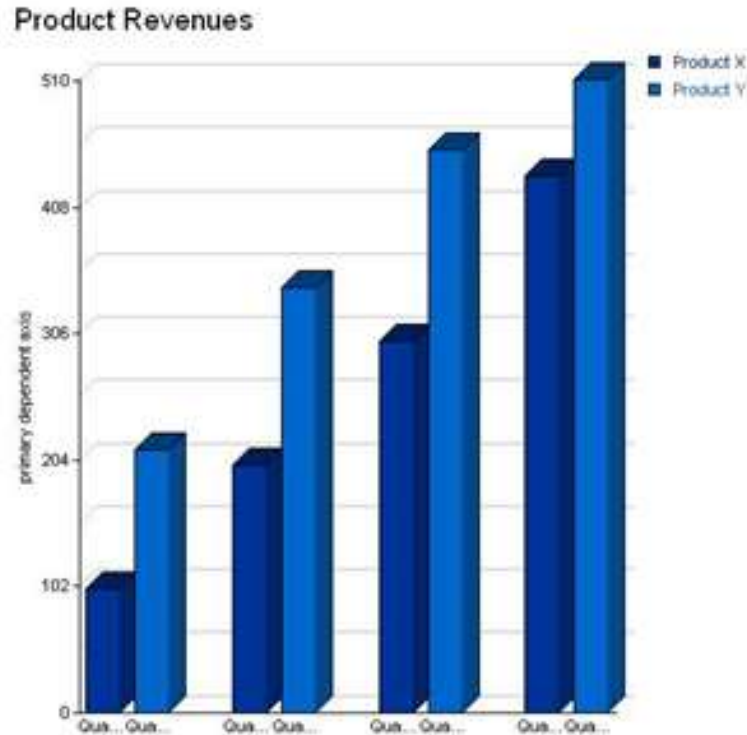
- How much does the school district spend on its employees?

FY 2010 REVENUE BUDGET



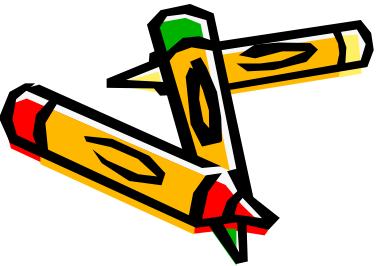
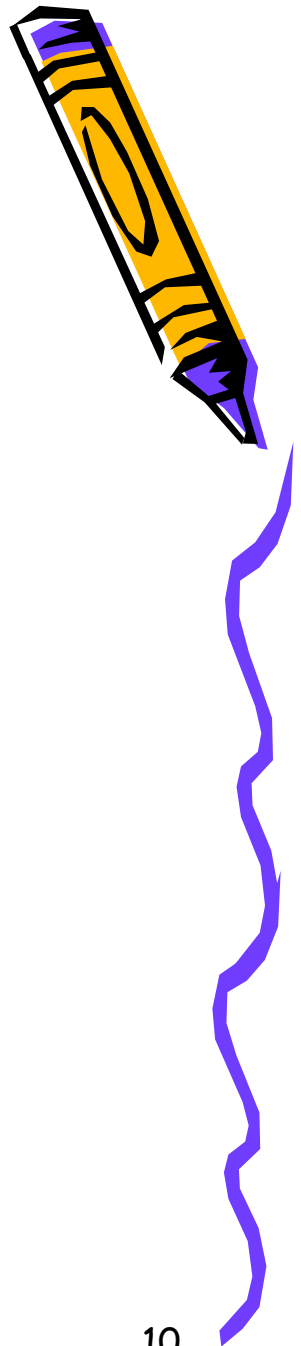
A Picture is worth a 1000 words

- Do expenses exceed revenue?



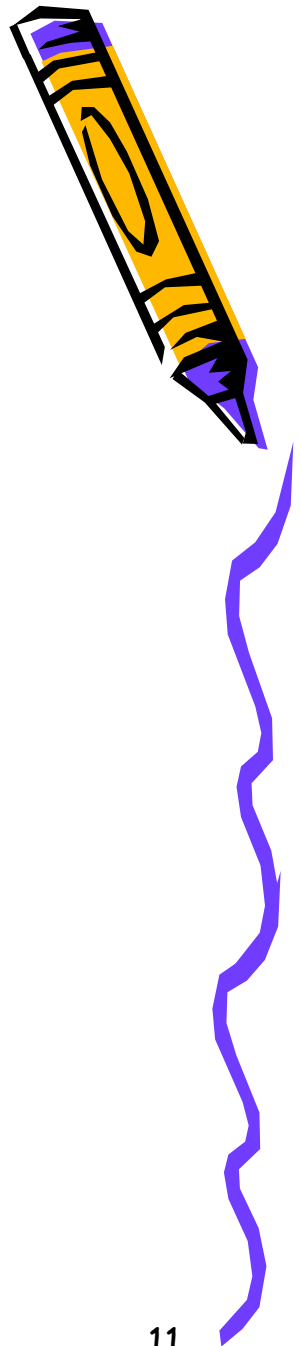
The Rules

- Tell the truth
- Be accurate
- Don't go around the Union leadership or the negotiator
- Give Union time to consider proposals
- Maintain confidentiality of proposals
 - Board members
 - Administration
- Address conflicts of interest
 - Real
 - Perceived



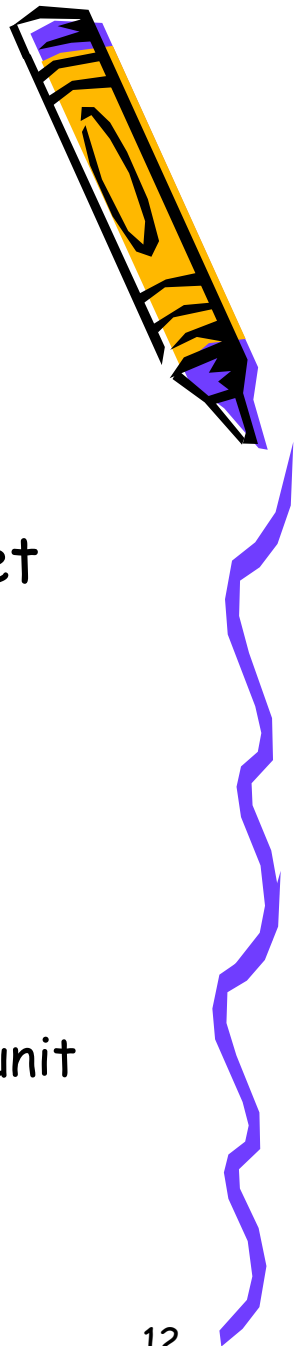
Times are changing

- Professional Help
 - Level the playing field
 - Specialized training
 - Experience
 - Knowledge of the law
 - Know the finances
- Use technology to get message across to employees and community.
 - Internet
 - Social media
 - Networking



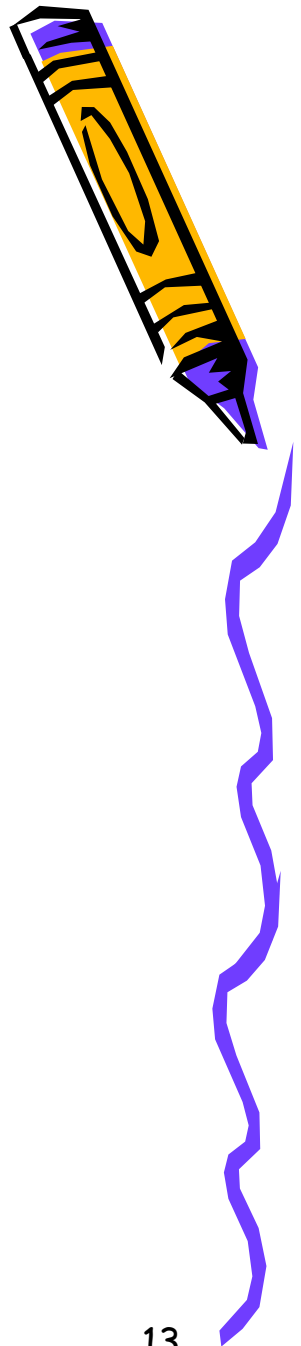
Distractions from real issues

- Be Prepared for personal attacks.
- Union prepared budget
 - Do not have to accept or consider
 - Board has the only authority to approve budget
- Can be painful to school district leaders
 - School District leaders are often the targets and are attacked directly and personally
 - Propaganda is often used to discredit a school district leader
 - Distractions are often used to refocus the bargaining unit and the community on other issues.



Repetition

- Key to effective communication
- Multiple channels
 - Use technology
 - Use media
- Frequency
- People can care about children - not negotiations
- Board must communicate its care for children and completing budget to facilitate education not job security



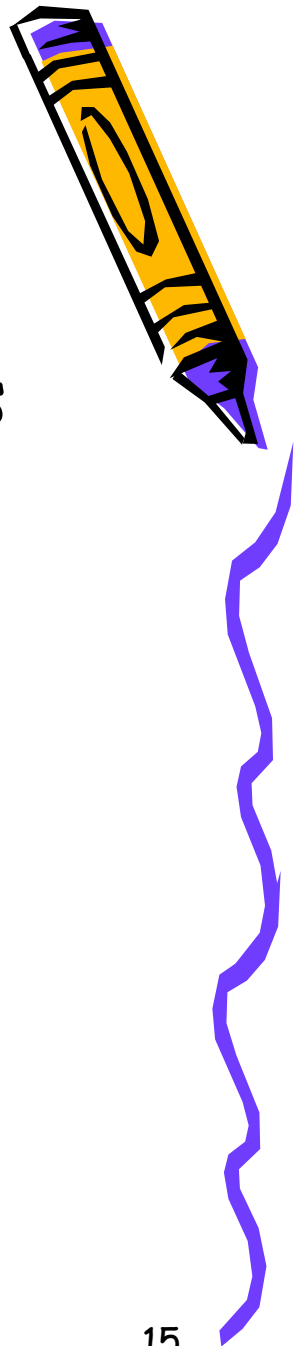
Message

- The board and its administration have an obligation to communicate key issues to the community and the employees of the school district.
- The communication needs to reflect the genuine desire to find a shared solution.
- Effective communication lays the foundation for dealing with bargaining conflict and pressure tactics.



Effective Boards

- Communications plus well thought out strategies to respond to pressure tactics demonstrates board perseverance
- Board will not be influenced to make bad decision because of distractions.
 - Not in students' best interests
 - Not fiscally prudent
 - Not educationally sound
- Effective negotiations leads to collaborative solutions



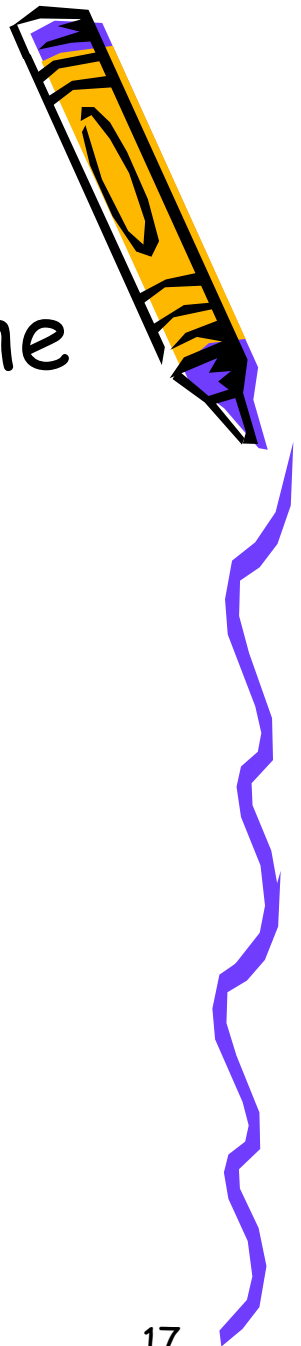
Effective Boards

- Protection of bargaining strategies
- Address conflicts of interest
- Address appearances of conflicts of interest
- Be knowledgeable of the School Personnel Act and what rights employees already have
- Be knowledgeable of administration's needs for effectively administering the school district
- Personnel are expensive for the budget.



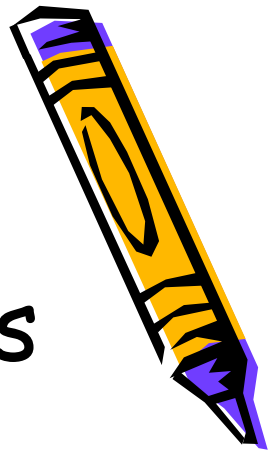
Potential Issues

- Do not redefine terms used in the law when in bargaining.
 - Just cause
 - Unsatisfactory job performance
- Do not alter statutory requirements.
 - Tenure
 - Administrative leave with pay



Potential Issues

- Do not defer financial obligations beyond school year.
 - Anti-Donations Clause
- Be cautious of Union input on policy development
 - Interest may not be the same
 - Already have extensive due process rights in law
 - Don't have more hearings or elaborate grievance procedures.



Concessions

- In these economic times, seeking and obtaining concessions from the unions is possible.
- Financial information about the school district is a public record. See SB 327 adding school district financial information to the Sunshine Portal Transparency Act, effective July 1, 2012.



Concessions

You have budgetary constraints and the unions what to protect jobs

- Reductions in force
 - Hatch decision
- There cannot be protection based on seniority alone.
 - Can't rule a school district with only English teachers because they are the most senior.



Questions



- Thank you



Contact Information



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