

Recent Teacher Policy Changes in Tennessee: From Collective Bargaining to Collaborative Conferencing

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The method for local school boards and teachers in Tennessee to establish agreements on conditions of employment underwent a major change in 2011. The Education Professional Negotiations Act (Public Acts 1978, Chapter 570), which allowed teachers to join and be exclusively represented by an employees' organization in contract negotiations with school boards, was repealed. The new Professional Educators Collaborative Conferencing Act (Public Acts 2011, Chapter 378) replaced it. The new collaborative conferencing law changed the employment relationship between school boards and teachers in several key ways:

- Representation of teachers at conferencing sessions will be apportioned among multiple organizations, depending on the proportion of teacher votes for each organization. Previously one organization was designated as the exclusive representative.
- Issues that can be addressed by conferencing are more restricted.
- If school boards and teacher representatives cannot reach agreement on an issue, the school boards will make the final decision through policy, rather than engaging in mediation or arbitration.

Collective bargaining and collaborative conferencing are methods for governing the relationship between local boards of education and their professional employees, as well as any organizations representing those employees. The law dealing with each method specifies its purpose as setting forth the legitimate rights and obligations of the school boards and the teachers and establishing procedures governing the relations between them.

Collective Bargaining

. . .to protect the rights of individual employees in their relations with boards of education and to protect the rights of the boards of education and the public in connection with employer-employee disputes affecting education, to recognize rights of professional employees . . .to meet, confer, consult and negotiate with boards of education over matters relating to terms and conditions of professional service and other matters of mutual concern through representatives of their own choosing, . . . and to establish procedures that will facilitate and encourage amicable settlements of disputes.¹

Collaborative Conferencing

The process by which the chair of a board of education and the board's professional employees, or such representatives as either party or parties may designate, meet at reasonable times to confer, consult and discuss and to exchange information, opinions and proposals on matters relating to the terms and conditions of professional employee service, using the principles and techniques of interest-based collaborative problem-solving.² Interest-based collaborative problem-solving is not defined in law but likely refers to a process by which the parties discuss areas of concern in an open, non-adversarial manner.³

Comparison of Collective Bargaining and Collaborative Conferencing Laws

Initiating the process and selecting representatives

As was true under collective bargaining, teachers in a district can choose not to participate in collaborative conferencing. Under the old law, at least 30 percent of professional employees had to indicate interest in holding an election to designate a representative organization for the process to begin.⁴ Under the collaborative conferencing law, at least 15 percent of

professional employees must request collaborative conferencing to trigger the process of designating representatives.⁵ If less than 15 percent of a district's teachers are interested, no collaborative conferencing will take place.

Under the new law, the definition of "professional employee" has been tightened to exclude licensed employees whose main responsibilities are administrative, such as principals, assistant principals, and supervisors.⁶

Under collective bargaining, once the process was initiated with a 30 percent petition, a special election committee would conduct an election for professional employees to vote their preferred organization for representation. The committee was composed of an equal number of representatives chosen by the employee organization(s) and by the school board.⁷ The ballot provided for employees to vote for no representation. An organization had to win the majority of votes cast to be designated the exclusive organization for any collective bargaining negotiations.⁸

Under collaborative conferencing, once the process is initiated by the 15 percent request, the school board appoints equal numbers of teachers and board members to a special question committee.⁹ The committee conducts a confidential poll for teachers to vote on whether they want collaborative conferencing with the board and, if so, what their preferred

organization is for representation. The board has no obligation to engage in conferencing unless a majority of teachers eligible to vote indicate they want conferencing.¹⁰

If a majority approves collaborative conferencing, the teachers' representatives are selected in numbers according to the proportional share of votes received, provided that they must have received a minimum of 15 percent of the votes.¹¹ Each employees' organization receiving 15 percent or more of the votes shall select and appoint the person(s) to serve as a representative of the group. If at least 15 percent of teachers polled indicate a preference for an "unaffiliated" representative (one not with a recognized employees' organization), then the special question committee shall select the person(s) to represent that group, in numbers proportional to the unaffiliated votes. The total number of teachers' representatives will be equal to the number of management representatives selected by the board.¹²

Scope of issues

The issues that are allowed for discussion in collaborative conferencing are more restrictive than those under collective bargaining. Exhibit 1 shows how issues covered under collaborative conferencing have changed from those under collective bargaining.

A general statement in the old law says nothing shall prohibit the parties from agreeing to discuss other

Exhibit 1: Allowed Topics for Discussion

Under old Collective Bargaining law^a	Under new Collaborative Conferencing law^b
Salaries or wages	Salaries or wages, excluding differentiated pay plans or incentive compensation
Grievance procedures	Grievance procedures
Insurance	Insurance
Fringe benefits other than pension plans	Fringe benefits other than pension plans
Leave time	Leave time
Payroll deductions	Payroll deductions, excluding those for political activities
Student discipline procedures	[Not addressed]
Working conditions	Working conditions (definition now states that this term is intended to be narrowly defined)

Notes: ^a Tennessee Code Annotated §49-5-611 (version prior to 2011 in Appendix to Title 49).

^b Tennessee Code Annotated §49-5-608.

topics, but it is not bad faith if a party refuses to negotiate on other topics.¹³ A general statement in the new law says that no other terms or conditions of employment (other than those listed) shall be the subject of collaborative conferencing.¹⁴ Although not addressed under the old law, teacher evaluations are specifically prohibited from collaborative conferencing discussions, and a new statement was added that “No agreement shall include provisions that require personnel decisions to be determined on the basis of tenure, seniority or length of service.”¹⁵

Remaining unchanged from the collective bargaining law is school boards’ authority to transfer teachers within the district and assign teachers where needed without being subject to conferencing.¹⁶

Settling disagreements

Under collective bargaining, once an agreement was reached between the school board representative and the employee’s organization, the law required that they jointly prepare a memorandum of understanding and present it to their governing authorities for ratification or rejection. Boards were not allowed to enter into a memorandum beyond a three-year period.¹⁷ If parties could not reach an agreement after good faith negotiating on a required bargaining item, a legal impasse was reached.¹⁸ Although a school board could implement policy on the contended issue, determination that a true impasse had been met was often disputed.¹⁹ The state’s collective bargaining law allowed either the employees’ organization or the school board to request mediation when an impasse was reached, although this provision has apparently not been used much.²⁰ The law allowed mediation through a federal mediation and conciliation service or through some other mediator, mutually agreed upon. If no agreement could be reached through mediation, the parties could then go to fact-finding advisory arbitration.²¹

Under collaborative conferencing, the parties will still jointly prepare a memorandum of understanding on areas of agreement, and the board is still limited to a three-year period of agreement.²² The memorandum becomes binding on the date of its approval by the school board or at a later date that is explicitly stated in the memorandum. There is no separate approval process for the teachers’ organizations.

The new law states that there is no requirement that the parties reach an agreement or produce a memorandum of understanding. If parties cannot reach agreement on the areas subject to collaborative conferencing, school boards have the authority to address such issues through board policy without official determination of an impasse.²³ There are no provisions for mediation or arbitration.

The collaborative conferencing law does not significantly change the prohibition on unlawful acts laid out under collective bargaining. It is still unlawful for school boards or professional employees or their designated representatives to threaten, coerce, or interfere with other parties’ exercise of their rights under this law.²⁴ It is still unlawful for teachers to strike. Changes under the new law now require any complaint of an unlawful act occurring to first be filed with (or by) the school board. Only if no resolution is reached, may the complaint then be filed in chancery court.²⁵ The new law also reduces the time to file a complaint from six to three months.²⁶

Next steps

The new collaborative conferencing law replaces the collective bargaining law effective June 1, 2011. However, any negotiated agreements under the old law, adopted prior to June 2011, are to remain effective until their set expiration date – generally three years after adoption.²⁷ Any and all collective bargaining that was in process was to be suspended indefinitely on June 1, 2011.²⁸ Although the new law is officially in effect and a few districts have already begun the polling process to initiate collaborative conferencing,²⁹ no collaborative conferencing can actually be conducted until a required training program has been implemented.³⁰ Since the deadline for implementing the training is July 2012, neither collective bargaining nor collaborative conferencing can take place between June 2011 and July 2012, unless the training program on conferencing is implemented earlier.

The Tennessee Organization of School Superintendents (TOSS) has developed collaborative conferencing training as required by law and will present a summary of the training to the House and Senate education committees.³¹ TOSS is tentatively planning to hold regional meetings to train school

district representatives, who can return to their districts and provide the training to others.³² Training reference materials are expected to be available on the websites of various teacher and school administrator organizations. Additional, more in-depth, training may be developed if other resources become available.

Endnotes

- ¹ *Tennessee Code Annotated* §49-5-601(b)(3) (version prior to 2011 in Appendix to Title 49).
- ² *Tennessee Code Annotated* §49-5-602(2).
- ³ Tennessee Department of Education, “[Professional Educators Collaborative Conferencing Act of 2011: Frequently Asked Questions](#),” June 17, 2011, <http://www.tn.gov/education> (accessed Nov 28, 2011).
- ⁴ *Tennessee Code Annotated* 49-5-605 (version prior to 2011 in Appendix to Title 49).
- ⁵ *Tennessee Code Annotated* 49-5-605(b)(1).
- ⁶ Tennessee Department of Education, “[Professional Educator Collaborative Conferencing Act of 2011: Frequently Asked Questions](#),” June 17, 2011, <http://www.tn.gov/education> (accessed Nov 28, 2011).
- ⁷ *Tennessee Code Annotated* §49-5-605(b)(2)(A) (version prior to 2011 in Appendix to Title 49).
- ⁸ *Tennessee Code Annotated* §49-5-605(b)(4) (version prior to 2011 in Appendix to Title 49).
- ⁹ *Tennessee Code Annotated* §49-5-605(b)(1).
- ¹⁰ *Tennessee Code Annotated* §49-5-605(b)(3).
- ¹¹ *Tennessee Code Annotated* §49-5-605(b)(4).
- ¹² *Tennessee Code Annotated* §49-5-605(b)(4).
- ¹³ *Tennessee Code Annotated* §49-5-611(b) (version prior to 2011 in Appendix to Title 49).
- ¹⁴ *Tennessee Code Annotated* §49-5-608(b).
- ¹⁵ *Tennessee Code Annotated* §49-5-608(b)(5).
- ¹⁶ *Tennessee Code Annotated* §§49-5-608(b)(5) and 49-5-601(b)(5) (version prior to 2011 in Appendix to Title 49).
- ¹⁷ *Tennessee Code Annotated* §49-5-612 (version prior to 2011 in Appendix to Title 49).
- ¹⁸ *Encyclopedia of Everyday Law – Teacher’s Unions/Collective Bargaining*, <http://www.enotes.com> (accessed Dec.27, 2011).
- ¹⁹ Tennessee Department of Education, “[Professional Educator Collaborative Conferencing Act of 2011: Frequently Asked Questions](#),” June 17, 2011, <http://www.tn.gov/education> (accessed Nov 28, 2011).
- ²⁰ *Tennessee Code Annotated* §49-5-613 (version prior to 2011 in Appendix to Title 49); Christy Ballard, General Counsel, Tennessee Department of Education, telephone interview, Dec. 15, 2011.
- ²¹ *Tennessee Code Annotated* §49-5-613 (version prior to 2011 in Appendix to Title 49).
- ²² *Tennessee Code Annotated* §49-5-609(b).
- ²³ Tennessee Department of Education, “[Professional Educator Collaborative Conferencing Act of 2011: Frequently Asked Questions](#),” June 17, 2011, <http://www.tn.gov/education> (accessed Nov 28, 2011).
- ²⁴ *Tennessee Code Annotated* §49-5-606 and 49-5-609 (version prior to 2011 in Appendix to Title 49).
- ²⁵ *Tennessee Code Annotated* §49-5-607(c).
- ²⁶ *Tennessee Code Annotated* §§49-5-607(c)(2) and 49-5-609(c)(2) (version prior to 2011 in Appendix to Title 49).
- ²⁷ *Tennessee Code Annotated* Title 49, Chapter 5, Part 6, “Compiler’s Note.”

²⁸ *Tennessee Code Annotated* §49-5-601(d).

²⁹ Mealand Ragland-Hudgins, "Teachers poll set on conference process," *Daily News Journal*, Oct. 26, 2011, <http://pqasb.pqarchiver.com/dnj> (accessed Oct. 27, 2011); Luke Thompson, "Montgomery County teachers vote 'yes' on collaborative conferencing," *The Leaf-Chronicle* (subscription required), Nov. 21, 2011, <http://pqasb.pqarchiver.com/theleafchronicle> (accessed Nov. 21, 2011).

³⁰ *Tennessee Code Annotated* 49-5-601(e).

³¹ *Tennessee Code Annotated* 49-5-601(e).

³² Dr. Keith Brewer, Executive Director, Tennessee Organization of School Superintendents, telephone interview, Jan. 3, 2012.



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