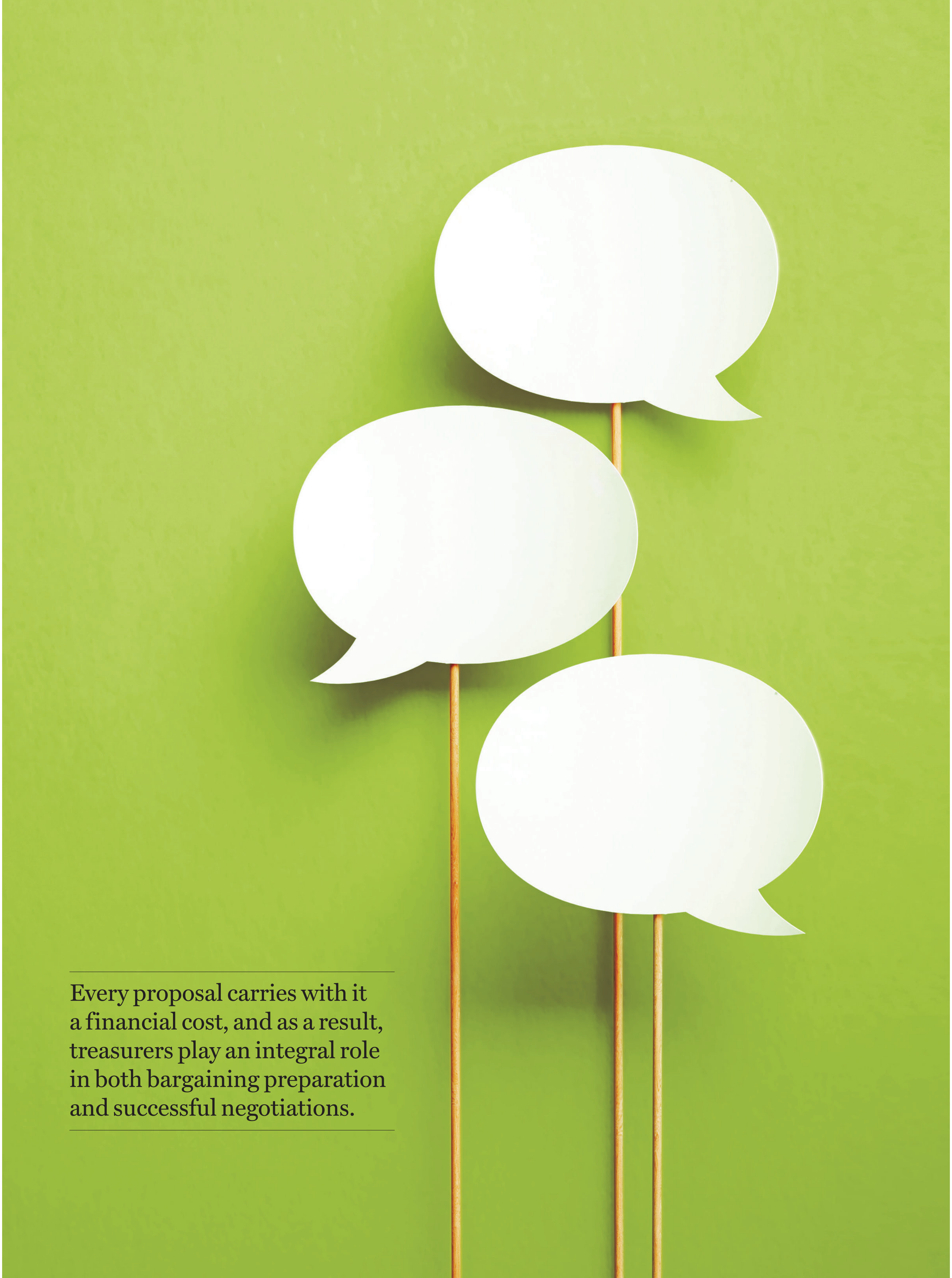


Every proposal carries with it a financial cost, and as a result, treasurers play an integral role in both bargaining preparation and successful negotiations.

LEGAL

Post-Pandemic Negotiations

Set yourself up for a positive bargaining experience by understanding the negotiations landscape as we continue to navigate this post-pandemic era.

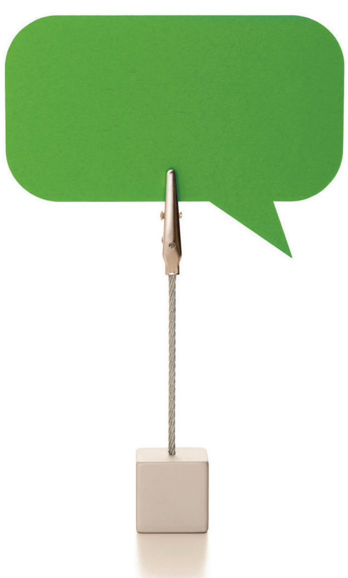
As spring quickly approaches, many districts are preparing for upcoming negotiations. Whether you're negotiating this year or looking for ways to work effectively with your union to set yourself up for a more positive bargaining experience in the future, it's important to understand the negotiations landscape as we continue to navigate this post-pandemic era. And while some aspects of bargaining remain constant, 2023 certainly has some unique challenges in store. From COVID-19 exhaustion to staffing shortages and bolder union strategies, it's more important than ever to anticipate the challenges you may face at the bargaining table and plan accordingly to set the stage for a positive bargaining experience and increased likelihood of beneficial language to set up your district for success in the future.

In 2022, the State Employment Relations Board (SERB) reported 185 unfair labor practice filings, with 74 percent of those alleging employer violations. The large majority were dismissed or withdrawn, and only six of the 185 that were filed resulted in probable cause findings. Although many do not result in probable cause findings, the numbers indicate bolder strategies by unions, carrying with them a cost to employers in defending their positions. In another report indicative of the changing labor relations landscape, the Cornell University School of Industrial and Labor Relations' Labor Action Tracker counted 385 strikes across the United States in 2022. Gone are the days when talk of strikes is few and far between. Unions appear to be far more willing to threaten a strike or even follow through on stepping out for a few days by implementing a short strike in a "show of force" against employers to prompt action.

It is reasonable to surmise that the emotional aspects of an unprecedented pandemic and the resulting COVID-19 exhaustion may be partially to blame. Between addressing and accounting for learning loss from the days of school closure and subsequent implementation of online learning, to dealing with increased behavioral issues as students acclimated back to a fully in-person environment, there is no doubt that teachers and staff, like administrators, have been feeling increased pressure and stress, putting anxiety at an all-time high. And with that, union strategies have become bolder, and employees appear to be far more willing to support these strategies through action.

385 labor strikes were counted across the U.S. in 2022

... for bargaining in the future, one thing remains constant – preparedness is key.



It may seem nearly impossible to fully recollect what things were like before the pandemic, but some of today's issues were causing trouble for schools long before March 2020. The pandemic, it seems, has only exacerbated these issues and shone a spotlight on others. The pandemic caused a shift in the labor market, prompting unprecedented resignations and a sense of leverage shifting to employees due to resulting staffing shortages. In turn, increased staffing shortages continue to cause more pressure and stress for current employees, adding to post-pandemic exhaustion and creating more challenges for employers. Along with shortages in teaching staff and increased use of leaves by current employees, districts have struggled to find qualified substitutes. Substitute shortages have been addressed by the Ohio legislature in the form of temporary exceptions to substitute licensure standards, but it doesn't appear that these shortages or issues are going to resolve themselves any time soon. As a result, many districts are considering creative solutions to address staffing and substitute needs through proposals for period or spot substitutes, splitting classes, etc. However, post-pandemic stress and staffing shortages are not limited to teaching staff.

Even before the pandemic, many districts struggled with shortages in support staff, especially in transportation. Transportation staffing issues have only become more challenging since the pandemic, prompting districts to consider reallocating funds and placing increased emphasis on non-teaching bargaining. Focusing funds toward attracting and retaining qualified bus drivers has become a necessity for many districts to simply meet minimum transportation obligations. In addition to targeting funds in this way, driver shortages have prompted districts to closely assess the market to remain competitive, and attract and retain qualified candidates.

Another post-pandemic bargaining theme has come by way of union proposals for substantial wage increases and attempts to make up for perceived prior "concessions" that occurred during the pandemic. In recent years, we have seen union proposals geared toward securing a portion of available Elementary and Secondary School Emergency Relief (ESSER) funding, and now union proposals have shifted toward viewing current negotiations as an unprecedented time for unions to seek long-term improvements in compensation. For the most part, there's been a shift back toward proposals for three-year agreements, now that much of the uncertainty associated with the pandemic is behind us. There also has been an increase in wage proposals and settlements. In 2021, SERB reported that the statewide average increase for the entire duration of the contract was 2.33 percent. As we see union proposals increase, it is likely that we also will see wage settlements increase. For most districts, the days of 1-2 percent increases are gone – at least for now.

2.23%

2021 average increase in wage proposals

These issues have prompted districts to think more creatively about their own proposals and plan for counterproposals to address union-identified concerns. Considering proposals that target available funds toward staffing shortages and increase recruitment and retention of qualified staff is one way districts can plan to meet these needs. For instance, proposing attendance bonuses with shorter terms to provide benefits on a weekly or monthly basis can reduce staff use of leave and, in turn, reduce the need for substitutes. For support staff, where long-term increases to compensation aren't feasible, districts might consider offsetting compensation with stipends for supplies, like tools, boots, clothing, etc., or focusing increases on certain employees, like bus drivers.

The 2021 SERB wage settlement report noted that nearly 20 percent of contracts included one or more lump sums, which serve as a one-time dollar amount that does not attach to the base wage scale. Lump sums or stipends are another way to target funds toward a need without longer lasting effects that a base wage increase might bring. However, to be effective, it is important to ensure that contract language properly limits the stipend or lump sum to avoid an expectation of continuation beyond the specified contract term or year. Considerations regarding lump sums and other incentives aren't always limited to proposals at the bargaining table. If you are not bargaining this year but considering incentivizing employment or targeting funds in this way as a part of recruitment or retention efforts, you'll need to consider bargaining implications. For instance, do you have the necessary flexibility in your existing agreement or will you need to rethink your goals in upcoming negotiations to support these efforts?

Whether you're bargaining this year or looking for ways to improve management-union relations for bargaining in the future, one thing remains constant – preparedness is key.

Bargaining strategy depends on several factors, including the type of bargaining you'll be implementing, timing of bargaining, identified approach based on perceived needs, data and comparables both statewide and in your area, etc. The post-pandemic impact on bargaining is just another one of those factors. Every proposal carries with it a financial cost, and, as a result, treasurers play an integral role in both bargaining preparation and successful negotiations. Knowing the labor landscape and doing your due diligence to prepare for bargaining are essential to avoiding the pitfalls associated with negotiating in these post-pandemic times. – MEGAN E. GREULICH & ERIC J. JOHNSON / Weston Hurd LLP