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How to Participate

- To close or reopen your panel.
- To download today's presentation or any additional documents. Please submit your text questions here as well.
- If time permits, we will have a brief Q&A session at the end of this presentation.



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Today's Discussion

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Introduction

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Introduction

- School boards often enter the collective bargaining process with a reactive mindset, and/or with the idea that the only major issues relate to money (salaries, insurances, or other benefits).
- Most collective bargaining agreements also cover or include issues which reach far beyond money issues, and can restrict management/board flexibility in the running of a school district.
- A board's thoughtful preparation for negotiations, can help the board provide positive outcomes for both students and the community at large.
- The objective of this presentation is to provide a foundation for understanding the general negotiation process under RSA 273-A, New Hampshire's public employee/er collective bargaining statute.

Early Stages

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NH's Public Employee Labor Relations Law

- In most New Hampshire school districts, one or more groups of employees have elected to form certified collective bargaining units – the formal name for **unions**.
- Collective bargaining units of public employees (state, county or local) are created under RSA 273-A, New Hampshire's "Public Employee Labor Relations" law.
- RSA 273-A governs the creation of public employee unions, as well as the relationship each union has with its respective public employer.

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Bargaining Units – Community of Interest

- Bargaining units formed among positions with a “community of interest”.
- Units may be narrow (paraprofessionals only), or broad (shared pay categories - hourly v. salary), and sometimes counterintuitive.
 - Not uncommon for a “support staff” bargaining unit to include diverse positions, e.g., paras, food service, custodians & secretaries, whether PT, FT, PY or FY.
 - Some unions have employees of different employers.
- For many of the bargaining units which have peculiar or disparate positions, the formation occurred simply because the employer chose not to challenge the unit composition.

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Bargaining Unit, Right to Work & Janus

- Although the bargaining unit consists of employees whose positions are included in the Certification, a bargaining unit employee need not be a member of the union.
- Under a 2018 United States Supreme Court decision in *Janus v. American Federation of State, County and Municipal Employees Council 31*, employees may not be required to join or pay fees to a union. (New Hampshire allowed but did not require “agency” or “fair share” clauses in collective bargaining agreements).
- SB61 pending would prohibit agency / fair share agreements.

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Bargaining Unit & Collective Bargaining Agreement

- Once certified, the union negotiates the terms and conditions of employment for all of the positions within the bargaining unit.
- The negotiated terms are set forth in a collective bargaining agreement, or “CBA” (sometimes referred to as a “master contract”).
- For school districts and municipalities, the legislative body has final approval of any agreement that includes “cost items”.

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Negotiations Good Faith Bargaining



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Duty to Negotiate

- RSA 273-A:3, I states “[i]t is the obligation of the public employer (school board) and the employee organization (teachers’ union/other union) certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith.” (discussed later).
- On the administration side, RSA 194-C:4, enumerates among the services to be provided as Superintendent Services, “labor contract negotiation support”.

Getting into the Details

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“Good Faith” bargaining

- One of the primary obligations for both the employer and the union under RSA 273-A, is that the parties negotiate in “*good faith*”.
- The statutory definition of the phrase, however, is imprecise. The language, found in 273-A:3, merely states:
 - “good faith negotiation means meeting at reasonable times and places in an effort to reach agreement on the terms of employment, ... but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.” (RSA 273-A:3, I).

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“Bad Faith” bargaining

“Bad faith” bargaining, the corollary to good faith negotiating, is equally hard to define. The most common examples are:

- Surface bargaining – showing up, but not making any movement, or engaging in discussion. Good faith requires conversations, and participating with the object of reaching an agreement.
- Retro/Regressive Bargaining – “Moving the Chains” - Proposals get worse. (Bd offers 1%, union counters with 4%, Bd counters with .5%)

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“Good Faith” / “Bad Faith” bargaining

- Various court opinions, treatises and experts have offered insight into what is otherwise a “facts and circumstances” analysis:
 - In the 1992 decision in *Appeal of Franklin Educ. Ass’n, NEA-NH*, the NH Supreme Court stated that the “duty to bargain in good faith ... [imposes] a duty to give negotiations a fair chance to succeed.”
 - The PELRB has oft stated that “good faith negotiating means bargaining with the intent, but not the obligation to reach agreement.”

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“Good Faith” / “Bad Faith” bargaining

- ***Good faith / bad faith bargaining, continued...***
 - Perhaps the most helpful statement of the obligation is found in the “legal encyclopedia” *American Jurisprudence*:
 - Good faith requires a serious intent to adjust differences and to reach an acceptable common ground. It means more than mere talk with the purpose of avoiding agreement, and more than sterile or formal discussions.
48A *Am. Jur.* 2nd Sec. 2974

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Failure to Bargain in Good Faith

General...

- Decrease in likelihood that negotiations result in a collective bargaining agreement;
- Potential for a negative impact on school climate;

Legal...

- Constitutes an “unfair labor practice” under RSA 273-A:5, I(e) (for the employer), and 273-A:5, II(d) for the union.

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Negotiation Subjects

- School boards should enter the negotiation process with the understanding that negotiation proposals fall within one or more of four general categories:
 - Money
 - Leave
 - Job Security
 - Power

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Negotiation Categories

- Money is implicated not only by salary, retirement or attendance “bonuses”, but also by the wide range of provisions found in collective bargaining agreements which shift costs from employee to employer (health insurance, professional development, tuition reimbursement, etc.).
- Leave benefits (most of which include indirect costs to the employer), provide employees with attendance exceptions otherwise required by the basic hourly or salary employer/employee relationship.
- Job security protections might be found in the obvious CBA sections: discipline, “RIF” (reduction-in-force), RIF recall, evaluations; as well as the not-so obvious, e.g., grievance process, co/extracurricular, etc..

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Negotiation Categories

- Of the four general negotiation categories, power shifting proposals are sometimes the hardest for board members to discern, and therefore protect against.
- Almost all New Hampshire school district CBA’s include provisions which shift power - that is authority to take unilateral action - from management and/or the school board, to the employees. Common power shifting provisions include:
 - Contract language setting exact beginning/ending times or days for the student school day or year;
 - Language specifying exact insurance plans;
 - Individual contract date with “specific assignment”;
 - Assignment, re-assignment or vacancy provisions.

Negotiation Subjects

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Mandatory, Permitted and Prohibited Subjects of Bargaining

- The subject classifications above (money, leave, security and power), describe what you might bargain about.
- Another set of classifications you will hear from time to time, however, are founded in general labor law, and in NH Supreme Court decisions, and impact whether certain approaches to bargaining might be considered good or bad faith negotiating.
- The three categories are: *mandatory, permitted, and prohibited.*

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Mandatory, Permitted and Prohibited Subjects of Bargaining

- Mandated subjects of bargaining are those which are:
 - (1) not reserved to exclusive management authority,
 - (2) primarily effect terms and conditions of employment, and
 - (3) if included in an agreement, neither the language nor a grievance will interfere with public control of government functions.

Typically, wages, hours, insurances will fall into this category, but also things such as evaluation procedures (not substance), training/professional development.

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Mandatory, Permitted and Prohibited Subjects of Bargaining

- Prohibited subjects are those which are reserved to exclusive management authority (or illegal).
- Permitted subjects are those which are not so reserved, but fail *either* (2) or (3). That is, they either:
 - do not primarily effect terms and conditions of employment, and
 - would not interfere with public functions if in the CBA or if a grievance was filed.
 - **More simply, neither prohibited nor mandatory.**
 - E.g., ground rules, bargaining teams, arbitration, internal mgt. or association matters.

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Mandatory, Permitted and Prohibited Subjects of Bargaining

- The requirement of good faith negotiating is strongest when the subject is a mandatory subject of bargaining.
- Insistence on negotiating a prohibited subject would be deemed bad faith negotiating.
- Good faith negotiating requires parties to at least discuss a permitted subject, but it may allow one or the other parties to reject sooner, rather than later.
- Can't condition acceptance of a final agreement on acceptance of a permitted subject.

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Mandatory, Permitted and Prohibited Subjects

Impact Bargaining

- If a mandatory subject of bargaining, may not change unilaterally either pre-contract, during contract or during status quo.
- If permitted subject, and not contrary to current CBA, may change but will need to negotiate “impact” on mandatory subjects.
- Changes in law may also trigger need to impact bargain.
- Need to impact bargain was more prevalent than ever during pandemic.

Negotiation Subjects

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Process and Preparation

Early Stages



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Establish General Objectives & Goals

- Depending on the priorities of the Board, some ideas and objectives require more research and development than the limited negotiating window allows.
- In order to maximize the opportunity of negotiations, the board, in consultation with the administration, should establish objectives, priorities, and overall expectations.
 - Review strategic plan relative to personnel. If the district does not have one, the Board should at least identify some informal, medium range objectives.
 - What is the district trend for retention?
 - Hiring?

Early Stages

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Establish General Objectives & Goals

- What education and preparation levels does the Board want to strive to achieve?
- Expectation for length of agreement (compete with other anticipated items, other CBAs, or other considerations – expected attrition in subsequent years).
- What priority does the Board give to reaching an agreement? More important when already in a “status quo” period.
- Look for efficiency offsets (e.g., electronic copies of CBA’s and notices, payroll issues).

Early Stages

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Review the Current CBA

CBA language can advance, or obstruct Board goals and objectives, therefore, thorough review of the existing agreement is essential.

- Have SAU and building level administrators identify existing obstacles to achieving objectives? (e.g. posting/interviewing requirements for vacancies, especially those which occur after August 1).
- Review recent grievance/ULP history.
- Review open or current side agreements / side-bars. Determine if Board wishes to consider incorporating, modifying, or eliminating.

Early Stages

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Getting into the Details – Administration & Board/Board Negotiating Team



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Compile Pertinent Data

a) Internal Data Gathering.

- Insurance costs - single, two-person, and family insurance premiums, the District/Employee contributions and the number of individuals in your bargaining unit on each plan;
- Staff development fund use for the past X# of years (how many people accessed the fund and how much was spent);
- Tuition reimbursement fund use for the past three years (how many people accessed the fund and how much was spent);
- Other benefits or costs of unit;

Continued...

Getting into the Details

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Compile Pertinent Data

a) Internal Data Gathering – continued...

- Predictable district budget increases/decreases (NHRS, insurance premiums, retirement costs);
 - Anticipated taxpayer costs; and
 - Special warrant articles – bonds, major equipment purchases, etc.
- Create a “cheat” sheet – an easy reference to use during negotiations showing data points such as: current budget, cost of step only, cost of 1% salary increase (break down for on-table, and off-table), insurance category aggregate cost based on current usage, etc.; prepare a scattergram:

Getting into the Details

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Compile Pertinent Data

Scattergram -

SAMPLE SCATTERGRAM PAGE. REFLECTS COST OF STEP INCREASES ONLY. SCHEDULE ALLOWS FOR INDEPENDENT INCREASES FOR EMPLOYEES "OFF-STEP"

XXXXX TEACHERS' ASSOCIATION Multiplier (COLA Increase): 1.50
1st Year Scattergram - FY19 Salaries - Step Only

Steps	B	B15	B30	M	M15	M30	M45	Steps	B	B15	B30	M	M15	M30	M45	Steps	B	B15	B30	M	M15	M30	M45		
1	38,069	39,402	40,761	42,159	43,570	44,975	46,127	1								1	19,606	-	42,005	91,296	47,246	-	-	200,153	
2	39,213	40,584	42,005	43,448	44,928	46,400	47,811	2	0.5		1.0	2.0	1.0			2	-	-	43,264	-	48,664	-	-	91,928	
3	40,388	41,802	43,264	44,718	46,184	47,648	49,109	3		1.0		1.0				3	-	43,055	-	48,428	-	-	91,483		
4	41,600	43,055	44,563	46,028	47,492	48,956	50,419	4			1.0					4	-	-	-	-	-	-	142,609		
5	42,847	44,348	45,900	47,401	48,902	50,403	51,904	5	1.0			2.0				5	42,847	-	-	99,762	-	-	-		
6	44,133	45,677	47,276	48,875	50,474	52,073	53,672	6								6	-	-	-	-	-	-	-		
7	45,457	47,048	48,695	50,342	51,989	53,636	55,283	7				1.0				7	-	-	-	52,919	-	-	-		
8	46,820	48,460	50,106	51,751	53,396	55,041	56,686	8		2.0		1.75				8	-	96,920	-	95,386	-	-	-		
9	48,225	49,913	51,660	53,407	55,154	56,901	58,648	9	1.2			2.0				9	57,870	-	-	112,282	-	-	-		
10	51,410	53,210	55,010	56,810	58,610	60,410	62,210	10			1.0	0.6		1.0	1.0	10	-	-	53,210	34,695	-	61,944	64,113		
11		54,807	56,561	58,315	60,069	61,823	63,577	11				2.0				11	-	-	-	119,122	-	-	-		
12			61,348	63,092	64,836	66,580	68,324	12					2.0		1.0	12	-	-	-	122,696	-	-	68,017		
13			63,188	64,932	66,676	68,420	70,164	13					1.0		1.0	13	-	-	-	63,188	-	67,689	150,877		
14			65,083	66,827	68,571	70,315	72,059	14						1.0	1.0	14	-	-	-	-	-	72,159	72,159		
Total on-step									2.7	3.0	3.0	15.4	2.0	2.0	31.05		120,323	129,975	138,479	839,774	95,910	129,633	204,289	1,668,387	
Off-1								Off-1				1.6	1.0		2.60	Off-1				104,133	67,362			171,495	
Off+								Off+	5.6	5.0	1.0	2.0	2.0	1.0	4.0	20.60	Off+	321,085	288,309	63,236	137,442	142,254	69,719	97,815	1,119,860
																								1,291,955	
																								2,995,719	
																								1,197,534	
																								3,721,395	
																								Total Salary Cost FY19: 3,660,799	
																								Year 1 Cost: 61,096	

Note: Need to check for roll-up constants!!

Getting into the Details
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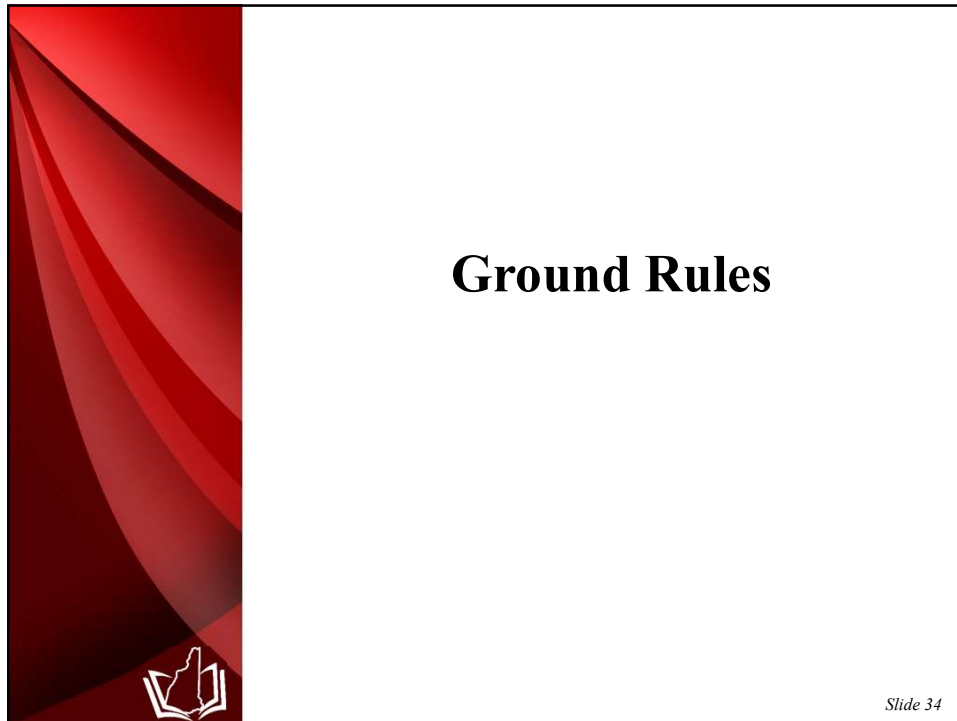
Compile Pertinent Data

b) *External Data Gathering.*

- Predicted increases for employees in town or other districts within SAU;
- Anticipated town/coop budget items, bonds, etc.;
- Surrounding district information - "Earning Stream Comparison" **(CONTACT Will Phillips if interested in receiving Excel sheet);**
- General insurance options from current insurer, as well as competitors.

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Ground Rules

One of the first steps in the two-party negotiation process is the establishment of “ground rules”.

These in many ways help establish how “good faith” bargaining works for specific negotiations.

Review and discuss with counsel the proposed ground rules, long before the “ground rules meeting”.

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Ground Rules Considerations

Typical considerations or provisions for ground rules include:

- Scheduling of sessions;
- Agenda setting;
- Minutes, notes or records;
- Length of sessions;
- Length of caucuses;
- # of sessions before last “new” proposal (language should allow for “creative responses to open items”);

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Ground Rules Considerations

Ground Rule Considerations – *continued...*

- Method of memorializing tentative agreements;
- Roll of “lead negotiator” / “spokesperson”;
- Communications outside of formal negotiations;
- Confidentiality and publicity;
- Ratification process; and
- Impasse process.

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Impasse or Agreement

- It is beyond the scope of this presentation to delve deep into what happens either upon successful completion of negotiations, or negotiation failure (impasse).
- In short, if the parties reach an agreement at the table on all issues, they submit the agreement to their respective bodies for ratification.
- If the agreement is ratified by both the board and the union, the cost items are submitted to the voters.
- If the vote passes, there is a CBA, if not, or if either the board or union reject the agreement, it is back to the table/or onto the impasse track.

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Impasse or Agreement

- If the parties fail to reach agreement at the table, or the full body of either party rejects the tentative agreement reached by either may declare an impasse, which generally leads to mediation, or the less frequently used “fact-finding”.
- Irrespective of whether mediation or fact-finding, the voters (or other legislative body), still have final say over **cost items**, by way of a warrant article.
- If the negotiated agreement does not include “cost items”, then an agreement is final upon approval of the parties respective members (full board, or union membership, respectively).

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Contact Information

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William Phillips
NHSBA Director of Policy Services
& Staff Attorney

Email: wphillips@nhsba.org
Phone: (603) 228-2061 x 304
25 Triangle Park Drive, Ste. 101
Concord, NH 03301

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SAMPLE SCATTERGRAM PAGE. REFLECTS COST OF STEP INCREASES ONLY. SCHEDULE ALLOWS FOR INDEPENDENT INCREASES FOR EMPLOYEES "OFF-STEP"

XXXXX TEACHERS' ASSOCIATION

Multiplier (COLA Increase): **1.00**

1st Year Scattergram - FY19 Salaries - Step Only

Steps	B	B15	B30	M	M15	M30	M45	Steps	B	B15	B30	M	M15	M30	M45		Steps	B	B15	B30	M	M15	M30	M45					
1	38,069	39,402	40,781	44,319	45,870	47,475	49,137	1									1												
2	39,211	40,584	42,005	45,648	47,246	48,900	50,611	2	0.5		1.0	2.0	1.0			4.5	2	19,606	-	42,005	91,296	47,246	-	-	200,153				
3	40,388	41,802	43,264	47,018	48,664	50,367	52,129	3			1.0		1.0			2.0	3	-	-	43,264	-	48,664	-	-	91,928				
4	41,600	43,055	44,563	48,428	50,123	51,877	53,693	4		1.0		1.0				2.0	4	-	43,055	-	48,428	-	-	-	91,483				
5	42,847	44,348	45,900	49,881	51,626	53,434	55,304	5	1.0			2.0				3.0	5	42,847	-	-	99,762	-	-	-	142,609				
6	44,133	45,677	47,276	51,378	53,175	55,037	56,964	6								0.0	6	-	-	-	-	-	-	-	-				
7	45,457	47,048	48,695	52,919	54,771	56,687	58,672	7				1.0				1.0	7	-	-	-	52,919	-	-	-	52,919				
8	46,820	48,460	50,156	54,506	56,414	58,389	60,432	8		2.0		1.75				3.75	8	-	96,920	-	95,386	-	-	-	192,306				
9	48,225	49,913	51,660	56,141	58,107	60,141	62,245	9	1.2			2.0				3.2	9	57,870	-	-	112,282	-	-	-	170,152				
10		51,410	53,210	57,825	59,849	61,944	64,113	10			1.0	0.6		1.0	1.0	3.6	10	-	-	53,210	34,695	-	61,944	64,113	213,962				
11			54,807	59,561	61,645	63,803	66,036	11				2.0				2.0	11		-	-	119,122	-	-	-	119,122				
12				61,348	63,494	65,717	68,017	12				2.0			1.0	3.0	12			-	122,696	-	-	68,017	190,713				
13				63,188	65,400	67,689	70,058	13				1.0		1.0		2.0	13	-	-		63,188	-	67,689	-	130,877				
14				65,083	67,362	69,719	72,159	14							1.0	1.0	14	-	-	-	-	-	-	72,159	72,159				
Total on-step:									2.7	3.0	3.0	15.4	2.0	2.0	3.0	31.05		120,323	139,975	138,479	839,774	95,910	129,633	204,289	1,668,382				
Off-1								Off-1								2.60		Off-1								104,133	67,362	171,495	
Off+								Off+	5.6	5.0	1.0	2.0	2.0	1.0	4.0	20.60	Off+	321,085	288,309	63,236	137,442	142,254	69,719	97,815	1,119,860				
																23.20												1,291,355	
																Total FTEs 54.25												2,959,737	
																										Roll up multiplier (FICA, NHRS, etc.)		1.25734	
																										Total Salary Cost FY19:		3,721,395	
																										Total Salary Cost FY18:		3,660,299	
																										Year 1 Cost:		61,096	
																										Note: Need to check for roll-up constants!!			