

## Notes Regarding Potential Bad Faith Negotiation (sources cited)

Prepared by Craig and Linda Clark  
Citizen observers of CCS Board meetings

"Bad faith negotiation" in employment refers to **a situation where an employer or potential employer engages in dishonest or manipulative tactics during the hiring process**, such as deliberately withholding crucial information, making unreasonable demands, or intentionally delaying the negotiation with the goal of undermining the employee's ability to reach a fair agreement. [1, 2, 3]

### Important points to remember: [5, 6, 7]

- Legal implications: Depending on the jurisdiction, bad faith negotiation may be considered a violation of employment laws, especially if it involves discrimination or unfair labor practices. [5, 6, 7]
- Employee rights: If you suspect bad faith negotiation, you have the right to walk away from the job offer and potentially consult with an employment lawyer. [2, 5, 7]

### Key characteristics of bad faith negotiation in employment: [2, 3, 4]

- **Deceptive practices:**  
Making false promises or misrepresenting job details to entice a candidate.
- **Withholding information:**  
Not disclosing important aspects of the role, like salary range, responsibilities, or company issues, that would significantly impact the candidate's decision.
- **Unreasonable demands:**  
Making demands that are clearly not aligned with industry standards or the candidate's experience level.
- **Intentional delays:**  
Prolonging the negotiation process without a legitimate reason to stall the candidate.
- **Pressure tactics:**  
Using intimidation or threats to force a candidate to accept unfavorable terms.
- **Surface bargaining:**  
Appearing to negotiate while not genuinely interested in reaching an agreement.

### Observations of potential bad faith negotiation practices by members of the Cumberland County BOE (*italicized blue text below*)

**Deceptive practices:** Making false promises or misrepresenting job details to entice a candidate. [2, 3, 4]

*BOE concluded the January 16, 2025 Work Session with the one remaining item being the director salary. The BOE attorney clearly concluded that Mr. Stepp should propose his preferred salary in a revised contract for consideration at the January 23, 2025 BOE meeting. Mr. Stepp submitted a revised contract that incorporated all other items agreed upon in the work session and added a revised salary figure for the January 23, 2025 Board meeting. The BOE did not discuss the revised salary or any other contract terms but abruptly acted "to not accept the contract". The public certainly anticipated that the contract would be discussed and the one remaining provision would be the topic of discussion.*

**Withholding information:** Not disclosing important aspects of the role, like salary range, responsibilities, or company issues, that would significantly impact the candidate's decision. [1, 2, 4]

*One BOE member, Ms. Hale, states that her decision to not accept the contract is based on "a need to go a different direction". The different direction has not been described for the Director of Schools position in any of the public forums. The Director is entitled to have the intended direction discussed fairly and openly to determine whether there is indeed a distinctive difference in his planned direction vs. Ms. Hale's. Neither other BOE members nor the public have had Ms. Hale's definition of 'direction' in any meetings. The BOE has not had a meeting in which 'direction' was specifically defined other than the documented performance measures documented in Mr. Stepp's evaluation. His performance is currently documented as 'exceeds expectations'.*

**Unreasonable demands:** Making demands that are clearly not aligned with industry standards or the candidate's experience level. [1, 4]

The information contained in this communication is provided for informational purposes only, and should **not** be construed as **legal advice** on any subject matter.

## Notes Regarding Potential Bad Faith Negotiation (sources cited)

*One BOE member, Mr. VanWinkle, presented a PowerPoint discussion during the January 16, 2025 Work Session that was not shared in advance to the public or, to our knowledge, other BOE members. In his discussion, Mr. VanWinkle presented 'data' from another district that was not correlated to Mr. Stepp's documented evaluations and implied that Mr. Stepp's performance was not meeting Mr. VanWinkle's expectations. A BOE member who has not been involved in that employee's evaluation process should not categorize the job performance as being substandard using new and undocumented criteria for the employee.*

*Another BOE member, Mr. Matthews, presented verbal information regarding Mr. Stepp's performance that was attributed to hearsay from anonymous sources.*

**Intentional delays:** Prolonging the negotiation process without a legitimate reason to stall the candidate. [\[1, 2, 4\]](#)

*September 26, 2024 BOE meeting - The BOE voted for Mr. King to represent the board in contract negotiations with Mr. Stepp by a 6-2 majority (District 7 was vacant at the time).*

*November 20, 2024 work session - Mr. King and Mr. Stepp presented the board with the negotiated contract. BOE members had consensus to add the contract to the upcoming December 5, 2024 BOE meeting, allowing 15 days for board members to review the contract and seek answers to any questions they had regarding the contract terms. When discussing the timing of the agenda item, the majority of the board members expressed that 15 days was sufficient to review a 6-page document. All BOE members were aware of the contract negotiations since September and had opportunity to ask questions regarding the process, review the existing contract or explore other district contracts for comparison.*

*December 5, 2024 BOE meeting – Mr. VanWinkle proposed tabling the contract discussion until January 16, 2025, citing over 3 minutes worth of a prepared speech regarding complaints of incomplete information or sufficient time to review the contract. Note that Mr. VanWinkle could have requested additional information himself at any time from September 26<sup>th</sup> to December 5<sup>th</sup>. He had been provided additional information by BOE member, Mrs. Stout, but did not indicate any initiative to locate pertinent information.*

*January 16, 2025 Work Session – All BOE members had 42 days to review the contract before this meeting. During those 42 days, they also were free to ask questions of Mr. King as the board representative, any questions regarding the contract. In the work session, all BOE members had the opportunity to review the contract and ask questions of Mr. Stepp and the BOE attorney. The BOE attorney advised that there was nothing in the contract that was out of the ordinary and Mr. Stepp's attorney was also satisfied with the terms in the proposed contract. The BOE reached consensus on all terms, including the contract term reduction from 4 years to 2½ years, insurance benefits, cell phone provision and the car allowance/car provision. The discussion concluded with the salary as the only unresolved contract provision. Mr. Stepp agreed with the BOE attorney to provide his proposed salary for the contract consideration in the January 23, 2025 meeting.*

*January 23, 2025 BOE meeting – the BOE voted to not accept the contract with no discussion of any contract provisions.*

*The total length of time between the contract presentation on November 20, 2024 to January 23, 2025 when the contract was rejected was 64 days.*

**Pressure tactics:** Using intimidation or threats to force a candidate to accept unfavorable terms. [\[1, 2, 5\]](#)

*Beginning in the November 20, 2024 work session and continuing through the January 16, 2025 work session, several BOE members seemed obsessed with 'no cause termination' provisions. Although the*

The information contained in this communication is provided for informational purposes only, and should **not** be construed as **legal advice** on any subject matter.

## Notes Regarding Potential Bad Faith Negotiation (sources cited)

*BOE attorney and more experienced BOE members repeatedly emphasized that the contract's "no cause" language and terms were standard provisions in director contracts, including the one that currently exists with Mr. Stepp, the prolonged discussion continued. The continual focus and belaboring the discussion seemed very threatening and intimidating as the discussion implied a desire to terminate for no cause. The discussion continued into a proposal that reassignment for no cause be included in the contract. The BOE attorney suggested that the reassignment provision was not a reasonable proposed clause.*

*The discussion of anonymous complaints also presented intimidation or threat of a 'no cause' termination. CCS code of ethics prohibits BOE members from discussing anonymous complaints with employees but requires those complaints to be directed to the appropriate supervisor.*

**Surface bargaining:** Appearing to negotiate while not genuinely interested in reaching an agreement. [1, 4, 5]

*Five BOE members abruptly rejected the revised contract after two months of deliberations: two offered no explanation whatsoever, over the 3-week period since the January 23 meeting, one changed their justification from negative anonymous hearsay to 'we can do better', one repeated needing a different direction without defining said direction, and one rationalized with non-documented performance issues.*

[1] <https://www.millercohen.com/blog/2024/04/what-to-know-about-bad-faith-bargaining/>

[2] <https://www.cbtrial.com/bad-faith-settlement-negotiations/>

[3] [https://www.law.cornell.edu/wex/bad\\_faith](https://www.law.cornell.edu/wex/bad_faith)

[4] <https://mccormickmurphy.com/bad-faith/examples/>

[5] <https://www.watsonpalmerlaw.com/bad-faith-bargaining-protect-your-bargaining-unit/>

[6] <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/bargaining-in-good-faith-with-employees-union-representative>

[7] [https://www.law.cornell.edu/wex/implied\\_covenant\\_of\\_good\\_faith\\_and\\_fair\\_dealing](https://www.law.cornell.edu/wex/implied_covenant_of_good_faith_and_fair_dealing)

The information contained in this communication is provided for informational purposes only, and should **not** be construed as **legal advice** on any subject matter.