



COLLECTIVE BARGAINING FUNDAMENTALS

NEW SUPERINTENDENTS LEADERSHIP ACADEMY 2017
MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATORS

RAYMOND M. DAVIS
THRUN LAW FIRM P.C.

Caution

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Fundamentals: PERA § 15

“To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in ***good faith with respect to wages, hours and other terms and conditions of employment***, or the negotiation of an agreement, or any question arising under the agreement, and the execution of a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, ***but this obligation does not compel either party to agree to a proposal or require the making of a concession.***”



PERA Section 15 Requirements

- Meet at reasonable times
- Confer in good faith
- Execute a contract incorporating agreements reached
- “this obligation does not compel either party to agree to a proposal or require the making of a concession.” MCL 423.215



Establish Goals/Parameters

- Prioritize
 - “Gotta Gets”
 - “Wish List”
- Financials (not just wages)
 - Insurance
 - Others
- Language
 - Prohibited must go
 - CBAs are NOT policies

Language Considerations

- Prohibited subjects: out
- Legally compliant
- Costs
- Management Obstruction
- Past practice
- LOAs and MOUs

Find reference to “member” and change to “employee”... must be bargained!

Expect the Unexpected

- Goal: Fair agreement for District financial stability, with legally compliant contract language
- Since “fairness” views, differ, the road to agreement may include
 - Crisis activities
 - Mediation
 - Fact Finding
 - Impasse/Imposition

Uniserv Directors

- Significant turnover and reassignment
- More “snap” negotiators
- Who is running the local unit – the President or the UD?



Bargaining Units

- Disaffiliation?
- Only fee-paying members can vote to ratify CBA?
- Who is on the bargaining team and what is their wage schedule position?



Disaffiliation of Smaller Units



MEA Board Policy L-9: Low Membership Locals (5/15/82)

- Local units with 0 to 20% of “members in good standing” are placed on a “critical list”; locals with 20%-30% are on a “watch list”
- Employees in “critical list” units will receive communications from MEA and are urged to increase membership
- After four consecutive months on the critical list, the unit “shall be disaffiliated from MEA.”
- “...the possible outcome is a cessation of all MESSA products immediately upon disaffiliation .”



MESSA Disaffiliation Policy (11/18/16)

- MESSA benefits will be terminated at end of last month of CBA, with written notice to the employer , where:
 - Bargaining unit elects to decertify or disaffiliate ; or
 - MESSA Board terminates benefits due to MEA Board decision to expel, discontinue, disclaim or otherwise terminate the unit from MEA membership (“disaffiliated unit”)
 - A “disaffiliated unit” may be eligible to continue with MESSA where the unit is participating in a MESSA approved benefits consortium and the disaffiliated unit membership is not more than 5% of the consortium membership

Classification of Bargaining Subjects

- Mandatory
- Permissive
- Prohibited
- Illegal



“Prohibited” Subjects

An employer is not required to bargain to impasse or agreement prior to taking action on a prohibited or illegal subject.

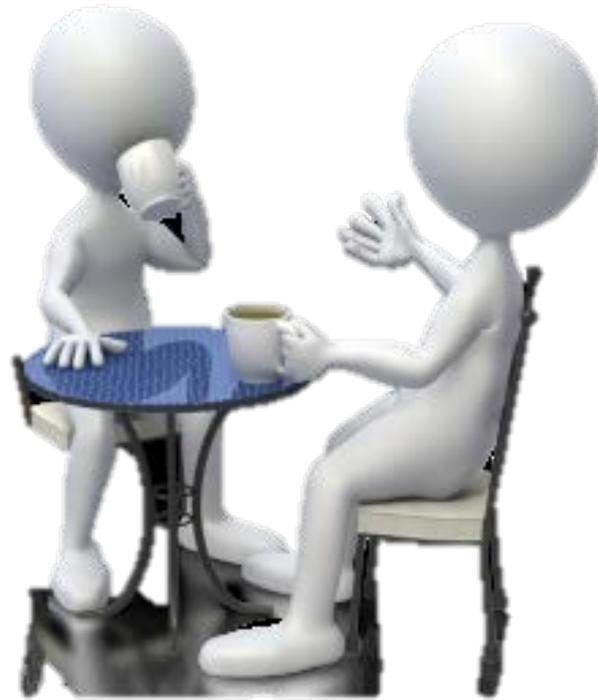
Troy Sch Dist, 21 MPER 37 (2008)

Unfair Labor Practice

- An allegation that your District violated PERA
- No monetary damages; will order party cease and desist
- Administrative Law Judge assigned to the case; can appeal ALJ's decision to the Michigan Employment Relations Commission



Communicating with Employees about Bargaining



Duty to Bargain: Employee Communications

- Public employer must bargain exclusively through recognized exclusive bargaining agent (i.e. union)
- Employer cannot engage in “direct dealing” or direct bargaining with employees
- Because union is deprived of opportunity to react to employer’s offer.



St. Clair Cmty Coll, 1979. MERC Lab Op 541

“Direct Dealing” Criteria

- Did employer communicate directly with represented employees?
- For purpose of establishing or modifying wages, hours or employment conditions?
- To the exclusion of union?
- Likely to erode union’s status as exclusive representative?



City of Detroit (Housing Comm), 15 MPER 33072 (2002)

Examples of Good Faith Employer Communications

- Not made to the exclusion of the union
- Does not contain offers not made to the union
- Employer continues to bargain with the union
- Website Postings: permissible if (1) no applicable ground rules to the contrary; and (2) table proposal presented to the union first.



PERA Requests for Information



INFORMATION REQUESTS: PERA

- “Discovery” standard for disclosure
- Access to information necessary to represent the bargaining unit
- Compiling information vs. producing existing documents
 - Bargain over costs
 - Granting union access to documents

Wayne Co, 22 MPER 80 (2009)

INFORMATION REQUESTS: PERA

- FOIA is distinct and separate right
 - *Kent Co Deputy Sheriff's Ass'n v Kent Co Sheriff*, 463 Mich 253 (2000)
- Scope of unit ordinarily limits “relevance”
 - *Traverse City Pub Schs*, 1969 MERC Lab Op 395
- No precise response timelines
- “Unreasonable delay” is an unfair labor practice
- If employer claims request is “unduly burdensome”, it must notify union promptly.
 - *City of Detroit*, 25 MPER 23 (2011)



Unfair Labor Practices: What is “Regressive” Bargaining?

- Changing bargaining position (even to less favorable offer) is not, by itself, evidence of bad faith
- Are “regressive” proposals tactic to avoid reaching agreement?
- Less favorable proposals may be due to change in economic conditions
 - ***City of Detroit***, 1982 MERC Lab Op 1042
- New proposals late in process may be evidence of bad faith



Impasse



Definition of Impasse

- Point at which further discussion would be futile.
 - *Flint Twp*, 1974 MERC Lab Op 152; *Oakland Comm Coll*, 15 MPER 33066 (2002).
- Point where “the parties’ positions have so solidified that further bargaining on the subject matter is obviously useless.”
 - *City of Saginaw*, 1982 MERC Lab Op 727.
- Or where “positions have crystallized so that further bargaining would be futile.”
 - *Escanaba Area Pub Schs Bd of Ed*, 4 MPER 22013 (1990); *Capac Comm Schs*, 23 MPER 46 (2010)

Impasse

- Depends on the facts of each case not on the declaration of either party.
 - *Redford Union Sch Dist*, 23 MPER 32 (2010).
- Employer must prove that neither party was willing to compromise.
 - *Oakland Comm Coll*, 15 MPER 33006 (2001).
- Usually requires factfinding and mediation
- If you have impasse; employer can implement unilaterally

Contract Expiration



Contract Expiration = Wage Freeze

PERA § 15b(1): “[A]fter the expiration date of a [CBA] and until a successor [CBA] is in place, ***a public employer shall pay and provide wages and benefits at levels and amounts that are not greater and those in effect on the expiration date of the [CBA].*** The prohibition in this subsection includes increases that would result from wage step increases.”

Wage Freeze

Also includes:

- Longevity payment
- Lane changes



Contract Expiration = Benefit Freeze

“Employees who receive health, dental, vision, prescription, or other insurance benefits under a [CBA] shall bear any increased costs of maintaining those benefits that occur after the expiration date. The public employer may make payroll deductions necessary to pay the increased costs of maintaining those benefits.”

No Retroactivity

“[T]he parties to a [CBA] shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the [CBA].”



Section 164h of the State School Aid Act

- Districts/ISDs cannot enter into collective bargaining agreements after October 1, 2017 that:
 - Establish racial or religious preferences for employees
 - Automatically deduct union dues
 - Conflict with federal or state transparency laws
 - Include a method of compensation that does not comply with RSC Section 1250
- **Violation is a 5% state aid penalty**

Section 164h: Is It Enforceable?

- Governor did **not** veto Section 164H
- However, he stated that in providing “direction to departments in implementing appropriations” some provisions are “considered unenforceable,” specifically noting Section 164h



Merit Pay: RSC Section 1250

- Became effective in 2010
- Requires (for teachers and administrators) a “method of compensation” that:
 - includes “job performance and job accomplishments”
 - as a “significant factor” in determining
 - “compensation” *and*
 - “additional compensation”



Contract Duration

- Economic certainty permits longer contract duration
- MEA effort to reconfigure medical benefit coverage year
- Some districts are considering December expiration date (coincides with audited student enrollment count)
- 6 month coverage year lawful?
- 6 month coverage year recommended?

Six Month Plan Year Violate PA 152?

- “...means the 12-month period after the effective date of the contracted or self-insured medical coverage plan...” MCL 15.562(g)

Calendar Expiration Dates

- June 30th (*preferred*)
 - Aligns with fiscal year
 - Aligns with insurances
 - PERA Sec. 15b
- August 31st (*avoid*)
 - Creates stress point
 - Pay steps or bring teachers back after Labor Day?

PA 152 Best Practices

- Write compliance method into contract
- Do not maximize benefit to hard cap level
- No free loading HSAs if at cap limit
- No smoothing

NEW Insurance Hard Caps

Starting January 1, 2018 (September 15, 2017)

- Single: \$6,560.52 (from \$6,344.80)
- 2 Person: \$13,720.07 (from \$13,268.93)
- Full Family: \$17,892.36 (from \$17,304.02)
- 3.4% Limits Increase

Steps

- Trend of reconfiguring step schedule continues
- Unions typically very interested in steps
- To increase pay at “bottom” of scale, consider eliminating Step 1 and moving others
- Add steps to top
- Longevity?

Grievance Process Best Practices

- Definition of “grievance”
- Sixth Circuit: Grievance Suspension if file EEOC claim retaliatory

MEA Negotiation Strategies



MEA Tactics: Stage 1

- Select a “crisis” color (not school colors)
- Wear same color
- Wear buttons/hats/T-shirts
- Communication system with members/
internal newsletter
- Encourage community members to call board
members
- Attend Board meetings



MEA Tactics: Stage 2

- Picket board meetings
- Enlist speakers at board meeting
- Set up a Web site (or Facebook page)
- Distribute information flyers
- Connect with local police/fire department
- File ULPs/grievances/FOIA requests – issue press releases re same



MEA Tactics: Stage 3

- Crisis Assessment Team
- Work to rule
- Hold a rally
- Radio and public access TV ads, billboards, signs
- Decline in committee or after hours work
- All bargaining unit members leave and enter building together



District Responses

- One spokesperson: Superintendent
- Communication plan
- District website:
 - Proposals
 - Financial data/graphs
- Statements to the media
- Cautionary grounds:
 - Ground rules
 - Interference/Direct dealing



What is your takeaway?

Board's Role:

- Set parameters/authority
 - Salary
 - Health Insurance
 - Other contract language
- Consult with Superintendent in closed session
- Typically Board members do not attend negotiations



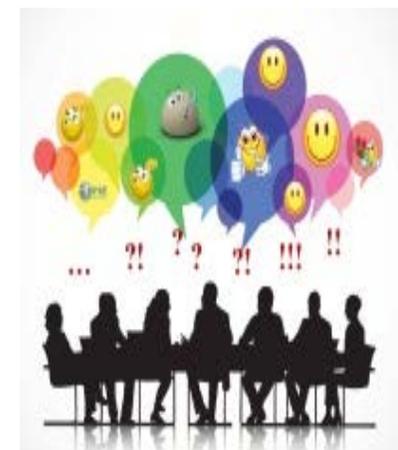
Takeaway

Confidentiality

- OMA: Closed Session
- Attorney-Client Privilege
- Established Parameters: Don't show your cards

Communication: Parameters/ authority allocated will be relied upon at negotiations

- Caution against undermining negotiators at the table; bad faith
- Consistent message reduces “Run on the Board”



Be Careful of the Shifting Winds

- Public may be behind you one minute and pressuring you the next
- Rely on the facts: Budget, state funding, trends, enrollment, fund balance, etc.
- Feelings are not facts

Stay..... 
FOCUSED!



Always Remember: There Is Light at the End of the Tunnel





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