



# Do's and Don'ts of Contract Language

Dr. Tom Smith  
February 27, 2015



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## Disclaimer

- The presenter is not engaging in dispensing legal or financial advice.
- Any individual or district interested in general and/or specific legal/financial protection should seek the counsel of an attorney and/or CPA.
- Language is from actual contracts, but not identified by school.



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## What are the Rules?



1. We don't know all of the answers!  
*You may not know **what** to do, but you should know what **not** to do – move from there.* (Ron Edmonds)
2. All districts are not equal.
3. When in doubt - Refer to Rule #1



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## Prohibited Subjects MCL 423.215(3)(...)

- Placement (Ionia Decision) (Section j)
- Layoff/Recall (Section K)
- Evaluation (Section l)
- Discipline (Section m)
- Site-Based Decision Committees (Section c)
- Distance Learning (Section h)




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## General Topics of Contracts

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|----------------------------------|--------------------------------|
| • Introduction                   | • <del>Evaluation</del>        |
| • Ratification                   | • Insurance                    |
| • Recognition                    | • Salary                       |
| • <del>Agency Shop/Dues</del>    | • Protection of Teachers       |
| • Teacher Rights                 | • Grievance                    |
| • Board Rights                   | • <del>Discipline</del>        |
| • Hours                          | • ERI                          |
| • Loads & <del>Assignments</del> | • <del>SIP</del>               |
| • Vacancies & Transfers          | • <del>Distance Learning</del> |
| • Teaching Conditions            | • Tuition Reimbursement        |
| • Leaves                         | • Extra-Duty                   |
| • Mentors                        | • Miscellaneous                |




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## PERA - MCL 423.215 (17)

*A bargaining representative or an education association shall not veto a collective bargaining agreement reached between a public school employer and a bargaining unit consisting of employees of the public school employer; shall not require the bargaining unit to obtain the ratification of an education association before or as a condition of entering into a collective bargaining agreement; and shall not in any other way prohibit or prevent the bargaining unit from entering into, ratifying, or executing a collective bargaining agreement. The power to decide whether or not to enter into, ratify, or execute a collective bargaining agreement with a public school employer rests solely with the members of the bargaining unit who are employees of the public school employer, and shall not be delegated to a bargaining representative or an education association or conditioned on approval by a bargaining representative or an education association.*




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## Ratification



*Do not "backdate" to date of last expiration. Use the date that the parties completed all ratification votes. i.e. expired June 30, but not completed until October.*

This agreement effective as of the 5<sup>th</sup> day of October, 2014, by and between the Board of Education of the XXXXXXX Public Schools, hereinafter "Board", and the XXXXXX Education Association, hereinafter called the "Association".



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## Recognition



*What about non-teachers?*

The Board hereby recognizes the Association as the exclusive bargaining representative to the extent required by Act 379 of the Public Acts of 1965 for the purpose of collective bargaining in respect to rates of pay, wages, hours, and conditions of employment for all certified teaching personnel.

This is to include guidance counselors and librarians.



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## Teacher Rights

*The Board and the Association recognize that the ability of pupils to progress and mature academically is a combined result of school, home, economic, and social environment. Therefore, teachers alone cannot be held accountable for the academic achievement of the pupil in the classroom.*

"Accountable for academic achievement" is an evaluation standard – PSB. First sentence becomes irrelevant.



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## Teacher Rights

*Academic freedom shall be guaranteed to teachers. Independent study and investigation at the presentation and interpretation of the facts and ideas in all branches of learning will be encouraged, provided that controversial topics are handled in such a manner as to present opposing points of view.*

Can we define "academic freedom?" This is a Policy issue.



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## Board Rights

The Board reserves the right, subject only to the limitations of this agreement to:

- Manage and control its business affairs.
- Direct the working forces and affairs of the district.
- Draft and adopt reasonable rules and regulations.
- Determine financial policies & adopt budgets.
- Hire, promote, suspend and discharge employees, transfer employees, assign work or duties to employees, determine the qualifications of employees.



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## Hours

*The parties agree to schedule 175 days of student instruction.*

The parties agree to schedule (and students attend) the number of days necessary to qualify for full state aid.



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## Hours

*In the event that scheduled days/hours are canceled and need to be made up to qualify for full state aid, the makeup time shall not be scheduled until the parties have had an opportunity to negotiate the amended calendar.*

In the event that scheduled days/hours are canceled and need to be made up to qualify for full state aid, the makeup time shall be scheduled at the conclusion of the school year, or at an otherwise mutually agreeable time. Teachers shall not receive any additional compensation for the added time.



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## Loads & Assignments

*Prohibited (mostly)*

*(j) Any decision made by the public school employer regarding teacher placement, or the impact of that decision on an individual employee or the bargaining unit.*

*If a teacher is assigned to a class outside of their field of academic preparation, a written agreement shall be signed by the teacher involved and the administration.*

If a teacher is assigned to a class outside of their field of academic preparation, **it shall only be with the full written authorization of the MDE.**



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## Vacancies & Transfers

*Prohibited (mostly)*

*(j) Any decision made by the public school employer regarding teacher placement, or the impact of that decision on an individual employee or the bargaining unit.*

Teachers shall have the right to apply for any position that may be open.



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## Teaching Conditions

*In the event that the class size limits are exceeded, a teacher shall be compensated for the excess on a basis of XX dollars per day per student in excess of the limit.*

In the event that the class size limits are exceeded, the Board determines the best strategy to address remedial action. This may include, but is not limited to hiring additional instructional staff as may be necessary, the use of classroom instructional aides, or in some cases, compensation to the classroom teacher in the amount of \$ X.

*The argument for class size limitations is that large numbers negatively impact instruction. If that is indeed the case, then the appropriate strategy is to provide additional instructional support. Accepting the notion that additional compensation solves the problem, negates the original argument.*



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## Teaching Conditions

*Every effort shall be made by the Board to minimize clerical tasks.*

The Board shall provide access to district clerical personnel, to be scheduled by the building administrator.



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## Leaves

*Each teacher shall be credited with 15 days of annual leave time for use when the employee or a member of the immediate family is ill or has a medical appointment for which school time must be utilized.*

Each teacher shall be credited with one day for each month worked, for use when the employee or a member of the immediate family is ill or has a medical appointment for which school time must be utilized.

*(define immediate family) – this is a new area.*



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## Leaves

*Teachers shall be credited with 4 days annually for personal business, not to be deducted from sick leave. Unused days shall be compensated at the daily substitute rate.*

Teachers shall be credited with 4 days annually for personal business, to be deducted from sick leave. Personal business shall be defined to be business of a personal nature that cannot be conducted at times other than when school is in session.

Personal business time may not be used to extend a vacation period (no use immediately preceding or following a school vacation period).



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## Leaves

*These days shall not be used for other employment, or vacation/recreational activities. Personal business leave is to be used to attend to urgent matters that require the personal attention of the teacher and cannot be attended to outside of the work day.*

Who determines ..... other employment?  
recreational activities?  
urgent matters  
requires personal attention



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## Leaves

*A teacher may request an unpaid leave of absence for a specified time. Such request shall be in writing and shall be approved by the Board. The period of time shall be unpaid, but insurance benefits shall continue for the remainder of the school year.*

A teacher may request an unpaid leave of absence for a specified time. Such request shall be in writing and **may** be approved by the Board. The period of time shall be unpaid and without any additional benefits. Board approval/disapproval shall not be the subject of any grievance. FMLA may apply.



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## Leaves

*Upon retirement, teachers shall be compensated for any unused sick leave days.*

*Such compensation shall be at the rate of 50% of the teachers current per diem rate (annual salary ÷ number of teacher days) times the number of unused days (maximum of 120). i.e. (.50 X \$60,000/180 X 120days)= \$20,000.*

- Percentage
- Number of days
- What is "per diem?"
- Consider flat rate



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## Mentors

*The Board and the Association agree the relationship shall be confidential and shall not, in any fashion, be a matter included in the evaluation of the Mentor Teacher or Mentee.*

- *Evaluation standard - delete*

The Mentor Teacher and Mentee shall, at the end of each semester, submit to the principal, a log of activities/areas of accomplishment that have been addressed in the preceding months.



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## Evaluation

### *Prohibited*

*(1) Decisions about the development, content, standards, procedures, adoption, and implementation of a public school employer's performance evaluation system adopted under section 1249 of the revised schoolcode, 1976 PA 451, MCL 380.1249, or under 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the content of a performance evaluation of an employee under those provisions of law, or the impact of those decisions on an individual employee or the bargaining unit.*



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## Insurance

*The Board will provide to the employee MESSA(s) Choices II with a 10/20 drug card for the contract period for the employee's entire family.*

The Board will contribute to the premium no more than the state established cap amounts for health insurance for a twelve (12) month period for the bargaining unit member and family. For 2014-15 the cap numbers are FF -\$1331.26/mo, ES/EC \$1020.83/mo, S - \$488.13/mo. Any cost greater than the Board's contribution shall be subject to payroll deduction.

In the second year of the contract (2013-14), the Board reserves the right to impose the statutory limits for health care rates (hard cap).



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## Salary

Teachers shall only move lanes at the beginning of a semester and after completion of a new degree or the additional required credits beyond an existing degree.

- *Any degree????*
- *Be sure to include the newest calculations, and not simply indicate a percent increase.*



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## Protection of Teachers

*Any and all complaints made against a teacher shall be called to the teacher's attention within 5 days. ~~Failure to do so shall prohibit the use of the complaint or any related material in any disciplinary process, or be included in the teacher's personnel file.~~*

"Action taken upon any complaint by a parent of a student directed toward a teacher, and/or any notice thereof to be included in said teacher's personnel file shall be subject to Bullard-Plawecki, Michigan Act 397 of 1978." [Consult attorney.](#)



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## Agency Shop/Dues

*See PA 53*

*No Dues deductions*

*No Agency Shop*



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## Grievance

*A grievance shall be defined to be an alleged violation of the terms of this Agreement, or any other policy, rule, regulation or decision made by the Board or its agents.*

A grievance shall be defined to be an alleged violation of the terms of this Agreement.



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## Arbitration

- *Vague language invites arbitration.*
- *Arbitrators have broad powers.*
- *Need contract language to limit the power/scope of authority of the arbitrator.*
- *The arbitrator shall have no authority/power to rule on matters for which there is an alternative dispute forum.*
- *The arbitrator shall have no authority/power to rule on matters \_\_\_\_\_.*



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## Discipline

*Prohibited (mostly)*

*(m) For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee, decisions concerning the discharge or discipline of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit. For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, a public school employer shall not adopt, implement, or maintain a policy for discharge or discipline of an employee that includes a standard for discharge or discipline that is different than the arbitrary and capricious standard provided under section 1 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.*



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## Discipline

*The Association shall accept responsibility to deal with ethical problems in accordance with the terms of such Code of Ethics of the Education Profession.*

**Consult your Attorney!!!! ---BRAD**

**If a teacher is to be disciplined or reprimanded by the Board or its agents, he shall be entitled to have a representative of the Association present, subject to the provisions of their federal Weingarten Rights. NLRB v. J. Weingarten, Inc. 420, US 251.**



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## Early Retirement Incentive

- Create "Incentive" for employees to retire at an earlier date than normal.
- If an ERI plan is in contract language, employees can count on it being there.
- In short, it is not an incentive! It is a guaranteed benefit.



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## School Improvement

*Membership on SIP Committee is prohibited.*

*(c) The composition of school improvement committees established under section 1277 of the revised school code, 1976 PA 451, MCL 380.1277.*



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## Distance Learning

*Prohibited*

*(h) Decisions concerning use and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide that technology, or the impact of those decisions on individual employees or the bargaining unit.*



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## Tuition Reimbursement

*The Board shall reimburse teachers at the rate of XXXX for any and all coursework taken following attainment of their Bachelor's Degree. All work must be completed on an approved program leading to an advanced degree or in the teacher's major field of work.*

*Graduate credit courses of the candidate's own choice may be counted. They do not have to be in a planned program.*

*The Board shall reimburse teachers at the rate of XXXX for any and all coursework taken following attainment of their Bachelor's Degree. All work must be completed on an approved program leading to an advanced degree in the teacher's major field of work, or meeting standards for continuing certification in the appropriate educational field.*



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## Extra-Duty

The Board shall have complete discretion to hire all extra- duty positions.

?? Determined annually  
?? Staff preference

*Hiring non-staff personnel, and/or reducing the compensation to any personnel may have the unintended consequence of reducing the number of staff personnel who apply, and thereby reducing the number of these valuable people.*



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## Substitutes

*Subs are not regular and not part of the bargaining unit. Districts with language relative to subs should have the language reviewed for legal compliance and consider removing it.*



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## Seniority Lists

"The administration shall, no later than October 1, submit the seniority list to the Association to review the information for accuracy. The Association shall have 30 days to review the information and call any discrepancies to the attention of the Administration for possible correction(s). After the 30 days, the list shall be considered to be accurate and final."



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**Slide 39**

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**TS1** Tom Smith, 2/10/2015

## Harassment

*Modern Board Policy addresses harassment in general and provides the appropriate process to report, investigate and address harassment issues. It is recommended to review such language and seek to eliminate unenforceable protections, deferring to Board Policy.*



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## “Feel Good Language”

*Contracts are full of language that can be termed, “feel-good.” It sounds nice, and would get an A+ on the educational jargon meter, but is usually ill-defined, vague and creates an environment ripe for controversy. These include terms such as:*

- *Witnesseth...*
- *Best effort*
- *Substantially*
- *Stakeholders*



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## Acceptable Use Policy

*Districts are required to have a Board-adopted acceptable use policy for internet access and use. However, such a policy is best not included as contract language.*



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## Dock Time

*Dock time is "unpaid time off." Contracts do not address "dock time," even though employees presume that it exists. The Board can consider an unpaid leave pursuant to language that may allow for the Board to do so. However, teachers are not allowed to simply be absent and claim "dock time." Any time off without pay should only be with Board approval after considering a written request.*



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## Sick Banks

*The donated days are often days that veteran teachers have that are beyond their accumulated maximums. Therefore, the days have no value to anyone – except the teacher who draws upon the bank.*

*In order for a sick bank to be a shared-risk (Board/Association), the donated days must have value, i.e. personal days and donated through random draw among the staff (not just the veterans).*



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## Bad Terminology

- Adequate Supplies
- Reasonably Equipped
- Should...
- Best Effort
- Substantial
- Cover for another teacher – A problem in high schools in the spring!



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**Final thoughts....**

1. Know who your friends are.
2. Good Luck!



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