




MASB
MICHIGAN ASSOCIATION
OF SCHOOL BOARDS

MERC Update
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Services






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Let's Explore

Recent MERC Decisions on:

- Prohibited Subjects of Bargaining
- Union Dues and Service Fees
- Health Care
- Privatization





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**Prohibited Subjects of
Bargaining**



How prohibited is prohibited?

(3) Collective bargaining between a public school employer and a bargaining representative of its employees shall not include any of the following subjects:

Ionia Public Schools & Ionia Education Association, MEA/NEA

- What happened in Ionia
- Discussing v. Bargaining v. Including it in a CBA



Real CBA Language in Action

PERA says:

(c) Decisions about the development, content, standards, procedures, adoption, and implementation of the method of compensation required under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions about how an employee performance evaluation is used to determine performance-based compensation under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions concerning the performance-based compensation of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit.



Real CBA Language in Action

ACADEMIC PERFORMANCE:

Teachers will receive a stipend payment of \$500.00 if either of the following conditions is met by June 1, 2015:

1. The students in 75% of tested grade levels in reading and 75% of tested grade levels in math meet or exceed county or state performance proficiency percentages on state provided summative assessments.
2. At least 50% of all students in 1/3 of assessed grade levels in math and 1/3 of assessed grade levels in reading in the district achieve projected annual growth targets.

The following condition must prevail if either of the above stipend conditions is met:

- The fund balance as determined on June 1, 2015, remains at or above the Board policy level of 20%.

Such stipend payment is a one-time payment and not to become part of any teacher's ongoing salary schedule.

Such payment for eligible teachers will be made before June 30, 2015 or a payroll period as soon as completion data is communicated from the State of Department of Education.



Real CBA Language in Action



(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.




Real CBA Language in Action

SECTION 2.6: DISCIPLINE OF TEACHERS

A. Any complaint made against a teacher by a parent, student, or other person will be called to the attention of the teacher within two school days, absent extenuating circumstances, in which case it shall be done as soon as possible. If the Administration does not feel that the complaint is serious or if there are no grounds for the complaint, such issues will not be communicated to the teacher. No such complaint will be included in the teacher's personnel file unless and until the teacher has been informed of the complaint and the identity of the complainant is made known to the teacher (subject to the requirements of law or appropriate investigative or judicial bodies).

Union Dues, Fees, and PERA



Subsection 9 of PERA:

(2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following:

(a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.



Subsection 10(c): Employer shall not . . .

(c) Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization.



Union Dues and Fees - Taylor

- Taylor School District & Taylor Federation of Teachers & Rhatigan, Metz, and Stefke
- What happened in Taylor?
- What ALJ Julia Stern ruled

Union Dues and Fees - Taylor



- MERC says it is ok for different parts of contract to have different expiration dates
- a ten-year duration for the union security agreement is “excessive and unreasonable.”
- Taylor’s security agreement violates subsections 9 & 10 of PERA

Problematic CBA Language

ARTICLE 5 - ASSOCIATION SECURITY AND PAYROLL DEDUCTIONS

Section A: Each bargaining unit member shall, as a condition of employment, on or before thirty (30) days from the date of commencement of duties or the effective date of this agreement, whichever is later, join the Association or pay a service fee to the Association, pursuant to the Association’s “policy regarding objections to political-ideological expenditures” and the administrative procedure adopted pursuant to that policy. The service fee shall not exceed the amount of Association dues collected from Association members. The bargaining unit member may authorize payroll deduction for such fee. In the event that the bargaining unit member shall

Problematic CBA Language

Just Kidding?

If any law, directive, or condition of the State of Michigan or any of its departments establishes the reduction or withholding of state funds or the ability of the District to qualify for state funds due to the inclusion of this Section A, this Section A shall be considered null and void and will not apply to any persons employed by the district and represented by this bargaining unit.



Consequences for RTW Violations

- \$500 fine
- Lawsuits and legal fees - \$\$\$\$\$
- Does it make strategic sense?
- Doesn't make many friends in the current legislature



MERC on Health Care Costs

- Publicly Funded Health Insurance Contribution Act of 2011
- Garden City Public Schools & Garden City Education Association



Health Care – Garden City



- What happened in Garden City?
- Cost sharing is a permissive subject of bargaining, not a mandatory subject
- But once a board binds itself in a contract, it is bound until the expiration of the CBA



Health Care – Mandatory After All?



- What happened in Shelby Township (PA 152) and City of Flint (PA 54) cases?
- Obligation to provide unions with chance to bargain over effects of PA 54
- May have duty to bargain how contributions are calculated
- What about while in fact finding?



Bidding Out Noninstructional Services



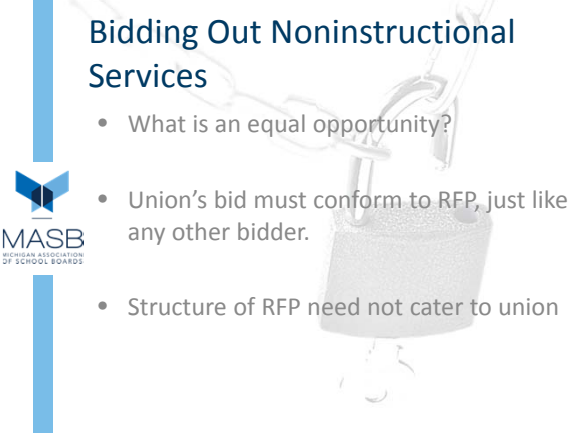
PERA Says

(f) The decision of whether or not to contract with a third party for 1 or more noninstructional support services; or the procedures for obtaining the contract for noninstructional support services other than bidding described in this subdivision; or the identity of the third party; or the impact of the contract for noninstructional support services on individual employees or the bargaining unit. However, this subdivision applies only if the bargaining unit that is providing the noninstructional support services is given an opportunity to bid on the contract for the noninstructional support services on an equal basis as other bidders.



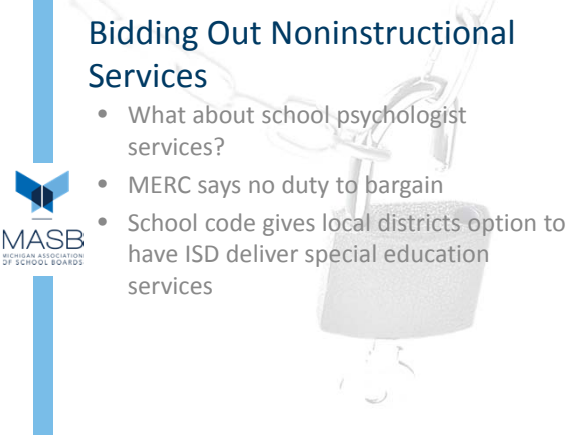
Bidding Out Noninstructional Services

- What is an equal opportunity?
- Union’s bid must conform to RFP, just like any other bidder.
- Structure of RFP need not cater to union



Bidding Out Noninstructional Services

- What about school psychologist services?
- MERC says no duty to bargain
- School code gives local districts option to have ISD deliver special education services



Legal questions when you get back home?

- Call us at 517-327-5900
- Email Kacie Kefgen – kkefgen@masb.org

