

**NEGOTIATIONS 2016:  
STRATEGIES FOR THE UPCOMING  
BARGAINING SEASON**

MASB/MASA/MSBO  
Labor Relations Conference  
Clark Hill PLC  
February 26, 2016  
*John Gierak and Joseph Urban*



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**Fire Monkey:  
“Ambitious and Adventurous, but Irritable”**



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**OVERVIEW**

- THE BASICS
- PRIORITIES THIS YEAR
- STRATEGIES
- CLOSING ADVICE

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### THE BASICS BEGIN WITH PERA

- The Public Employment Relations Act requires public employers The Public Employment Relations Act requires public employers to “bargain in good faith” with union representatives.
  - Meet at reasonable times and places.
  - Confer about “wages, hours, and other terms and conditions of employment . . .”
  - Execute a contract incorporating agreements reached.
  - Does not require either party to agree to a proposal or to make a concession.

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### SUBJECTS OF BARGAINING

- Mandatory Subjects – wages, hours and working conditions
- Permissive Subjects – curriculum, student issues, e.g.
- Prohibited Subjects – may discuss, no obligation to bargain, may take unilateral action
- Illegal Subjects – no dues deductions, e.g.

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### SCHOOL REFORM – WHAT’S LEFT TO BARGAIN?

- **Plenty!**
- **Compensation Issues-**
  - Salary and wage levels
  - Salary steps
  - Salary lanes
  - Insurance (carrier, type and level of benefits);  
**NOTE: ACA requirements 1-1-16**
  - Cash in lieu
  - Personal leave time (especially sick banks)
  - Fund balance – early warning legislation

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**SCHOOL REFORM – WHAT’S LEFT TO BARGAIN?**

- **Working Time Issues -**
  - Increased number of student instruction days (minimum 180 student days 2016-17)
  - Increased student instruction time;
  - Increased number of teacher work days;
  - Longer teacher work day on-site;
  - Increased teacher professional development time;
  - More flexible and cost-effective class size limitations;
  - Teacher pay inequities (AP English vs elementary PE);
  - Structure of school day and school year to enhance student achievement.

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**COLLECTIVE BARGAINING – THE PROCESS**

- **Stages of the Process**
  - Preparation.
  - Negotiations (Formal and Side Bar)
  - Mediation (non-binding)
  - Fact-finding (non-binding)
  - Post fact-finding negotiations
- **Outcomes:**
  - Agreement; No agreement; Imposed terms and conditions

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**IF NO AGREEMENT...**

- The Board will either implement its Last Best Offer, outsource the work (if possible), or maintain the status quo indefinitely.
- The Union will increase its efforts to change Board bargaining goals through pressure tactics (such as illegal “work to rule” or electing/recalling Board members).

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**DUAL-TRACK BARGAINING EFFORTS**

- At the bargaining table, to reach agreement and position the Board to exercise its options under the law:
  - a. Formal table position (postured for possible fact-finding and implementation of LBO or outsourcing)
  - b. Informal position (where the Board can go; those positions typically explored in mediation)
- Away from the bargaining table, to counter the Union's pressure tactics and efforts to elect/recall Board members:
  - a. Prepare Board and administrators for Union tactics
  - b. Development of a communications plan – setting the climate and communicating key messages

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**WHAT NOT TO DO**

- Refuse to meet
- Make regressive proposals *without justification*
- Disparage union leadership
- Publish or "float" proposals not yet made to union
- Misrepresent proposals
- Engage in conversations with teachers or union leaders outside of the bargaining process
- Speak off the cuff
- Undermine District bargaining team

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**THE CURRENT BARGAINING CLIMATE**

- Scarce and dwindling state resources unlikely to significantly improve given other needs (Flint, DPS, infrastructure needs, MPERS legacy costs)
- Unhappy local unions due to 2011 school reforms and cases being decided at all levels against them
- Union leadership feeling a need to constantly demonstrate their value under right-to-work, so all problems become major issues
- Some teachers increasingly disenchanted and local administration and board subject to more local pressure tactics.
- Increased pressure due to early warning legislation; everyone doing more with less.

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LIMITED RESOURCE BARGAINING

- Modest growth or flat or concessionary contracts
- Rapid or protracted negotiations
- Traditional forms of teacher compensation, step and lane advancement, waning in practice but growing in demand by unions and teachers
- Legal and ideological demands for merit pay but few successful examples
- No "going rate" as in the past; each District facing unique circumstances

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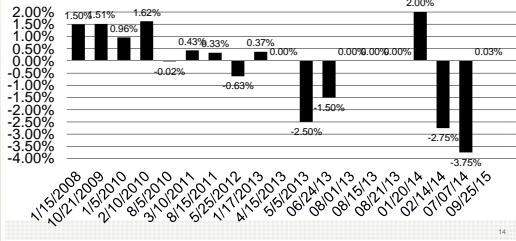
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MERC FACT FINDING

Average Wage Recommendation Per Contract Year



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RECENT HISTORY

- **In our office alone:**
  - Brandon School District – 7.5% cut
  - Iron Mountain – 7.5% cut
  - Muskegon – \$1 million cut
  - Grant–7.9% cut
  - Hazel Park – 8.8% cut
  - Troy– 12% floor on fund balance formula and two additional steps
  - **Raises generally tied to more work time**

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**ASK YOURSELF:**

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- DO YOU NEED A NEW CONTRACT?
- IF SEEK CONCESSIONS, WHAT IS UNION'S INCENTIVE TO SETTLE?
- WHAT IS TOLERANCE TO USE IMPASSE STRATEGIES AND WITHSTAND LOCAL PRESSURE TACTICS?

16

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**PRIORITIES**

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- **Fiscal House in Order** – Eliminating deficits and avoiding Early Warning Legislation
- **Language & Policy/Administrative Guideline Review** – Prohibited and Illegal Subjects
- **Health Insurance**
  - PA 152: Will you switch this year?
  - ACA
- **Calendar** – 180 students days as of 2016-17 absent contract bar

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**LANGUAGE PRIORITIES**

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- **Review prohibited subject deletion**
  - Do not overlook original prohibited subjects, such as the use of technology to deliver educational services
- **Review deletion of illegal subjects**
  - Possible anti-discrimination obligations to address harassment of non-members

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**MORE LANGUAGE**

- **Update Board policies and administrative guidelines on prohibited subjects**
  - Critical if you will layoff this year
  - Consider internal appeal process for teacher discipline to demonstrate fairness
- **Update other provisions, such as FMLA**

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**WHAT IS YOUR FISCAL CONTEXT?**

- **MUST YOU ACHIEVE CONCESSIONS?**
  - BY WHAT DATE?
  - BY HOW MUCH?



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**WHAT IS YOUR FISCAL CONTEXT?**

- **IS STATUS QUO ACCEPTABLE?**
  - THEN RIDE PA 54, YOUR "BEST FRIEND"
  - FOR HOW LONG?
  - WHAT CONDITIONS WILL ALLOW PAY INCREASES OR REQUIRE CONCESSIONS?
  - BY WHAT DATE?
- **IF PAY INCREASES ARE ON THE HORIZON, ARE THEIR COSTS SUSTAINABLE?**
  - FOR HOW LONG? ON OR OFF SCHEDULE?

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**WHAT IS YOUR FISCAL CONTEXT?**

- **Early Warning Legislation**
  - Must maintain at least a 5% fund balance for a rolling two consecutive years;
  - Reports on financial information due to CEPI by July 7 each year.
  - Treasurer may declare potential financial stress based upon financial and enrollment information provided.

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**EARLY WARNING LEGISLATION CONCERN**

- **May spell the end of financial autonomy:**
  - Must provide additional financial information to Treasurer;
  - May contract with its ISD to conduct administrative review of finances.
- **Districts should communicate the significance of not having a 5% fund balance.**

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**WHAT ASSUMPTIONS TO USE?**

- OFFER 2-3 FORECASTS: BEST CASE, WORST CASE, MODERATE CASE
- MODEST FUNDING INCREASES (GOVERNOR \$60/\$120)
- 3% INSURANCE INCREASE IF HARD CAP, MAYBE GREATER % IF NOT HARD CAP
- LESS THAN 1% DECREASE IN MPSERS COSTS (BUT IS IT SUSTAINABLE; PENDING DPS LEGISLATION WOULD IMPACT COSTS BY REMOVING DPS TEACHERS FROM SYSTEM)
- ENROLLMENT – RELY ON YOUR HISTORY AND/OR BLENDED EXPERT PROJECTIONS
- **CLEARLY EXPLAIN ASSUMPTIONS AND THEIR BASIS**

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**REASONABLY PRUDENT FORECASTS**

- ACKNOWLEDGE UPFRONT YOUR BUDGET PHILOSOPHY: ASSUME THE WORST AND HOPE FOR THE BEST
- ASSUME VARIOUS LEVELS OF BUDGET VARIANCE IF THAT IS YOUR HISTORY
- MAINTAIN OPEN BOOK PHILOSOPHY AND COMPLETE TRANSPARENCY
- RESPOND PROMPTLY TO FOIA/PERA REQUESTS THAT ARE REASONABLE

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**CURRENT COMPENSATION STRATEGIES**

- Off-Schedule Payments
- Delay / Partial Steps (e.g., 1 step over 2 years, half-steps)
- Formula or "Trigger" for cuts and raises
- Expanded salary steps (e.g., 11 steps to 14+ steps)
- Reduced Lanes and/or Longevity
- Compensation for increased work time / instruction time (180 student instruction days in 2016-2017)

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**FORMULA/TRIGGER BASICS**

- Quantify and automatically adjust/respond to factors beyond the control of the district/employees; i.e., if fund balance falls below some "trigger" (10%, 12%, etc.), the salary schedule is reduced
  - Provides fiscal certainty for districts
  - Provides ability of parties to allow for multi-year agreements
  - Ensures that everyone has some "skin in the game"
  - Assures employees they maintain their "fair share"

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**FORMULAS AND TRIGGERS**

- SALARY INCREASES CONDITIONED ON ENROLLMENT OR PER PUPIL FUNDING LEVELS OR COMBINATION THEREOF
- SHARE "EXCESS" FUND BALANCE AMOUNTS OFF-SCHEDULE, ONE TIME
  - Combine with "merit pay" requirements for Effective and Highly Effective teachers

28

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**WAGES**

- **TWO-TIER WAGE SCALES**
  - Structural Change
  - Long Term
  - Short-Term Savings May Be Minimal
  - Hard Feelings? Low Morale?
  - Difficult to compete with contractors for non-instructional staff, given MPSERS cost

29

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**OTHER AREAS TO REVIEW**

- STAFFING LEVELS
- CLASS SIZE
- TIME OFF (SICK, VACATION)
- INSURANCE BENEFITS
- WORK TIME
- WORKING CONDITIONS



30

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### WHAT ABOUT "MERIT PAY?"

- Misnomer
- Section 1250 of Revised School Code requires that compensation and additional compensation be based on job accomplishments and job performance.
- Especially difficult to address in a climate of concessions or pay freezes

31

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### ALTERNATE SALARY SCHEDULES

- TO DATE, PRIMARILY AN ISD PHENOMENON (PROPERTY- TAX BASED FUNDING)
  - ST. CLAIR, LENAWEE, LIVINGSTON, KRESA
  - BLISSFIELD, OTHERS
- SEE TNTP ARTICLE: *The Hidden Costs of Lockstep Teacher Pay*  
[http://tntp.org/assets/documents/TNTP\\_Shortchanged\\_2014.pdf](http://tntp.org/assets/documents/TNTP_Shortchanged_2014.pdf)
- OTHERWISE, TIE STEP AND LONGEVITY TO EFFECTIVENESS RATINGS.
- OUTSIDE OF CBA, PROVIDE ADDITIONAL COMPENSATION TIED TO VARIOUS CRITERIA.

32

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### EX. OF ALT SALARY SCHEDULE: ST. CLAIR RESA

2015-2016 185 Days

	Novice		Effective		Highly Effective	
N 0	38,000	Level 0	40,000	Level 0	45,000	
N 1	40,000	Level 1	42,700	Level 1	48,000	
N 2	42,000	Level 2	45,400	Level 2	51,000	
N 3	44,000	Level 3	48,100	Level 3	54,000	
N 4	46,690	Level 4	50,800	Level 4	57,000	
		Level 5	53,500	Level 5	60,000	
		Level 6	56,200	Level 6	63,000	
		Level 7	58,900	Level 7	66,000	
		Level 8	61,600	Level 8	69,000	
		Level 9	64,300	Level 9	72,000	
		Level 10	67,000	Level 10	76,125	
		Level 11	71,952			

33

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**MI Effectiveness Ratings\***

- **Ineffective Teachers & (Administrators)**
  - 2011-2012: 0.8% (0.7%)
  - 2012-2013: 0.6% (0.5%)
  - 2013-2014: 0.5% (0.3%)
- **Minimally Effective Teachers & Administrators**
  - 2011-2012: 2.04% (1.76%)
  - 2012-2013: 2.41% (2.24%)
  - 2013-2014: 2.26% (2.37%)
- **Effective Teachers & Administrators**
  - 2011-2012: 74.6% (74%)
  - 2012-2013: 64.4% (68%)
  - 2013-2014: 59.3% (66%)

\* Source: MDE/CEPI Website Staffing Reports

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**Increase in Highly Effective Educators**

- **Highly Effective Teachers**
  - 2011-2012: 23% 
  - 2012-2013: 33%
  - 2013-2014: 38%
- **Highly Effective Administrators**
  - 2011-2012: 23% 
  - 2012-2013: 29%
  - 2013-2014: 32% 

97% of Teachers = Effective or Highly Effective  
98% of Administrators = Effective or Highly Effective

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**INSURANCE**

- **SELF FUNDING**
- **LOWER COST PLANS**
- **DO NOT PAY MAXIMUM PERMITTED BY PA 152**
  - District Cap Lower Than Hard Cap
  - % Less Than 80
  - Single Premium Only
- **DO NOT PAY NON-HEALTH BENEFITS**
- **PAY VERY SMALL % NON-HEALTH BENEFITS**

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**Because You Never Know How  
You Will Achieve Your Goal**

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- **ELIMINATE OR REDUCE:**
  - TUITION REIMBURSEMENT
  - EXTRACURRICULAR SCHEDULES
  - SICK LEAVE BANKS
  - OTHER REIMBURSEMENTS
  - EXTRA HOURLY RATES
  - CLOTHING ALLOWANCE

37

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**LEAVES OF ABSENCE**

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- Paid leave days increase sub costs and reduce educational quality
- Reduce number of sick days and/or change how earned
- Reduce number of personal business days
- Make attendance a factor in "merit pay"

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**PROVISIONS TO AVOID AT THE TABLE**

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- "Sunset" provisions
- "Cleaning" personnel files
- Sick bank
- Notice or investigation of complaints against employees within a specified time period
- Requirements to "confront accuser"
- Other limitations on employee investigations

39

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**PROVISIONS TO AVOID AT THE TABLE**

- Incorporating or retaining statements of law in contracts
- Calculating extra duty as a percentage of salary
- Absolute class-size maximums
- Specific starting and end times to instructional day
- "Weighting" of special education students.

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**PROVISIONS TO AVOID AT THE TABLE**

- Job descriptions in the contract
- Maintaining fringe benefits on extended unpaid leaves
- Expensive severance benefits based upon unused sick leave days
- Use of sick leave days to supplement Workers' Compensation benefits

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**PROVISIONS TO AVOID AT THE TABLE**

- Specifying steps of progressive discipline (non-teacher);
- Limitations on use of teacher prep time;
- Incorporation of outside materials by reference
- Overtime beyond that required by law.

It is also worth considering attempting to remove these provisions if they are already in the contract.

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**FINAL CONSIDERATIONS**

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Points to remember when bargaining in times of economic distress:

- Assemble the right team
- Prepare your Board and your administrative team
- Develop your messaging for your staff and community
- Know your union
- Consider your style of bargaining (IBB?)
- Develop a timetable based on economic and operational needs

43

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**FINAL CONSIDERATIONS**

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- Begin with a "state of the District's finances"
- Accept "working without a contract"
- Understand your bargaining leverage
- Demonstrate shared sacrifice
- Put all of your cards on the table; be transparent
- Be open to adjusting bargaining goals in light of changing realities

44

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**PARTING THOUGHTS**

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- School reform legislation has significantly changed the playing field to school districts' advantage, especially if you can live with the status quo under PA 54.
- Aim high and retain maneuvering room for mediation, fact-finding and post-fact-finding negotiations.
- Goals should include creating leverage for the next contract.
- It may not be anyone's "fault" that the contract is not yet settled...concessionary bargaining remains tough.
- The school district can survive and be improved as a result of negotiations, even if protracted.
- The contract will eventually be settled!

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Thank you!

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