



Bargaining – What's HOT and What's NOT!

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Agenda

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- **Negotiating Benefits**
- **Attendance**





Negotiating Benefits

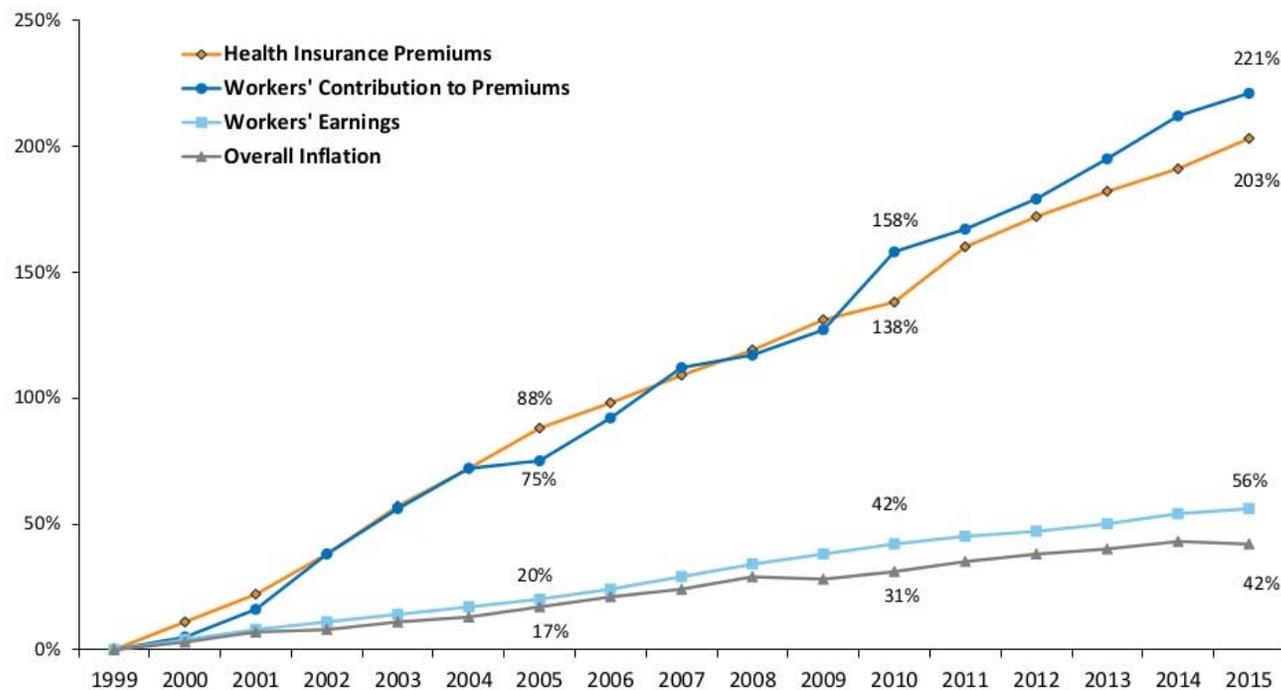




National Landscape

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Cumulative Increases in Health Insurance Premiums, Workers' Contributions to Premiums, Inflation, and Workers' Earnings, 1999-2015



SOURCE: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2015. Bureau of Labor Statistics, Consumer Price Index, U.S. City Average of Annual Inflation (April to April), 1999-2015; Bureau of Labor Statistics, Seasonally Adjusted Data from the Current Employment Statistics Survey, 1999-2015 (April to April).



Local Landscape – Michigan Schools

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Turbulent Times



- MESSA increase averaged 15%+



- EA groups leaving MESSA looking for alternatives
- EA not sharing alternatives with members
- EA groups renewing with MESSA but angry



- Small, if any, wage increases
- 3.3% hard cap increase for 2017
- Federal and state law complications



Takeaways for Negotiators

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- Develop a long-term plan to control insurance costs and take advantage in the interim of the cost containment benefits offered by 2011 PA 152
- Cost increases may become worse
- Short term decisions can have long term effects (the belief that PA 152 solves all problems)
- Growing pressure for compensation increases (employees contribution to insurance cost from disposable income)
- Developing a strong communications plan creates a long-term bargaining strategy





Think Globally

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- Why lower cost options are in everyone's best interest
- Who is open to this message/how to communicate
- Who votes at ratification
- What strategies work best
- Identify opportunities to educate
- Repetition is key in an effective communications plan





Communicate Impact of No Contract

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- School districts not prohibited from advising bargaining unit employees, what the increase will be in their payroll deductions for insurance, if the contract expires without a successor agreement
- Notice must be factual, without negative commentary about the union.
- It's critical for employer to ensure all employees get key data given increasing number of non-union employees within bargaining unit



Communication

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- **Best Practice Tips**

- Employer should provide this notice so employees aren't surprised if increase occurs.
- Notice of potential impact should be simple and easy to understand.
- A chart depicting deduction amounts before and after contract expiration can be helpful.
- Consider sharing the notice with the union bargaining team before sending it to all affected employees
- Do this on a regular basis when contract expires or when there is a re-opener.





Communication

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- A few simple rules:
 - Do not communicate anything to bargaining unit employees that you have not first shared or shown to the union [direct dealing]
 - If you want to share a proposal, make sure you have given the proposal to the union first
 - Do not disparage the union in your communication to the employees – let the facts speak for themselves
 - Be 100% accurate in what you say



Strategic Considerations

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- **Be patient**
 - In light of PA 152 and PA 54, unless you need immediate concessions, the district can afford to take a long term view
- **Consider an Insurance Study Team or Committee**
 - Given the pace of likely future increases in costs, PA 152 may lead educated employees to initiate change





Highly Regulated

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- Public Employment Relations Act, which includes Public Act 54 of 2011, which protects the status quo pending a new contract
- The Public Employees Health Benefit Act, also known as Public Act 106 of 2007, which requires bidding
- Publicly Funded Health Insurance Contribution Act, also known as Public Act 152 of 2011, which protects the budget
- The Affordable Care Act, also known as “Obamacare”
- The Policyholder, MCL §380.1255a
- COBRA
- IRS rules and regulations
- ACA reporting requirements





Opt-Out Payments & Affordability

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- Payments available under an *unconditional* opt-out arrangement will be considered when assessing the affordability of coverage offered by an employer regardless of whether or not the employee receives the opt-out payment.
- The cost of coverage for the employee will be the portion of the premium for which the employee is responsible *plus* the amount of the opt-out payment.



Cash-In-Lieu

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- Is this still a necessary component of avoiding higher medical premium costs?
- Is the mandated employee contribution a sufficient disincentive to elect insurance not needed by dual coverage or family?
- Negotiate flat dollar amount, not single subscriber rate, or reduce current cash-in-lieu
- Trend to reduce cash-in-lieu?





Public Act 54 of 2011

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MCL 423.215b

. . . after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement. The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.

- **Mandatory preservation of the “status quo.”**



Public Act 54 of 2011

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- **Puts the onus on public employee unions to bargain in good faith to reach fair and reasonable contracts before existing contracts expire.**
 - Otherwise, members won't receive raises and will be out-of-pocket for any increases in the costs of insurance benefits
 - Any negotiated improvements in compensation will be prospective only and won't cover additional insurance costs employees incur in the meantime
 - Reduces incentive for unions to string out negotiations while applying local political pressure to achieve their bargaining goals



Public Act 152 of 2011

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- **Created a new law that limits the amount that public employers pay toward employee medical benefit plans.**





PA 152: Increased Leverage

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- At the bill signing in 2011, Governor Snyder stated that the law is “a fair and equitable approach that brings public employee benefits more in line with the private . Getting these currently unsustainable costs under control now helps ensure Michigan’s long-term future and allows us to all move forward together.”
- MEA spokesman Doug Pratt stated, “This is just another example of our teachers and other public employees being under attack from this governor and Legislature.”
- PA 152 has radically changed negotiations regarding public employee insurance in Michigan.



At Contract Expiration

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- When contract expires, absent a successor agreement, the employer shall not pay more than the actual dollar amount it paid per employee at contract expiration, and the employer may unilaterally deduct the additional amounts, consistent with its past practice in making such deductions, to preserve status quo.
- When contract expires, the employer may unilaterally deduct the additional amount needed from employee paychecks, to ensure that it does not pay more than the Hard Cp or the 80/20 it has elected, consistent with its past practice in making such deductions.



Interplay Between PA 54 and PA 152

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Example

- Pursuant to PA 152, the employer was paying 80% of employees' medical benefit costs during the term of the parties' contract.
- Once that contract expires and until a new contract is in effect, the employer continues to pay the dollar amount that it was paying on the expiration date of the contract.
- Pursuant to PA 54, the employer cannot continue to pay 80% of any increased medical benefit costs that may have taken effect after the contract expired.
- If date of contract expiration follows annual increase in premium, will have to negotiate who absorbs the increase if any during the contract term.

Three Schools of Thought

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- 1. “We pay the cap and don’t care what employees choose.”**
- 2. “We pay the cap, but feel obligated to help find affordable options.”**
- 3. “We are 80/20 and need to lower our insurance contributions.”**





Hard Cap vs. 80/20

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Hard Cap

- Willingness to seek alternatives
- Cafeteria options more favorable
- Fixed cost for 12 months
- PAK concerns

80/20

- District savings
- Small ongoing impact for employees
- Less interest in seeking lower cost alternatives
- PAK concerns



PA 152 Limitations Apply to “Annual Costs”

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Employer’s contribution limitations apply to:

- “...reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs...”
- As a result, be cautious in wording the employer’s contribution to “annual costs,” not just a contribution towards “premium.”



PA 152 Is a Ceiling, Not a Floor

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- On appeal in *Decatur*, the MI Court of Appeals affirmed MERC's ruling and explained that employees through their union representatives, "may still bargain for health insurance benefits **up to the amount of the limits imposed by the employer**, whether that limit be in the form of the hard caps or the 80/20 plan"
- There remains a duty to bargain whether the public employer will pay the maximum allowed under the statute, or some amount below the PA 152 ceiling
- Negotiate language that matches increase assumptions. Avoid a promise to pay the PA 152 maximum, if the district can't unconditionally afford that promise



Options – Hard Cap

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- Employer pays stated dollar amount that is less than the hard cap
- Employer pays hard cap in first year of contract, and thereafter the monthly amount increases by a percentage, but not to exceed the actual hard cap (whichever is lower)
- Employer pays amount that is less than the hard cap in the first year and then increases it in subsequent years by the percentage increase in the hard cap established by the Treasury Department
- Employer establishes its own annual composite hard cap, but not to exceed the statutory hard cap
- Employer pays the statutory hard cap provided the increase each year does not exceed XXXX
- Limited by PA 152 and creativity at the table



Options – 80/20

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- Pay 80% of premium but 60% of HSA and other annual costs
- Pay 75% of annual costs
- 80% of all annual costs, but in the event that the increase in any given year exceeds __%, the increase will be paid by the employee
- 80% of annual costs but not to exceed the hard cap

PA 269 of 2013

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Medical Benefit Plan Coverage Year

- 12-month period after effective date of the contractual or self-insured medical coverage plan that a public employer provides to its employees.
- May or may not coincide with fiscal year or contract expiration.
- If 80/20 employer, be careful to consciously understand when insurance increase occurs and whether district can afford to pay the entire 80% of any future increase, if there is no cap specified in the agreement, and the increase occurs before the contract expires.



Non-Health Benefits

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- Consider paying < 100%
- Bid these benefits; competitive costs and multi-year fixed rates are easy to obtain
- If MESSA district, calculate whether savings in non-health outweigh, from the employer and employee's perspective, the loss of the 2% cost reduction in health premium
- May help employees understand there is "life after MESSA," or other favored provider, if the transition to non-health benefits goes smoothly





Spousal Coverage

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- Negotiate requirement that spouse or unmarried partner not employed by District must elect their employer's coverage
- Negotiate that where both employed by District, only one may elect full health coverage
- Note: 2016 Kaiser Survey reports **all** employers offering coverage to spouse or unmarried partner disqualify spouse/partner if they have coverage from another source





Final Takeaways

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- Even with advent of PA 152, savvy school negotiators will search for cost-cutting options to stabilize health insurance costs to maximize dollars available for salaries
- Savvy school negotiators will critically review extent to which multi-year contracts commit district to uncapped future cost increases
- Complexities of insurance and regulations require a team of professionals reviewing existing and proposed contract language
- Educating bargaining unit employees, union and non-union is the key to effecting meaningful change



Attendance



Sub Shortage/Absenteesim

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- **Multi-Faceted Approach**

- **How you Compensate Subs**

- Competitive pay
 - Creative expansion of sub pools
 - retirees; 30 day rule
 - once tenured, tenure re-attaches because cannot require any tenured employee to serve more than one probationary period in same district
 - Perks for subs based on number of days subbing
 - Tell employees what you are doing to find and retain subs

- **How Your Staff Treats Subs**

- Viable sub plans, *e.g.*





Do We Want Employees to Work?

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- **Reduce opportunities for employees not to work**
 - **School business – negotiate after school or summer PD**
 - **Negotiate and enforce restrictions on use of personal days**
 - reason
 - number
 - when taken
 - **Negotiate and enforce narrowed use of sick days**
 - earn sick days, versus available at beginning of year
 - not to be used for routine appointments that can be scheduled outside the work day
 - **Limit accumulation of unused sick days to LTD waiting period**
 - **Buy back accumulated sick days on a current basis?**
 - **Tighten if not eliminate sick banks/buy short term disability instead**
 - waiting periods before sick bank kicks in
 - reimburse bank for days used
 - # sick days grows with years of service
 - limit use to employee “serious health condition”
 - restricted number used for illness of immediate family, narrowly defined
 - **Too many days allowed each year?**
 - **Cautious re PTO time**





Other Contract Issues

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- Employer right to verify proper use of days.
- No, or very limited, approved “dock days;” if absent and unpaid, not approved unless ADA, FMLA or religious observance.
- No more than one year medical leave mandated by contract; if longer, must submit evidence that there is a reasonable likelihood the employee will return to work.
- No right to grieve when employer discretion determines additional leave days.
- Negotiated attendance incentive bonuses (excluding performance-based compensation for teachers which is prohibited subject).

Holiday Pay

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- **CBA Provision (Support Staff):**

“The employee must have worked his/her scheduled hours the entire day on the last day scheduled for his/her classification prior to the holiday and the first day for his/her classification after the holiday, unless the holiday fell during the employee’s scheduled vacation period, or unless school was cancelled or delayed and the employee was not required to report to work. Appropriate verification may be required if an employee requests the use of sick leave or approved leave on the day before or day after a holiday.”





Who Gets Holiday Pay?

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- **Employee A**: Used a sick day the day before Thanksgiving
- **Employee B**: Used a personal day the day before Thanksgiving
- **Employee C**: Used sick time the day after Thanksgiving for a doctor's appointment
- **Employee D**: Used sick time the day before Thanksgiving due to medical leave
- **Employee E**: Used bereavement time the day before Thanksgiving





Answers*

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- **A:** No; unless doctor statement is satisfactory to employer.
- **B:** No.
- **C:** Maybe. Was employee asked to reschedule? Was it a life-threatening situation? Verification by health care provider should be required.
- **D:** Yes; if medical leave was pre-existing, approved and ongoing.
- **E:** Yes; verification may still be required.



*Subject to Specific Contract Language

Special Tools – Teacher Attendance

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- **Teacher Evaluation**
 - **Section 1248 criteria requires assessment of teacher attendance and teacher’s “ability to withstand the strain of teaching”**
 - research-based correlation with student achievement
 - use contract maximum as standard?
 - use other standard, such as historical bargaining unit average
 - permit a three year average to minimize adverse impact of anomaly, or exception in the event of an aberrant year
 - **Performance-based compensation**
 - student growth plus teacher attendance
 - supplement existing tool
 - Section 1250 MRSC

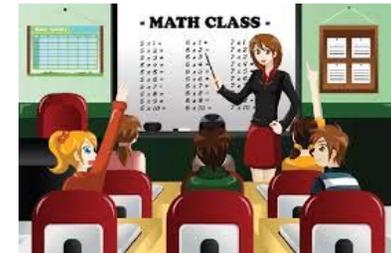


Teacher's Attendance Record

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MCL 380.1248(i)(D)

- Research shows that regular and continuous attendance of a teacher in the classroom is a strong factor in achieving positive student growth. *E.g.*, Working Paper 13356, National Council Teacher Quality, August 2007. (10 additional days of absence reduce student achievement in 4th grade math by 3.3% of a standard deviation).
- Some argue that Districts cannot consider absences unless in excess of District policy. See Tenure Commission decisions within *Echols v Highland Park*, TTC 90-32 (1991) and *Gladstone v Highland Park*, TTC 80-14 (1981).
 - Note that **these misconduct cases predate the July 19, 2011 reforms** and are inconsistent with the rationale behind Section 1248.



Teacher Attendance (Cont'd)

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- Consider that attendance is an essential function of employment.
- Exclude FMLA absences, ADA absences, religious observances, school mandated absences, etc. Generally, limited to sick days that are not FMLA and personal business days.
- Remember, performance based compensation is a prohibited subject of bargaining and along with student growth, teacher attendance may be considered. MCL §380.1250; MCL §423.215(3)(o).



Outside the Box?

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- **Employee recognition on a weekly or monthly basis to those who have perfect attendance?**
- **Board recognition?**
- **Monthly report to Board on absenteeism rates (*i.e.*, use of days) and impact on cost of substitutes?**
- **Update job descriptions**
 - Include requirement of regular and consistent attendance as an essential function of job



Questions

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- School law issues are complex and fact specific; when in doubt, consult with legal counsel.



Thank you!

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