

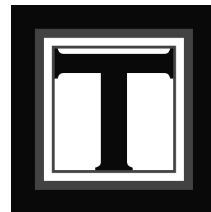
# Reintroduction of Prohibited Subjects of Bargaining and How It Affects Negotiations



Michigan School Business Officials

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# Caution:

These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations.

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Future legal developments may affect these topics.

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# **PERA: Bargaining Rights & Obligations**

- What must we do?
- What can we do?



# **PERA Bargaining**

- Expansive (wages, hours, terms and conditions of employment)
- Public employees cannot strike
- Duty to bargain collectively
- Public school employer responsibility to manage and direct operations on behalf of the public
- No obligation to make a concession

# Mandatory Bargaining Subjects

MUST bargain hours, wages, and other terms and conditions of employment.

Effective February 13, 2024, *mandatory subjects* include unprohibited subjects:

- |                                      |   |
|--------------------------------------|---|
| <b>1. Teacher Evaluation</b>         | <b>5. Teacher Placement</b>                         |
| <b>2. Observation</b>                | <b>6. Layoff/Recall</b>                             |
| <b>3. Ineffective Teacher Notice</b> | <b>7. Discipline</b>                                |
| <b>4. Merit Pay</b>                  | <b>8. Contracting for Noninstructional Services</b> |
|                                      | <b>9. Intergovernmental Contracts</b>               |




# YES

## It's Mandatory

For *unexpired* CBAs:

- Newly unprohibited subjects for which the union did not have the opportunity to bargain that affect ***teacher*** hours, wages, and other conditions of employment

Demand to bargain  
does *NOT* require concession





# Legal Guardrails

Subject	Legal Guardrails
Teacher Placement Teacher Layoff/Recall	RSC § 1248 Certification Requirements
Teacher Evaluation	RSC § 1249 Tenure Act
Notice to Parents	RSC § 1249a
Dues Collection	First Amendment - <i>Janus</i>
Teacher Discipline	RSC § 1230b(6) Tenure Act <i>Weingarten</i> Rights Due Process



# **Revised School Code Amendments**

**Sec. 1248: Placement, Layoff/Recall**

**Sec. 1249: Evaluation**

**Sec. 1250: Merit Pay (repealed)**

**Effective July 1, 2024**



# **Teacher Layoff/Recall Teacher Placement**

**RSC § 1248 Amended**

## **What's Required?**





# **RSC § 1248 Applies to Decisions About:**

- Filling teacher vacancy
- Placing teacher in classroom
- Conducting staffing or program reduction or personnel decision resulting in elimination of teacher position



# RSC § 1248

## Minimum Requirements

- ❑ Applies to *teachers* as defined in RSC Section 1249, not ancillary staff positions
- ❑ Seniority may not be *sole* factor in personnel decisions, but may be considered as *tiebreaker* if all other factors are equal
- ❑ Board shall adopt “clear and transparent procedures” for all Section 1248 personnel decisions
- ❑ Effectiveness as measured by “Section 1249 **or** as otherwise collectively bargained **must** be used” as factor for personnel decisions.

MCL 380.1248(2) and 380.1248(3)



## **RSC § 1248**

### **Definition of “Teacher”**

As used in this section, "teacher" means an individual who:

- has a valid Michigan teaching certificate or authorization or who is engaged to teach under section 1233b,
- is employed, or contracted for, by a school district, intermediate school district, or public school academy, and
- is assigned by the school district, intermediate school district, or public school academy to deliver direct instruction to pupils in any of grades K to 12 as a teacher of record.

MCL 380.1249(8)



## RSC § 1248

Other relevant factors *may* be used for personnel decisions, including, but not limited to:

- ✓ Length of service in grade level or subject
- ✓ Disciplinary record
- ✓ Completion of relevant special training and integration into instruction in a meaningful way

MCL 380.1248(3)



# **RSC § 1248**

## **Other Relevant Factors**

- ☐ Recency of relevant and comparable teaching assignments
- ☐ Prior effectiveness ratings
- ☐ Attendance and punctuality
- ☐ Rapport with colleagues, parents, students
- ☐ Ability to withstand strains of teaching
- ☐ Compliance with state and federal law
- ☐ Other relevant factors as determined by the superintendent or designee





# Teachers' Tenure Act

- Probationary teacher with effective rating on most recent evaluation may not be displaced by tenured teacher solely because teacher has tenure. MCL 38.82a
- Teacher employed as administrator after employment in that capacity must be continuously employed as active classroom teacher. MCL 38.91

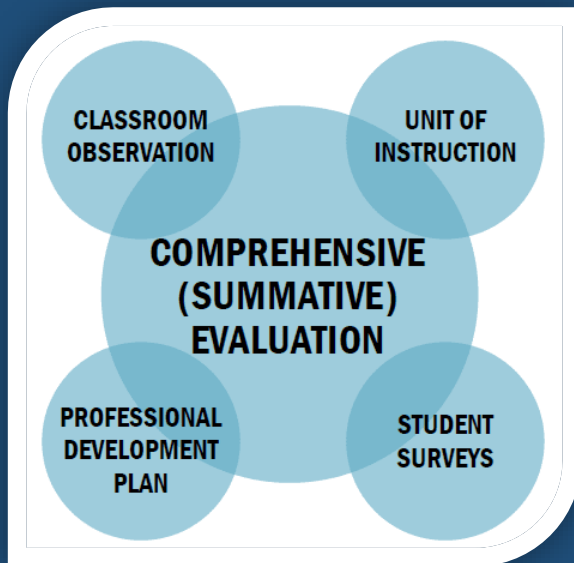
# Teacher Evaluation

RSC § 1249 Amended

***What's Required?***



# Teacher Evaluation



## PA 224 of 2023

- Amends RSC Sections
  - 1249 teachers
  - 1249b administrators
- Effective July 1, 2024

# Amendment Highlights

- Ratings: Effective, Developing, Needing Support
- Tenured T may grieve/mediate/arbitrate "needing support" rating
- Student Growth: 20%
- Must Bargain: evaluation tool, student growth measurement, local assessments

# What MUST Be Included in CBA

## May Bargain

- Dues, PAC
- Teacher Discipline
- Teacher Merit Pay
- Teacher Evaluation
- Teacher Placement
- Teacher Layoff/Recall
- Retro Pay

## CBA Must Address

- RSC 1248: TOR Placement System ("effectiveness")
- RSC 1248: TOR Layoff/Recall System ("effectiveness")
- RSC 1249: TOR Evaluation Tool (+) Student Growth Measurements

# Teacher Discipline





# Standards for Discipline

Just Cause

Not Arbitrary or Capricious

At Will

# The Just Cause Burden



# Teachers' Tenure Act

- Probationary Teachers
  - Article 2, Sec 3 (38.83(1)): Probationary teacher nonrenewal for performance
  - Article 2, Sec 3 (38.83(2)): Probationary teacher discharge may be at any time
- Tenured teachers
  - Article 4, Sec 1 (38.101): "Discharge or demotion of a teacher on continuing tenure may be made only for a reason that is not arbitrary or capricious"

# **RSC § 1230b**

## **Unprofessional Conduct**

- Sec 6: Cannot agree to suppress information about unprofessional conduct or expunge information about unprofessional conduct from personnel records
  - Must be substantiated
- Sec 8(b): Unprofessional conduct = One or more acts of misconduct, immorality, moral turpitude, or inappropriate behavior involving a minor or commission of a crime involving a minor

# **Bullard Plawecki Employee Right-to-Know Act**

- Sec 2: Disciplinary information not included in personnel record shall not be used by employer in proceeding
- Sec 3: Employee may review personnel record at reasonable intervals generally not more than 2 times in a calendar year
- Sec 6: Cannot divulge disciplinary record to third party without written notice to the employee

# Limiting Arbitrability

- Limiting Grievance Procedure
- Limiting Powers of Arbitrator





# Beyond Bargaining



CBA language is subject to grievance arbitration *unless* expressly excepted in the CBA

# No Arbitrator Jurisdiction

When arbitrator's jurisdiction:

- Evaluations, especially ratings except what is required by §1249
- Teacher placement
- Teacher layoff/recall
- Teacher discipline
- Classroom observations



# Other Statutory Amendments and Legal Guardrails

- PERA Section 10: Union Dues
- CFA Amendment: PAC Contributions
- PERA Section 11a: Employee Contact Information
- PERA Section 15b: CBA Freeze



# Union Dues Collection





# Collecting Union Dues

- PA 114 of 2023
- Removes PERA § 10 prohibition against public schools collecting union dues or service fees
- Effective February 13, 2024



# Dues Collection

***Public employee mandate*** to pay union dues violates First Amendment as subsidized "union speech"

*Janus v AFSCME, Council 31,*  
138 S Ct 2448 (2018)





# Dues Deduction: What Does It Mean?

- ***Must*** be bargained back into CBA
- Unions have been collecting dues since 2012 through ACH, credit card, and other methods
- If you agree to deduct, insist on hold harmless/indemnification language
- Consider charging fee to union
- Trade-off opportunity



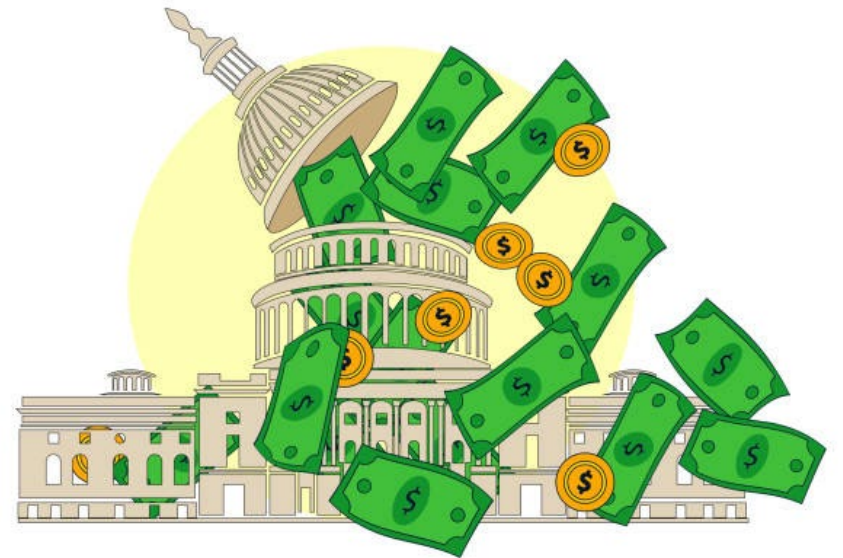
# Indemnification

District requires Union:

- obligation to indemnify and hold harmless District and Board of Education, Board members, employees, agents against any claim arising from District's deduction of dues
- indemnification obligation to include District's attorney fees to defend against a claim

# PAC Contributions

- PA 244 of 2023
- Effective February 13, 2024
- Amends Michigan Campaign Finance Act to allow automatic payroll deductions for PAC contributions



# Employee Contact Info to Union



- PA 236 of 2023 creates PERA §11a
- Effective February 13, 2024
- Requires employer to provide employee contact information to Union within 30 days of hire
- Employer must provide an updated list every 90 days

A hand holding a red marker is drawing a large red circle around the text "Game Changer". The hand is positioned at the bottom right of the frame, with the marker tip touching the circle. The background is a solid blue color.

Game  
Changer

Repeal of PERA § 15b



# Wage and Benefits Freeze



- PA 113 of 2023
- Repeals PERA § 15b which freezes wages and benefits after CBA expiration if no new contract and prohibits retroactive application
- Effective February 13, 2024

# Bargaining Implications



- Less employer leverage for CBA settlement
- Consider CBA language to clarify *no automatic* step, lane, longevity increase upon CBA expiration

# **Bargaining Strategies**

- Board Policies form the foundation of district proposal
- Work from language proposed by the District
- Horizontal communication
- Quid Pro Quo
- Follow legal guardrails



# Questions

