

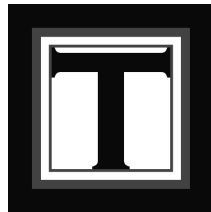
Bargaining Prohibited, Permissive, Mandatory Subjects – Red Light/Green Light Sample Language



**Central Michigan 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.

Future legal developments may affect these topics.

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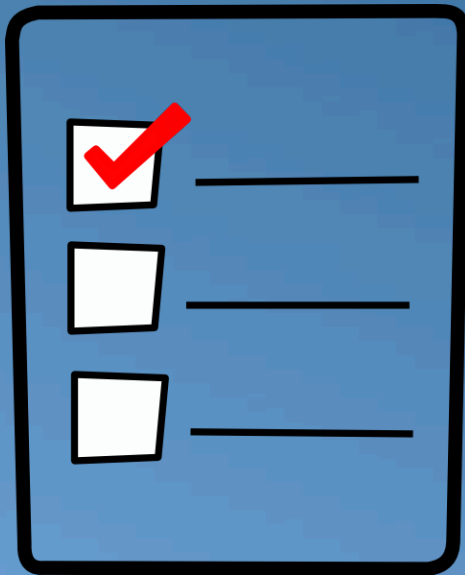
Topics

- Understanding PERA
- Mandatory, Permissive, Prohibited, & Illegal Bargaining Subjects
- The “Secret Sauce” Arguments at Table:
 - Teacher Discipline
 - Teacher Placement
 - Teacher Layoff & Recall
 - Teacher Evaluation
 - Dues

Lessons Learned

1. MEA prototype language is garbage and, in many cases, violates the new revisions to RSC.
2. Follow best practices
3. Work from District language
4. Get something or say “NO!”
5. Limit Arbitrability
6. Horizontal Communication

Reintroduction Considerations



- Maintain management rights
- Do not create unmanageable contract
- What should/should not be bargained
- Negotiate from your language: Board Policies
- Understand implications of Union proposals
- Consider Appendix for “Classroom Teachers”

Table Impact



- Less = more management rights
- CBA can expand law
- Contract inclusion = grievance procedure
- Why cite laws?
- Predicted changes to law [Fix Now!]
- Importance of express language

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

CBA Must Contain

- Classroom Teacher:
 - Placement: clear and transparent procedure
 - Layoff/Recall: clear and transparent procedure
 - Evaluation: tool, student growth measurement, local assessment

Repeal of PERA § 15(b)

- Retro is optional, not required.
- Precise Wage Language
- Impact of Proposal to Embed § 15b

Sample Language

Upon expiration of this Agreement, the bargaining unit shall not receive lane, step, or longevity advancement, or increased benefits, unless expressly ratified by both parties.



“Unprohibited” Bargaining Subjects 2023

1994:

Policyholder status

Starting day for school year

Composition of school
improvement committee

Open enrollment decisions

Authorizing body for PSAs

~~Third party contract for
noninstructional services~~

Volunteers

Experimental/pilot programs

2011:

~~Teacher Observation~~

~~Teacher Evaluation~~

~~Ineffective Teacher
Notice~~

~~Teacher Layoff/ Recall~~

~~Teacher Placement~~

~~Merit Pay~~

~~Teacher Discipline~~

~~Intergovernmental
Agreements~~

Strategy: Kick the Can Down the Road



Language for Non-Expiring CBA

Until the expiration of this Agreement, the parties will delay further bargaining on the recently repealed prohibited bargaining subjects. The parties acknowledge that teacher of record placement, layoff/recall, and evaluation are governed by Board Policies 4402, 4403, and 4405. Teacher of record and layoff/recall procedures are clear and transparent and consider effectiveness. The Evaluation tool shall be [add tool], and we will measure student growth as we did in 2023-2024.

Understanding PERA

- Bargaining collectively in good faith pursuant to the PERA means:
 - Meeting at reasonable times
 - Conferring in good faith with respect to:
 - wages, hours, and other terms and conditions of employment
 - or to negotiate an agreement or question arising under the agreement
 - and to execute a written contract or agreement.
 - Neither party is compelled to agree to a proposal or make a concession.

Table
Arguments: The
“Unprohibiteds”

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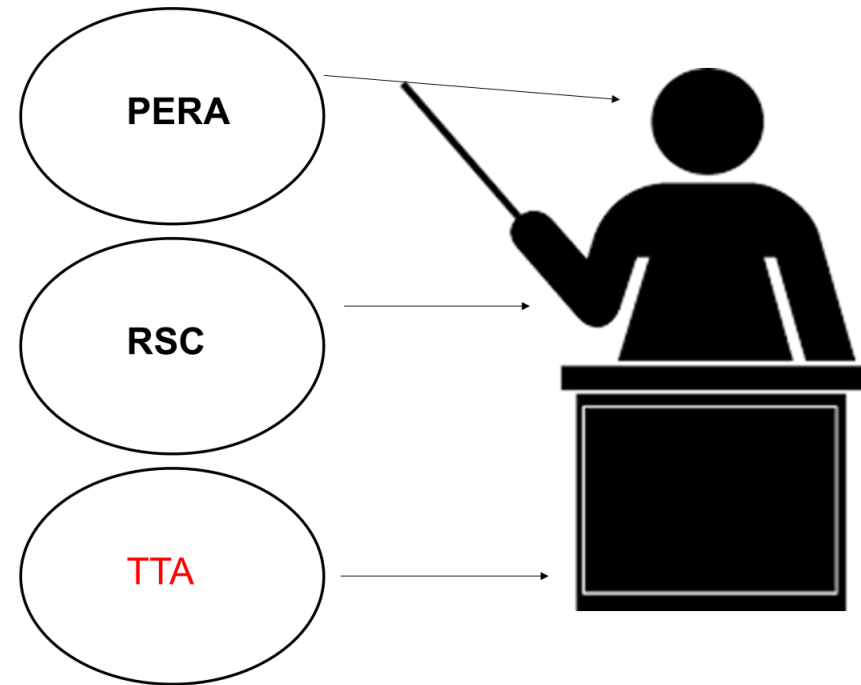


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Base Arguments

- No Ambiguity
- No Procedural Complexity
- System Value
- No Violations of Law; TTA
- No Repeating the Law
- Systemic Disadvantages
- No Lengthy Process
- No Language Regulating Non-Bargaining Unit Members

Know the New Law



Red Light Green Light Language



Dues

Red Light

- Union control of Opt-In/Opt-Out
- Rigidity
- PAC contributions
- Complex and dynamic procedures
- Limits on indemnification
- Union shop language

Green Light

- Fees
- Employee limits on notification to collect, flexibility to withdraw
- Full indemnification
- Not arbitrable

Gets: Think Ahead!

- Embed Former PERA § 15(b)
- Embed Hard Caps
- Management Rights: Unprohibiteds, health and safety
- No Strike Language
- Arbitration Exclusions

Table Observations

1. Local President and UD have not read Board policy
2. Local President and UD do not understand history or purpose
3. Union more concerned about “restoring rights” than system created by language

Arguments:

1. Not committing a crime by violating RSC
2. Will not bargain Administrative Duties with teachers – Could be ULP
3. Language not good for you
4. Creates systemic disadvantage to students

Evaluation/Observation

Red Light

- No “Rigorous, transparent, fair” term
- Expanding to ancillary staff
- Limitations on observations
 - number or caps
 - format and time limit
 - unscheduled
 - walkthroughs
- Limitations on 2nd evaluator
- Procedural complexity
- Arbitrating process - negative observation, IDP, MYPR, etc
- Regulating administrator training
- Forms

Green Light

- Tool and student growth methodology; system for determining growth component
- Limit arbitration to only what is provided under §1249
- Probationary teachers cannot challenge their observations, IDP, MYPR, the evaluation process, or their final evaluation rating, unless allowed by law
- Biennial or triennial evaluations, with flexibility to move an employee to annual
- Not arbitrable, except as required by law

Teacher Placement

Red Light

- “Just Cause” factor
- Tenure status/seniority as a factor
- Expanding to ancillary staff
- Broadening the definition of placement to include assignments
- Bid bump procedure
- Limitations on mid-year hiring decisions
- Timelines and processes
- Mandatory internal placement before considering external candidates
- Required implementation of teacher preferences
 - building, subject, class, etc
 - voluntary transfer trumps involuntary transfer
- Multiple Systems for different placement decisions

Green Light

- One system of factors for all placement and layoff/recall decisions
- Decisions driven by “effectiveness”
- Consider any “non-arbitrary or capricious” factor
- Limited to classroom teachers
- Contract does not restrict District’s authority to determine assignment, reassignment, or transfer consistent with Board Policy.
- Not arbitrable

Teacher Layoff/Recall

Red Light

- Tenure status/seniority as a factor
- “Just cause” factor
- Bumping process for transfers
- Recall status unending
- Limitations on layoff basis (financial crisis)
- Limitations on layoff timing (60 days/semester notice)
- Layoff avoidance (transfer request; leave of absence)
- Recall avoidance (delay recall due to other employment)

Green Light

- Follow Board Policy for layoff and recall procedures
- Consider any non-arbitrary or capricious” factor
- Shortened notice to avoid unemployment exposure
- Short recall period
- Automatic termination and removal from the recall list if employee fails to accept recall position or fails to report to recalled position
- Not arbitrable

Teacher Discipline

Red Light

- Just and reasonable cause
- Discipline includes grieving/arbitrating “all” discipline
- Grieving/arbitrating prob teacher nonrenewal, discipline, or discharge
- Claims in multiple forums at the same time
- Limitations on evidence, file maintenance, notice to employee
- Unnecessary timelines and procedures

Green Light

- Add “not arbitrary or capricious” standard for lesser discipline.
- *Weingarten* rights
- Arbitration limitation
- Review of personnel file at reasonable times and intervals
- Allowing rebuttal statements; 5 pages on 8.5 x 11 paper
- Not arbitrable

Questions?



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