

Collective Bargaining Trends

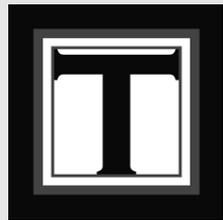


Michigan School Business Officials

Southwestern Michigan Regional Group

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March 4, 2026



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Caution

These slides reflect general legal standards and are not intended as legal advice.

Future legal developments may affect these topics.

Use of these materials without the benefit of the oral presentation may be misleading.

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Topics

1. 27I
2. MEA Membership Loss
3. New Unit Elections/Accretions
4. Long-Term Implications of Unprohibiteds
5. Student Discipline & Teacher Safety Language
6. Employee Leaves & ESTA
7. Strategic Language for Health Insurance
8. Communications During Negotiations & MEA Crisis Management



Categorical Revenue 271 (cont.)

“Educator” and Third-Party Contractors

- “Educator” defined broadly
- Do not pay 271 funds directly to a contractor
- Contract with contractor’s employer to provide additional educator compensation

MCL 388.1627(2)

Categorical Revenue 271 (cont.)

Duty to Bargain

- MERC - no duty to bargain regarding employees outside the bargaining unit; but duty to bargain the amount of proceeds available to the unit.
- Best practice: bargain amount to be designated to bargaining unit members *before* awarding Section 271 funds to non-bargaining unit educators.

MEA Losses

2010 Revenue = \$132 million (130,000 members)



2024 Revenue = \$109.2 million



2025 Revenue = \$88.3 million (79,465 members)

MEA Losses (cont.)

- UniServs consolidated
- Arbitrations delayed
- Consider bargaining mediation in lieu of board level grievance step



Union Elections

- Elections administered by MERC
- Employees file representation petition
- Bargaining unit eligibility defined in petition



Union Elections (cont.)

- At least 30% of proposed members must sign petition
- Majority vote of those who vote wins, and all members of unit are represented.
- ER is not required to voluntarily recognize a new unit outside the MERC process.

Accretions

- Bargaining unit may request to “accrete” or add new positions to its unit.
- Bargaining unit members must have “community of interest” including similarities in duties, skills, working conditions, wages, benefits, reporting relationships, etc.
- EE may bargain working conditions of new group.



Long-Term Implications of the Unprohibiteds

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

Lessons Learned in 2025 (Dues)

1. Must comply with U.S. Supreme Court *Janus* decision
2. Indemnification
3. No PACs



Lessons Learned (Teacher Placement)

1. Start from policies
2. Do not limit involuntary transfers
3. “Effectiveness” and other factors such as discipline, training, and seniority (MCL 380.1248)
4. Allow grievance, but no arbitration



Lessons Learned (Layoff/Recall)

1. Keep full discretion to layoff
2. Limit recall to 18 months
3. Limited challenge system
4. Allow arbitration in limited, expedited circumstances

Lessons Learned (Teacher Discipline)

1. No complex discipline procedures
2. No Just Cause
3. Add arbitrary/capricious



Standards for Discipline

Just Cause

Not Arbitrary or Capricious

At Will

Lessons Learned (Teacher Discipline)

4. No expunging past discipline
5. *Weingarten* rights addressed by law
6. Allow grievance, but no arbitration

Lessons Learned (Intergovernmental Agreements)

1. Add management rights over health and safety
2. Right to enter intergovernmental agreements regardless of impact

Lessons Learned (Third Party Contracting)

1. Retain discretion to contract with third parties.

2. Possible CBA Language:

The employer may contract or subcontract with a third-party to perform work that (1) is not exclusively performed by the Association and that (2) would not directly cause a reduction of a member's regularly scheduled work hours.

Lessons Learned (No PA 54)

1. Longer negotiations
2. Retro is optional, not required
3. Precise wage language
4. Impact of proposal to embed § 15b



Possible CBA 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.



Student Discipline & Teacher Safety Language

- “Protection of Teachers”
- Avoid terms that violate special education law.
- Avoid agreeing to provide legal counsel for assaults
- Avoid reimbursements for damaged personal items

Employee Leaves & ESTA

- No PTO.
- Effort to allow parental leave time.
- Effort to expand unpaid leaves.

Inconsistent with ADA/FMLA terms.

ESTA

- PMLA gone
- ESTA applies to ALL EEs
- 1 hour of paid medical leave accrues for every 30 hours worked, part-time or full-time
- EE may use up to 72 paid medical leave hours per year (some exceptions)
- Employer may require reasonable documentation after 3 consecutive leave days

Contracts

- Possible CBA Language: *If ESTA is in effect, the first 72 hours of any paid leave earned each ESTA year may be used for any ESTA purpose, with those 72 hours of leave being subject to the same conditions as provided in ESTA.*

FAQs: <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/frequently-asked-questions--faqs>

PA 152: Current Version

- Currently, Publicly Funded Health Insurance Contribution Act (“PA 152”) requires public employers to limit their contribution toward employee health insurance plans by implementing ***either*** a “hard cap” formula ***or*** an “80/20” cost-sharing formula arrangement.
- PA 152 Section 3 establishes the hard cap formula based on the change in the medical care component of the U.S. Consumer Price Index for the most recent 12-month period.

PA 152 Amendments

- HB 6058 would have amended Publicly Funded Health Insurance Contribution Act (PA 152)
- 2025 Hard Cap would have increased 7%
 - Future increases would be based on medical care component of average of Michigan health insurance rates, or 3%, whichever is greater
- Employers would be required to pay at least 80% of total annual costs of medical benefit plans they offer to employees
- Exception: current conflicting CBA or contract

PA 152 Hard Cap Comparison

PA 152 Currently:

- **\$7,718.26** multiplied by the number of employees with single-person coverage;
- **\$16,14.28** multiplied by the number of employees with individual and spouse coverage or individual-plus-1-nonspouse dep coverage;
- **\$21,049.85** multiplied by the number of employees with family coverage.

New PA 152 Amendments:

- **\$8,258.54** multiplied by the number of employees with single-person coverage;
- **\$17,271.14** multiplied by the number of employees with individual and spouse coverage or individual-plus-1-nonspouse-dep coverage;
- **\$22,523.34** multiplied by the number of employees with family coverage.

PA 152 80/20 Comparison

PA 152 Currently:

- Under PA 152 Section 4's "80/20" compliance formula, a public employer may contribute ***no more*** than 80% toward the total medical insurance costs of its employees who take medical insurance benefits.

New PA 152 Amendments:

- HB 6058 requires all public employers to pay ***at least*** 80% of the total costs of the medical benefit plans they offer or contribute to for their employees.

Hard Cap and 80/20 “Either/Or” or “Both/And”?

- Currently: ***Either*** PA 152 hard cap formula ***or*** 80/20 formula
- HB 6058 requires any collective bargaining agreement or other contract executed on or after January 1, 2025, to comply with ***both*** the PA 152 hard cap formula ***and*** the 80% minimum employer contribution formula.

Warning!

- Failure to comply with PA 152 could result in a District being assessed a penalty equal to 10% of its state aid payments during the period that the District fails to comply.



HB 6058 Status

- **October 27, 2025:** Michigan Court of Appeals held (in a 2–1 published decision) that the Michigan House leadership had a clear constitutional duty under Article IV, § 33 of the Michigan Constitution to present the bill (along with eight others) that had passed both chambers to the Governor, and by failing to do so, they violated that duty.
 - Remanded the matter back to the Michigan Court of Claims to determine the timing for presentation of HB 6058 to the Governor
- **December 8, 2025:** Appeal filed with Michigan Supreme Court. Court has yet to rule whether to grant leave.

Possible Language Solutions

Possible CBA Language:

Effective January 1, 2026, the Employer shall contribute the following to an employee's election of insurance coverage for a medical benefit plan:

- \$7,942.09 per year for single subscriber
- \$16,609.38 per year for 2-person subscribers
- \$21,660.30 per year for full family subscribers

Effective January 1, 2027, the Employer's contribution to the employee's medical benefit plan costs shall be no less than the hard cap numbers identified by the Michigan Department of Treasury for each coverage category. If the Publicly Funded Health Insurance Contribution Act, MCL 15.561 et seq. is amended during the term of this Agreement to eliminate the hard cap, the Employer's contribution towards insurance costs will not exceed _____ percent (_ %) over the previous year's contribution.

Union Communications with Board

- Different rules than for employer communications initiated to employees
- Union not prohibited from making proposals to governing body that have not first been made at the table
- However, union may not insist on directly negotiating with governing body instead of employer's designated representatives
- Focus is on overall conduct and whether bargaining is impeded



Rules for Communication to Public/Media

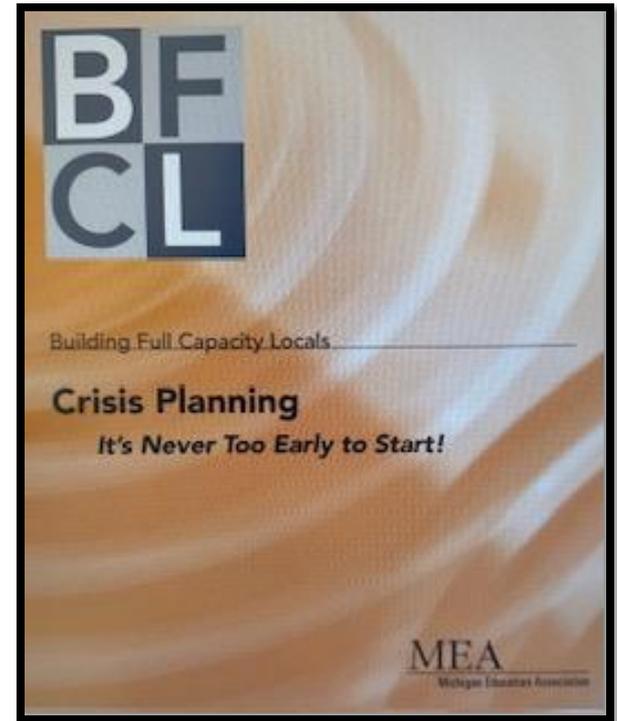
- MERC has been reluctant to censor these communications or to police them for accuracy
- Rationale is that the other party has the time and opportunity to clarify disputed facts and to utilize the general media
- Not negotiating in public, but keeping the public informed about negotiations



Warren Consol Schs, 1975 MERC Lab Op 129

MEA Crisis Management

- Goal: gain leverage at the table by putting political pressure on your Board
- Not organic – 2009 MEA Booklet
- Ugly shirts, social media pressure, join public comment



QUESTIONS



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