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NEGOTIATIONS BEYOND THE BASICS: IT'S A BRAND NEW WORLD

SWMSBO Labor Conference
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PERA – Public Employment Relations Act

- Duty to bargain
- Meet and confer in good faith with respect to wages, hours, and conditions of employment
- Neither party is compelled to agree to a proposal or make concessions
- Good faith bargaining is manifesting an attitude and conduct that will be conducive to reaching an agreement

Bargaining



The collective bargaining landscape has changed over the years:

- Prohibited Subjects from 2011 are NO LONGER prohibited
 - Placement, layoff, discipline, evaluation, merit pay, subcontracting
- 5 Percent Fund Balance is the New Zero
 - Early Warning Deficit Reporting Requirements
- Costs are NO LONGER frozen until there is a successor agreement
 - This could affect how quickly deals come together

Some things remain the same:

- Pressure Tactics
- Union Members Talking to Board Members
- Quick Deals are Usually Bad Deals – Be Patient
- Buyouts as a Fake Solution

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Types of Bargaining?



TRADITIONAL

More formal, one spokesperson for each side, positional

EXPEDITED

Limit the issues, set time limits, smaller teams, more informal

INTEREST BASED

More collaborative, training for both sides is required, outside facilitators facilitate the bargaining sessions, try to walk in the other side's shoes, see their interests and issues, each team member is expected to contribute in some fashion in the sessions

Preparation is important for any type of bargaining

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Preparation



Many decisions need to be made before starting

- Make up of team
- Parameters
- Board Involvement
- Type of bargaining desired

Data must be obtained – credibility will be determined by how well you know the information

- Benefits – plans, costs, opt outs
- Payroll for the group including retirement, FICA
- Cost of steps for group, history
- Budget, funding, other groups, other trends
- Do not ignore costs of support groups just because their total is probably only 10% of the teacher group

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Issues?



Start understanding the data

- Enrollment trends
- Staffing levels and trends

Do you need incentives for hiring new staff? Or retention of staff?

Consider doing a contract review

Do you have outdated procedures in contract?

Plan on listening, but don't try to solve every issue with contract language

- Use administrative rules and procedures to deal with some of the operational issues that they will bring forward

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Budget



There are really only two ways to deal with the budget - staffing levels and bargaining

Management has the right and obligation to deal with staffing levels without bargaining

- Make sure staffing levels are right sized
- Review that you're providing adequate support for your program

Be cautious with buyouts. They are short term solutions and could send the wrong message to employees.

Buyouts do NOT save money over the long term and exacerbate the staffing shortages that are occurring

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Buyout?



Advantages

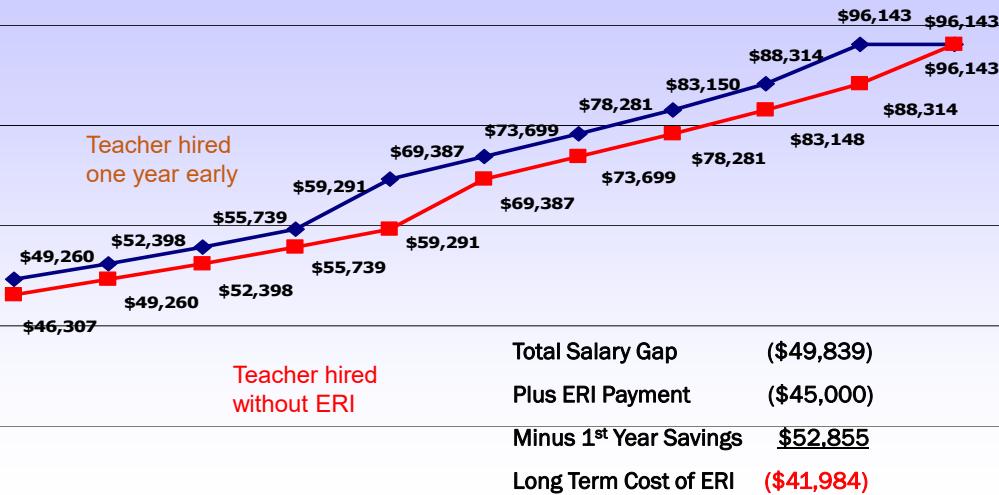
- Avoids layoffs
- Avoids unemployment costs
- Possibly could save money over one or two years, although this is unknown because employees may have retired without ERI

Disadvantages

- Disrupts normal retirement patterns
- Mass exodus of experienced teachers
- Have to layoff newly hired teachers the next year due to declining enrollment
- Costs the district money over time
- Sends wrong message
- Staffing shortages make buyouts impossible to manage
- Back to same problem next year with less fund balance

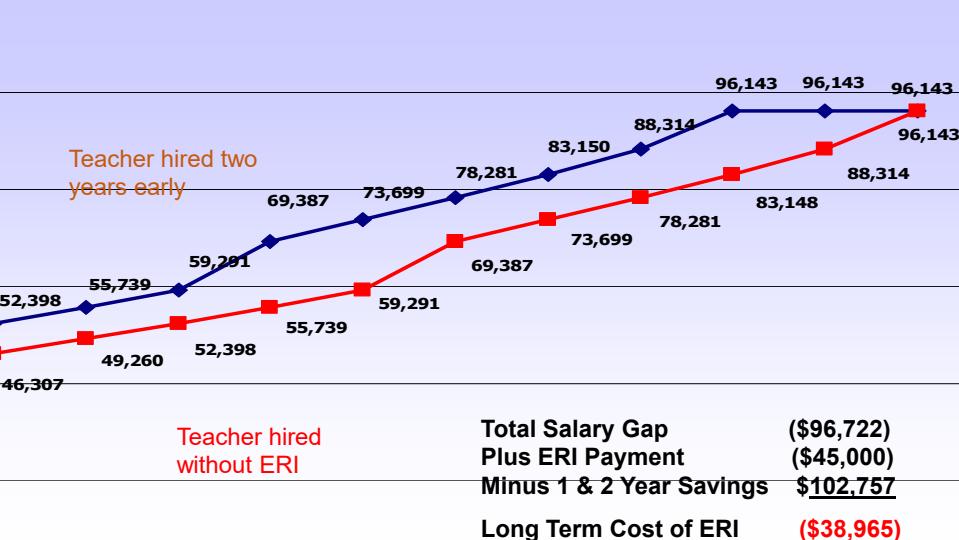
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Salary Gap - Hired One Year Early



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Salary Gap - Hired Two Years Early



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Why Doesn't a Buyout Work?



- Realistically, people are not retiring more than one or two years early
- Buyout gives away the savings between step 10 and step 0
- Each subsequent year, the replacement teacher is one or two steps ahead on the salary schedule (prematurely hired instead of the normal replacement process)
- Currently, many teachers are being brought in above the bottom step, which makes cost analysis worse

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Fund Balance?



- The fund balance must be explained and managed
 - Don't be overly concerned with having a good fund balance
 - It can be managed, explained, used strategically
 - It is needed for emergencies, cash flow/borrowing, investment income, bond rating, funding cuts
- 10-15% is a good target
- Do not spend fund balance too quickly
 - It does not matter if fund balance is large, if you're using too much, it will deplete
- It is best used for one-time costs
- It can help cushion budget cuts and declining enrollment, but you should be making cuts along with using fund balance

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Incentives and Retention



Do you have to bargain incentives to hire?

- Yes, and the union leadership will be interested in what you're going to do for current members
- Letter of Agreement with sunset is better than adding it to the contract

You probably need to consider both incentives and retention

- Signing bonus? Another bonus after three or six months?
- Current members get a bonus for staying through the year?
- Instead of a hiring bonus, you could pay a HIGHER RATE for Probationary employees
- It all MUST be bargained with the union

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Attendance Incentive Examples



ATTENDANCE IMPROVEMENT

1. As an incentive to improve attendance of employees, the district will pay all actively employed employees a bonus as follows for not using sick/personal days:
 - a. No sick/personal days used = \$1000 bonus
 - b. One sick/personal day used = \$750 bonus
 - c. Two sick/personal days used = \$500 bonus
 - d. If more than two sick/personal days are used, no bonus will be paid.
 - e. Funeral Leave and vacation time utilized will not count against the above.

If vacation days for eligible employees are not utilized during student attendance days during the 2024-25 school year, they will be paid out at 150% of normal daily rate instead of 100%. Payment to be made the last pay in June.

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Safety and Security Language



MEA is promoting new safety and security language “protecting” staff, especially special education aides

Be VERY CAUTIOUS adding language to “protect” employees. Every word in contract restricts management rights

You should not need to add a lot of language to the contract – Do not try to legislate everything. Sometimes administrative rules will help solve an issue.

Generally, do not put in language regarding state law, it will speak for itself

Remember, this is a MUTUAL agreement. You do NOT have to agree to put things into the contract. Be strong, be resolved to NOT add new language.

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Bargaining Un-Prohibited Topics



PROHIBITED TOPICS THAT ARE NOW UN-PROHIBITED

- Decisions about the placement of teachers - [assignment](#)
- Decisions affecting personnel when conducting a staffing or program reduction - [layoff and recall](#)
- Decisions concerning [discharge or discipline](#) of an employee
- Decisions about [evaluations](#)
- **DO NOT** go back to previous language. **DO NOT** buy into the argument, “we had this before and it was taken from us”
- Management had these rights for many years prior to 1965 when districts began bargaining and agreeing to restrictions on management rights

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Vacancies, Placement, Transfer



Law applies to “when filling a vacancy, placing a teacher in a classroom, or conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position.”

“... shall not adopt, implement, maintain, or comply with a policy or collective bargaining agreement that provides length of service as the sole factor in personnel decisions.”

- Most placement procedures are open to bargaining
- Policy is important to setting the stage for district concerns
- Should have implemented “clear and transparent procedures” in advance of bargaining.

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Vacancies



1. A vacancy shall occur whenever a bargaining unit member vacates a unit position as the result of resignation, dismissal or transfer if the Board decides to fill it. Newly created bargaining unit positions shall also be considered a vacancy. A leave of absence by a Teacher for the entire school year shall also be considered a vacancy.
2. When any bargaining unit vacancies occur, the Board shall inform the Association, provide electronic notice to employees, and post the vacancy on the district website. It is agreed between the parties that notification of vacancies through email is a courtesy and failure to have received same shall not be subject to the grievance procedure.

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Vacancies



3. Vacancies shall be posted for seven (7) calendar days before being filled. Vacancies on or after August 15 and prior to the end of the second week of school shall be posted for twenty-four (24) hours before being filled. **The Board agrees to consider certification, qualifications, and length of service to the school system for any transfer requests and internal applications prior to hiring an outside applicant.**
4. If an internal candidate is not selected, the administration will make a personal contact (phone call or in person) to discuss the basis for the non-selection.

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Layoff and Recall



It is understood by the parties that determining teacher staffing level and any reduction of staff is within the sole discretion of the Board. The procedures set forth in this article shall be used in any reduction of staff, laying off and recalling teachers.

If the District needs to restructure the teaching schedule so that any current teaching positions are eliminated, the teachers in positions being eliminated are considered displaced. A displaced teacher shall be transferred into a vacant position within their area of certification prior to any teacher being laid off.

If layoffs are necessary, teachers in that area of certification will be laid off in inverse order of seniority provided all other factors distinguishing those teachers from each other are equal as stated in section E below.

The Association will be notified of a contemplated reduction in personnel at least ten (10) calendar days prior to layoff notices being given to teachers. Teachers being laid off shall be notified in writing no less than thirty (30) calendar days prior to the effective date of layoff.

Certification shall be defined as holding the required certificates, endorsements, licenses, and/or approvals required by law to serve in the position assigned.

Qualifications (being qualified) shall be defined as holding appropriate certification for the position, the teacher's disciplinary record, relevant special training (in accordance with MCL 380.1248), and the most recent year-end evaluation rating.

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Layoff and Recall

The certification and qualifications of a teacher to be laid off shall be the certification and accumulated qualifications on file with the Board at the time the layoff notification to the Association occurs. The certification and qualifications of a teacher to be recalled from layoff shall be the certification and qualifications on file with the Board at the time the notice of recall from layoff. It is the teacher's responsibility to notify the Board, in writing, of any inaccuracies in Board records and/or any changes to their certificates, as they occur.

The Board shall give written notice of layoff or recall by sending a registered or certified letter to the teacher at their last known address. The teacher's address as it appears on the Board's records shall be conclusive when used in connection with layoff, recall, or other notice to the teacher. It shall be the responsibility of the teacher to notify the Board of any change in address.

Teachers have a right to recall for two (2) years from the effective date of layoff **provided they did not receive an overall rating of less than effective in their most recent year-end evaluation**. They will be recalled in each area of certification in seniority order (highest senior teacher first) provided all other factors distinguishing those teachers from each other are equal as stated in section E above. If a teacher has no right to recall, they may still apply for any open position for which they are certified. If hired, they would be placed one step higher from the year of layoff (if steps were granted in an ensuing year).

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Layoff and Recall

If the teacher fails to report to work within ten (10) calendar days of the date of the recall notice of a position for which the teacher is adequately certified and qualified, the teacher shall be deemed a voluntary separation and shall forfeit any further right of recall. If the teacher needs additional time to report to work, the teacher must contact the Human Resource Officer to work out the start date at the discretion of the HR Officer.

The Board's obligation to pay salary, fringe benefits and all other benefits under this collective bargaining agreement is suspended for the duration of any layoff. All insurance benefits will continue in effect until the effective date of layoff. Thereafter, upon carrier approval, a laid off teacher may continue insurance coverage under COBRA at no expense to the employer.

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Teacher Discipline



A bargaining unit member may only be discharged, demoted, or otherwise disciplined for a reason that is not arbitrary or capricious. Discipline for the purpose of this Agreement includes warnings, reprimands, and suspensions up to fifteen (15) days. **Probationary teachers shall not have the right to the grievance procedure for any discipline. Non-probationary teachers may only grieve discipline up to Level Three.**

Disciplinary action that includes suspensions over fifteen (15) days or discharge shall occur in accordance with the statutory requirements under the Michigan Tenure Act.

Discipline may include but is not limited to:

Verbal warning or written warning
 Verbal reprimand or written reprimand
 Suspension
 Discharge

The District does not have to apply discipline in a progressive manner, but rather, may impose discipline consistent with the seriousness of the teacher's conduct, as determined by the District. Additionally, nothing in this Article limits the District's right to take other appropriate action, such as placing a teacher on administrative leave during an investigation or issuing a counseling memorandum, which is considered instructional, not disciplinary.

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Evaluation



The District shall follow the provisions of the Revised School Code MCL 380.1249, as amended, and District Evaluation Procedures regarding the evaluation of teachers. The 5D+ Teacher Evaluation shall be the performance evaluation tool unless the parties mutually agree to a different tool. Student growth and assessment data or student learning objectives metrics will be 20% of the evaluation and the other 80% of the evaluation will be objective criteria as determined by the evaluation tool. **The grievance procedure may only be utilized if the evaluation procedures are not followed and the teacher receives a final rating of less than effective on their year-end evaluation.** Any changes to the District Evaluation Procedures must be mutually agreed upon between the EA and the District.

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Evaluation Procedures



BIENNIAL EVALUATIONS

Any teacher who has received at least an effective rating on three consecutive year-end evaluations will be evaluated biennially.

1. The biennial rotation will begin in the 2024-25 school year. The principal of each building will determine the group of teachers (about half) who will be evaluated in the 2024-25 school year, with the remaining group being evaluated in the 2025-26 school year.
2. Any teacher who is probationary or on an Individualized Development Plan will be evaluated annually.
3. If concerns arise in teacher performance in a non-evaluation year, the principal may choose to complete a full evaluation of the teacher. In this case, the teacher and PEA will be notified of the concerns before the beginning of the evaluation process.
4. During the “off-year”, teachers will not be required to do a self-evaluation, formal observations, and final rating for that school year as they are receiving an effective rating from their previous year.
5. A teacher scheduled for evaluation will be notified by the second Friday in September that they are on the rotation for evaluation and who their primary evaluator is for that year.

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Evaluation Procedures



TEACHER TRAINING

All new teachers to the district will receive training on the evaluation process and tool during their new teacher orientation. All teachers will be provided refreshers on the evaluation process and tool every fall.

TEACHER EVALUATION PROCESS

Self-Assessment

Professional Growth Plan (PGP): The teacher will have the following two (2) indicators as areas of focus: These focus areas will be the areas the teacher will target to improve their practice during their evaluation year. Teachers will use the Professional Growth Plan (PGP) in Pivot to identify the areas of focus and specify the action steps to be taken to improve. The PGP should be submitted to the administrator for review by the **third Friday in October**. Administrators will review and approve the PGP by **the first Friday in November**.

Student Growth Goal (SGG): Each teacher will develop the SGG, which is focused on improving teaching and learning. Per state law, the SGG accounts for 20% of the overall evaluation. These goals will be written on the PGP in Pivot and submitted to the building administrator for review by **the third Friday in October**, with administrator approval by **the first Friday in November**. Below are the components and directions for completing the student growth portion of the PGP.

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Evaluation Procedures



Student Growth for Specials, Elective, SE Teachers: Some teachers will select a level of improvement in proficiency as related to their specialized area of teaching to improve student growth. The teacher may select the target level from those listed or specify their own with administrator approval.

Observations: The administrator will conduct at least two observations of the teacher during the year, generally one per semester. Observations that will be part of the year-end evaluation will last a minimum of 15 minutes, preferably 20-40 minutes. At least one of the observations will be scheduled collaboratively with the teacher. The teacher shall provide a lesson plan 24 hours prior to the scheduled observation. The administrator should be able to see the components of the lesson during the observation or be able to ascertain the components via the teacher's agenda or online lesson planning tool. The expected lesson components are: . . .

Post-Observation Meeting and Feedback: The administrator will provide feedback on the observation via Pivot under Notices and Wonderings on the lesson plan, state standard, and pupil engagement within seven (7) calendar days of the observation. The post-observation meeting can be in person or electronic via Pivot. Should a teacher choose the electronic meeting option, teachers must respond to the Notices and Wonderings in PIVOT within seven (7) calendar days. The administrator will provide the final feedback within thirty (30) calendar days of the original observation.

Mid-Year Progress Reporting: The administrator will meet in person with any probationary teacher or any teacher rated less than effective by the evaluator by the end of February to discuss the progress and learning around the teacher's areas of focus and what support or assistance the teacher may need to continue their growth in the areas of focus.

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Public Act 54



Public Act 54 of 2011 – NO LONGER IN EFFECT

- It previously froze step and lane movement on the salary schedule at contract expiration date
- It previously mandated employee pay any insurance cost increases occurring after contract expiration and prior to ratification of new contract
- It previously prohibited retroactive payment to employees of steps and/or lanes or increased insurance costs
- Hard Cap?

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Tentative Agreement?



Written only

- Do not try to agree to things verbally

What should be retroactive?

- Language is effective on date of final ratification
- Salary increases may or may not be retroactive – it can be bargained

Ratification – union first, then Board

Past practice – how do you correct a wrong practice?

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Contract Expiration



Terms and conditions still apply

- New law means you may have to move normal steps, lanes, and increase insurance contributions (depending on the language in your contract)

Extension or not? Normally, NO - do not “extend” without the deal being done

- They like to say they are “working without a contract”, but that is not really true, they are working under the expired contract terms including step increases if not bargained otherwise.
- No extension means no arbitration on grievances and you could stop paid release time for union leader

Union pressure tactics

- Buttons, picketing, work to rule, etc.
- Frame the issue to the media and community – “Benefits and salaries are important and difficult issues and we’re working to reach agreement”

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Involving the Board



Often, Board members are NOT on the bargaining team, but the Board has a team to negotiate on the Board/District's behalf

Try to keep the Board above the action, but updated

If it is contentious bargaining, make sure the Board is on board

Go over parameters and confidentiality early in the process, but don't necessarily go into closed session every Board meeting

Remind Board members of legal requirements

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Patience in Bargaining



Be patient

Help Board members be patient

Don't make decisions for a quick fix.

Be proactive with the process

The law NO LONGER prohibits granting steps or increases if the contract has expired.

- This may cause issues to both sides for working toward a settlement

If they will not adjust their proposals, have rationale why the finances of this will not work or rationale why you're not willing to add it to the contract and stick to it

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Summary



The Best Approach to Negotiations and Labor Relations:

- Know the law and the process
- Be transparent – open and honest communication
- Show respect and expect respect in return
- Support proposals with data
- Develop a culture of problem-solving with union leadership
- Start early and always be prepared
- Don't write new contract language for every issue brought forward
- Be resolved to get grievance restrictions for Evaluation and Discipline
- Be resolved that performance is a determining factor for layoff
- Consult professionals when needed

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THANK YOU!

Questions?

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