Collective Bargaining—Legal and Table Trends

MSBO FINANCIAL STRATEGIES CONFERENCE

JANUARY 21, 2020

RAYMOND M. DAVIS & KATERINA M. VUJEVA
• 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
• This document may not be reproduced or redistributed, in whole or in part, without the express written permission of Thrun Law Firm, P.C.
Table Trends
Civil Rights

- Pronouns
- Expanding protected classes
- Is your PERA harassment/retaliation clause mutual?
Negotiating Health Benefits
Health Insurance

- 30 hour/week threshold
- Impact on PA 152 cap
- More flexibility with providers?
- “Big Table” discussion
- Individual coverage HRAs
PA 152 Best Practices

• Write compliance method into contract
• Do not maximize benefit to hard cap level
• No preloading HSAs if at cap limit
• No smoothing
PA 152: Medical Benefit Coverage Year

• MEA requests that the district increase health insurance contributions January 1, 2017

• Your Master Agreement Language
**BCEA v Bay City Public**

- Arbitrator: James T. Ellis
- Award: January 9, 2018
- Holding: MESSA medical benefit plan coverage year must be negotiated, and not unilaterally changed by MESSA.
Cafeteria Plans/Cash-In-Lieu

• Review plan to ensure compliance
• Cash-in-lieu run-through the cafeteria plan
• HRAs (Health Reimbursement Arrangement)
  • Individual coverage HRA
    • Tax-free employer-established account that reimburses employee’s qualified medical expenses up to an employer-established amount
  • Excepted Benefit HRA
    • Some IRC Section 213(d) expenses; certain premiums/cost-sharing for dental/vision, COBRA, STLD plans
• Available starting 1/1/2020
• Cash-in-liew subject to ACA—fine?
IRS Audit Alert

• Appropriate designation as employee income or expenses
• Misclassification as independent contractor
Wages

• Fix scale?
• Eliminate scale? (Political considerations)
• Eliminate or reduce lanes?
• Placing new hires?
• Catching up for lost steps?
Steps

• Trend of reconfiguring step schedule continues
• Union typically very interested in steps
• To increase pay at “bottom” of scale, consider eliminating Step 1 and moving others
• Add steps to top
• Longevity?
• Add to step schedule?
Practical Considerations: Merit Pay Leverage

• Merit steps/MEA dislikes
• Do not put cross reference in CBA
Table Trend Support Groups: Compensation Increase

- Research: Center for Education Performance and Information
- Research: “Indeed.com”
  - Learn market and supporting tax base
- Research: % of cost to budget
  - Trend Line 5 years
Leave Provisions
Leave Provisions of Master Agreement

• FMLA Provisions?
  • Concurrent with other leave
• ADA Provisions?
• One Year Unpaid Leave?
• Sick bank/short term disability
Paid Time Off (PTO) Teachers

• Allowing PTO for vacation?
• MEA argument: teachers are professionals, they are doing it anyway
• Impact on classroom continuity?
Paid Medical Leave Act (PMLA): Non-Exempt Staff

• Average 25 hours/week eligibility
• 1 hour paid leave for 35 hours worked
• Non-exempt employees only
• Accrue up to 40 hours/year
• Effective March 29, 2019
• Covers districts with 50 or more employees
PMLA Recommendations

1. Unionized Staff: Review CBAs for compliance.
2. Unaffiliated Staff: Review handbook policies and administrative guidelines for compliance.
3. Put in individual employment contracts.
Eliminate/Modify Language Concerning Outdated Concepts

• Update language to reflect current practice, e.g., eliminate sabbaticals

• Eliminate prohibited subjects of bargaining

• Eliminate references to outdated law

• Review appendices!
“Prohibiteds”
Prohibits are still prohibited... for now

- Political shifts will likely result in changes to the list of prohibited subjects. Don’t delay in getting these out.
  - Teachers: discipline, placement, evaluation, observation, layoff/recall
  - Use of volunteers in providing service. MCL 423.215(3)(g)
  - Cf Emergency Manager Language. MCL 423.215(7)
  - Cf Merit Pay.
Application to Schedule B

• *Marion Pub Schs v Marion Ed Ass’n*, MERC Case No. CU17 E-016 (2019)
  • Teacher/coach disciplined in his role as the coach by nonrenewing the coaching contract.
  • MERC: The discipline is grievable, because the conduct complained of was for the coaching position and was applied to his coaching position.

• Side note: FLSA application—exempt if primary duty is teaching
Disciplinary Standard for Non-Teachers

- “Just cause” vs “non-arbitrary” or capricious”
- Support employees more protection than teachers?
- Discipline by category?
- Disciplinary sunset. See MCL 380.1230b(6)
- Even discipline that is not “unprofessional conduct,” eliminate sunset
- Carefully review standards for non-certified members of your teacher units
Assure “Grievance” Process is Tight

• Negotiated Grievance Procedure
  • Limited vs Broad Definition of “Grievance”
  • Grievance “levels”
    • Board level of appeal
• Arbitration Parameters
• Grievance about “prohibited”
  “The Association shall pay all arbitration costs associated with grievances concerning prohibited...”
Table trends
Student Behaviors

• Increased student behavioral issues, particularly at early elementary.

• Attempts to get increased assistance. Moving from “reasonable assistance” to “all necessary”

• Administration and union do not agree on definitions of “reasonable” and “necessary,” so increased grievances on issue

• District legal advice to teachers?
Disaffiliation of Smaller Units
MEA Board Policy I-9: Low Membership Locals (5/15/82)

- Local units with 0 to 20% “members in good standing” are placed on a “critical list”; locals with 20% - 30% are on a “watch list”

- Employees in “critical list” units will receive communications from MEA and are urged to increase membership

- After four consecutive months on the critical list, the unit “shall be disaffiliated from MEA”

- “…the possible outcome of a cessation of all MESSA products immediately upon disaffiliation”
MESSA Disaffiliation Policy (11/18/15)

• MESSA benefits will be terminated at end of last month of CBA, with written notice to the employer, where:
  • Bargaining unit elects to decertify or disaffiliate; or
  • MESSA Board terminates benefits due to MEA board decision to expel, discontinue, disclaim or otherwise terminate the unit from MEA membership (“disaffiliated unit”)
  • A “disaffiliated unit” may be eligible to continue with MESSA where the unit is participating in a MESSA approved benefits consortium and disaffiliated unit membership is not more than 5% of the consortium membership