

A BARGAINING UPDATE

MSBO Annual Conference
Clark Hill PLC
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BARBARA A. RUGA



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OVERVIEW

- THE BASICS
- PRIORITIES THIS YEAR
- STRATEGIES
- CLOSING ADVICE

THE BASICS BEGIN WITH PERA

- The Public Employment Relations Act requires public employers to “bargain in good faith” with union representatives.
 - Meet at reasonable times and places.
 - Confer about “wages, hours, and other terms and conditions of employment . . .”
 - Execute a contract incorporating agreements reached.
 - Does not require either party to agree to a proposal or to make a concession.
- Unfair Labor Practice to unilaterally change MSB in the CBA.

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SUBJECTS OF BARGAINING

- Mandatory Subjects – wages, hours and working conditions
- Permissive Subjects – curriculum, student issues, e.g.
- Prohibited Subjects – may discuss, no obligation to bargain, may take unilateral action
- Illegal Subjects – no dues deductions, e.g.

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SCHOOL REFORM – WHAT’S LEFT TO BARGAIN?

- Compensation Issues-
 - Salary and wage levels;
 - Salary steps;
 - Salary lanes;
 - Insurance (carrier, type and level of benefits);
NOTE: ACA requirements 1-1-16
 - Cash in lieu;
 - Personal leave time (especially sick banks)

SCHOOL REFORM – WHAT’S LEFT TO BARGAIN

- Working Time Issues -
 - Increased number of student instruction days;
 - Increased student instruction time;
 - Increased number of teacher work days
 - Longer teacher work day on site
 - Increased teacher professional development time
 - More flexible and cost-effective class size limitations;
 - Teacher pay inequities (AP English vs elementary PE);
 - Structure of school day and school year to enhance student achievement.

COLLECTIVE BARGAINING – THE PROCESS

Stages of the Process

- Preparation.
- Negotiations (Formal and Side Bar).
- Mediation (non-binding).
- Fact-finding (non-binding).
- Post fact-finding negotiations.
- Outcomes:
 - Agreement; No agreement; Imposed agreement.

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IF NO AGREEMENT...

- The Board will either implement its Last Best Offer, outsource the work, or maintain the status quo indefinitely.
- The Union will increase its efforts to change Board bargaining goals through either pressure tactics (such as illegal “work to rule” or electing/recalling Board members).

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DUAL-TRACK BARGAINING EFFORTS

- At the bargaining table, to reach agreement and position the Board to exercise its options under the law:
 - a. Formal table position (postured for possible fact-finding and implementation of LBO or outsourcing)
 - b. Informal position (where the Board can go; those positions typically explored in mediation)
- Away from the bargaining table, to counter the Union's pressure tactics and efforts to elect/recall Board members:
 - a. Prepare Board and administrators for Union tactics
 - b. Development of a communications plan – setting the climate and communicating key messages

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WHAT NOT TO DO

- Refuse to meet
- Make regressive proposals *without justification*
- Disparage union leadership
- Publish or “float” proposals not yet made to union
- Misrepresent proposals
- Engage in conversations with teachers or union leaders outside of the bargaining process
- Speak off the cuff
- Undermine bargaining team

THE CURRENT BARGAINING CLIMATE

- Scarce and dwindling state resources unlikely to improve given MPERS burden and tax credits and likely failure of road tax.
- Unhappy local unions due to 2011 school reforms and cases being decided at all levels.
- Some teachers increasingly disenchanted and local administration and board subject to more local pressure tactics.
- Everyone doing more with less.

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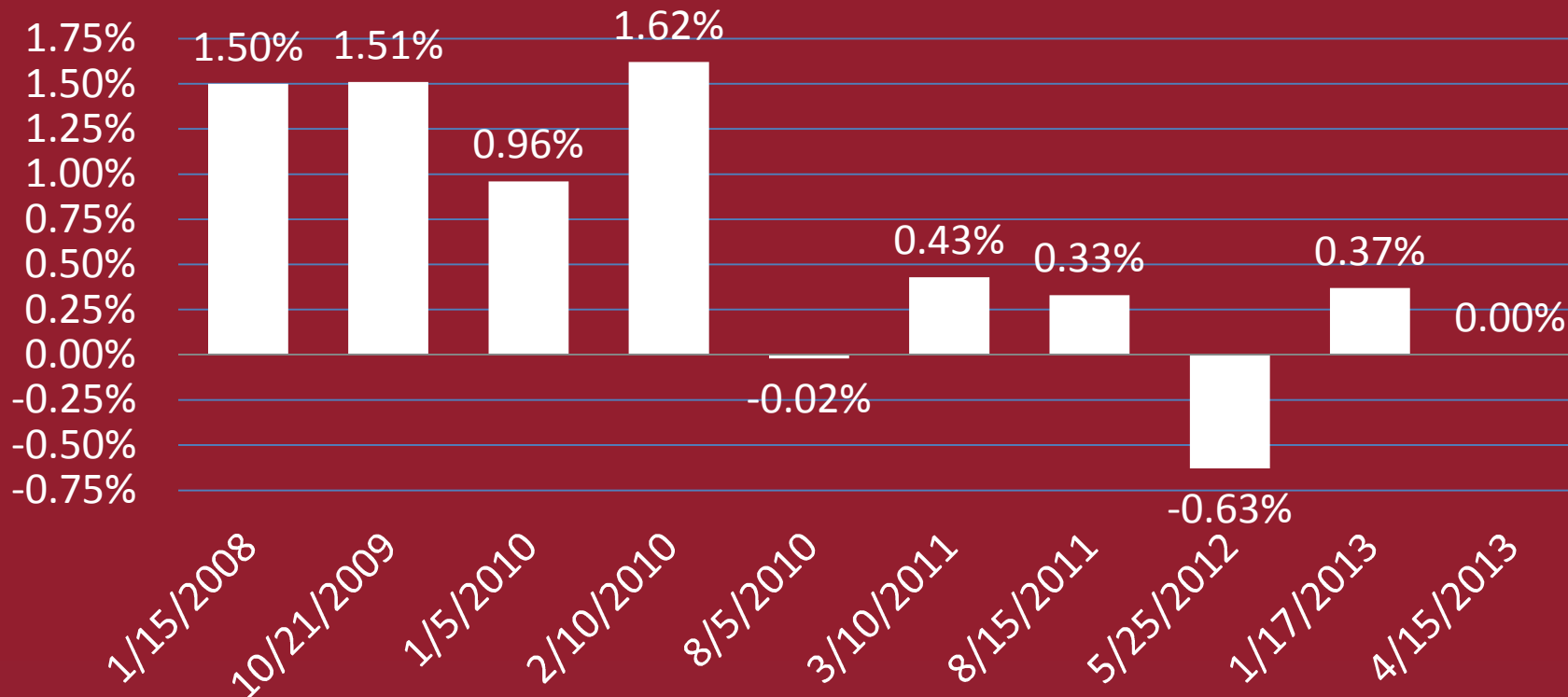
SCARCE RESOURCES

- Modest growth or Flat or concessionary contracts
- Rapid or protracted negotiations
- Traditional forms of teacher compensation, step and lane advancement, waning in practice but growing in demand by unions and teachers
- Legal and ideological demands for merit pay but few examples

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MERC FACT FINDING

Average Wage Recommendation Per Contract Year



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IN 2013-2014

In our office alone:

- Brandon School District – 7.5% cut
- Iron Mountain – 7.5% cut
- Muskegon – One Million Cut in Teacher compensation
- Grant Public Schools – settled with 7-9% cut
- Troy School District – added two steps keeping top the same & 12% floor on fund balance

ASK YOURSELF:

- DO YOU NEED A NEW CONTRACT?
- IF SEEK CONCESSIONS, WHAT IS UNION'S INCENTIVE TO SETTLE?
- WHAT IS TOLERANCE TO USE IMPASSE STRATEGIES AND WITHSTAND LOCAL PRESSURE TACTICS?

PRIORITIES

- Language & Policy/Administrative Guideline Review
 - Prohibited Subjects
 - Illegal Subjects
 - Other
- Health Insurance
 - PA 152: Will you switch this year?
 - ACA
- Calendar

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LANGUAGE PRIORITIES

- Review prohibited subject deletion
 - Remember original prohibited subjects, such as the use of technology to deliver educational services
- Review deletion of illegal subjects
 - Think about whether to add anti-discrimination obligations to avoid harassment of non-members

MORE LANGUAGE

- Update FMLA provisions and include required notice as an appendix to the CBA
- Update Board policies and administrative guidelines on prohibited subjects
 - recent case law on layoff and recall criteria
 - really important if you will layoff this year
 - improved thinking on evaluation ratings and changes in section 1249 have occurred and are on the horizon
 - add internal appeal process to teacher discipline

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YOUR FISCAL CONTEXT

DICTATES BARGAINING
STRATEGIES & TIMELINES



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WHAT IS YOUR FISCAL CONTEXT?

MUST YOU ACHIEVE CONCESSIONS?

– BY WHAT DATE?

– BY HOW MUCH?

–Attend today's deficit

district session at 10:30



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WHAT IS YOUR FISCAL CONTEXT?

- IS STATUS QUO ACCEPTABLE?
 - THEN PA 54 IS YOUR BEST FRIEND
 - FOR HOW LONG?
 - WHAT CONDITIONS WILL ALLOW PAY INCREASES OR REQUIRE CONCESSIONS?
 - BY WHAT DATE?
- IF PAY INCREASES ARE ON THE HORIZON, ARE THEIR COSTS SUSTAINABLE?
 - FOR HOW LONG? ON OR OFF SCHEDULE?

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WHAT ASSUMPTIONS TO USE?

- OFFER 2-3 FORECASTS: BEST CASE, WORST CASE, MODERATE CASE
- FLAT OR MODEST FUNDING INCREASES
- 3.5% INSURANCE INCREASE IF HARD CAP, MAY BE GREATER % IF NOT HARD CAP
- 1% INCREASE IN MPSERS COSTS
- ENROLLMENT – RELY ON YOUR HISTORY AND/OR BLENDED EXPERT PROJECTIONS
- CLEARLY EXPLAIN ASSUMPTIONS AND THEIR BASIS

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REASONABLY PRUDENT FORECASTS

- ACKNOWLEDGE UPFRONT YOUR BUDGET PHILOSOPHY: ASSUME THE WORST AND HOPE FOR THE BEST
- ASSUME VARIOUS LEVELS OF BUDGET VARIANCE IF THAT IS YOUR HISTORY
- MAINTAIN OPEN BOOK PHILOSOPHY AND COMPLETE TRANSPARENCY
- RESPOND PROMPTLY TO FOIA/PERA REQUESTS THAT ARE REASONABLE

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CURRENT COMPENSATION STRATEGIES

- Off-Schedule Payments
- Delay / Partial Steps (e.g., 1 step over 2 years, half-steps)
- Formula or “Trigger” for cuts and raises
- Expanded salary steps (e.g., 11 steps to 14+ steps)
- Reduced Lanes and/or Longevity
- Compensation for increased worktime / instruction time
 - NOTE: In 2016-2017, minimum number of pupil instruction days is 180

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FORMULA/TRIGGER BASICS

- Quantify and automatically adjust/respond to factors beyond the control of the district/employees; i.e., if fund balance falls below some “trigger” (10%, 12%, etc.), the salary schedule is reduced
 - Provide fiscal certainty for districts
 - Provide security for parties to allow for multi-year agreements
 - Ensure that everyone has some ‘skin in the game’
 - Guarantee employees they maintain their ‘fair share’

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FORMULAS & TRIGGERS

- SALARY INCREASES CONDITIONED ON ENROLLMENT OR PER PUPIL FUNDING LEVELS OR COMBINATION THEREOF
- SHARE “EXCESS” FUND BALANCE AMOUNTS OFF SCHEDULE ONE TIME

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WAGES

- TWO TIER WAGE SCALES
 - Structural Change
 - Long Term
 - Short Term Savings May Be Minimal
 - Hard Feelings? Low Morale?

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OTHER AREAS TO REVIEW

- STAFFING LEVELS OR CLASS SIZE
- BENEFITS
- TIME
- WORKING CONDITIONS



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WHAT ABOUT “MERIT PAY?”

- Misnomer
- Section 1250 of MRSC requires that compensation and additional compensation be based on job accomplishments and job performance.

ALTERNATE SALARY SCHEDULES

- TO DATE, PRIMARILY AN ISD PHENOMENON
 - ST. CLAIR, LENAWEЕ, LIVINGSTON, KRESA
 - BLISSFIELD, OTHERS
- SEE TNTP ARTICLE: *The Hidden Costs of Lockstep Teacher Pay*
http://tntp.org/assets/documents/TNTP_Shortchanged_2014.pdf
- OTHERWISE, TIE STEP AND LONGEVITY TO EFFECTIVENESS RATINGS.
- OUTSIDE OF CBA, PROVIDE ADDITIONAL COMPENSATION TIED TO VARIOUS CRITERIA.

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EX. OF ALT SALARY SCHEDULE: ST. CLAIR COUNTY RESA

2012-2015 Scale					
Novice		Effective		Highly Effective	
N 0	38,000	Level 0	40,000	Level 0	45,000
N 1	40,000	Level 1	42,700	Level 1	48,000
N 2	42,000	Level 2	45,400	Level 2	51,000
N 3	44,000	Level 3	48,100	Level 3	54,000
N 4	46,000	Level 4	50,800	Level 4	57,000
		Level 5	53,500	Level 5	60,000
		Level 6	56,200	Level 6	63,000
		Level 7	58,900	Level 7	66,000
		Level 8	61,600	Level 8	69,000
		Level 9	64,300	Level 9	72,000
		Level 10	67,000	Level 10	75,000
		Level 11	70,889		

*The top steps in each of the categories will be increased by 1.5% in the final year (2014-15) of this agreement!

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ST. CLAIR COUNTY RESA (Cont.)

Additional scenario: (added June 13, 2012)

In year one (1), Teacher "X" is on the Highly Effective Scale and is at Level 5, which provides for a salary of \$60,000 for the 185 contract days. Teacher "X" fails to maintain their "Highly Effective" rating for three (3) consecutive years (or in year two (2), year three (3) and a hypothetical year four (4)) and is then moved to the "Effective" Level Scale. What Effective Level will Teacher "X" be placed?

Teacher "X" must maintain their Highly Effective rating in each year in order to obtain the next level on the Highly Effective Scale. If Teacher "X" does not attain the level of "Highly Effective" in the next year, Teacher "X" will be maintained on the Highly Effective Scale on Level 5. If Teacher "X" is again evaluated the following year and does not attain the Highly Effective Level, then for the second time Teacher "X" will not be granted an increase on the Highly Effective Scale and will remain on Level 5. If then for the third consecutive time Teacher "X" fails to reach the Highly Effective Rating, Teacher "X" will be placed on the **Effective Scale Level 9** (\$64,300) for the upcoming school year.

Year 1	Year 2	Year 3	Year 4	Year 5
Highly Effective-5	Highly Effective-5	Highly Effective-5	Highly Effective-5	Effective -9
Highly Effective	1 st year Effective	2 nd year Effective	3 rd year Effective	Effective

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MI Effectiveness Ratings*

Ineffective Teachers & (Administrators)

- 2011-2012: 0.8% (0.7%)
- 2012-2013: 0.6% (0.5%)
- 2013-2014: 0.5% (0.3%)

Minimally Effective Teachers & Administrators

- 2011-2012: 2.04% (1.76%)
- 2012-2013: 2.41% (2.24%)
- 2013-2014: 2.26% (2.37%)

Effective Teachers & Administrators

- 2011-2012: 74.6% (74%)
- 2012-2013: 64.4% (68%)
- 2013-2014: 59.3% (66%)

* Source: MDE/CEPI Website Staffing Reports

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Increase in Highly Effective Educators

Highly Effective Teachers

- 2011-2012: 23%
- 2012-2013: 33%
- 2013-2014: 38%



Highly Effective Administrators

- 2011-2012: 23%
- 2012-2013: 29%
- 2013-2014: 32%



97% of Teachers = Effective or Highly Effective

98% of Administrators = Effective or Highly Effective



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INSURANCE

- SELF FUNDING
- LOWER COST PLANS
- DO NOT PAY MAXIMUM PERMITTED BY PA 152
 - District Cap Lower Than Hard Cap
 - % Less Than 80
 - Single Premium Only
- DO NOT PAY NON-HEALTH BENEFITS
- PAY VERY SMALL % NON-HEALTH BENEFITS

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Because You Never Know How You Will Achieve Your Goal

& you must always have something in
your hip pocket



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OTHER TERMS & CONDITIONS

ELIMINATE OR REDUCE:

- TUITION REIMBURSEMENT
- EXTRACURRICULAR SCHEDULES
- SICK LEAVE BANKS
- OTHER REIMBURSEMENTS
- EXTRA HOURLY RATES
- PAID UNION RELEASE TIME
- CLOTHING ALLOWANCE

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LEAVES OF ABSENCE

- Paid leave days increase sub costs and reduce educational quality
- Reduce number of sick days and/or change how earned
- Reduce number of personal business days
- Make attendance a factor in “merit pay”

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PROVISIONS AND DEMANDS TO AVOID AT THE TABLE

- “Sunset” provisions;
- Union release time;
- “Cleaning” personnel files;
- Sick bank;
- Notice or investigation of complaints against employees within a specified time period.

PROVISIONS AND DEMANDS TO AVOID AT THE TABLE

- Requirements to “confront accuser”;
- Incorporating or retaining statements of law in contracts;
- Calculating extra duty as a percentage of salary;
- Absolute class size maximums;
- Specific starting and end times to instructional day;
- “Weighting” of special education students.

PROVISIONS AND DEMANDS TO AVOID AT THE TABLE

- Job descriptions in the contract;
- Maintaining fringe benefits on extended unpaid leaves;
- Expensive severance benefits based upon unused sick leave days;
- Use of sick leave days to supplement Workers' Compensation benefits.

PROVISIONS AND DEMANDS TO AVOID AT THE TABLE

- Limitations on employee investigations;
- Specifying steps of progressive discipline (non-instructional);
- Limitations on use of teacher prep time;
- Incorporation of outside materials by reference; and
- Overtime beyond that required by law.

It is also worth considering attempting to remove these provisions if they are already in the contract.

FINAL COMMENTARY

Empathy & Setting the Right Climate



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CONCESSIONARY CONTRACTS

Points to remember when bargaining in times of economic distress:

- Assemble the right team
- Prepare
- Know your union
- Consider your style of bargaining
- Develop a timetable based on economic and operational needs
- Accept “working without a contract”

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CONCESSIONARY CONTRACTS

Points to remember when bargaining in times of economic distress (cont.):

- Understand your bargaining leverage
- Demonstrate shared sacrifice
- Put all of your cards on the table
- Be creative
- Haste makes waste

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PARTING THOUGHTS

- School reform legislation has significantly changed the playing field to school district's advantage.
- Aim high and retain maneuvering room for mediation, fact-finding and post-fact-finding negotiations.
- Goals should include creating leverage for next contract.
- It may not be anyone's "fault" that the contract is not yet settled...concessionary bargaining remains tough.
- The school district can survive and be improved as a result of negotiations, even if protracted.
- The contract will eventually be settled.



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Thank you!



Barbara A. Ruga
bruga@clarkhill.com
(616) 608-1105

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