

## MEMORANDUM

**TO: MEA UniServ Directors**

**FROM: MEA Legal Department & Craig Culver**

**DATE: April 17, 2012**

**RE: Passage of Ballot Initiative and Bargaining Implications for Expired Contracts**

*With voter approval of the Protect Our Jobs Ballot Initiative, the Amendments contained in the Ballot Proposal would become effective immediately upon certification of the election results. **This would most likely be sometime in late November, 2012.***

Upon certification of the Ballot victory, the following would immediately occur:

1. Any hourly or annual rates of pay lost from the prohibition on step increases after contract expiration caused by 2011 PA 54 (MCL 423.215b) would be reinstated beginning on the certification date.
  - a. Pay lost from step freezes occurring between a labor agreement's expiration date and the certification of the Ballot initiative victory would NOT be restored; however, income lost during this period could be bargained back retroactively.
2. The status quo of an expired labor agreement's provisions regarding health insurance plans and employee contributions would be restored to pre-PA 54 and pre-PA 152 levels.
  - a. The "Cap Rules" created by 2011 PA 152 (The Publicly Funded Health Insurance Contribution Act) would NO longer be a necessary part of future bargaining proposals.
  - b. Any increases in health plan costs occurring after the expiration of the contract that were entirely passed on to employees (due to PA 54) would cease unless the expired labor agreement contained a provision requiring employees to assume some or all rate increases.

NOTE: Health insurance increases that were passed on to the members could also be bargained back retroactively.

3. The new prohibited bargaining topics created by 2011 PA 103 and included in Section 15(3) of PERA would NO LONGER exist. This law currently prohibits bargaining over the decision or impact concerning the following subjects:

- a. The placement of teachers;
- b. Personnel decisions for teachers during a reduction in force, recall or hiring after a reduction in force, as set forth in MCL 380.1248;
- c. Teacher evaluation systems, including the format, timing or number of classroom observations, as set forth in MCL 380.1249 and in the Teachers' Tenure Act.
- d. Teacher discipline policies, which may NOT include a standard different than the arbitrary and capricious standard; and
- e. Performance-based compensation systems for teachers, as set forth in MCL 380.1250
- f. Notification to parents and legal guardians that children are being taught by ineffective teachers, as required by MCL 380.1249a.

NOTE: For bargaining units that negotiated the removal of language regarding these prohibited topics, passage of this ballot initiative would once again allow for collective bargaining in these areas; for bargaining units that negotiated LOAs addressing these prohibited topics, passage of this ballot initiative may, depending on the language of the LOA, cause those topics to immediately become effective provisions of the contract.

4. The prohibited bargaining topics created by 1994 PA 112 and included in Section 15(3) of PERA would NO LONGER exist. The provisions of this law prohibit bargaining over the following topics:
  - a. Who is or will be the policyholder of an employee group insurance plan;
  - b. The starting day for the school year and the amount of pupil contact time required to receive full state school aid under MCL 380.1284 and MCL 388.1701;
  - c. The composition of school improvement committees established under MCL 380.1277;
  - d. The decision whether to provide/allow interdistrict or intradistrict open enrollment opportunity in a school district or of which grade levels or schools in which to allow such an open enrollment opportunity;
  - e. The decision whether to act as an authorizing body to grant a contract to organize and operate 1 or more public school academies under MCL 380.1852.

- f. The decision whether to contract with a third party for 1 or more noninstructional support services;
- g. The use of volunteers in providing services at its schools;
- h. Decisions concerning use of experimental or pilot programs and staffing, and decisions concerning use of technology to deliver educational programs and services; and
- i. Any compensation or additional work assignment intended to reimburse an employee for or to allow an employee to recover any monetary penalty imposed under PERA.

NOTE: Some of these topics may be considered permissive bargaining topics, such as the decision whether to provide/allow interdistrict or intradistrict open enrollment opportunity in a school district, and the decision whether to act as an authorizing body to grant a contract to organize and operate 1 or more public school academies

- 5. The prohibition created by 2011 PA 297 (Public Employee Domestic Partner Benefit Restriction Act) on public employers providing medical and other fringe benefits to members with domestic partners would NO LONGER restrict bargaining.
  - a. All public sector labor organizations could once again bargain over domestic partner benefits for their members.
- 6. The prohibition created by 2012 PA 53 on the ability of MEA bargaining units to collect dues or service fees from wages through payroll deduction would NO LONGER exist.
  - a. MEA and its local affiliates could once again bargain with the employer over the use of payroll deduction to collect dues and service fees.