



# POLICE OFFICERS ASSOCIATION OF MICHIGAN

(A)



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To All Iron County Medical Care Facility Employees:

Please review the e-mail below from ICMCF labor attorney Steven Girard. Mr. Girard is one of the most prominent public employer labor attorneys in the State and sets all labor policy for ICMCF. His e-mail clearly refutes AFSCME claims and verifies the POAM position that your current contract stays in place until we negotiate a new one.

From: Girard, Steven K. <SGirard@ClarkHill.com>  
 Sent: Sunday, April 06, 2014 4:42 PM  
 To: Ed Jacques  
 Subject: RE: Steven K. Girard

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Hi Ed,

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I am sorry I missed your call Friday. I ducked out early in the afternoon. I have read the AFSCME flyer. I will call Chester to discuss their policies relative to distribution of literature in the facility. I agree with you the flyer is incorrect in that it would only apply in a decertification (as opposed to electing another union such as POAM). If your union were to win a majority of the votes, the Facility would be prohibited from making changes in mandatory subjects of bargaining (such as wages, vacations, pension, etc.) absent agreement of POAM. However, the Facility and Mr. Pintarelli are trying to be absolutely neutral in this election. I would not expect for he or the Board to issue any memorandums regarding this election (including any memos seeking votes for the third choice on the ballot "no union"). You certainly are free to counter AFSCME's flyer as you determine appropriate. Thank you. Steve

Let's now focus on the positive. After POAM prevails in this election, we invite all employees, especially previous AFSCME supporters, to become more involved in their local union. We will assist by meeting with your group at least once a month (more, if necessary) to assist in grievance investigation and processing, preparing for negotiations and/or mediation, establishing new by-laws, political action, and training for all stewards/members on important labor issues.

\* Mr. Girard is the same labor attorney hired by Houghton County Medical Care Facility. The Employer agrees and admits that no changes to the contract will take place without a mutual agreement between HCMCF and TPOAM.

15. — Survival of expiration date, mandatory subjects of bargaining

At expiration of contract, those wages, hours, and other terms and conditions of employment established by contract which are deemed mandatory subject of bargaining survive contract by operation of law during bargaining process. Wayne County Government Bar Ass'n v. Wayne County (1988) 426 N.W.2d 750, 169 Mich.App. 480.

At expiration of a labor contract with a public employer, those wages, hours, and other terms and conditions of employment established by the contract which are mandatory subjects of bargaining survive the contract by operation of law during the bargaining process; thus, the public employer has a continuing obligation during the bargaining process to apply those wages, hours, and other terms and conditions of employment designated as mandatory subjects until such time as impasse is reached in the bargaining process. Local 1467, Intern. Ass'n of Firefighters, AFL-CIO v. City of Portage (1984) 352 N.W.2d 284, 134 Mich.App. 466, appeal denied.

16. — Unilateral action, mandatory subjects of bargaining

Under the Public Employment Relations Act (PERA), an employer commits an unfair labor practice if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless the employer has fulfilled its statutory obligation or has been freed from it. Organization of School Adm'rs and Sup'rs AFSA, AFL-CIO v. Detroit Bd. of Educ. (1998) 580 N.W.2d 905, 229 Mich.App. 54, appeal dismissed 589 N.W.2d 775.

Neither documentary nor testimony evidence supported a claim that the rate of compensation of adult education department heads for overtime, if authorized, was unilaterally modified,

and thus, no unfair labor practice was established regarding their pay. Organization of School Adm'rs and Sup'rs AFSA, AFL-CIO v. Detroit Bd. of Educ. (1998) 580 N.W.2d 905, 229 Mich.App. 54, appeal dismissed 589 N.W.2d 775.

Unilateral action over mandatory subject of bargaining may not be taken by either party absent impasse in negotiations or clear and unmistakable waiver. Wayne County Government Bar Ass'n v. Wayne County (1988) 426 N.W.2d 750, 169 Mich.App. 480.

Duty to bargain in good faith under Public Employment Relations Act extends to those subjects within scope of phrase "wages, hours and other terms and conditions of employment," referred to as mandatory subjects of bargaining, and with regard to which parties are required to bargain if bargaining has been proposed by either party, so that neither party may take unilateral action on the subject absent an impasse in negotiations. Kent County Educ. Ass'n/Cedar Springs Educ. Ass'n v. Cedar Springs Public Schools (1987) 403 N.W.2d 494, 157 Mich.App. 59.

Increase in number of assigned daily class periods required of high school teachers significantly increased teachers' class preparation time and obligations and was thus within scope of a mandatory subject of bargaining between school board and teachers' bargaining units so that board's unilateral action in changing hours without notice to bargaining unit constituted an unfair labor practice. Kent County Educ. Ass'n/Cedar Springs Educ. Ass'n v. Cedar Springs Public Schools (1987) 403 N.W.2d 494, 157 Mich.App. 59.

Once specific subject has been classified as "mandatory subject of bargaining," the parties are required to bargain concerning the subject of it has been proposed by either party, and neither party may take unilateral action on the subject absent an impasse in the negotiations. Detroit Police Officers Ass'n v. City of Detroit (1974) 214 N.W.2d 803, 391 Mich. 44.



13. Mandatory subjects of bargaining—In general

Employer and the representative of the employees are statutorily required to bargain for wages, hours, and other terms and conditions of employment, which constitute mandatory subjects of collective bargaining. St. Clair Intermediate School Dist. v. Intermediate Educ. Association/Michigan Educ. Ass'n (1998) 581 N.W.2d 707, 458 Mich. 540.

"Mandatory subjects" of collective bargaining are comprised of issues that settle an aspect of the relationship between the employer and employees, and include, but are not limited to, terms and conditions of employment concerning hourly, overtime, and holiday pay, work shifts, pension and profit sharing, grievance procedures, sick leave, seniority, and compulsory retirement age. St. Clair Intermediate School Dist. v. Intermediate Educ. Association/Michigan Educ. Ass'n (1998) 581 N.W.2d 707, 458 Mich. 540.

Procedure for determining whether an employer must bargain before altering a mandatory subject of bargaining involves a two-step

analysis: whether the issue the union seeks to negotiate is covered by or contained in the collective bargaining agreement, and if not, whether the union somehow relinquished its right to bargain. Organization of School Adm'rs and Sup'rs AFSA, AFL-CIO v. Detroit Bd. of Educ. (1998) 580 N.W.2d 905, 229 Mich. App. 54, appeal dismissed 589 N.W.2d 775.

Public employer is required to bargain in good faith pursuant to proposed new contract with respect to wages, hours, and other terms and conditions of employment; these subjects are mandatory subjects of bargaining. United Auto Workers, Local 6888 v. Central Michigan University (1996) 550 N.W.2d 835, 217 Mich. App. 136, appeal denied 554 N.W.2d 12, 453 Mich. 884.

Under Public Employees Relations Act (PERA), procedure for determining whether employer must bargain before altering mandatory subject of bargaining involves a two-step analysis: is issue union seeks to negotiate covered by or contained in collective bargaining agreement; and, if not, did union somehow relinquish its right to bargain. Port Huron Educ. Ass'n, MEA/NEA v. Port Huron Area School Dist. (1996) 550 N.W.2d 228, 452 Mich. 309, rehearing denied 554 N.W.2d 10, 453 Mich. 1204.

Subject need not be explicitly mentioned in collective bargaining agreement in order for subject to be covered by agreement, for purposes of determining whether parties have duty to bargain regarding subject. Port Huron Educ. Ass'n, MEA/NEA v. Port Huron Area School Dist. (1996) 550 N.W.2d 228, 452 Mich. 309, rehearing denied 554 N.W.2d 10, 453 Mich. 1204.

Rules governing attendance and setting forth disciplinary policies constitute mandatory subject of bargaining under Public Employment Relations Act. Amalgamated Transit Union, Local 1564, AFL-CIO v. Southeastern Michigan Transp. Authority (1991) 473 N.W.2d 249, 437 Mich. 441.

Issue of manpower or staffing levels is managerial decision which is therefore permissive subject of bargaining under this section, whereas issues of employee work load and safety constitute conditions of employment and hence are mandatory subjects of bargaining. City of Sault Ste. Marie v. Fraternal Order of Police Labor Council, State Lodge of Michigan (1987) 414 N.W.2d 168, 163 Mich.App. 350, appeal denied 425 N.W.2d 90, 430 Mich. 895.

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Michigan Compiled Laws Annotated  
MCLCA 423.215