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MAKING MICHIGAN RIGHT-TO-WORK: IMPLEMENTATION PROBLEMS IN PUBLIC SCHOOLS

AUDREY SPALDING





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Mackinac Center for Public Policy 140 West Main Street P.O. Box 568 Midland, Michigan 48640
989-631-0900 Fax: 989-631-0964 Mackinac.org mcpp@mackinac.org

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Making Michigan Right-to-Work: Implementation Problems in Public Schools

By Audrey Spalding

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Executive Summary

This paper examines how public school districts responded to Michigan's 2012 “right-to-work” law. It describes the key findings from reviews of more than 500 teacher collective bargaining agreements. It also raises several questions about the legality of some union contracts with regard to this new law.

Public Act 349 of 2012 stipulates that public employees cannot be fired for refusing to financially support a union. Though the law was passed in December 2012, it did not take effect until March 28, 2013. During this four-month window, school districts and their local unions could create or extend collective bargaining contracts that would require teachers to continue paying union dues or fees as a condition of employment. This paper finds that many districts and unions fast-tracked negotiations in order to ratify a collective bargaining agreement before Public Act 349 became effective.

Among districts with collective bargaining agreements that took effect after March 28, 2013, approximately 75 percent removed mandatory dues language entirely. Both legal and policy questions are raised by the remaining 25 percent of districts, which kept mandatory dues language in one way or another, despite having a contract that took effect or was modified after the law's effective date.

These questions are organized into five categories: 1) Districts that made no apparent changes to their contract and kept mandatory dues language; 2) districts that created a separate agreement outside of their collective bargaining agreement to require mandatory dues payment; 3) districts that ratified a contract before March 28, 2013, but delayed the contract's effective date; 4) districts that ratified a contract before March 28, 2013, but delayed the effective date of part of the contract; and 5) districts that modified their collective bargaining agreements after March 28, 2013, without removing mandatory dues language.

More than 10,000 teachers work in districts with collective bargaining agreements that fall into one of the above categories. As collective bargaining agreements signed before March 28, 2013, continue to expire or are modified, more teachers will be impacted if the issues identified are not resolved.

Mechanisms for resolving these questionable contracts are discussed, including state guidance for districts and increased penalties for districts that violate the law. Policymakers might consider increasing the fiscal penalty for unions and public employers who violate Public Act 349, creating a financial reward for districts that comply or using the state's emergency manager law to hold school districts accountable for compliance with this new law.

Introduction

On Dec. 11, 2012, Gov. Rick Snyder signed Public Act 349, which significantly changed public sector collective bargaining in Michigan. This law protected public employees, such as public school teachers, from being forced to financially support a union as a condition of their employment.¹

The law did not take effect until March 28, 2013, however, which meant that public employers, such as school districts, and public sector unions could ratify new collective bargaining agreements that could still require public employees to financially support a union as a condition of employment for several years to come.²

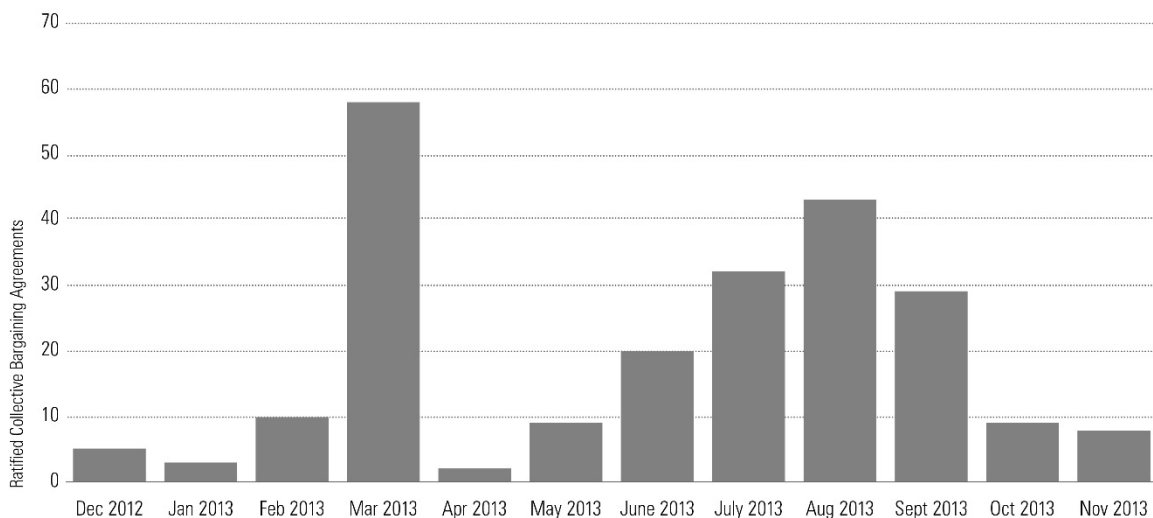
Steven Cook, the president of Michigan's largest public sector employee union, the Michigan Education Association, characterized the law as "Freedom to Freeload," and stated in a letter to union members:

[O]ur goal is to settle, extend or modify contracts with school districts ... So long as agreements are in place [before the law goes into effect] that include [mandatory financial support of the union], they are legal and remain in effect for the length of the agreement.³

Within the first year of the passage of Public Act 349, 234 Michigan school districts agreed to new collective bargaining agreements. Of those, 76 were signed between Dec. 11, 2012, and March 28, 2013. This deluge represents almost one-third of all contracts signed during the 12-month period after PA 349 was signed.

Graphic 1 shows the number of contracts signed each month during this 12-month period. In March of 2013, 58 contracts were signed, 35 percent more than were signed in any other month that year. These figures suggest that the large volume of contracts signed in early 2013 was a direct response to Public Act 349.

Graphic 1: Number of Teachers Union Contracts Signed Between Dec. 2012 and Nov. 2013



This report is part of a continued effort by the Mackinac Center to investigate how school districts and their local unions chose to implement Michigan's recent school reforms. Previously published work suggests that school district compliance with state collective bargaining reforms is varied, at best. In some cases, state law appears to be ignored entirely.

In March 2014, a study titled "Roadblocks to Reform?: A Review of Union Contracts in Michigan Schools," found that more than 17 percent of the surveyed districts appeared to be disregarding 2011 laws that modified some of the state's collective bargaining statutes. Altogether, about 60 percent of districts kept language in their union contracts that the 2011 laws appear to have prohibited.⁴ Similarly, a 2012 review of 104 union contracts found that 81 districts — more than three-quarters of those surveyed — appeared to be disregarding a 2010 law requiring districts to use a performance-based pay system for teachers.⁵

For this survey of compliance with Public Act 349, the Mackinac Center reviewed all available district collective bargaining agreements that impact teachers in public school districts.* Under state law, districts are required to post their current collective bargaining agreements online, and this was the primary source of information in this report.⁶ A total of 509 contracts were reviewed.

This report summarizes how school districts chose to comply with the law and identifies legal and policy issues raised by some of their contracts. These issues were found in 57 teacher contracts, or nearly 25 percent of the number of the contracts signed or modified within the first year after Public Act 349 was signed into law.[†]

This research demonstrates how districts and their unions chose to respond to Public Act 349, and should interest policymakers concerned about the implementation of Michigan's relatively new "right-to-work" law. The final section of this paper discusses policy options for legislators to improve the execution of this law among Michigan school districts.

Summary of Public Act 349 and Typical Responses

Michigan's right-to-work law states that any individual employed by a "public employer" cannot be required to pay "any dues, fees, assessments, or other charges or expenses of any kind or amount." Further, public sector employees cannot be required to contribute to a charity or other party "in lieu" of paying dues or fees.⁷

Under Public Act 349, public employees now have the option of opting out of their union altogether, for any reason. The law applies to any "agreement, contract, understanding, or practice" that took effect after March 28, 2013, or was "extended or renewed" after that date.⁸

In light of this law, most districts have completely removed any language pertaining to mandatory dues, "agency fees" or "service fees." Forest Hills, a district just outside of Grand Rapids that employs about 670 teachers, previously required that all teachers "as a condition of employment,"

* This survey was conducted in May 2013. Some changes in district collective bargaining agreements may have occurred between the end of May 2013 and the publication of this report.

† This tally includes 212 districts with collective bargaining agreements that went into effect after Dec. 11, 2012, and six districts that modified their contracts thereafter.

pay union “dues or a service fee.”⁹ In its new contract that took effect July 1, 2013, the Forest Hills district no longer includes any language that could be interpreted to require teachers to financially support a union as a condition of employment.¹⁰

The Tecumseh school district, a small school district in southeast Michigan, responded similarly. Prior to 2013, the district’s contract stated that union dues or agency fees would be automatically deducted from a teacher’s paycheck and remitted to the union if teachers did not make these payments themselves.¹¹ In Tecumseh’s new collective bargaining agreement, which took effect on Sept. 23, 2013, dues and agency fees are no longer mentioned.¹²

This survey found that more than 75 percent of Michigan school districts with contracts that took effect after March 28, 2013, removed mandatory dues language, similar to Forest Hills and Tecumseh.

Five Issues With Public Act 349 Implementation

Though most districts adhered closely to the requirements of Public Act 349, the sections that follow indicate how varied the interpretation of the law was by the districts that did not plainly stick to the language of the law. Described below are five different issues identified in this survey of teachers union contracts with regard to the implementation of Public Act 349:

- *Illegal Language:* Twenty-three districts ratified their collective bargaining agreements for teachers after March 28, 2013, but left the language Public Act 349 forbids unchanged.
- *Separate Agency Fee Agreement:* Eight districts approved a separate “agency fee agreement” before the March 28, 2013, deadline, with expiration or effective dates incongruent with the main collective bargaining agreement.
- *Delayed Effective Dates:* Fifteen contracts were ratified by districts and unions prior to March 28, 2013, but the effective date of the contract does not occur until months later.
- *Split Effective Dates:* Five districts approved contracts where the provision concerning mandatory union dues and fees took immediate effect (prior to March 28, 2013), but the other provisions of the contract took effect months later.
- *Modified Contracts:* At least six districts agreed to contracts prior to March 28, 2013, that kept mandatory union dues and fees, but have since that date added a “letter of understanding” or modified the terms of the contract in some other way without removing the language forcing teachers to financially support a union as a condition of employment.

These five issues impact a quarter of Michigan districts that ratified or modified their teacher contracts after Public Act 349 went into effect. Addressing these issues is important not only for the more than 10,000 full-time public school teachers employed by the districts with these

contracts, but also because over the next two years, 120 additional school districts will need to comply with Public Act 349 for the first time, impacting nearly 25,000 teachers.*

Illegal Language

Of the 509 districts surveyed, 23 kept mandatory dues language in collective bargaining agreements ratified after Public Act 349 took effect (see Graphic 2). These districts represent almost 10 percent of Michigan school districts that approved teacher contracts after March 28, 2013.† These contracts do not provide a rationale for preserving this language prohibited by state law.

The Monroe school district is one of these 23 districts and employs about 350 teachers.¹³ Monroe's teacher contract states that employees will be fired if they do not financially support the Monroe City Education Association, stating: "[T]he services of such teacher shall be discontinued as of the end of the current school year."¹⁴

Monroe's collective bargaining agreement was approved by its board of education on March 4, 2014, nearly a year after Public Act 349 took effect. According to the minutes of the meeting, the district's six school board members who were present at the meeting approved the contract unanimously.¹⁵

Monroe Assistant Superintendent Ryan McLeod acknowledged that the language in Monroe's collective bargaining agreement was illegal. McLeod told Michigan Capitol Confidential (a news service published by the Mackinac Center) that "[t]his [language] absolutely should be taken out."¹⁶ It is unclear how the district plans to remove the language, and the contract does not expire until Aug. 15, 2016.¹⁷

The Vicksburg school district, just south of Portage, also appears to force teachers to pay union dues or agency fees. The district's contract was extended on Sept. 4, 2013, five months after Public Act 349 took effect. It requires employees "permanently employed" to either "become and maintain their membership in the [union]," "pay a representation fee ... to the [union]," or "pay sums equal to such dues" to a nonprofit charity "in lieu of periodic dues uniformly required of [union] members."¹⁸

The district believes that it may continue forcing teachers to financially support the Vicksburg Education Association, because the district's previous contract would not have expired until 2015. The district plans to continue to enforce this provision until the original agreement expires after the 2014-2015 school year.¹⁹

Graphic 2 lists the 23 districts with collective bargaining contracts that contain mandatory dues language. The "Date of Ratification" column indicates the date a district's school board approved

* This tally is of districts that have contracts that went into effect before March 28, 2013 and are set to expire in 2014 through August 2016. Author's calculation based on "2013-14 Pupil Headcount Data: Fall 2013 Enrollment Data" (Center for Educational Performance and Information, 2013), <http://goo.gl/pEuZmh> (accessed July 30, 2014); "School Personnel Data and Reports: Full Time Equivalencies Data" (Center for Educational Performance and Information, Dec. 2013), <http://goo.gl/9CqVYv> (accessed July 30, 2014).

† This is based on the number of contracts available on school district websites as of May 2014.

the collective bargaining agreement. This information comes from public school board meeting minutes (often posted online), and through Freedom of Information Act requests.

These districts are primarily small districts, with each employing an average of fewer than 100 teachers, but altogether, they employ about 2,100 teachers and enroll close to 35,000 students.²⁰

The Monroe district was identified previously by the Center for the district's inclusion of other prohibited language in a teachers union contract.²¹ Algonac, Farwell and Reese were previously identified for failing to offer performance-based compensation for teachers.²²

Graphic 2: Agreements Containing Illegal Language per Public Act 349

District	Date of Ratification	Language
Algonac	6/24/2013	"Bargaining unit members not joining the Association shall pay a service fee to the Association ... If a bargaining unit member does not pay ... the Employer shall deduct that amount from the bargaining unit member's wages." ²³
Bloomington	6/24/2013	"Any teacher who is not a member of the Association ... shall, as a condition of employment, pay a representation fee to the Association." ²⁴
Buckley	9/17/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association or pay a Service Fee to the Association." ²⁵
Chassell Township	10/21/2013	"[A]ny teacher who is not a member of the Association ... shall, as a condition of employment, pay a service fee to the Association." ²⁶
Colon	11/11/2013	"Any teacher who is not a member of the Association ... shall as a condition of employment, pay a service fee to the Association." ²⁷
Dansville	6/17/2013	"Any teacher [not paying dues] ... must render to the Association either the equivalent fees or the reduced Agency Fee." ²⁸
Farwell	8/19/2013	"All teachers ... shall as a condition of employment ... join the Association, or pay a service fee to the Association." ²⁹
Forest	7/8/2013	"Each bargaining unit member may ... join the Association and pay membership dues or pay a service fee to the Association." ³⁰
Frankfort-Elberta	8/12/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association or pay a service fee to the Association." ³¹
Gladwin	7/29/2013	"All bargaining unit members ... shall ... join the [union], or pay a Service Fee to the [union]." ³²
Kalkaska*	9/9/2013	"Each bargaining unit member shall, <u>as a condition of employment</u> ... join the Association, or pay a service fee to the union." (Emphasis in original) ³³
Lawrence†	6/24/2013	"[I]t shall be a condition of employment that all teachers ..." ³⁴
Leslie	9/25/2013‡	"Bargaining unit members shall, as a condition of employment, pay either dues or a Service Fee." ³⁵

* In Kalkaska's contract, the district notes that the agency shop fee language is unenforceable. The district is listed here because it preserved language contrary to Public Act 349.

† The Lawrence school district did remove some language from its contract that would require teachers to pay an agency fee, but the contract the district ratified after Public Act 349 still gives the impression that teachers must authorize dues to be deducted from their pay as a condition of employment.

‡ This is the date Leslie's collective bargaining agreement was signed by the Ingham Clinton Education Association. FOIA requests for the district's minutes showing the date of board ratification were ignored.

District	Date of Ratification	Language
Ludington	8/26/2013	"As a condition of employment, teachers shall ... pay either membership dues or a representation service fee to the Association." ³⁶
Mattawan	6/10/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association or pay a service fee to the Association." ³⁷
Monroe	3/4/2014	"[If a teacher does not pay dues or fees to the union], the services of such teacher shall be discontinued as of the end of the current school year." ³⁸
Mt. Pleasant	7/8/2013	"If a bargaining unit member does not pay [dues or fees] ... the employer shall deduct that amount from the bargaining unit member's wages and remit same to the Association." ³⁹
Munising	7/26/2013	"If the teacher fails to [pay dues or fees], the Association may file charges in writing with the Board and shall request termination of the teacher's employment." ⁴⁰
Northport	6/24/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association, or pay a service fee to the Association." ⁴¹
Parchment	7/1/2013*	"Any teacher who is not a member of the Association ... shall as a condition of employment, pay a service fee to the Association." ⁴²
Reese	7/11/2013	"Each bargaining unit member shall ... join the Association, or pay a Service Fee." ⁴³
Superior Central	8/19/2013	"Any teacher who is not a member of the Association ... shall pay a service fee." ⁴⁴
Vicksburg	9/4/2013	"Employees permanently employed ... must either ... become and maintain their membership in the Association, pay a representation fee ... or pay sums equal to such dues to a [charity]." ⁴⁵

Separate Agency Fee Agreements

Eight districts approved separate "agency fee agreements" with their unions in an attempt to continue to require teachers to pay union dues or fees as a condition of employment. These districts enroll about 27,000 students and employ more than 1,800 teachers.⁴⁶

These agency fee agreements are separate from the district's main collective bargaining agreements, and are focused on forcing teachers to financially support a union. Every separate agency agreement identified has a different duration than the district's standard union contract.

Graphic 3 lists these districts. The column labeled "Ratification Date" indicates the date a school district ratified its main collective bargaining agreement.

* This is the effective date of Parchment's contract, not necessarily the date of ratification. There is evidence that the contract was ratified after March 28, 2013: Julie Mack, "Most Kalamazoo-Area School Employees Will Feel Impact of New Right-to-Work Law This Summer," *MLive.com*, March 28, 2013, <http://goo.gl/LDJqho> (accessed Aug. 22, 2014).

Graphic 3: Separate Agency Fee Agreements

District	Date of Ratification	Language
Armada	3/19/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association, or pay a Service Fee to the Association." ⁴⁷
Clarkston	3/25/2013	"[F]ailure to pay the service fee will result in employment termination." ⁴⁸
Haslett	3/25/2013	"Each Association bargaining unit member shall, as a condition of employment ... remit membership dues or pay a service fee to the Association." ⁴⁹
New Haven*	3/21/2013	"All teachers ... as a condition of continued employment shall ... [b]ecome members of the Association, or [p]ay a service fee." ⁵⁰
Romulus	3/18/2013	"Any employee ... shall, as a condition of employment, pay as a representation fee to the Union an amount to be determined by the Union." ⁵¹
Rudyard	2/11/2013	"Any [bargaining unit members who are not paying dues] ... shall immediately execute an authorization permitting the deduction of an annual service fee." ⁵²
South Lake	3/21/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association or pay a service fee to the Association." ⁵³
Taylor	1/24/2013	"[E]ach person employed in the bargaining unit shall either become a member of the [union] and pay dues ... or agree to pay a service fee." ⁵⁴

Taylor is being sued by the Mackinac Center Legal Foundation.⁵⁵ Mackinac Center attorneys argue that the "union security agreement" approved by the Taylor school district was designed to require teachers to pay union dues and fees for as long as possible, and that a school district and union cannot have two simultaneous collective bargaining agreements in place with different expiration dates. The Taylor union security agreement expires on July 1, 2023, while the district's main collective bargaining agreement expires on Oct. 1, 2017.⁵⁶

Graphic 4 shows the details of the agency fee agreement and main contracts approved by the eight identified school districts. The effective and expiration dates of each district's main contract are compared to the effective and expiration dates of the district's agency fee agreement.

* New Haven's contract states it was entered into on March 21, 2013. Board meeting records suggest the contract was entered into around this time, but it may have been approved as early as February 2013. "Regular Board of Education Meeting" (New Haven Community Schools, Feb. 11, 2013), <http://goo.gl/r4lQK3> (accessed Sept. 2, 2014).

Graphic 4: Separate Agency Fee Agreement Dates

District	Main contract effective date	Agency fee effective date	Main contract expiration date	Agency fee expiration date
Armada ⁵⁷	9/1/2013	3/19/2013	8/31/2016	8/23/2023
Clarkston ⁵⁸	9/1/2013	3/25/2013	8/31/2014	6/30/2016
Haslett ⁵⁹	8/16/2013	3/22/2013	6/30/2016	6/30/2016
New Haven ⁶⁰	3/21/2013	3/21/2013	8/31/2017	8/31/2023
Romulus ⁶¹	8/16/2013	3/18/2013	8/15/2016	8/15/2016
Rudyard ⁶²	7/1/2013	2/11/2013	6/30/2014	6/30/2015
South Lake ⁶³	3/21/2013	3/21/2013	8/31/2016	8/31/2018
Taylor ⁶⁴	1/24/2013	1/24/2013	10/1/2017	7/1/2023

Armada, for example, approved a main collective bargaining agreement that took effect on Sept. 1, 2013, while its agency fee agreement took immediate effect on March 19, 2013. Armada's main collective bargaining agreement will expire on Aug. 31, 2016, while the district's agency fee agreement will continue for another seven years.

Similarly, Clarkston, Haslett and Romulus have agency fee agreements in place that took immediate effect, while their main contracts took effect after the Public Act 349 deadline. This arrangement allowed these districts to lock in immediate mandatory financial union support, while delaying the implementation of the other terms of the regular contract.

South Lake followed the pattern of Taylor: The district's main collective bargaining agreement and agency fee agreement both took effect immediately, but the expiration dates differ. South Lake's agency fee agreement is set to expire in 2018, two years after the district's main contract will have expired.⁶⁵

Delayed Effective Dates

Some districts ratified agreements prior to March 28, 2013, but set those agreements to take effect months later. This survey identified 15 districts with delayed effective dates, employing more than 2,700 teachers and enrolling about 46,000 students.⁶⁶ Since the law states that Public Act 349 applies to agreements that "tak[e] effect" after March 28, 2013, these contracts raise questions concerning their legality.⁶⁷

In May 2014, Michigan Capitol Confidential reported that Wyoming Public Schools had agreed to a collective bargaining agreement prior to March 28, 2013, but that the agreement did not take effect until Aug. 15, 2013.⁶⁸ The contract states, "Any unit employee who is [not paying union

dues] ... shall pay as a fee to the Association an amount determined by the Association.”⁶⁹ Wyoming Director of Finance and Human Resources Matt Lewis said that the language is “valid but innocuous. ... [W]e are a closed shop, but the district cannot threaten termination of an employee who refuses to pay union dues.”⁷⁰

Wyoming teachers paid dearly for this unenforceable language. During contract negotiations, the Wyoming district proposed removing that language.⁷¹ However, the Kent County Education Association responded to the district’s proposal by requesting that the illegal language be retained.⁷² The district allowed the language to remain, in order to “completely alter” the district’s salary schedule (which cost some teachers \$12,700 in salary annually), reduce paid leave days and add days to the school calendar.⁷³

“We achieved all of this because we gave [the union] three years of potentially unenforceable union security language,” Lewis told Michigan Capitol Confidential.⁷⁴

The largest district identified in this category is Chippewa Valley, which employs more than 900 teachers and enrolls about 16,500 students. According to Chippewa Valley’s contract, extended by the board in March 2013 with a letter of understanding, if a teacher does not pay dues or fees, “[the union] may request that the teacher’s services be terminated.”⁷⁵

However, the tentative agreement to extend this language did not take effect until July 1, 2013.⁷⁶ Interestingly, Chippewa Valley also agreed to a separate letter of understanding regarding union dues that did take effect in March. These multiple letters of understanding could be categorized as separate agency fees agreements, but appear here because the letter of understanding regarding the entire contract, including agency fees, took effect at a later date.

East China is a more clear-cut case. The district ratified its collective bargaining agreement in March 2013, before Public Act 349 went into effect.⁷⁷ However, the district’s collective bargaining agreement did not take effect until Aug. 26, 2013.⁷⁸

Graphic 5: Agreements Containing Illegal Language That Became Effective After March 28, 2013

District	Effective Date	Language
Cheboygan	9/1/2013	"[The union] shall certify to the [district] ... the amount of annual membership dues and/or representation service fees required of [union members] and/or non-member fee-payers." ⁷⁹
Chippewa Valley	7/1/2013	"In the event a teacher ... does not join the Association or tender their service fees to the Association, the Association may request that the teacher's services be terminated." ⁸⁰
Clintondale	9/1/2013	"[T]he failure of any teacher to [pay dues or fees to the union] is just and reasonable cause for discharge from employment." ⁸¹
East China	8/26/2013	"As a condition of continued employment, all teachers shall ... pay to the Association membership dues ... or pay to the Association a service fee." ⁸²
Grosse Ile	8/15/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association/Union, or pay a Service Fee to the Association." ⁸³
Litchfield	7/1/2013	"[A]ny teacher who is not a member of the Association ... shall, as a condition of employment, pay a Service Fee established by the Association." ⁸⁴
Marlette	7/1/2013	"The refusal of such teacher to pay such sum equivalent to the dues and assessments is recognized by the parties as reasonable and just cause for termination of employment." ⁸⁵
Merrill	7/1/2013	"Each bargaining unit member shall, <u>as a condition of employment ... join</u> the Association, or pay a service fee to the union." ⁸⁶ (Emphasis in the original.)
New Buffalo	8/1/2013	"[E]ach teacher who is not a member of the Association ... shall as a condition of employment pay a service fee." ⁸⁷
Northview	9/1/2013	"Each teacher ... shall, as a condition of employment, either become a member of the Association or pay to the Association a representation fee." ⁸⁸
Pinckney	7/1/2013	"Each Association bargaining unit member shall, as a condition of employment ... either join the Association and remit membership dues or pay a service fee to the Association." ⁸⁹
St. Louis*	7/1/2013	"Each bargaining unit member shall, as a condition of employment ... join the Association, or pay a service fee to the union." ⁹⁰
Tahquamenon†	7/1/2013	"Each bargaining unit member shall as a condition of employment ... join the Association or pay a service fee." ⁹¹
Tri County	7/1/2013	"Any teacher who is not a member of the Association ... shall, as a condition of employment, pay as a Representation Benefit Fee to the Association." ⁹²
Wyoming	8/15/2013	"Any unit employee who is not a member of the Association ... shall pay as a fee to the Association an amount determined by the Association." ⁹³

Split Effective Dates

Another issue concerning the implementation of Public Act 349 in school districts was the use of different effective dates for different portions of a collective bargaining agreement. Some districts made the section of language that Public Act 349 makes illegal take effect prior to March 28, 2013, but elected to make the remainder of the contract take effect at a later date. (There may be other districts that made just some portions of their contracts effective after March 28, 2013 — those are not discussed here).

* St. Louis may have ratified this contract after March 28, 2013, but board meeting minutes are not specific.

† Tahquamenon may have ratified this contract after March 28, 2013, but board meeting minutes are not specific.

Delaying the majority of a district's contract shows how districts and their unions identified a way to avoid Public Act 349 immediately, while delaying the remainder of their new contract. The districts with split effective dates employ about 2,200 teachers and enroll 33,800 students.⁹⁴

The collective bargaining agreement approved by the Warren Consolidated School District provides a clear example. The bulk of Warren's teachers union contract took effect on Aug. 24, 2013. An appendix to the agreement, however, states that "Each teacher shall, as a condition of employment ... join the Association or pay a service fee to the Association equivalent to the amount of dues uniformly required of members of the Association." This language, according to the appendix, took immediate effect when the district ratified the contract in March 2013. The contract does not expire until Aug. 29, 2021.⁹⁵

Lansing, another large district on this list, employs 900 teachers and enrolls close to 12,000 students.⁹⁶ Lansing's main contract took effect on July 1, 2013, but the article of the contract requiring mandatory union dues and fees took immediate effect when the district ratified the agreement in March 2013.⁹⁷

Berrien Springs is included on this list, but is a slightly different case. The district's contract states that it becomes effective upon ratification, which occurred in March 2013.⁹⁸ However, a district attorney noted in an email to a union official that "the contract will be ratified and become effective prior to March 28th (2013), however the contract language *changes* we have agreed to will be effective July 1 [emphasis added]."⁹⁹ Berrien Springs' contract states that "each bargaining unit member ... shall, as a condition of employment, join the Association or pay a Service Fee to the Association."¹⁰⁰

In Graphic 6 below, "Full contract effective date" indicates the main effective date of the contract.

Graphic 6: Agreements With Split Effective Dates

District	Full contract effective date	Language
Berrien Springs	7/1/2013	"[E]ach bargaining unit member ... shall, as a condition of employment, join the Association or pay a Service Fee to the Association." ¹⁰¹
Lansing	7/1/2013	"In the event [a teacher does not pay union dues or fees] ... the Board shall ... deduct the Representation Benefit Fee from the teacher's wages." ¹⁰²
Olivet	7/1/2013	"[E]ach bargaining unit member ... shall, as a condition of employment, join the Association or pay a Service Fee to the Association." ¹⁰³
Warren	8/24/2013	"Each teacher shall, as a condition of employment ... join the Association or pay a service fee to the Association." ¹⁰⁴
Waverly	7/1/2013	"[I]t shall be a condition of employment that all ... teachers ... either ... cause to be paid ... the membership fee ... or cause to be paid ... a Service Fee." ¹⁰⁵

* Full agreement effective on Aug. 24, 2013, agency fee portion effective in March 2013. "Agreement Between the Warren Consolidated Schools Board of Education and the Warren Education Association" (Warren Consolidated Schools, March 6, 2013), 51, 104, <http://goo.gl/gNSqH> (accessed July 31, 2014).

Modified Contracts

Some districts have modified parts of their teachers union contracts after March 28, 2013, without changing the contract to comply with Public Act 349. These districts have contracts that were ratified prior to the effective date of Public Act 349. There are about 1,700 teachers employed by these districts, teaching about 24,000 students.¹⁰⁶

The largest district on this list is Ann Arbor Public Schools, which approved a new “tentative agreement” with its teachers union on June 25, 2014, to modify employee compensation levels and allow the district to pursue teacher merit pay and a new teacher evaluation system.¹⁰⁷ Although it made these changes to the contract, the new tentative agreement did not remove language requiring teachers to pay union dues and fees as a condition of employment.

The Coldwater school district did something similar. It entered into a collective bargaining agreement on March 25, 2013, with its teachers union, requiring employees to pay union dues and fees as a condition of employment.¹⁰⁸ However, on June 24, 2013, the district added an agreement to its contract, changing teacher salary, insurance and merit pay.¹⁰⁹ This behavior may be an indication of a high level of trust between the district and its union, since district officials were willing to give the union a benefit (mandatory dues) in March, while delaying discussions of salary, insurance and merit pay for three more months.

Graphic 7 lists the districts that have been identified for modifying portions of their contracts after March 28, 2013, but chose not to comply with Public Act 349. “Modification Date” indicates when the district appears to have changed its collective bargaining agreement with a “letter of understanding” or some similar action.

Whether or not these districts should be in compliance with Public Act 349 is a question that impacts more than just these districts. Nine other districts agreed to contracts before March 28, 2013, that last at least five years.* The longest of these contracts extends until 2023.¹¹⁰ It is likely that these districts will need to modify their contracts in the future (especially those provisions impacting the district’s budget), but will these districts need to comply with Public Act 349 when these changes are made?

The answer will impact almost 6,400 teachers in some of Michigan’s largest school districts, including Utica, Dearborn, Warren Consolidated, Taylor, Hartland and Woodhaven-Brownstown, in addition to the 1,740 teachers employed in the six districts listed below.¹¹¹

* These districts are Utica, Taylor, Warren Consolidated, South Lake, Woodhaven-Brownstown, Lakeview (Calhoun), Dearborn City, Coldwater, Lansing and Hartland.

Graphic 7: Contracts Modified After March 28, 2013

District	Modification Date	Language
Ann Arbor	6/25/2014	"Teachers shall either submit a membership form or shall be considered agency shop fee payers to Association." ¹¹²
Beaverton	5/29/2013	"All teachers ... may either ... authorize[e] deduction of membership dues of the Association ... or [c]ause to be paid a representation fee." ¹¹³
Coldwater	6/24/2013	"In the event that a bargaining unit member has not [paid union dues] or paid the required service fee ... that member is not considered an employee." ¹¹⁴
North Huron	9/18/2013	"All ... teachers ... shall ... as a condition of employment ... either become members of the Association; or [p]ay to the Association an amount of money ... equal ... [to dues]." ¹¹⁵
Richmond	12/17/2013	"Any teacher who is not a member of the Association ... shall, as a condition of employment, pay as a Representation Benefit Fee to the Association." ¹¹⁶
Shepherd	8/1/2013	"Each bargaining unit member shall pay membership dues or a service fee to the Association." ¹¹⁷

Possible Explanations for the Varied Responses to Public Act 349

There may not be one single explanation for why so many school districts, based on the language in their teachers union contract, appear to have failed to completely comply with Public Act 349. Ignorance of the law is not a likely explanation: Officials must have been aware of Public Act 349, given the high level of media attention and deluge of contract negotiations that occurred in March 2013.

District officials may have desired to maintain an amicable relationship with their unions by cooperating with efforts to maintain forced dues. This mindset may explain why some district officials chose to cooperate with fast-tracked negotiations prior to March 28, 2013.

Another possible explanation for the large number of districts who appear to be noncompliant with Public Act 349 may be the strength of Michigan's teachers unions. There is no doubt that teachers union, and their officials, stand the most to lose from Public Act 349, especially if a significant number of teachers opt to leave the union and halt their financial support. The Michigan Education Association, the state's largest teachers union, stands to lose hundreds of dollars every year from each member who declines membership.

In late 2012, the Fordham Institute, a nonprofit education research organization, ranked the strength of Michigan's teachers unions as sixth-highest in the nation in terms of financial resources and membership rates and fourth in political involvement.¹¹⁸ Nearly a quarter of Michigan delegates sent to both Democratic and Republican national conventions were teachers union members.¹¹⁹

But, when it comes to state policy, Michigan teachers unions received the lowest possible ranking. Fordham notes that collective bargaining reform laws passed in 2011 — the implementation of which the Center reviewed in a previous study — reduced teachers unions' influence. The Fordham authors note that there is a "striking disparity" between Michigan teachers union resources and political involvement and the unions' actual impact on policy.¹²⁰

The disparity the Fordham report identified may be one influencing the large number of districts that appear to be attempting to avoid the implementation of Public Act 349. Since Michigan's teacher unions have not been able to stop the Legislature from passing laws they oppose, these unions may be attempting block and stall the implementation of these laws at the local level. With only small repercussions for ratifying union contracts that fail to comply with these new laws, there teachers unions stand to lose very little for encouraging districts to block or stall implementation. Under Public Act 349, individuals and school districts that have violated the law by including mandatory dues language in collective bargaining agreements will be punished with a fine of \$500 or less.¹²¹

The fact that 76 school districts agreed to new collective bargaining agreements during the four-month period between when Public Act 349 was signed and when it took effect suggests that teachers unions were actively seeking and relatively successful at compelling school district officials to act to stall the implementation of Public Act 349. Previous research published by the Mackinac Center suggests that unions acted similarly with regard to other state laws.*

Implication for Policymakers

Developing Compliance Guidance

This survey has identified 57 school districts, employing more than 10,000 teachers, whose implementation of Michigan's Public Act 349 raises significant questions. These teachers union contracts represent close to one-quarter of all the contracts that were signed after Public Act 349 became law.[†]

The variety of district responses to Public Act 349, in addition to previous research showing varied compliance with other state laws, suggests that there is need for better guidance about how school districts can comply with state laws. This guidance could take the form of a detailed compliance document that each district would have to submit to the Michigan Department of Education or the Michigan Employment Relations Commission. An opinion issued by the Michigan Attorney General may also help clarify some of the questions about separate agency fee agreements, delayed and split effective dates and modified contracts. Additional legislation that clarifies the current language may also be of use.

* In response to the collective bargaining reforms of 2011, some school districts ratified contracts that agreed to immediately reinstate prohibited language into their contracts if a union-backed ballot initiative were to pass in the 2012 general election. In response to a new law requiring districts to make performance a "significant factor" in determining teacher pay, some districts ratified union contracts that only paid teachers \$1 for excellent performance. Audrey Spalding, "Roadblocks to Reform?: A Review of Union Contracts in Michigan Schools" (Mackinac Center for Public Policy, 2014), <http://goo.gl/dr711> (accessed July 28, 2014); Tom Gantert, "Study: Most School Districts Violating Merit Pay Law," *Michigan Capitol Confidential* (Mackinac Center for Public Policy, Oct. 16, 2012), <http://goo.gl/GNN5OO> (accessed July 31, 2014).

† This is based on teacher contracts available on school district Web sites in the spring of 2014, and does not include contracts that may have been approved after that period.

Limiting Noncompliance

Given that the language of Public Act 349 is relatively straightforward and that school districts still seem to have difficulty completely complying or understanding the law, policymakers may need to provide more than just additional guidance to change school district behavior and improve the level of compliance. School district officials may need more of an incentive to comply with these recent changes to state law.

In order to assure that district officials comply with Public Act 349, state officials could consider increasing financial penalties for noncompliance. The current financial penalty for not complying with Public Act 349 is a \$500 fine to employers, unions and others.¹²² As the evidence provided above suggests, this may not be a large enough penalty to spur school officials and unions to demonstrate compliance. The Legislature might consider a larger fine against school and union officials that ratify contracts that fail to comply with state law.

Another monetary option would be to provide additional funding for school districts that comply with the law. Michigan's newest school aid budget includes "best practices" funding tied to district compliance with Michigan's merit pay requirement and Public Act 103 of 2011, which prohibited collective bargaining over teacher personnel policies, including placement, layoff and recall.¹²³ The 2014-2015 school year will provide an experiment to determine the impact of this financial incentive.

Another possible way to increase school district compliance with state law could be through Michigan's emergency manager law, which allows the governor to appoint an emergency manager to oversee financially unstable school districts and other local units of government.¹²⁴ The state could expedite the process of assigning an emergency manager for districts that fail to abide by state collective bargaining laws.

The emergency management review process could begin for districts that have ended the most recent fiscal year in deficit and also have failed to remove prohibited language from their collective bargaining agreement.* If districts fail to remove that language and continue to overspend, the state could place them under emergency management.

This move would be justified because recent collective bargaining reforms, including the prohibition against making layoffs solely on the basis of seniority, are part of an attempt to help districts better manage their finances. District officials bypassing those laws while still overspending are not responsibly managing public resources and their school system.

Further, it is likely that if such measures were taken, few districts would be placed under emergency management as a result of their collective bargaining agreements. It is far more likely that the possibility of being placed under emergency management would motivate districts to follow state law.

* Currently, the financial review process would begin for districts that end a fiscal year in deficit and have failed to submit a "deficit elimination plan" to the state.

Conclusion

Thousands of Michigan public school teachers are employed by districts that, at best, may be confusing them about their rights as employees under Public Act 349, and, at worst, illegally continuing to force them to financially support a union against their will. Thousands more are employed by districts with collective bargaining agreements that will soon expire — and who may soon also face confusing contract extensions or separate agency fee agreements designed to continue mandatory union dues or fees.

Based on the varied and questionable attempts to comply with Public Act 349 identified here, policymakers should provide guidance to school districts and other public employers as they implement changes to union contracts to comply with the new law. Not only will this increase compliance, it will help public school teachers and other public employees determine whether or not they qualify for protections contained in Public Act 349. In order for public employees to exercise these new rights, they first need to know if they are eligible for them.

About the Author

Audrey Spalding is the director of education policy at the Mackinac Center for Public Policy. She oversees the Center's education research and publications, including Michigan Education Digest. She is author of several studies on school performance, accountability and collective bargaining. She started at the Center in 2012 as an education policy analyst.

Before joining the Center, Spalding worked as a policy analyst at the St. Louis-based Show-Me Institute, where she provided analytical research and legislative testimony on tax credits, land banks and education. Her public policy op-eds have been published in a variety of newspapers, including The Detroit News, the St. Louis Post-Dispatch, the St. Louis Business Journal and The Kansas City Star.

Prior to her time at Show-Me, Spalding was an education reporter for the Columbia Missourian, where she was a co-recipient of the 2008 Missouri Press Association's Community Service Award for her efforts to highlight school district expenditures.

Spalding received her bachelor's degree from the University of Missouri, double-majoring in journalism and economics. She is currently pursuing an MBA at the University of Michigan, and is a native and resident of Ann Arbor, Mich.

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Audrey Spalding is director of education policy at the Mackinac Center for Public Policy. Before joining the Center, Spalding worked as a policy analyst at the St. Louis-based Show-Me Institute, where she provided analytical research and legislative testimony on tax credits, land banks and education.

Prior to her time at Show-Me, Spalding was an education reporter for the Columbia Missourian, where she was a co-recipient of the 2008 Missouri Press Association's Community Service Award for her efforts to highlight school district expenditures. Spalding received her bachelor's degree from the University of Missouri, double-majoring in journalism and economics. She is a native and resident of Ann Arbor, Mich.

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140 West Main Street P.O. Box 568 Midland, Michigan 48640

989-631-0900 Fax 989-631-0964 Mackinac.org mcpp@mackinac.org