

# Professional Educators Collaborative Conferencing Act



Update Session  
TSBA Headquarters  
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# Collaborative Conferencing



- **Public Chapter 378**
  - The Professional Educators Collaborative Conferencing Act of 2011
- **Completely abolished the Education Professional Negotiations Act**

# Collaborative Conferencing



- Requires TOSS, in conjunction with other stakeholders, to develop a training program.
- Requires LEAs to implement the training program by July 1, 2012.
- Suspends negotiations indefinitely between local boards of education and local professional employees' organizations.
- Existing contracts will remain in effect until their natural expiration.

# Collaborative Conferencing



- Recognizes principals, assistant principals, and supervisors as members of the local board's management team.
- Requires collaborative conferencing on:  
Salaries and wages, insurance, fringe benefits, leave, grievance procedures, payroll deductions, and working conditions.
- Requires MOU on the items agreed upon - The MOU shall be valid for up to three years.

# Collaborative Conferencing



- If there is no agreement on any items, the Board has the authority to address them according to board policy.
- No teacher, group of teachers, or teachers' organization shall be denied the opportunity to represent themselves or groups of professional employees.
- Directors may communicate with teachers on the subjects of collaborative conferencing through any means, medium or format the director chooses.

# Initiating Collaborative Conferencing



1. Between October 1 and November 1 of any year, 15% of the professional employees of an LEA submit, in writing, a request to conduct collaborative conferencing to the local board.
2. The local board appoints a number of local board members and an equal number of professional employees to a special question committee to hold a private poll.
3. The poll shall consist of two questions:

# Initiating Collaborative Conferencing



Question 1: Shall the professional employees of this LEA undertake collaborative conferencing with the board of education?

## If Yes

Question 2 (example):

Which of the following organizations would you like to represent you in collaborative conferencing?

- a. TEA
- b. PET
- c. unaffiliated

## If No

Question 2 (example):

Which of the following organizations would you prefer to represent you in collaborative conferencing?

- a. TEA
- b. PET
- c. unaffiliated
- d. none of the above

# Initiating Collaborative Conferencing



4. No board shall to engage in collaborative conferencing unless a majority of those eligible to vote respond "YES" to the first question.
5. If a majority vote "YES" to the first question, the board shall appoint between 7-11 persons to serve as management personnel, and the professional employees shall be represented by the same number of persons.
6. The representatives shall be selected according to each organization's proportional share of the responses to the second question; provided, however, that only those professional employees' organizations receiving fifteen percent (15%) or more of the responses to the second question shall be entitled to representation.

# Initiating Collaborative Conferencing



7. "Unaffiliated" but not the category of "none of the above," shall be considered a professional employees' organization. If fifteen percent (15%) or more select an unaffiliated representative, then the special question committee shall appoint a person to serve as an unaffiliated representative.
8. The professional employee representatives shall serve terms of 3 years. In the event of a vacancy, the appointing body shall name the replacement for the remainder of the term.
9. Prior to expiration of the terms of the members of the panel, a new poll shall be conducted to determine whether the professional employees want to continue to engage in collaborative conferencing.

# Initiating Collaborative Conferencing



10. Professional employee representatives and members of the local board's management personnel shall be appointed by December 1.
11. The results of the confidential poll and the names and positions of the appointed representatives shall be transmitted to the board, professional employees and professional employee organizations prior to January 1.
12. Those persons or organizations initiating the poll shall be assessed the reasonable costs necessitated in conducting the poll by the chair of the special question committee.

# Conducting Collaborative Conferencing



1. Management personnel and professional employee representatives shall participate in collaborative conferencing on the following terms and conditions of employment:
  - Salaries or wages;
  - Grievance procedures;
  - Insurance;
  - Fringe benefits, but not to include pensions or retirement programs of the Tennessee consolidated retirement system or locally authorized early retirement incentives;
  - Working conditions; except those working conditions which are prescribed by federal law, state law, private act, municipal charter or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;
  - Leave; and
  - Payroll deductions (except those dollars going to political activity).

# Conducting Collaborative Conferencing



2. No other terms or conditions of employment shall be the subject of collaborative conferencing and the following items are explicitly prohibited:
  - Differentiated pay plans or incentive compensation programs,
  - Expenditures of federal, state, local or private grants,
  - Evaluations of professional employees,
  - Staffing decisions and state board of education or local board of education policies relating to innovative educational programs, innovative high school programs, virtual education programs, and other programs for innovative schools or school districts that may be enacted,
  - Personnel decisions, such as transfers, assignments and filling vacancies, and none of these decisions may be based on seniority or length of service, and
  - Payroll deductions for political activities.

# Conducting Collaborative Conferencing



3. Through this process, the two teams may enter into a memorandum of understanding (MOU) on the terms and conditions of employment. The MOU shall not exceed three years in duration.
4. An MOU shall be binding on the parties from the date of its approval by the board of education or at a later date. However, any items that require funding shall not be effective until the local funding body has approved such funding in the budget.

# Conducting Collaborative Conferencing



5. The Act does not require collaborative conferencing, agreement on any terms, or an MOU. Absent an agreement and MOU on terms and conditions specified for collaborative conferencing in this act, the board of education shall have the authority to address such terms and conditions through board policy.



# *Model Practices, Policies, and Procedures for Personnel*

Lee Harrell, TSBA

Dr. Keith Brewer, TOSS

Stephen Smith, Dept. of Education

# Personnel Decisions



- These decisions and policies/procedures never had to be a topic of collective bargaining.
- Most are covered under law through the duties of the board or the director.

# Personnel Decisions



- Wouldn't "working conditions" encompass personnel decisions???? No.
- In *LCEA v. LCBE*, the TN Supreme Court held that "transfers or assignments are permissive subjects of bargaining that the Board may - but is not required to - negotiate;"

# First to the Top



## 49-1-302 (d)(2)

*The evaluations shall be a factor in employment decisions, including, but not necessarily limited to, promotion, retention, termination, compensation and the attainment of tenure status.*

# Reductions in Force



## *TCA 49-5-511(b)(1)&(2)*

*When it becomes necessary to reduce the number of teaching positions or nonlicensed positions in the system because of a decrease in enrollment or for other good reasons, the board shall be empowered to dismiss such teachers or nonlicensed employees as may be necessary. The board shall give the teacher or nonlicensed employee written notice of dismissal explaining fully the circumstances or conditions making the dismissal necessary.*

# Reductions in Force – Contractual Examples



- When the Board determines that a teacher or teachers must be laid-off, the individuals with the least seniority in the system shall be laid off.
- If the requirements of certification are fulfilled, systemwide seniority shall be the controlling factor and teachers with the least amount of seniority shall be laid off first.
- A teacher being laid-off who is certified for another area may displace the teacher in such area within the system with the least seniority.

# Reductions in Force – Contractual Examples



## Problems

- The language ignores teacher performance and fails to consider the negative impact of treating teachers as interchangeable parts.
- The language sometimes creates a seemingly endless process of senior teachers “bumping.”

# Reductions in Force



## Model Policy

*The director of schools shall develop procedures regarding the dismissal of certified employees as required in the best interests of the students or as necessary for the efficient operation of the schools. No single criterion, such as seniority, shall be used as the basis of any such dismissal.*

# Reductions in Force



## Model Procedures

- The certified employees' most recent evaluations, as adopted by the state board of education, shall be a primary factor in the director's dismissal of such employees due to reductions in force.
- Seniority shall not be a determining factor in the dismissal of certified employees dismissed due to reductions in force and shall be considered only if factors pertinent to the teachers' performance evaluations are equal.

# Recall



## 49-5-511 (b)(3)

A tenured teacher who has been dismissed because of abolition of position shall be placed on a preferred list for reemployment in the first vacancy the teacher is qualified by training and experience to fill. Nothing shall deprive the director of the power to determine the filling of such vacancy on the basis of the director's evaluation of the teacher's competence, compatibility and suitability to properly discharge duties required for the vacant position considered in the light of the best interests of the students in the school where the vacancy exists. The teacher's most recent evaluation may be a factor in such determination.

# Recall - Contractual Examples



- *All certified employees dismissed due to reductions in force shall be re-employed in order of system seniority within their area of certification.*
- *No individuals may be hired for vacant positions while employees within the area of certification are on the system's recall list unless the remaining eligible employees have refused the available position.*



## Problems

- Completely ties the hands of the director of schools. This ability is explicitly that of the director.
- Evaluations are not a factor in the decision-making process.

# Recall



## Model Policy

*The director of schools shall develop procedures regarding the recall of certified employees affected by reductions in force. All such reemployment decisions shall be made in the best interests of students and the efficient operation of the schools within the district. No single criterion, such as seniority, shall be used as the basis of any re-employment decision.*

# Recall



## Model Procedures

- The employees' most recent evaluations shall be a primary factor in the director's placement of a teacher affected by a reduction in force.
- Nothing shall prohibit the director from filling a vacancy with a certified employee not included on the preferred list if the director has considered the preferred list and found the employment of such teachers to be contrary to the best interests of the students.
- A teacher may be recalled to a vacant position within a school only if the principal interviews the teacher and consents to the hire.

# Transfers/Assignments



- It is the duty of the board of education to assign to its director of schools the duty to:
  - Assign teachers and educational assistants to the several schools. [T.C.A. § 49-2-301(b)(1)(L)]
  - Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, non-renew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in Chapter 5, Part 5 of this title. [T.C.A. § 49-2-301(b)(1)(EE)]

# Transfers/Assignments



The director of schools, when necessary to the efficient of operation of the school system, may transfer a teacher from one location to another within the school system, or from one type of work to another for which the teacher is qualified and licensed; provided, that transfers shall be acted upon in accordance with board policy. [T.C.A. § 49-5-510]

# Transfers/Assignments – Contractual Examples



- All vacant positions that occur after the first day teachers report of each school year will be filled with a late hire teacher. Regular hire teachers are not eligible to fill late hire positions that occur during the school year. Any such vacant positions will be posted prior to the next succeeding school year and filled by a regular hire employee.
- ...in the event of an involuntary transfer of a certified employee to the vacant position, the vacancy shall be filled by the teacher with the least amount of seniority who meets the certification criteria.

# Transfers/Assignments



## Problems

The educator hired mid-year may have done an exceptional job.

Merit and the evaluations are not factors in this process.

# Transfers/Assignments



## Model Policy

*The director of schools shall develop procedures regarding the transfer of employees. All such transfer decisions shall be made in the best interests of students or as necessary for the efficient operation of the schools within the district. No single criterion, such as seniority, shall be used as the basis of any transfer decision.*

# Transfers/Assignments



## Model Procedures

- The certified employees' most recent evaluations shall be a primary factor in the director's decision to transfer a teacher.
- Individual student performance on relevant assessments shall be a factor in determining appropriate transfer decisions.
- A teacher may be transferred to a school only if the principal interviews the teacher and consents to the transfer.

# Payroll Deductions



- Payroll deductions are still legal.
- PECCA prohibits payroll deductions for political activities for districts involved in collaborative conferencing.
- Review your policies/procedures to ensure the most efficient process for your system.

# Classified Employees/Responsibilities



- Coaches' supplements, additional pay for extracurricular activities, etc.
- The TN Supreme Court has held that these provisions are not statutorily allowed.
- “regardless of the language of the locally negotiated agreement, coaching and other assignments that do not require a license are not subject to the collective bargaining process because of the wording of specific provisions of the EPNA.”

# Megan Sampson



## First Week of June 2010

Named “Outstanding First-Year Teacher” by the Wisconsin Council of Teachers of English

## Second Week of June 2010

Received layoff notice

Conclusion



Thank you  
Questions?