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M A P E R S

RECENT LEGAL ISSUES AND DECISIONS

SPRING 2011 CONFERENCE

This summary is presented to provide a general reference to recent legal decisions of interest to Michigan public retirement and healthcare plans.

ADMINISTRATION

McKnight v. General Retirement System of the City of Detroit

Michigan Court of Appeals - Decided November 16, 2010

2010 Mich. App. LEXIS 2165

A member of the Retirement System named his wife as his primary survivor beneficiary and his mother as his contingent survivor beneficiary on membership enrollment forms. The member subsequently divorced his wife and died without amending his beneficiary forms. When his mother sought payment of his death benefit and annuity, the Retirement System indicated that it would pay the benefits to the deceased member's estate. The mother sued the Retirement System seeking a declaratory judgment for payment of the annuity and death benefit. The Court of Appeals awarded the mother payment of benefits as the member's only eligible beneficiary who was living at the time of his death. The Court reasoned that the mother qualified in line of succession because the member's former wife no longer met the qualification requirements as a result of the divorce.

McMillan, et al v. Mich Pub Schools Employees Retirement System, et al

Michigan Court of Claims - Decided April 1, 2011

Case No. 10-45-MM

Plaintiffs, active members of the Michigan Public Schools Employees Retirement System (MPERS), brought a class action against the Defendants seeking to invalidate legislation requiring public school employees to contribute 3% of their compensation to finance future retiree health care costs. The Court acknowledged that health care benefits are not "accrued financial benefits" protected by Article IX, Section 24 of the Michigan Constitution. However, the Court further held that the legislation was unconstitutional under both the federal and state constitutions because it results in the taking of private property for public use without just compensation. Such a taking was also found by the Court to violate Plaintiffs' rights to substantive due process.

O'Brien v. Pub Sch Employees' Retirement Bd

Michigan Supreme Court - Decided June 4, 2010

486 Mich. 958

The Supreme Court declined to hear Plaintiff's appeal because it was not persuaded that the questions presented should be reviewed. However, in a concurring opinion, Justice Corrigan wrote to express "shock and disbelief" at the salary of Mr. O'Brien, a school superintendent, and to urge legislative attention to the legislation, including the Public School Employees Retirement Act, that gave rise to such "eye-popping" use of tax dollars.

Price v. Mich State Treasurer

U.S. Dist. Court E.D. Michigan - Decided December 14, 2010

2010 U.S. Dist. LEXIS 138721

An incarcerated retiree's pension was garnished by the State pursuant to the State Correctional Facility Reimbursement Act. The retiree subsequently filed suit in federal district court alleging a denial of due process as a result of the garnishment of his pension without consent. The Court dismissed the retiree's claims holding that federal court review of state court proceedings (i.e., garnishment proceedings) is jurisdictionally limited to the Supreme Court of the United States. The retiree's proper avenue of redress was application to the U.S. Supreme Court for a writ of certiorari.

Raby v. Bd of Trustees of the Detroit Police and Fire Retirement System, et al

Michigan Court of Appeals - Decided March 17, 2011

2011 Mich. App. LEXIS 520

A member contacted the Retirement System for the purpose of obtaining benefit estimates under the regular service retirement option and the early retirement option. A Retirement System staff member advised the member that his benefits would be minimally affected if he elected to take an early retirement, and that he would maintain his medical benefits. The member elected the early retirement option and subsequently learned that his pension would be substantially less than a regular service retirement and that he was not eligible for continued health insurance. The member sued alleging that he detrimentally relied on the staff member's statements regarding his estimated pension benefit. The Court dismissed the member's claims reasoning that the staff member's statements did not amount to a promise of benefits on which there was detrimental reliance.

Retired Detroit Police and Fire Fighters Ass'n v. City of Detroit, et al

Michigan Court of Appeals - Decided December 16, 2010

2010 Mich. App. LEXIS 2414

The City of Detroit Police and Fire Retirement System was actuarially determined to be overfunded. Accordingly, the City and its Unions negotiated benefit increases for active members of the Retirement System and the Board of Trustees of the Retirement System approved an offset to the City's required contributions to the Retirement System. Subsequently, the retired members and beneficiaries of the Retirement System sued the City, Unions, and Retirement System alleging breach of fiduciary duty, breach of contract, and conspiracy. The Court upheld the dismissal of the retirees' claims reasoning that they lacked standing to sue because they had no substantial legal interest in the overfunding of the Retirement System. The Court further held that the retirees had suffered no special injury or right that would be detrimentally affected by the Board's decision to grant this City an offset.

Upton v. City of Royal Oak

U.S. Dist. Court E.D. Michigan - Decided September 22, 2010 *2010 U.S. Dist. LEXIS 99892*

A non-duty disability retiree sued the City and several of its officials alleging that he was wrongfully retired in violation of his federal due process rights under the Fourteenth Amendment of the United States Constitution. The Court dismissed the due process claims holding that written notice of an upcoming Retirement Board meeting and the opportunity to appear and present evidence at the Retirement Board meeting satisfied the due process requirements under the U.S. Constitution.

Williams v. Pub Sch Employees Retirement System, et al

Michigan Court of Appeals - Decided January 11, 2011 *2011 Mich. App. LEXIS 31*

A member of the Public School Employees Retirement System (“PSERS”) sought to change retirement plans after the window period had closed. The Retirement Board denied the member’s request finding that she was provided notice of the window period to change plans. The Court of Appeals upheld the Retirement Board’s decision holding that it was not arbitrary, capricious, or an abuse of discretion. The Court reasoned that even though the member alleged that she never received notice of the ability to change plans, she had been provided notice in the same manner as all similarly situated individuals, and thus the Retirement Board’s decision did not violate her due process rights. Additionally, the Board’s denial did not violate the equal protection clause because the member offered no proof that she was similarly situated to those members who were allowed to change after the window period had closed.

DISABILITY

Cleveland v. State Employees Retirement Board, et al

Michigan Court of Appeals - Decided March 29, 2011 *2011 Mich. App. LEXIS 594*

The Retirement Board denied a member disability retirement benefits finding that he was not totally disabled. In concluding that the member was not totally disabled, the Retirement Board relied on the medical records and reports of no less than ten different doctors. The medical evidence and opinions differed as to the member’s ability to work. The Court of Appeals determined that the Retirement Board’s decision was supported by sufficient evidence, and was not otherwise arbitrary and capricious.

Kondratowicz v. Northwest Airlines Inc., et al

6th Circuit Court of Appeals - Decided March 23, 2011 *2011 U.S. App. LEXIS 6176*

A member of Northwest Airlines’ Retirement Plan sought disability retirement benefits under the plan. The plan requires both “total” and “permanent” disability which renders the member incapable of any employment with Northwest to qualify for a disability retirement. Not one of the five medical experts who examined the member found her to meet both requirements of the plan. Accordingly, Northwest denied the member disability retirement benefits. The Court found this decision to be proper as there was no genuine dispute of material fact with regard to whether the member was “totally” and “permanently” disabled.

Mitchell v. State Employees Retirement System

Michigan Court of Appeals - Decided September 2, 2010

2010 Mich. App. LEXIS 1645

A member sought a duty disability retirement after sustaining a knee injury while employed by the State of Michigan. The Retirement Board determined that the member failed to meet his burden of showing that he was permanently disabled and incapable of performing all employment within his training, education, or experience, and denied his application for duty disability retirement benefits. The trial court reversed the decision of the Retirement Board's concluding that its decision was not supported by substantial evidence. The Retirement Board appealed and the Court of Appeals concluded that the trial court misapplied the substantial evidence test. The Court of Appeals held that the Retirement Board could reasonable conclude from the evidence as a whole that the member did not meet his burden of proof. Since the trial court must be deferent to the Retirement Board's findings regarding witness credibility and evidentiary questions, the trial court erred in its application of the substantial evidence test and in reversing the Retirement Board's decision.

Nason v. State Employees Retirement System

Michigan Court of Appeals - Decided October 28, 2010

2010 Mich. App. LEXIS 2051

A Michigan Department of Corrections Officer shattered his right heel bone while on vacation and subsequently applied for a non-duty disability retirement. The Retirement Board, interpreting the State Employees Retirement Act ("SERA"), denied the officer's application reasoning that he was still able to perform jobs other than a corrections officer based on his past experience and training. The Court of Appeals determined that the Retirement Board misapplied the disability standard contemplated by the SERA and held that the language of the SERA solely allows consideration of whether a member can perform the state job from which the member seeks retirement, not other employment positions or field for which the member may be qualified by experience and training.

Overton v. State Employees Retirement Board

Michigan Court of Appeals - Decided March 8, 2011

2011 Mich. App. LEXIS 476

A state employee suffered two knee injuries while working at a residential treatment facility for delinquent youth and applied for duty and/or non-duty disability retirement benefits. The Retirement Board determined that the member had failed to prove that his disability was the natural and proximate result of the member's performance of duty, and denied his application for duty disability retirement benefits. The Board further denied non-duty disability retirement benefits on the basis that no doctor had opined that the member was unable to work a sedentary job. The Court of Appeals agreed with the Board that the competent, material, and substantial evidence refuted that the member's knee condition was duty related. However, because the Retirement Board failed to address whether the member was totally incapacitated with regard to his job as a youth specialist, the Court of Appeals vacated the Board's decision with regard to non-duty disability benefits.

DOMESTIC RELATIONS

In re Combs

U.S. Bankruptcy Court E.D. Michigan - Decided September 3, 2010

435 B.R. 467

A retiree's former spouse sought relief from the retiree's bankruptcy proceedings to pursue an action in state court for her share of the retiree's pension benefits awarded under a consent judgment of divorce. The retiree contended that because an Eligible Domestic Relations Order ("EDRO") had never been entered, his former spouse had never obtained a property interest in his pension. The Bankruptcy Court held that despite the fact that an EDRO had never been entered, under Michigan law the entry of the consent judgment of divorce transferred to the former spouse a property interest in the retiree's pension. Accordingly, the former spouse was permitted to seek appropriate relief in state court.

Spaulding v. Brewer-Shapton

Michigan Court of Appeals - Decided February 10, 2011

2011 Mich. App. LEXIS 262

The parties entered into a consent judgment of divorce which provided in relevant part that a Qualified Domestic Relations Order ("QDRO") would be entered with regard to pension rights and retirement benefits. The language of the consent judgment of divorce was ambiguous because it did not specifically provide which pension and retirement benefits were subject to division. The Court of Appeals held that the trial court erred in entering the QDROs without conducting an evidentiary hearing to determine the intent of the parties. When parties enter into a consent judgment of divorce, an evidentiary hearing is necessary to determine the parties' intent because the facts underlying the consent judgment are never before the trial court.

FREEDOM OF INFORMATION ACT/OPEN MEETINGS ACT

Bisonet v. Bingham Township

Michigan Court of Appeals - Decided June 22, 2010

2010 Mich. App. LEXIS 1134

The Township Board held a special meeting to discuss a lawsuit filed against it under the Land Division Act. The Board entered into closed session to discuss the litigation and invited four additional township officials into the closed session. A Freedom of Information Act request was thereafter submitted seeking the minutes of the special meeting. The Township responded to the FOIA request, providing a copy of the minutes of only the open portion of the meeting and a lawsuit was filed. The trial court and Court of Appeals both held that the minutes of the closed session of the meeting were exempt from disclosure pursuant to the provisions of the Open Meetings Act and the FOIA.

Brown, et al v. Plainfield Township, et al

Michigan Court of Appeals - Decided November 10, 2010

2010 Mich. App. LEXIS 2143

Two members of the Township Board alleged violation of the Open Meetings Act (“OMA”) in the Township’s hiring of a building inspector and zoning administrator. Specifically, it was alleged that the interviews of candidates for the position were conducted in a meeting of a committee subject to the OMA. The interviews were in fact conducted by the Township Supervisor on his own, after which he made a recommendation to the Board. The trial court and Court of Appeals held that the individual Township Supervisor acting in his official capacity is not a “public body” subject to the provision of the OMA, and dismissed the suit.

Mandich v. Owendale Gagetown Area Schools Bd of Trustees, et al

Michigan Court of Appeals - Decided December 14, 2010

2010 Mich. App. LEXIS 2384

A former member of the school board sued alleging violations of the Open Meetings Act (“OMA”) when the current school board held a private gathering before its regularly scheduled open meeting. The trial court found that the former member had presented no evidence that the private gathering constituted a meeting under the OMA and dismissed the suit. The Court of Appeals agreed stating that the former member points to no evidence that the members present at the private gathering exchanged views, debated, or otherwise discussed the audit. Thus, there was no violation of the OMA.

Michigan Attorney General Opinion No. 7247

Mike Cox, Attorney General - Issued May 13, 2010

2010 Mich. AG LEXIS 7

Voted ballots, which are not traceable to the individual voter, are public records subject to disclosure under the Freedom of Information Act (“FOIA”). A person must be allowed to inspect or examine voted ballots, which are not traceable to the individual voter, and to receive copies of the ballots upon request subject to reasonable restrictions. The public body may charge a fee for the copying of the voted ballots as provided for in the FOIA. A person requesting access to voted ballots under the FOIA is entitled to a response from a public body granting or denying the request within 5 to 10 business days. However, the public body in possession of the voted ballots may not provide access to the ballots for inspection or copying purposes until 30 days after certification of the election.

THE FOREGOING SUMMARIES ARE PRESENTED FOR GENERAL INFORMATION PURPOSES ONLY AND ARE NOT TO BE CONSIDERED LEGAL ADVICE. PLEASE REFER TO THE TEXT OF THE FULL OPINION OR CONTACT VANOVERBEKE, MICHAUD & TIMMONY, P.C., AT THE ABOVE ADDRESS IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS MATERIAL.