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M A P E R S

RECENT LEGAL ISSUES AND DECISIONS

SPRING 2012 CONFERENCE

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

ADMINISTRATION

Bolhuis v. Public School Employees Retirement System

Michigan Court of Appeals – Decided July 26, 2011

2011 Mich. App. LEXIS 1392

A benefit estimate provided to a retiring member erroneously included a retroactive lump-sum longevity payment twice when calculating the retiring member's FAC. The Retirement Board corrected the calculation which reduced the retiree's FAC by approximately \$6,000.00. The retiree filed an action against the Retirement System, and the trial court held that the Retirement Board's action reducing the retiree's pension was arbitrary and capricious. However, the Court of Appeals concluded that the issue involved a matter of statutory construction and the trial court applied the wrong standard of review. The Court reinstated the Retirement Board's decision as consistent with the statutory definition of "compensation" under the Public School Employees Retirement Act.

CIGNA Corp v. Amara

United States Supreme Court – Decided May 16, 2011

131 S. Ct. 1866

The conversion of CIGNA's defined-benefit pension plan to a defined-contribution ("cash balance") plan was communicated to plan participants via a written announcement and summary plan description of the new plan. Plan participants challenged the conversion alleging that the summary plan description was deliberately misleading because it failed to mention a number of material changes that negatively impacted participants' benefits under the plan. The Supreme Court held that a summary plan description is not part of the plan itself, and therefore a plan participant cannot seek to enforce the language of a summary plan description that is inconsistent with a plan document.

Fitzpatrick v. Public School Employees Retirement System

Michigan Court of Appeals – Decided May 19, 2011

2011 Mich. App. LEXIS 923

A vested deferred member of the Retirement System died prior to her deferred retirement eligibility date. Having no record of a nomination of beneficiary form on file, the Retirement Board denied retirement benefits to the surviving spouse of the deceased member. The surviving spouse appealed the denial of benefits and sought to add a class action claim against the Retirement System. The Court of Appeals held that there is no authority allowing the addition of a class action claim to a claim for judicial review of an administrative appeal of the Retirement Board's decision. The trial court's authority is limited to affirmation, reversal or modification of the Retirement Board's decision. The trial court was not empowered to do anything more.

General Retirement System of the City of Detroit, et al. v. Snyder, et al.

U.S. Dist. Ct. E.D. Michigan – Decided September 29, 2011 *2011 U.S. Dist. LEXIS 111658*

The Detroit Retirement Systems sought to enjoin implementation of Section 19(1)(m) of the Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011) [MCL 141.1501 *et seq.*], alleging that the provision was unconstitutional. Section 19(1)(m) of the Act would allow an emergency manager to remove trustees serving on a local pension board and/or to replace all the serving trustees of the pension board. The Court determined that the Retirement Systems' claims were not ripe for review because an emergency manager had not yet been appointed for the City of Detroit, and the uncertainty facing the Retirement Systems did not constitute any more of a hardship than other local pension board who could also be potentially affected by the appointment of an emergency manager.

Genesee Cty Community Mental Health v. Sprague, et al.

Michigan Court of Appeals – Decided June 28, 2011 *2011 Mich. App. LEXIS 1200*

At the time the defendant employees left the employ of the Community Mental Health Department, the retirement provisions in effect only required eight (8) years of credited service to be eligible for health care benefits upon deferred retirement. However, prior to the time the Defendants qualified for deferred retirement benefits, the retirement provisions were changed to require fifteen (15) years of credited service to qualify for health care benefits upon deferred retirement. The employer argued that the retirement provisions in effect at the time of commencement of benefits controlled, and that Defendants were not entitled to health care benefits based upon the fifteen (15) year requirement. Defendants claimed that the retirement provisions in effect when the elected deferred retirement created a vested right to health care benefits because they met the contractual requirement at the time of election. The Court of Appeals agreed with the Defendants and held that they were vested in their accrued benefit at the time they elected deferred retirement and terminated their employment with the CMHD.

Goodenow v. Public School Employees Retirement Board

Michigan Court of Appeals – Decided March 6, 2012 *2012 Mich. App. LEXIS 402*

The applicant decided to retire at the end of the 2007 school year, but did not resign his employment until August 21, 2007, in order to remain a member of the local union negotiating team. His resignation was accepted by the school district effective June 30, 2007. However, the Retirement Board determined that he was not effectively retired until he submitted his resignation on August 21, 2007, and therefore his retirement benefits were not payable until September 1, 2007. The Court of Appeals determined that the Retirement Board incorrectly determined the applicant's effective retirement date under the Public School Employees Retirement Act. The Court reasoned that the Act contemplated the date the applicant last performed personal service, not the date the applicant actually severed the employment relationship. Accordingly, the Court held that Retirement Board's decision was premised on an erroneous interpretation of the applicable statute, and therefore, contrary to law. (Note: Dissenting opinion by Judge Sawyer opined that the Retirement Board's decision was supported by substantial evidence and should have been upheld.)

In re Constitutionality of 2011 PA 38

Michigan Supreme Court – Decided November 18, 2011 *490 Mich. 295*

In response to a request from Governor Snyder for an advisory opinion regarding the constitutionality of Public Act 38 of 2011, the Supreme Court held that reducing or eliminating the tax exemption for public pension incomes does not impair accrued financial benefits of a pension plan or retirement system of the state of its political subdivisions under Article IX, Section 24 of the Michigan Constitution. Furthermore, reducing or eliminating the tax exemption does not violate the Equal Protection Clause or the Contracts Clause of the U.S. Constitution or the Michigan Constitution. However, the Court also held that determining eligibility for income tax exemptions and deductions based on total household resources creates a graduated income tax in violation of the Michigan Constitution.

McCloughan v. Public School Employees Retirement System

Michigan Court of Appeals – Decided December 20, 2011

2011 Mich. App. LEXIS 2295

After executing an employment contract for the 1968-69 school year, plaintiff was drafted and inducted into the army before the school year actually began. Upon completing his armed service, plaintiff executed another employment contract for the 1970-71 school year. Plaintiff remained an employee of the school district until his retirement in 2008. Upon application for intervening military service credit for the period of his active duty, the member's application was denied by the Retirement Board on the basis that he had not begun his employment before he began military service. The Court of Appeals disagreed and held that the Retirement Board's decision was affected by a substantial and material error of law. The Court reasoned that the plaintiff was hired when he and the school district executed the employment contract, and that as a result he was an employee and member of the Retirement System at the time of his inducted into the armed services.

Omokehinde v. Detroit Bd of Education

Michigan Court of Appeals – Decided January 24, 2012

2012 Mich. App. LEXIS 142

Pursuant to a retaliatory discharge and discrimination lawsuit, Plaintiff entered into a settlement agreement with the Board of Education that provided for restoration of sick days, personal days, vacation time, and seniority for the period she was not employed as a result of the wrongful discharge. Subsequently, Plaintiff claimed that the Board was in breach of the settlement agreement because it did not notify the Michigan Public School Employees Retirement System (MPERS) of her restored seniority and did not make employer contributions to the Retirement System for those restored years of service. The Board responded that it agreed to restore Plaintiff's seniority rights, but not her pension rights. The trial court agreed with the Plaintiff and ordered the Board to restore her service credit with MPERS. The Court of Appeals, applying principles of contract interpretation, held that the settlement agreement was ambiguous with regard to the restoration of pension rights. Accordingly, it remanded the matter back to the trial court for further factual development as to the intent of the parties with regard to Plaintiff's pension rights.

COLLECTIVE BARGAINING

AFSCME Council 25, et al. v. State Employees Retirement System, et al.

Michigan Court of Appeals – Decided August 25, 2011

2011 Mich. App. LEXIS 1524

Various unions representing state employees negotiated for a 3% hourly wage increase for the 2010-2011 fiscal year. The collective bargaining agreements were approved by the Civil Service Commission and transmitted to the Governor for incorporation into the State budget. Unable to obtain the required 2/3 majority vote to override the 3% compensation increase, the Legislature enacted legislation that required 3% contribution from the compensation of active employee members into the public employee retirement health care funding act. The unions challenged the constitutionality of this legislation. The Court of Appeals held that the legislation was unconstitutional and void. The Court stated that the Michigan Constitution expressly provides that the rate of compensation for all classified service employees is fixed by the Civil Service Commission. It further provides the process for a legislative override of any wage increase by a vote of 2/3 of the legislature. When the legislature did not achieve its goal in preventing the 3% wage increase, it enacted new legislation to fill a budget deficit. When a statute contravenes the provisions of the Michigan Constitution it is unconstitutional and void.

Doucette, et al. v. City of Marquette, et al.

Michigan Court of Appeals – Decided August 9, 2011

2011 Mich. App. LEXIS 1463

The City was required to provide its former City Manager with retiree health care benefits pursuant to the provisions of his employment contract. His employment contract provided that he was entitled to the fringe benefits typically provided to department heads of the City. The fact that the City Commission had not formally approved a benefits package for department heads did not nullify the provision of the City Manager's contract. At the time he entered into his employment contract, the executive package of fringe benefits included retiree health insurance to an employee receiving a pension. The Court held that plaintiff was receiving a pension when he began to draw benefits under the defined contribution plan. Accordingly, the contract provision providing fringe benefits was binding on the City.

Macomb County, et al. v. AFSCME Council 25 Locals 411 and 893, et al.

Michigan Court of Appeals – Decided September 20, 2011

2011 Mich. App. LEXIS 1587

The employers' unilateral adoption of a different mortality table for calculating joint and survivor pension benefits violated the duty to bargain over retirement benefits contained in the Public Employment Relations Act ("PERA"). Although actuarial assumptions used to determine whether the Retirement System is receiving sufficient contributions to maintain adequate funding are not a subject of bargaining, the actuarial assumptions used to calculate optional forms of benefit payments under the Plan (i.e., mortality tables) are subject to mandatory bargaining. The Court of Appeals also concluded that the parties' past practice of accepting a 100% female/0% male mortality table over the prior 24 years constituted a modification of the contract that could not be unilaterally altered.

Oakland County v. Oakland County Deputy Sheriff's Association

Michigan Court of Appeals – Decided August 9, 2011

2011 Mich. App. LEXIS 1456

A deputy sheriff was terminated from his employment and his union disputed the termination. Arbitration of the dispute resulted in an arbitration award reinstating the deputy with no loss of seniority or benefits, but without back pay or back benefits. On reinstatement, the deputy was not credited with service credit under the Retirement System. The parties sought clarification of the arbitration award and the arbitrator held that the deputy was entitled to service credit for pension purposes. The Court of Appeals held that the arbitrator's determination that the deputy was entitled to pension service credit upon reinstatement to employment was within the essence of the deputy's collective bargaining agreement because nothing in the contract prohibited the arbitrator from awarding pension service credit.

DISABILITY

Britton v. State Employees Retirement System

Michigan Court of Appeals – Decided June 28, 2011

2011 Mich. App. LEXIS 1190

The Retirement Board denied plaintiff's application for non-duty disability retirement based on the medical reports of two separate doctors that concluded that plaintiff was not totally or permanently disabled. On appeal of the Retirement Board's decision, the trial court concluded that plaintiff was sufficiently disabled to qualify for non-duty disability retirement benefits because her complaints of pain were supported by an objectively manifested injury. The Court of Appeals held that the trial court applied the incorrect standard of review and reinstated the decision of the Retirement Board. The Court of Appeals found that competent, material, and substantial evidence supported the Retirement Board's decision denying non-duty disability retirement benefits.

Hunter v. Public School Employees Retirement System

Michigan Court of Appeals – Decided January 31, 2012

2012 Mich. App. LEXIS 198

The Retirement Board’s denial of duty disability retirement benefits was reversed by the trial court which found that the decision was not supported by competent, material, and substantial evidence because the independent medical advisers did not physically examine the applicant and wrongfully relied on a dictionary definition of the applicant’s job and not his actual duties of employment. The Court of Appeals held that the trial court misapprehended or misapplied the substantial evidence test in reversing the Retirement Board’s decision. The Court of Appeals reasoned that it is not a reviewing court’s function to pass on the credibility of witnesses, namely the examining physicians, and the trial court should not have disregarded the opinions of the Retirement Board’s medical advisers simply because they did not physically examine the applicant. The Court of Appeals concluded that the Retirement Board made a decision supported by evidence that a reasonable person would accept as accurate.

Monroe v. State Employees Retirement System

Michigan Court of Appeal – Decided June 28, 2011

2011 Mich. App. LEXIS 1501

The Retirement Board denied non duty disability retirement benefits based on the opinions of four examining physicians that the applicant’s condition was not permanent. A trial court affirmed the decision of the Retirement Board. On appeal, the Court of Appeals held that the Retirement Board’s denial was consistent with the law and supported by competent, material, and substantial evidence on the whole record. The Court of Appeals reasoned that an examination of applicant’s medical records was sufficient to constitute a medical examination of the member under the State Employees Retirement Act. The Court of Appeals also noted that the fact that the applicant was received state long-term disability benefits and social security disability benefits had no impact on the Retirement Board’s decision.

INVESTMENT

General Retirement System of the City of Detroit, et al. v. UBS, et al.

U.S. Dist. Ct. E.D. Michigan – Decided June 30, 2011

799 F. Supp. 2d 749

The City of Detroit Retirement Systems asserted that UBS fraudulently induced the systems into buying an equity position in a collateralized loan obligation (“CLO”). Specifically, the Retirement Systems alleged that UBS knowingly misrepresented expected returns of 10-15% in the CLO investment. These representations were not contained in any of the contractual documentation between the parties. The Retirement Systems sued pursuant to the Michigan Public Employee Retirement System Investment Act (“Act 314”) and under common law theories of breach of contract, breach of fiduciary duty, fraud, misrepresentation, and unjust enrichment. The Court dismissed the Retirement System’s claims under Act 314 because all of the contracts between the parties contained choice-of-law provisions referencing New York law. The Court refused to dismiss the Retirement Systems’ fraud and misrepresentation claims, based on a merger clause contained in a side letter agreement between the parties. However, the Court noted the difficulty facing the Retirement Systems, as “sophisticated investors”, in justifying their reliance upon UBS’s allegedly false representations when the Retirement Systems failed to negotiate such representations into the written contracts.

FOIA/OPEN MEETINGS ACT

Ader v. Delta College Board of Trustees

Michigan Court of Appeals – Decided July 14, 2011

2011 Mich. App. LEXIS 1279

In a lawsuit by an individual against the Delta College Board of Trustees for a violation of the Open Meetings Act (“OMA”), the Court of Appeals held that the OMA confers standing on individuals to commence a civil action for injunctive relief to either compel compliance with the OMA or to enjoin further noncompliance with the Act.

Bloch v. Davison Community Schools

Michigan Court of Appeals – Decided April 26, 2011

2011 Mich. App. LEXIS 771

The School District's imposed fee for responding to plaintiff's freedom of information request was permitted under the provisions of the FOIA. The Court of Appeals held that the FOIA plainly provides that a public body may charge for labor costs attributable to having its own employees respond to a FOIA request. The Court further held that the costs attributable to responding to plaintiff's request constituted an "unreasonably high cost" chargeable to the plaintiff under the FOIA, where the costs incurred in responding to plaintiff's request exceeded the costs incurred in responding to all FOIA requests for the previous school year. The Court also noted that the School District's FOIA policy properly identified the duplication and labor costs chargeable under the Act.

Citizens for Public Accountability & Responsible Development, et al. v. Northville Twp Bd of Trustees

Michigan Court of Appeals – Decided May 26, 2011

2011 Mich. App. LEXIS 1008

The Township Board held several public meetings for the purpose of discussing the settlement of an ongoing lawsuit over the development of property within the Township. No Township residents were present at the public meetings. Upon settlement of the litigation with the developer, plaintiff, on behalf of the Township residents, sued seeking to invalidate the settlement agreement on the grounds that the Township Board violated the notice requirements of the Open Meetings Act ("OMA") and improperly recorded the minutes of the meetings in question. The Court held that because the meeting notices were posted on bulletin boards within the Township offices at least 18 hours in advance of the meetings, the notice requirements of the OMA were not violated. However, the Court did determine that the Township Board's minutes violated the OMA because they did not accurately reflect the decision to settle the ongoing litigation. The Court reasoned that the minutes only provided that the Township supervisor and clerk were authorized to execute documents pertaining to the litigation which were presented by the attorney. The minutes did not state the Board's actual decision to settle the litigation, nor did they reflect what documents the attorney had presented.

Higgs v. Delta College Board of Trustees

Michigan Court of Appeals – Decided April 17, 2012

2012 Mich. App. LEXIS 677

A member of the Delta College Board of Trustees alleged a violation of the Open Meetings Act ("OMA") because he was interrupted while speaking during the public comment segment of a public budget meeting. The Court of Appeals held that the OMA was not violated because the meeting transcript clearly indicated that the Board member was permitted to address the Board during the public comment segment of the meeting and was not prevented from making and completing his comments. Additionally, the Court noted that it did not believe the OMA was intended to provide a forum for members of a public body to present their personal disagreements about the decision-making of the public body during the public comment section of a meeting.

Hopkins v. Township of Duncan

Michigan Court of Appeals – Decided October 20, 2011

39 Media L. Rep. 2513

A Township resident filed a request under the Freedom of Information Act ("FOIA") requesting copies of any notes taken by any elected official during any Township Board or Zoning Board meetings in the previous 12 months. The Township failed to produce any records in response to the resident's request, and the resident sued for a violation of the FOIA. The Township claimed that the notes taken by one Township Board member were not "public records" subject to disclosure because they were strictly for the Board member's personal use, not shared with other Board members, and not kept in the Township Board's files. The Court agreed, holding that handwritten notes of a township board member taken for personal use, not circulated among other board members, not used in the creation of the minutes of any meetings, and retained or destroyed at the member's sole discretion are not public records subject to disclosure under the FOIA.

Katkowsky v. Michigan State Police

Michigan Court of Appeals – Decided April 24, 2012

2012 Mich. App. LEXIS 763

An attorney representing plaintiffs in a pending federal lawsuit against the Michigan State Police (“MSP”) submitted a FOIA request to the MSP for records regarding the receipt of funds from the U.S. Department of Transportation, and for records relating to the funding of a motorcycle safety program. The MSP denied the request as records relating to a civil action in which the requesting party and the public body are parties. The attorney brought a lawsuit against the MSP for violations of the FOIA. The Court of Appeals held that the MSP’s application of the FOIA exemption was reasonable. Although the Court declined to address whether the records actually related to the federal court action or whether the attorney was a party, it concluded that the MSP’s determinations with regard to the FOIA were not arbitrary and capricious.

Speicher v. Columbia Township, et al.

Michigan Court of Appeals – Decided September 20, 2011

2011 Mich. App. LEXIS 1599

A Township resident requested to be provided with copies of any meeting notices involving the appointment of a township treasurer. The Township failed to provide the resident with the notice of a special meeting in which the township treasurer was appointed. The resident sued for a violation of the Open Meetings Act and the trial court ruled that he was not entitled to a copy of the notice because he did not pay a yearly fee as required by the Act. The Court of Appeals disagreed and held that the Township’s failure to establish a yearly fee for copies of meeting notices precluded the resident from having to pay. In other words, the Township’s silence set the fee at zero dollars. The Township could not circumvent the requirements of the OMA by simply failing to set a yearly fee for providing copies of meeting notices.

DOMESTIC RELATIONS

Estate of Reed v. Reed

Michigan Court of Appeals – Decided June 23, 2011

293 Mich. App. 168

A default judgment of divorce was entered that awarded each party all rights in their respective pension plans free and clear from any claim by the other party. Mr. Reed subsequently died without having completed a change of beneficiary form with his employer’s 401(k) plan administrator. As a result, Mr. Reed’s former spouse was paid benefits in the amount of \$150,000 as the designated beneficiary under the plan. When Mr. Reed’s estate learned of the distribution, a lawsuit was initiated seeking to enforce the terms of the judgment of divorce and recover the distribution made to the former spouse. The former spouse contended that because the divorce judgment was entered by default, the waiver of her rights to Mr. Reed’s pension benefits was invalid. The Court held that the former spouse’s waiver of her rights to Mr. Reed’s pension benefits was valid and enforceable based on her course of conduct during the divorce proceedings. Specifically, the Court pointed out that she did not dispute the notice of the divorce proceedings and/or the proposed content of the default judgment of divorce; she did not respond to the divorce complaint or seek to have the judgment of divorce set aside. The former spouse was ordered to return all funds she received from the 401(k) plan to Mr. Reed’s estate.

Keebler v. Keebler

Michigan Court of Appeals – Decided July 21, 2011

2011 Mich. App. LEXIS 1361

The parties entered into a consent judgment of divorce which provided that all retirement benefits shall be divided equally pursuant to qualified domestic relations orders. An Eligible Domestic Relations Order (“EDRO”) was entered awarding the plaintiff a share of the defendant’s pension, including any automatic annual increases, and designating plaintiff as surviving spouse for any pre-retirement survivor benefits. The EDRO was explicitly incorporated into the judgment of divorce. The Court of Appeals held that the language of the judgment of divorce and the incorporation of the EDRO thereto demonstrated an intent between the parties for the defendant to receive similar rights to plaintiff’s pension. Accordingly the trial court was directed to enter a Qualified Domestic Relations Order in favor of defendant with provisions matching those of the EDRO.

Neville v. Neville

Michigan Court of Appeals – Decided February 16, 2012

2012 Mich. App. LEXIS 286

A default judgment of divorce, referencing a Qualified Domestic Relations Order (“QDRO”), awarded the Alternate Payee 50% of the present value of the Plan participant’s pension and designated her as “surviving spouse” for pre and post retirement benefit purposes. Several years later, the Plan participant requested that the trial court modify the terms of the QDRO. The Court of Appeals determined that a QDRO executed contemporaneously with the divorce judgment and required by the terms of the judgment must be treated as part of the property settlement in the divorce judgment. Accordingly, an amended QDRO could not change the parties’ substantive rights reflected in the judgment of divorce. Where the judgment of divorce did not limit the Alternate Payee’s survivorship benefit rights to a proportionate interest based on years of marriage, the amended QDRO also could not contain such a limitation. Furthermore, where the QDRO established the formula for determining the Alternate Payee’s share of the benefit, the trial court could not modify that formula.

Roller v. Roller

Michigan Court of Appeals – Decided January 26, 2012

2012 Mich. App. LEXIS 179

An ambiguous provision in the judgment of divorce referencing the entry of a Qualified Domestic Relations Order (QDRO), was properly interpreted by the trial court to award the defendant the balance of plaintiff’s 401(k) account. The trial court’s conclusion that the defendant was entitled to the balance of plaintiff’s 401(k) pursuant to the provisions of a QDRO was not clearly erroneous where the judgment of divorce indicated an intent to award defendant the balance of the account.

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.