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M A P E R S

RECENT LEGAL ISSUES AND DECISIONS

SPRING 2007 CONFERENCE

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

ADMINISTRATION

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

Michigan Court of Appeals - Decided: July 25, 2006

2006 Mich. App. Lexis 2294

The Court of Appeals determined that the Public Employee Retirement System Investment Act (Act 314) authorizes the Retirement Boards to retain all services necessary for the conduct of the affairs of the Retirement Systems. The Court held that Act 314 grants the Retirement Boards, as investment fiduciaries, the option to become autonomous employers and hire, direct and fix the compensation of their employees. The Court found that the Retirement System's Executive Secretary shall have the exclusive right to direct pension employees in the performance of their duties on behalf of the Retirement Systems. The Court noted that in light of the relationship between the Retirement System and the City, the City cannot have control over the appointment and management of the Executive Secretary responsible for managing the affairs of the Retirement Systems and that Act 314 supercedes conflicting City Charter provisions.

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

Michigan Court of Appeals - Decided: February 6, 2007

2007 Mich. App. Lexis 286

The Court of Appeals found that the composition of the Board of Trustees is a matter subject to collective bargaining agreement under the Public Employee Relations Act (PERA), and that a Charter provision enacted pursuant to the Home Rule Cities Act to add a retiree representative to the Retirement Board cannot contravene the obligations imposed by the PERA. Therefore, the City could not unilaterally implement or be compelled to amend the Retirement System to add a retiree trustee position on the Board.

Miller v. City of Flint

Michigan Court of Appeals - Decided: February 27, 2007

2007 Mich. App. Lexis 530

The Court of Appeals affirmed the Circuit Court's finding that the retiree's final average compensation (FAC) should be based on 365-day periods, which could include 27 pay periods, and that retirees could challenge the City's FAC calculation if the retiree could demonstrate that another method of calculation would result in a higher pension benefit.

Palazzola v. City of Fraser Consol. Retirement System, et al.

Michigan Court of Appeals - Decided: August 8, 2006

2006 Mich. App. Lexis 2444

Where an ambiguity arose from the inclusion of a sample calculation of a retirement benefit, the Court of Appeals determined that the Retirement Board properly exercised its authority to interpret the plan.

Caprathe v. Judges Retirement Board

Michigan Court of Appeals - Decided: April 24, 2007

2007 Mich. App. Lexis 1075

The Court of Appeals upheld the Retirement Board's adoption of a policy which prohibited all transfers of service credit under Section 6 of the Reciprocal Retirement Act, and found that the Board's denial of the judges' request to transfer credit was consistent with the Act.

Highland Park Policemen and Firemen Retirement System, et al. v. City of Highland Park, et al.

Michigan Court of Appeals - Decided: June 22, 2006

2006 Mich. App. Lexis 1998

The Court of Appeals upheld the Circuit Court's determination that the annual two-percent benefit increases over eight years, which the City agreed to pay in a promissory note entered into with the Retirement System, would revert at the expiration of the agreement. Therefore, the pension amount would not be frozen at the amount in effect after eight years of two-percent increases, but would revert to the benefit amounts existing in 1996.

DaimlerChrysler Corp., et al. v. Cox, et al.

6th Circuit Court of Appeals - Decided: May 23, 2006

2006 U.S. App. Lexis 12599

An ERISA pension plan is not required to send benefits to an address other than that listed by the retiree and thus may ignore directives from the State of Michigan to mail prisoner-retiree's benefits to their prison address so that the State can recapture their incarceration costs under the Michigan State Correctional Facility Reimbursement Act.

Appoloni, et al. v. United States

6th Circuit Court of Appeals - Decided: June 7, 2006

2006 U.S. App. Lexis 13940

The Court of Appeals found that early retirement incentive payments made to Michigan teachers in exchange for giving up statutory tenure rights are taxable wages under the Federal Insurance Contribution Act (FICA).

Snyder, et al. v. City of Romulus

Michigan Court of Appeals - Decided: June 20, 2006

2006 Mich. App. 1986

The Court of Appeals upheld the Circuit Court's decision that the enhanced early retirement plan provided to police command officers did not violate the Civil Rights Act or the Open Meetings Act.

46th Circuit Trial Court v. County of Crawford, et al.

Michigan Court of Appeals - Decided: July 28, 2006

2006 Mich. Lexis 1463

The Court of Appeals held that the 46th Circuit Trial Court cannot use its inherent judicial power to compel counties to fund enhanced pension and retiree health care benefits because such benefits are not "reasonable and necessary" to the court's ability to meet "critical judicial needs" and further, counties were not contractually obligated to provide funds for the enhanced benefits plan.

Hempstead v. Charter Twp. of Waterford, et al.

Michigan Court of Appeals - Decided: April 20, 2006

2006 Mich. App. Lexis 1272

The Court of Appeals found that the Retirement Board's decision to reduce a judge's local retirement benefits because the salary standardization payment was being considered for purposes of calculating the judge's state retirement benefits was appropriate and supported by substantial evidence. Therefore, the Court upheld the Retirement Board's ability to correct the error in the calculation of the judge's pension benefit for compliance with the Judges Retirement Act, and found that the Circuit Court improperly substituted its judgment for that of the Retirement Board.

DISABILITY

Scruggs v. State Employees Retirement Board

Michigan Court of Appeals - Decided: July 20, 2006

2006 Mich. App. Lexis 2243

The Court of Appeals found that the Circuit Court had exceeded its authority when it determined that further tests and another medical examination were necessary before the Retirement Board could properly decide the individual's application for non-duty disability retirement benefits. The Court of Appeals recognized that the Circuit Court's authority was limited to determining whether the Retirement Board's decision was supported by competent, material, and substantial evidence on the whole record. Accordingly, the Court of Appeals upheld the Retirement Board's decision to deny the application for non-duty disability retirement.

Baker v. State Employees' Retirement Board, et al.

Michigan Court of Appeals - Decided: October 24, 2006

2006 Mich. App. Lexis 3174

Where the Retirement Board denied an individual's request for duty disability benefits based upon the findings of an administrative officer that the individual had not met the burden of proof regarding the cause of the psychological disability, the Court of Appeals remanded the case to the lower court to determine if the administrative officer properly considered the evidence submitted.

EEOC v. Jefferson County Sheriff's Dep't, et al.

6th Circuit Court of Appeals - Decided: October 31, 2006

2006 U.S. App. Lexis 26981

Where Kentucky Retirement Systems disqualified employees for disability retirement benefits if the employee had reached normal retirement age and calculated disability benefits resulting in lower monthly benefits for older employees, the Court of Appeal found that the Equal Employment Opportunity Commission (EEOC) had established a prima facie violation of the Age Discrimination in Employment Act (ADEA). The Court of Appeals reversed the District Court's summary disposition dismissal of the matter and remanded the case to the lower court for a determination on the merits of the case.

Davis v. State Employees' Retirement Board

Michigan Court of Appeals - Decided: August 24, 2006

2006 Mich. App. Lexis 2572

Where the Retirement System was amended to require that applications for disability retirement be submitted within one year of termination of state employment, the Retirement Board could not retroactively apply the amendment to prevent the Retirement System's review of an application. Accordingly, the Court reversed the Board's denial of an application for non-duty disability relative to the issue of failure to comply with the one year application deadline.

INVESTMENT

Bay City Police and Fire Retirees v. Bay City Police and Fire Retirement System Board

Michigan Court of Appeals - Decided: August 24, 2006

2006 Mich. App. Lexis 2604

The Court of Appeals held that the Retirement Board is protected by governmental immunity against breach of fiduciary duty claims related to the Board's investment of plan assets.

FREEDOM OF INFORMATION ACT/ OPEN MEETINGS ACT

Michigan Federation of Teachers v. University of Michigan

Michigan Court of Appeals - Decided: March 22, 2007 *2007 Mich. App. Lexis 828*

The Freedom of Information Act's privacy exemption does not prevent the University of Michigan from providing University employees' names, home addresses, home telephone numbers and other job-related information to the teacher's union.

Loud v. Lee Township

Michigan Court of Appeals - Decided: January 30, 2007 *2007 Mich. App. Lexis 182*

The Court of Appeals held that an individual's Freedom of Information Act claim against the Township was barred by the statute of limitations due to the individual's failure to bring legal action within 180 days after the Township's final determination to deny the request for information.

Yourdan v. Brown City Community Schools

Michigan Court of Appeals - Decided: October 3, 2006 *2006 Mich. App. Lexis 2908*

The Court of Appeals held that the School's requirement for the individual to make a separate written request for specific information did not violate the Freedom of Information Act.

Taylor v. Lansing Board of Water and Light

Michigan Court of Appeals - Decided: June 27, 2006 *2006 Mich. App. Lexis 2607*

Where an individual requested information related to a civil legal action, the Board could not deny the request because the individual requesting the information was not a party to the litigation.

Omdahl v. West Iron County Board of Education, et al.

Michigan Court of Appeals - Decided: December 8, 2006 *2006 Mich. Lexis 3008*

Where the Board violated the Open Meeting Act (OMA) by failing to record the minutes of two closed meetings, the Court awarded attorney fees and costs to the Plaintiff (who was an attorney representing himself in the OMA action).

Detroit Free Press v. State of Michigan, Dep't of Attorney General

Michigan Court of Appeals - Decided: December 13, 2006 *2006 Mich. Lexis 3022*

The Detroit Free Press was not entitled to attorney fees and costs under the Freedom of Information Act because the newspaper's action did not challenge the non-production of documents, but was limited to the related copying costs and labor fees.

Saline Area Schools, et al. v. Mullins, et al.

Michigan Court of Appeals - Decided: May 1, 2007 *2007 Mich. App. Lexis 1199*

Where the School Board eventually complied with the request to videotape School Board meetings, the Court rejected the individual's request for attorney fees and costs.

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.