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M A P E R S

RECENT LEGAL ISSUES AND DECISIONS

SPRING 2016 CONFERENCE

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

BENEFITS ADMINISTRATION

Tautkus v. Saunders
Michigan Ct. of Appeals *2015 WL 7370101*
November 19, 2015

During negotiations to settle his workers' compensation claim the retiree was informed by a retirement system representative that if he were to accept a settlement of $95,000, his pension would be approximately three hundred pretax dollars per month, and would increase to $1,645.71 on his 60th birthday. The retiree accepted the settlement offer of $95,000 and was subsequently informed via letter that his pension benefit would only be $417.99 per month for the remainder of his life. The retiree filed a petition for correction of his pension amount and for an administrative hearing before MERS Board that stated he relied on the oral assertions made by MERS regarding his pension amounts in accepting the settlement. The administrative law judge found and that MERS had in fact given erroneous information to the retiree, but that the retiree had not proven that a definite promise had been made regarding an increased pension upon attainment of age 60, nor was it reasonable for the retiree to rely on MERS's oral statements without written confirmation. The Court of Appeals agreed and upheld the decision of the MERS Board.

Rees, et al. v. Iron Workers' Local No. 25 Pension Fund, et al.
United States District Court, Eastern District of Michigan *2015 WL 5729087*
September 30, 2015

A pension fund trustee verbally represented to an employee that he could retire two months earlier by using "banked hours" as service credit towards retirement eligibility. The employee relied on the trustee's representations and retired at the age of 51 under an early retirement window available to employees with 30 or more years of service regardless of age. The early retirement window closed shortly after the employee's retirement. After thirteen months of receiving a pension benefit, the pension fund discontinued the retiree's pension and told the retiree he could not use his "banked hours" towards calculating his retirement service credit. As a result, the retiree was unable to meet any retirement eligibility requirements under the pension fund and he had to return to work. Upon returning to work the employee began to suffer

from medical conditions and complications due to the nature of his employment and this lawsuit followed. The Court found that the pension fund was equitably estopped from revoking special retirement benefits, where the retiree's decision to retire was influenced by a trustee's misrepresentations of material fact. The Court noted that the trustee had apparent authority to make binding representations on behalf of the pension fund. The trustee's statements constituted gross negligence sufficient to establish constructive fraud by the pension fund.

Town v. Genesee County Employees' Retirement System
United States Court of Appeals for the Sixth Circuit *618 Fed.Appx. 806*
July 6, 2015

The retirement system denied the plaintiff's application for non-duty disability retirement after three (3) of the four (4) independent medical examinations resulted in a determination that the employee was not totally and permanently disabled for employment with the County. The employee filed a complaint against the retirement system claiming she was wrongfully denied disability retirement benefits. The U.S. Court of Appeals, applying Michigan law, found that the retirement system's decision to deny the applicant's disability application was supported by competent, material, and substantial evidence and was not arbitrary or capricious. The Court noted that 3 of the 4 examining physicians concluded that the Plaintiff was not disabled and that the fourth doctor's conclusion that she was disabled was outside the scope of the basis of his examination.

Shaw v. AT & T Umbrella Benefit Plan No. 1
United States Court of Appeals for the Sixth Circuit *795 F.3d 538*
July 29, 2015

The employee was denied disability benefits by the Plan and claimed that the Plan's decision violated the Employee Retirement Income Security Act (ERISA). In denying benefits to the employee, the Plan Administrator only requested a limited review of the employee's medical records and determined that there was not objective medical documentation of the member's inability to perform any occupation. However, the Court said the Plan acted arbitrarily and capriciously by (1) ignoring favorable evidence submitted by his treating physicians; (2) selectively reviewing the evidence it did consider from the treating physicians; (3) failing to conduct its own examination of the employee; and (4) heavily relying on the opinions of non-treating physicians. The Court reversed the Plan's decision and ordered it to pay disability benefits to the employee.

INVESTMENT

Pfeil, et al. v. State Street Bank And Trust Company
United States Court of Appeals for the Sixth Circuit *806 F.3d 377*
January 14, 2016

State Street Bank and Trust Company ("State Street") was the plan fiduciary of the GM Common Stock Fund and was subject to a prudent person/investor standard of care under ERISA regarding its investment of fund assets. The Plaintiffs claimed that State Street's decisions regarding the buying and selling of GM stock leading up to GM's bankruptcy were imprudent. The Court applied a prudent-process standard in evaluating State Street's actions. The test for determining whether a fiduciary has satisfied the duty of prudence is whether the individual trustees, at the time they engaged in the challenged transactions, employed the appropriate methods to investigate the merits of the investment and to structure the investment. The Court noted that fiduciaries who act reasonably—i.e., who appropriately investigate the merits of an investment decision prior to acting—easily clear this bar and ruled in favor of State Street.

RETIREE HEALTH CARE

Tackett v. M&G Polymers
United States Supreme Court *135 S. Ct. 926*
United States Court of Appeals for the Sixth Circuit *811 F.3d 204*
January 21, 2016

Retirees entered into various Collective Bargaining Agreements (CBA) with their employer which provided that the employer would make "full Company contributions towards the cost of retiree health care benefits. From 1991 until 2005, the retirees received healthcare benefits at no cost. In 2006, the employer announced that retirees would have to make contributions to their health care costs or they may be dropped from the plan. The retirees sued claiming they had a vested right to lifetime contribution-free health care benefits. The employer argued that the retirees always had been expected to contribute to their health care costs, but the employer never required them to do so until 2006.

Initially, the Court found that the CBAs demonstrated an intent to vest the retirees with lifetime contribution-free health care benefits. The United States Supreme Court determined that the existing precedent required analyzation of CBAs with a "thumb on the scale" in favor of vesting and was no longer appropriate. The Supreme Court stated that a collective bargaining agreement may provide in explicit terms that certain benefits continue after the agreement's expiration, but when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life. The Supreme Court remanded the case back to the lower courts to analyze the CBAs applying "ordinary principles of contract law."

Harper Woods Retirees Association v. City of Harper Woods
Michigan Ct. of Appeals *312 Mich. App. 500*
October 1, 2015

Retirees who had retired from employment with city alleged that the city had unlawfully changed health insurance benefits which were guaranteed under their collective bargaining agreements. The retirees argued that their Collective Bargaining Agreements (CBAs) granted them a right to healthcare benefits indefinitely after retirement, regardless whether the explicit terms of the contracts indicated that the parties intended those benefits to continue after the agreements expired. However, the Michigan Court of Appeals explained that the *Tackett* opinion and Michigan case law does not support the retirees' arguments because such a position is inconsistent with ordinary principles of contract law. Consequently, the Michigan Court of Appeals remanded the case to the lower court to determine (1) whether the parties intended the retiree healthcare benefits identified in each respective agreement to survive the expiration of the CBA, or (2) whether the retirees' rights to the specifically identified healthcare benefits terminated upon expiration of the agreement, so that the employer was permitted to alter the benefits under future contracts.

Gallo, et al. v. Moen, Inc.
United States Court of Appeals for the Sixth Circuit *813 F.3d 265*
February 8, 2016

The case arose when the retirees' employer made changes to their health care coverage that resulted in Medicare eligible retirees no longer receiving health care coverage and non-Medicare-eligible retirees were shifted to a healthcare plan that required higher out-of-pocket payments. The retirees argued that their health care benefits had vested under the Collective Bargaining Agreements (CBAs) and were unable to be modified by their former employer. The 6th Circuit Court of Appeals disagreed and, applying traditional contract principles in accordance with *Tackett*, explained that the CBAs had a durational clause in each agreement, which stated "until this agreement ends" therefore, the promises made within the contracts expired when the agreements expired.

Reese, et al. v. CNH Industrial N.V., et al.
U.S. District Court E.D. of Michigan *2015 WL 6865964*
November 9, 2015

Retirees sued their former employer seeking a declaratory judgment that they were entitled to lifetime health-care benefits and requiring the employer to maintain the level of retiree health-care benefits then in effect. Applying ordinary contract principles outlined in *Tackett*, the Court found that the retirees were vested in their health care benefits. The Court reasoned that the contract in question was ambiguous with respect to whether the parties intended retirees' health insurance benefits to vest. Accordingly, the Court looked at extrinsic evidence and found that the parties intended to grant retirees' vested, lifetime retiree health insurance coverage. The Court also determined that the changes sought to be made to the retirees' insurance coverage were not reasonably commensurate with the current levels of coverage and rejected the proposed changes.

COLLECTIVE BARGAINING

Van Buren County Ed Ass'n v. Decatur Public Schools
Michigan Ct. of Appeals *309 Mich App 630*
March 17, 2015

The Association challenged the School District's unilateral decision to impose hard caps on its contributions towards employee health care under the Publicly Funded Health Insurance Contribution Act ("PA 152"). The Court determined that there was no duty to bargain with respect to the option between hard caps or the 80/20 limits on employer contributions towards employee health care. The Court noted that PA 152 does not foreclose collective bargaining regarding health insurance benefits. Rather it sets limits on the amount of health insurance benefits a public employer may pay. Nothing in the statute prevents collective bargaining up to the statutorily imposed limits.

Shelby Township v. Command Officers Association of Michigan
Michigan Ct. of Appeals *2015 WL 9268183*
December 15, 2015

The Township refused to bargain regarding the method and amounts of employee health care contributions under the Township's 80/20 premium sharing plan. The Court held that the Township had a duty to bargain with the Union about the calculation of the members' premium shares under the 80/20 plan. The Court also held that the Township could not use a rate for its employees' premiums that included benefits for retirees. Accordingly, the Township was required to recalculate the rates applicable to Union members and reimburse any overcharges.

Cholak v. City of Westland & City of Westland Act 345 Pension Board
Michigan Ct. of Appeals *2015 WL 6440334*
October 22, 2015

The employee disputed the Retirement Board's interpretation of a provision of his applicable CBA regarding the purchase of prior service credit. The CBA contained mandatory grievance procedures in the event of a dispute. However, the Plaintiff proceeded to sue the Retirement Board without pursuing a grievance under the CBA. In this case, it was undisputed that the retiree failed to exhaust his administrative remedies provided by the CBA (i.e., the grievance process). The retiree argued that Act 345 provided a statutory basis for filing suit outside the scope of the CBA. The Court disagreed and upheld the dismissal of Plaintiff's claims based on his failure to exhaust his administrative remedies under the CBA.

Michigan Coalition of State Employee Unions v. State of Michigan
Michigan Supreme Court *498 Mich. 312*
July 29, 2015

State employees' unions challenged the constitutionality of amendments to the State Employees' Retirement Act which required employees in the DB Plan to contribute 4% of wages to that plan or else switch to the 401(k) DC Plan. Michigan Court of Appeals previously held that the amendments were unconstitutional in violation of Article 11, Section 5 of the Michigan Constitution which requires that the Civil Service Commission fix all rates of compensation and regulate all conditions of employment for state employees. The Michigan Supreme Court disagreed holding that pensions are not akin to "rates of compensation" which cannot be changed without approval of the Civil Service Commission. The Supreme Court also held that the Commission's power to regulate all conditions of employment does not permit the Commission to infringe upon the Legislature's power to enact laws relative to conditions of employment.

Cass v. Michigan State University, et al.
Michigan Ct. of Appeals *2016 WL 683145*
February 18, 2016

MSU and Unions entered into various Memoranda of Understanding (MOU) regarding healthcare which capped MSU's responsibility for increased costs at 5% annually. The MOUs provided that any cost increase above 5% would be borne by the employees; any cost increases below the 5% cap would "accrue" to the employees. Under the original MOUs the employees were not entitled to a cash payment or a base wage increase on account of any "accrued" amounts. In 2014 MSU and Unions entered into new MOU which provided for distributions of "accrued" savings to current employees. The Plaintiff, who retired in 2012, claimed that he had a vested right to the funds that had "accrued" under the prior agreement while he was still employed. The Court determined that Plaintiff did not have a vested right in amounts accrued prior to his retirement because the contract in effect at the time of his retirement did not provide for the payment of a cash benefit out of the "accrued" funds. The Court also noted that the use of the term "accrue" in the MOUs did not refer to a vested right, but rather, simply to an accumulation of money.

FOIA/OPEN MEETINGS ACT

Bell v. Buchanan Community Schools
Michigan Ct. of Appeals *2016 WL 300194*
January 21, 2016

A retiree of the school system was rehired as an independent contractor through a third party agency. After approximately two years of service as an independent contractor the school superintendent contacted the third party agency and requested that the retiree's assignment be terminated. The retiree argued that the school system violated the Open Meetings Act because the decision to terminate his contract was not done at an open meeting of the School Board. The Court recognized that the decision to terminate the retiree's assignment was not made by the School Board, but rather by the third party agency through which he was contracted. Although the school superintendent asked that the retiree be reassigned and asked individual Board members their opinion of the retiree, no formal action was taken by the Board and no violation of the OMA occurred.

Carroll v. Montmorency County Commission On Aging
Michigan Ct. of Appeals *2016 WL 155905*
January 12, 2016

The plaintiff claimed that her employer, the Montmorency County Commission on Aging (MCOA) violated the Open Meetings Act (OMA), when it went into closed session to discuss her employment performance.

During the closed session, the MCOA discussed the plaintiff's performance, but further deliberated and voted to terminate her services during the open meeting. Plaintiff sued the MCOA for its use of closed session discussions and sought to invalidate its termination decision because of the OMA violation. The Court of Appeals denied plaintiff's request and agreed with the lower court that any violations of the OMA at the meeting were procedural in nature, and that the MCOA cured any defects during the initial meeting by including the closed session discussions in the regular meeting minutes and having deliberations and voting for the plaintiff's termination in open session.

Wilson v. City of Gross Pointe Park
Michigan Ct. of Appeals *2016 WL 1072573*
March 17, 2016

The City of Grosse Pointe Park received two FOIA requests of varying specificity. Some of the requested records were specifically described while other requested information was very vague and generalized (i.e., "any other information . . ."). The City partially denied the requests noting that it was not obligated to create documents in response to the requests and that the requests do not sufficiently describe the record to enable the City to locate the record. Court agreed that the requests "were unclear on their face and/or were not sufficiently descriptive for the City to locate documents and/or were vague and ambiguous." It also noted that the City did not have "to search through an unlimited number of public documents without sufficient description of a public record to allow the public body to find the public record sought." Therefore, although the request did outline what information was wanted, because the request did not adequately explain which documents were requested, the City was not in violation of FOIA.

Holeton, et al. v. City of Livonia, et al.
Michigan Ct. of Appeals *2015 WL 4469328*
July 21, 2015

Plaintiffs alleged that the City violated the OMA by:

> (1) requiring plaintiffs to state their home address before speaking, (2) repeatedly cutting them off while they were speaking, (3) imposing unreasonably short time limits for plaintiffs' comments, (4) requiring plaintiffs to direct their comments to the chair, (5) arbitrarily and capriciously applying the standing rules pertaining to citizen participation, (6) addressing plaintiffs in a derogatory tone and referring to their remarks as "shenanigans," (7) engaging in harassing and threatening conduct designed to discourage plaintiffs from exercising their right to public comment, and (8) threatening to eject plaintiffs from the room and ban them from future city council meetings; and
>
> (1) insisting that comments be directed to the chair, (2) not allowing direct questions to a DTE employee who was present in the room, (3) Committee chairperson "raising her voice, shouting, interrupting, pounding her gavel, threatening, and implicitly changing the rules of audience participation," and (4) directing a police officer to eject Plaintiff from the room when she had not breached the peace or engaged in illegal behavior.

Court of Appeals held that Plaintiffs' claims were time barred, but the Michigan Supreme Court reversed and asked that the case be remanded to the trial court to determine whether the City was prejudiced by the Plaintiffs' delay in filing suit.

Zoran, et al. v. Township of Cottrellville, et al.
Michigan Ct. of Appeals *2015 WL 5022889*
August 25, 2015

The Township supervisor prevented three individuals from speaking for the full three-minute period, which is the Township's policy for public comment at board meetings. The Township supervisor stated she was not aware she stopped their comments before the three minutes had elapsed, but believed she was stopping them from personally attacking her any further. The individuals sued the Township and its supervisor personally for an intentional OMA violation, which allows for damages of up to $500.00, plus court costs and actual attorney fees to a person or group of persons bringing the action. In the lower court, the township supervisor was granted her motion to dismiss, but the Court of Appeals disagreed and remanded the case to determine if the supervisor intentionally violated the OMA when she failed to allow plaintiffs to speak for the full three-minute period and prevented an individual from continuing to speak because he did not provide her with his address.

DOMESTIC RELATIONS

Patterson v. Chrysler Group, LLC
United States District Court, Eastern District of Michigan *2016 WL 627886*
February 17, 2016

Patterson was divorced from her husband in 1993. On three separate occasions she sought benefits from her former husband's retirement plan pursuant to the parties' Judgment of Divorce. The retirement plan denied her claim all three times because the judgment was not a Qualified Domestic Relations Order (QDRO). In 2014, following her ex-husband's death, Patterson finally had a QDRO entered *nunc pro tunc* in state court which awarded her a portion of her ex-husband's pension as an Alternate Payee. The retirement plan denied her claim for benefits stating that the QDRO could not be qualified under applicable law (ERISA) because it would require the plan to pay increased benefits on the basis of actuarial value and benefits not otherwise provided under the plan (survivor benefits were not payable under the form of benefit elected by the ex-husband). The Court gave effect to the state court's invocation of the *nunc pro tunc* doctrine and considered the QDRO entered as of the date of divorce (1993). As a result the QDRO did not violate ERISA and the retirement plan was required to pay benefits to Patterson in accordance therewith.

Hudson v. Hudson
Michigan Ct. of Appeals *2016 WL 90732*
January 7, 2016

The parties entered into an Eligible Domestic Relations Order (EDRO) awarding each a share of the other's pension. Under the entered EDRO, one spouse had the option to receive a form of benefit that was not available under the other's pension plan. The parties questioned if one spouse's option to choose the form of payment, combined with other spouse's inability to select a similar option, is a violation of the judgment of divorce's intent. The court held that entry of the EDRO was consistent with the Judgment of Divorce which awarded each a share of the other's pension, "free and clear of any claims thereto, or interest therein"; The court noted that the parties had an opportunity before entry of the Judgment of Divorce to explore the pension options available, and to address any apparent inequality therein.