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Contract Board Ratification Date Should Be the Effective Date of a New Agreement, Not a Retroactive Date

Public employers, such as Michigan public school districts, should be careful what effective date is placed on a collective bargaining agreement (“CBA”) when a new, successor CBA is finalized after a former CBA has expired.

This is important to ensure that Section 15b of the Michigan Public Employment Relations Act (“PERA”) is not violated. Section 15b of PERA freezes employee wage and benefits from the expiration date of the former CBA, until a successor agreement is reached. Moreover, the public employer cannot agree to pay retroactive wages for that time period.

Section 15b(1) and (2) of PERA state:

(1) Except as otherwise provided in this section, **after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement.** The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased costs of maintaining those benefits that occur after the expiration date. The public employer may make payroll deductions necessary to pay the increased costs of maintaining those benefits.

(2) Except as provided in subsection (3) or (4), **the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.** [MCL 423.215b(1) and (2); emphasis added]

Before Section 15b went into effect it was common for public employers and labor organizations to agree that the effective date of the new CBA would be the date following the expiration date of the former CBA, even if the parties ratified the CBA on a later date.

However, making the new CBA's effective date to be the date following the expiration of the former CBA could lead to an unintended consequence of the employer being required to retroactively apply terms and conditions reached in negotiations back to that date, even though the employer only intended them to apply after the agreement was ratified.

Arbitrators have granted retroactive wage and benefit increases to labor organizations. In *City of Sterling Heights and Michigan Association of Police (Sterling Heights Police Officers Unit and Police Clerical Employees Association Unit)* 130 LA 260 (2012), a public employer and labor organization had a CBA that expired on June 30, 2011. Due to financial difficulties, the parties agreed to wage and benefit concessions pursuant to two memorandums of understanding ("MOU"). The MOU's, and thus the concessions, were also set to expire on June 30, 2011. Section 15b of PERA, went into effect on June 8, 2011.

The public employer argued that to comply with Section 15b of PERA, the concessions in the MOUs needed to remain in place until a successor agreement was reached. The labor organization filed for arbitration, arguing that the expiration of the MOU did not cause an increase in wages or benefits, and thus Section 15b's prohibition did not apply. The arbitrator found in favor of the labor organization stating that:

The evidence is convincing that it was the intent of the parties that when this particular concession no longer existed the wage rates of officers would be returned to the CBA level. If then, hypothetically, the parties had reached an agreement on a successor contract earlier that simply extended the previous CBA for another year, commencing July 1, 2011, all of the wage rates and benefit levels would have been maintained and the MOU would be of no application whatsoever without a specific agreement to that effect.

As to the Police Officer Unit it is found that the increased pension contribution obligation did not exist as of the expiration of the CBA; this is also true as to the special treatment of drop. That being so, any application of Public Act 54 [Section 15b] could not consider wage or benefit levels resulting from the MOU concessions as being extended. Discontinuing the concessions did not cause an increase contemplated by Public Act 54.

The arbitrator ordered that the public employer cease the wage and benefit concessions, and ordered that the concessions employees had given from the date of the expiration of the MOU to the date of the arbitration award be reimbursed retroactively by the public employer.

Additionally, a recent arbitration panel examined a case in which the effective date of a CBA was July 1, 2017, but the CBA had not actually been ratified until October 20, 2017. The CBA provided a wage increase to the employees above what they had received under the former CBA. The employer argued that the wage increase was only meant to be provided after ratification of the CBA. The employees argued the wage rate increase was intended to be retroactive back to the effective date of the contract, reasoning that where the parties had indicated they wanted other terms of the CBA to go into effect on another date, it was expressly stated in the CBA. The

panel of arbitrators uniformly agreed with the union's position, finding that the higher wage rate was retroactive back to the effective date of July 1, 2017.

Now that Section 15b is a part of PERA, public employers should ensure that the effective date of the contract is on or after the date the CBA is ratified by the public employer's board, and ratification by the Board should take place after the labor organization's ratification of the CBA. This insulates the District from arguments that the terms and conditions agreed to under the new CBA were meant to apply retroactively to the expiration date of the former contract, and potential violations of Section 15b of PERA.

Section 15b's requirement to freeze wage and benefits at the level they were at when the former CBA expired applies to public employers, such as school districts. Some arbitrators may parse what terms and conditions do and do not apply retroactively in light of Section 15b. For example, an arbitrator might find that while wage and benefit increases cannot apply retroactively, an employee's working conditions can, and order a public employer to make the employee whole for the period of the retroactive effective date and the ratification date of the contract. To avoid such problems, public employers should make all terms and conditions of CBA's go into effect on the ratification date of the contract, not a retroactive date.

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