

AFT Michigan Retiree Legislative Update

November, 2013

Court of Claims Changes Can Affect Public Pension Lawsuits...and More

The Michigan Court of Claims was established in the State Constitution to hear cases against the state, including cases seeking monetary compensation. For example, AFT Michigan's lawsuit regarding certain elements of PA 300, the recent law significantly amending the MPERS act, was filed in the Court of Claims and heard by the Honorable Rosemarie Aquilina.

In the late 1970's, the Legislature transferred all Court of Claims litigation to the Ingham County Circuit Court, considering it a central location that would save the state money by alleviating the need to defend cases all over the state. It was also seen as a neutral court that would provide a fair hearing for both sides.

Recently, the Court of Claims has ruled favorably on a number of lawsuits against the state. Note particularly that the Court of Claims found the law requiring state employees to pay an additional 4% of their salary toward their pension or else be switched into a defined contribution plan to be unconstitutional. (The similar MPERS case remains before the Michigan Supreme Court).

However, earlier this month, the Michigan Legislature completed a whirlwind process that completely reshaped the Michigan Court of Claims. PA 652 (Sen. Rick Jones, R-Eaton County) was introduced in mid-October and hustled through the Senate and House that abolished the current Court of Claims and replaced it with four handpicked judges to be chosen from the Michigan Court of Appeals. The fast-tracked bill was signed into law as PA 164 and given immediate effect, less than a month after its introduction.

While proponents of this massive change asserted that they did it to allow more voters to have a say in who sits on the Court of Claims (as opposed to having them all elected by Ingham county residents), shifting all power over the Court of Claims to the Supreme Court was a highly controversial method of dealing with that "problem." Other, more neutral remedies would have included having a blind draw, for example.

Many observers feel that this legislation had a lot more to do with the recent rulings coming from the Ingham County judges than with the makeup of the electorate. The fact that the bill was introduced and signed into law in less than a month indicates that

this was more about reshaping the decision-making power of the Court of Claims than good government.

Perhaps in an effort to mitigate the perception that the legislation was nothing more than a partisan power grab, the Republican-controlled Michigan Supreme Court chose a bipartisan panel from the Court of Appeals to serve as the new Court of Claims. Of the four selected judges, two were appointed by Governor Granholm (Judges Amy Ronayne Krause and Deborah Servitto) and two were appointed by Governor Engler (Judges Michael Talbot and Pat Donofrio).

The bill was pushed through so fast, in fact, that a number of provisions within may very well violate the Michigan Constitution. For example, there is no provision within the bill to allow for a jury trial in the Court of Claims – something guaranteed in the Michigan Constitution. The bill as passed would also reassign all pending cases to the new Court of Claims. While this may not be unconstitutional, it certainly will create untold problems for the court system and those seeking justice within it.

Governor Snyder and Republican leaders are apparently concerned enough about the problems within the new law that a “trailer bill” has already been introduced to “clean it up.” Rep. Mike Shirkey (R-Clark Lake) has introduced House Bill 5156 that would clarify the right to a jury trial. However, the bill as introduced does nothing to correct the issue of existing cases being transferred to the new court. In mid-November, newly named Chief Judge Michael Talbot placed a stay for the next 30 days on all cases that were in the Court of Claims prior to the legislation having been enacted.

Some examples of pending cases include:

- A lawsuit filed in the Court of Claims this summer by retired Troy teacher Thomas Okrie challenging the pension tax imposed on pension income. This case, which was filed on July 9, has a hearing scheduled for December 13 before Judge Rosemarie Acquilina.
- An ACLU lawsuit challenging the closure of the Capitol during the right to work debate last December. The case alleges violations of the Open Meetings Act and is in front of Judge William Collette.
- A case brought by Robert Davis against Governor Snyder and his New Energy to Reinvent and Diversity Fund (NERD) to make public the names of NERD fund donors. This case is before Judge Jim Jamos.

Let your legislators know how you feel about this legislation and its potential impact on retirees!

Brief Notes:

- Recently, nearly a quarter of Michigan school districts saw their financial ratings downgraded by Moody's. Moody's analysts indicate that a major cause is, not surprisingly, declines in enrollment, attributable in part to the growth of charter schools. However, they also state that even districts with stable or growing

enrollment are challenged by their lack of ability to raise revenue and “growing retirement funding obligations.”

- The House Financial Liability Reform Committee has had several hearings featuring organizations which are not fans of defined benefit pension plans, including the Mackinac Center and Pew, which spoke of recommendations being considered in Massachusetts.

.

**Contributed by Capitol Services, Inc.
November 21, 2013**