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December 13, 2012

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Re: City of Rochester Hills & Rochester Hills Fire Fighters Assn, IAFF
MERC Case No. D 11 G-0791 (Act 312)

PRE-HEARING CONFERENCE SUMMARY

Greetings:

This will summarize my understanding of the positions of the parties and agreed upon action as a result of our pre-hearing phone conference calls on November 30 and December 7, 2012.

- 1) The Union panel member delegate will be Alison Paton. The Union will have the opportunity to designate a different panel member during the course of the proceeding prior to the close of the hearing.
- 2) The Union will be represented by Attorney Alison Paton.
- 3) The Employer panel member delegate will be Dennis DuBay. The Employer will have the opportunity to designate a different panel member delegate during the course of the proceeding prior to the close of the hearing.
- 4) The Employer will be represented by Attorney Dennis Dubay.
- 5) Representatives for the parties have been informed that the Independent Arbitrator has reviewed Section 6 of PA 312 of 1969 as amended by PA 116 of 2011 (MCL 423.236) and interprets that section for purposes of this case that:
 - The requirement that the chair of the panel call and begin the hearing within 15 days after appointment will be met by convening the pre-

hearing conference within 15 days of appointment and establishing hearing date(s) and schedule for exchange of information prior to the formal hearing at this pre-hearing conference.

- The requirement that the hearing conducted by the arbitration panel - shall be concluded and any post hearing briefs filed within 180 days after it commences will be met by using the date of the pre hearing conference, November 30, 2012, as the date from which 180 days will be counted for filing of any post hearing briefs (i.e. May 28, 2013).

- 6) Representatives for the parties have been informed that the Independent Arbitrator has reviewed Section 8 of PA 312 of 1969 as amended by PA 116 of 2011 (MCL 423.238) which reads in part " The arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit to the arbitration panel and to each other its last offer of settlement on each economic issue before the beginning of the hearing" and interprets that section for purposes of this case to require the parties to submit that information to the panel chair and each other before the first hearing date at which a verbatim record of the proceedings is made. Therefore a schedule for submission of those and other documents is as follows:

- On or before December 28, 2012 each party will submit to the other party and the independent arbitrator by electronic mail:

a) The external comparable communities they propose be considered by the panel. If the parties are not able to agree upon all external comparable communities - a list of external comparable communities they have agreed upon and those they have not agreed upon;

b) The issues and positions on each issue it proposes be presented to the panel for decision. The parties indicated during the December 7, 2012 pre hearing conference call that the parties have agreed upon the duration of the proposed CBA.;

c) Indicate for each issue whether they propose that issue be considered an economic or non-economic issue.

Each issue identified will be in the form of the precise language each party proposes be inserted in the contract and/or the precise provisions of the contract they propose be deleted. If the parties wish to treat sections within a contract Article as separate issues they should be identified as separate issues. The parties have agreed that the issue of wages will be addressed separately for each year of the proposed agreement.

- Following the December 28, 2012 exchange of information the parties will confer and attempt to reach agreement on: a) the economic/non- economic designation for each issue; b) the external comparables; c) whether an issue is properly before the panel, i.e. is it or is it not a mandatory subject of bargaining and whether they choose to have the panel decide that issue. In the event the parties are unable to agree on one or more of the following issues: a) the economic/non- economic designation for each issue; b) the external comparables; or c) whether an issue is properly before the panel, i.e. is it or is it not a mandatory subject of bargaining and whether they choose to have the panel decide that issue on or before January 7, 2013 the parties will notify the Independent Arbitrator by electronic mail of the issues they are unable to agree upon.

On or before January 14, 2013 each party will exchange with the other party the proposed exhibits and witness lists relating to the issues of disagreement.

On or before January 17, 2013 the parties will exchange proposed rebuttal exhibits.

On Friday, January 18, 2013 a hearing will be held on the issues the parties are unable to agree upon relating to: a) the economic/non- economic designation for each issue; b) the external comparables; c) whether an issue is properly before the panel, i.e. is it or is it not a mandatory subject of bargaining and whether they choose to have the panel decide that issue. The hearing will be held beginning at 10:00 a.m. at the Rochester Hills City Hall, 1000 Rochester Hills Drive, 48309. Ph # 248-841-2521.

On or before January 25, 2013 the parties may submit to the Independent Arbitrator by electronic mail a closing brief in support of their positions on the issues. Upon receipt of the written arguments and supporting evidence from both parties, the Independent Arbitrator will exchange that information to each party and;

On or before February 8, 2013 the Independent Arbitrator will rule on the issues presented in the January 18, 2013 hearing and provide that ruling to the parties by electronic mail.

- On or before March 4, 2013 the representative for each party will submit to the other party the proposed direct exhibits and witness lists relating to the remaining issues to be presented by that party.

- On or before March 29, 2013 the representatives for each party will submit to the other party the proposed rebuttal exhibits and witness lists relating to the issues presented by the opposing party.

- On or before April 10, 2013 the representatives for each party will submit to the other party the proposed sur-rebuttal exhibits and witness lists relating to the issues presented by the parties.

- On or before April 12, 2013 each party will submit to the other party and the independent arbitrator by electronic mail its last offer of settlement on each economic issue.

During the hearing additional exhibits may be considered, at the discretion of the Independent Arbitrator, if it is determined that they are relevant and:

- 1) They were previously unavailable;
- 2) They are in response to testimony from the opposing party or in response to exhibits that were not previously provided to the party seeking to enter the exhibit, or
- 3) For other purposes resulting from circumstances outside the control of the party offering the proposed exhibits.

The parties will insure sufficient copies of all exhibits are available for the independent arbitrator and any other parties, such as witnesses, at the time they are presented each hearing day.

It is anticipated that this matter will require seven (7) days of hearing. Scheduled hearing days are:

Tuesday, April 16, 2013

Wednesday, April 17, 2013

Friday, April 19, 2013

Tuesday, April 23, 2013

Thursday, April 25, 2013

Friday, April 26, 2013

Tuesday, April 30, 2013

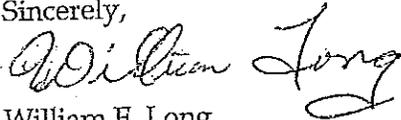
The hearings will be held at the Rochester Hills City Hall, 1000 Rochester Hills Drive, 48309. Ph # 248-841-2521. Each hearing day will commence at 10:00 a.m. and conclude at approximately 5:00 p.m. unless otherwise noted. Prior to the first and subsequent hearing days the parties will confer and determine which issues will be the subject of each day of hearing and the order of presentation of issues. If the parties are unable to agree upon the order of presentation of the issues either party may request a conference between the parties and the Independent Arbitrator during which the Arbitrator will rule on the order of presentation. The party advancing the issue will present testimony and exhibits

and the other party will be provided an opportunity for cross examination and presentation of rebuttal exhibits. For issues which both parties have proposed contract revisions, i.e.: both are proposing different revisions or additions to the same contract provision, one party will present direct testimony and supporting exhibits with an opportunity for cross examination by the opposing party, followed by the other party's presentation of direct testimony and supporting exhibits on that issue, with an opportunity for cross examination by the opposing party.

7) The schedule for exchange and submission of closing briefs and reply briefs if desired, or a post hearing panel meeting if desired, will be determined at the close of the hearing.

If there is anything in this summary that you believe I have overlooked or is inconsistent with your understanding, please contact me.

Sincerely,



William E. Long
Attorney at Law

cc: Ruthanne Okun, Director MERC
Maria Greenough, Court Reporter Supervisor

**COLLECTIVE BARGAINING AND ACT 312 IN A CONCESSIONARY
ENVIRONMENT: A MANAGEMENT PERSPECTIVE**

The Revenue Crisis:

- Property values still falling in many communities
- Property tax revenues can only grow by rate of inflation/5% under Proposal A
- Main source of revenue has dropped dramatically
- State-shared revenue has dropped significantly in last decade

**THE REVENUE CRISIS:
NO HELP FROM LANSING**

- No discussion of reform of Proposal A
- State-shared revenue replaced by EVIP:
 - New mandates on local government
 - Consolidation
 - Pension reform
 - Retiree health insurance reform
 - "Best practices"
- Local communities forced to seek millages
- Personal Property Tax: Another Major Cut in Revenue?

LEGISLATIVE CHANGES MAKE SETTLEMENT MORE DIFFICULT

- No retroactive wages or benefits
- 80%/20% and hard cap reduce take-home pay
- Lack of revenue makes wage increases extremely difficult to grant
- Lack of clarity in new statutes raises uncertainty
 - What are the rules of the game?
- Hot button issues (consolidation, pensions, health insurance) are not easily negotiated

THE CHANGING DYNAMICS OF COLLECTIVE BARGAINING

- The need for speed: The quicker the (eventual) concession, the better for employer and employees
 - collective bargaining
 - Act 312 arbitration
- P.A. 54 creates a deadline for settlement
- Act 312 cases may be result of internal political realities, not real differences on the merits
- P.A. 152 and ACA create a need for frequent health insurance re-openers

ISSUES FOR ARBITRATORS

- 1) Is it appropriate to be a mediator?
- 2) Do you really need testimony?
- 3) Why waive the time limits?
- 4) Should external comparables matter?
- 5) Should you remand to reduce the issues and length of the hearing?

Presentation authored by

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OVERVIEW OF TWO RECENT CHANGES IN MICHIGAN PUBLIC SECTOR LABOR LAW

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(Written: November 28, 2011)

The Michigan Legislature recently enacted two major changes to Michigan labor law that will significantly impact collective bargaining over health insurance in the public sector. Although other legislative amendments passed in 2011 affect specific classifications of public employees (such as teachers, police officers, and firefighters), the two legislative changes discussed in this article affect virtually all public sector employees, including those who are not represented in collective bargaining.¹

AMENDMENTS TO PERA

P.A. 54 of 2011 amends the Public Employment Relations Act (“PERA”) by changing three aspects of bargaining in the public sector.² First, unions and public employers are prohibited from agreeing to retroactive increases in wages and benefits after the expiration date of the prior collective bargaining agreement. Arbitration panels under Act 312 similarly are barred from ordering any such retroactive increase.³ Second, “step” increases may not be implemented after a collective bargaining agreement expires. “Step” increases, which are common in public school and municipal contracts, provide for automatic wage increases based upon the employee’s service with the public employer.⁴

These first two changes are not dramatic, particularly because few public employers are agreeing to significant wage or benefit increases. Rather, most public employers are seeking economic concessions from their employees in response to the severe decline in revenues.

In contrast, the third change to PERA is significant to both the negotiating process and the bargaining position of the public employer. Under this amendment, a public employer is

required to charge 100% of all increases in any insurance benefit - health, prescription drugs, dental, vision, life, disability - to the employee immediately after the collective bargaining agreement expires, until a successor agreement is reached.⁵ The public employer may collect this payment by payroll deduction, without the prior written consent of the employee.⁶

The practical effect of this third change is profound on the process of public sector bargaining. In private sector labor relations, if the employer and union are unable to reach agreement before their contract expires, the usual result is that either the employees strike or the employer locks them out. Since this creates an actual deadline, contract negotiations usually are completed before the expiration date of the collective bargaining agreement.

Until now, the public sector had no such deadline, and contracts were rarely negotiated prior to the expiration of the collective bargaining agreement. If the public employer demanded concessions on benefits, particularly health insurance, it would lose potential cost savings while negotiations dragged on for months after the nominal expiration of the collective bargaining agreement.

Under the amendment, public employees and the unions that represent them have a strong incentive to settle prior to the expiration of the old collective bargaining agreement, even if some concessions are demanded. Health insurance premiums are typically increasing by 9 - 13% per year. Translated to typical public sector contracts, this increase frequently means a public employee would have to pay \$230 to \$290 per month in health insurance costs, in addition to the employee's existing contribution. As a result, the pressure to avoid this type of increased contribution has already, and will likely to continue, to encourage settlements prior to the expiration of collective bargaining agreements.

Public sector bargainers will need to adjust their bargaining strategies, and their calendars, to respond to this newly created deadline.

PUBLICLY FUNDED HEALTH INSURANCE CONTRIBUTION ACT

Public employers are now starting to evaluate how to comply with the new Publicly Funded Health Insurance Contribution Act ("PFHIC"), which contains many ambiguities and will likely result in significant litigation in the appellate courts.⁷ PFHIC requires "public employers" (a broadly defined term which includes the State of Michigan, local units of government, political subdivisions, school districts, community colleges, public sector universities, and various intergovernmental agencies) to share the cost of health insurance premiums with their current unionized and non-unionized employees (subject to the "opt-out" provision discussed below).⁸ Retirees are exempted from the PFHIC.⁹

EFFECTIVE DATE

Public employers subject to PFHIC must comply with its provisions on or after January 1, 2012, depending on when their "medical benefit plan coverage year" begins.¹⁰ This term is subject to at least two interpretations. It either means the twelve-month period starting when annual deductibles and copayments are retriggered under the "medical benefits plan", or it means the twelve-month period starting when the annual increases in premiums become effective.¹¹ For many public employers, these twelve-month periods are not identical:

The sole exception is that employees covered by collective bargaining agreements "executed" prior to September 15, 2011, are grandfathered until their agreement expires. At that point, those employees lose their grandfather status and their benefits must come into compliance with PFHIC.¹²

Thus, many public employers will be faced with charging their non-union employees, typically key management and administrative officials, with contributions months or years before the unionized employees they supervise.

DEFAULT OPTION

If a public employer takes no action to elect another option, it will automatically default to the "hard dollar cap".¹³ Under this option, two calculations are required. First, the employer must calculate the number of employees enrolled in single, two-person and family coverage. Then the public employer must calculate the total of: \$5,500 for each employee enrolled in single coverage, \$11,000 for each employee enrolled in two-person coverage and \$15,000 for each employee enrolled in family coverage.¹⁴ The sum of this formula is the total amount the public employer may annually spend on health insurance coverage. Costs are inclusive of actual or illustrative premiums, reimbursements for prescription drugs, deductibles or co-payments, or employer payments into health savings or flexible spending accounts.¹⁵

Within the hard dollar cap, the public employer is allowed to "allocate its payments for medical benefit plan costs among its employees and elected public officials as it sees fit".¹⁶ The ability to allocate total dollars within the hard cap raises several issues. First, in most situations, the cost of two-person coverage is much closer to the cost of family coverage; it is typically more than double the cost of single coverage. Thus, assuming the employer does not want two-person plan participants to pay disproportionate share of their costs, the employer will have no choice but to make allocation adjustments within its hard dollar cap.

Second, there is considerable controversy in the labor relations community regarding whether public employers have to, or even may, collectively bargain with unions, over such an allocation. Many management-side labor lawyers believe that public employers are prohibited

from bargaining with unions about this allocation and must make this allocation unilaterally. Many union-side labor lawyers believe that this allocation is either a mandatory or, at least, permissive subject of bargaining. Mandatory subjects of bargaining are conditions that unions and public employers must bargain about, either to resolution or impasse; permissive subjects of bargaining are conditions that unions and public employers may agree to bargain about, or may lawfully refuse to bargain about.

Third, the allocation will likely encourage employees to change their levels of coverage, such as dropping a child from coverage, in order to move from family to two person coverage, or dropping a spouse from coverage, in order to move to single coverage. These types of individual changes will make it impossible for a public employer to actually ascertain the amount they will charge employees, until all coverage selections have been made.

80-20 OPTION

By a majority vote of its governing body, a local public employer may elect to adopt the "80-20" option.¹⁷ As with the allocation of costs described in the previous section, there is considerable controversy in the labor relations community whether the choice between the Default Option, the 80-20 Option or the Opt-out Option (discussed below) is subject to bargaining, and if so, is it a mandatory or permissive subject of bargaining.

Under the 80-20 option, the public employer may not pay more than 80% of its total, aggregate costs for all medical plans it offers to employees and elected officials. The remaining 20% must be borne by the employees and elected officials. As in the case of the Default Option, the public employer "may allocate the employees' share of total annual costs of the medical benefit plans among the employees of the public employer as it sees fit".¹⁸ Under this option, elected officials must be charged at least 20% of the cost.

OPT-OUT OPTION

Some, but not all, "public employers" may elect a third option, to completely opt out of the PFHIC requirements. An entity falling within the definition of "local unit of government" may, with a 2/3 vote of its governing body, elect to exempt itself from the cost-sharing requirements of PFHIC.¹⁹ Cities and counties with "strong mayor"/county executive forms of government may only opt out with the consent of that elected administrator.²⁰ "Local unit of government" include cities, villages, townships, county and several unique public authorities.²¹ Significantly, institutions of higher education, school districts, and intergovernmental authorities do not fall within this definition; therefore, those public entities may not elect to opt out.²² This distinction between public entities may come under constitutional attack in the courts.

The decision to opt out must be made annually by the governing body. It is problematical if a governing body opts out in the first year of a collective bargaining agreement, but later elects not to opt out in subsequent years of that agreement. It is unclear, in that event, whether the public employer would have to negotiate at least the impact of that decision and allow unionized employees to bargain over the level and types of coverage offered to them under the collective bargaining agreement.

CONCLUSION

Both statutes discussed in this article create profound changes in the nature and process of public sector collective bargaining. Given the inherent ambiguities and the likely legal attacks on their constitutionality and interpretation, it will likely be years before the full meaning of these statutes is resolved.

¹ P.A. 103 of 2011 amends Section 15 of PERA, by expanding the list of prohibited subjects of bargaining for unionized school district employees. P.A. 116 of 2011 amends Act 312, which provides for binding arbitration of contractual disputes for police officers, firefighters and emergency dispatchers, by changing criteria the arbitration panel must apply and the arbitration process.

² M.C.L. 423.201 et seq.

³ M.C.L. 423.215b.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ P.A. 152 of 2011.

⁸ Section 2(f).

⁹ Section 2(e).

¹⁰ Sections 3, 4(2).

¹¹ Section 2(e).

¹² Section 5(1), (2).

¹³ Section 3.

¹⁴ Id.

¹⁵ Sections 3, 4(2).

¹⁶ Id.

¹⁷ Section 4. State employees are subject to the decision of the specified State officials.

¹⁸ Section 4(2).

¹⁹ Section 8.

²⁰ Section 8(2).

²¹ Section 1(d).

²² Section 2(f).

This article was first published in the State Bar of Michigan PCLS Quarterly.

Reprinted in Labor and Employment Law Section – State Bar of Michigan Labor and Employment Lawnotes, Winter 2012.