

Frequently Asked Questions Regarding the Retirement Litigation
November 13, 2017

By: Michael M. Shoudy
MEA General Counsel

1. What changes happened in 2010 to the Michigan Public School Employees Retirement Act (MPSERA)?

On May 19, 2010, the Michigan Legislature enacted Public Act 75 (PA 75) which amended the MPSERA. The amendments, in part, required public school districts and other reporting units to withhold 3% of each employee's wages and remit the amount to Michigan Public School Employees Retirement System (MPSERS) which were classified as "employer contributions" to the trust that funds retiree health care benefits.

2. What did MEA do?

MEA and AFT filed suit on behalf of their members challenging the constitutionality of PA 75.

3. What happened in the courts regarding PA 75?

On July 13, 2010, the trial court issued a preliminary injunction providing that the 3% levy from wages of all applicable MPSERS members pursuant to PA 75 would be held in a separate interest-bearing account (escrow) until the trial court issued its ruling.

On April 1, 2011, the trial court issued its opinion finding that PA 75 was unconstitutional. The state appealed that decision to the Michigan Court of Appeals.

On August 16, 2012, the Michigan Court of Appeals held that PA 75 violated multiple constitutional provisions set forth in the Michigan and U.S. Constitutions, and therefore PA 75 was unconstitutional.

On September 27, 2012, the state filed an application for leave to appeal with the Michigan Supreme Court. The Supreme Court took no action on the application for nearly two years.

On July 1, 2015, the Michigan Supreme Court vacated the Court of Appeals August 16, 2012 ruling and remanded the case to the Michigan Court of Appeals to reconsider its prior ruling based on the Michigan Supreme Court's April 8, 2015 decision regarding 2012 Public Act 300 (discussed below).

On June 7, 2016, the Court of Appeals issued its second decision regarding the constitutionality of PA 75. The Court of Appeals again found PA 75 unconstitutional, as the Act violated multiple constitutional provisions set forth in the Michigan and U.S. Constitutions.

On July 19, 2016, the defendants through Governor Snyder filed an application for leave to appeal with the Michigan Supreme Court.

On June 1, 2017, the Michigan Supreme Court issued an order granting the defendant's application for leave to appeal. No final decision has been issued in the case. This order means that the Supreme Court has decided to review the decision of the lower court. Additional briefs will be filed by the parties. Oral argument will take place before the Michigan Supreme Court. Thereafter, the Michigan Supreme Court will issue a decision either affirming or reversing the decision of the Michigan Court of Appeals.

4. What happened in 2012 to the MPSERA?

On September 4, 2012 and in response to the Michigan Court of Appeals' August 16, 2012 decision regarding PA 75, the Michigan Legislature enacted Public Act 300 (PA 300) which amended the MPSERA. Public Act 300 required all actively employed members of MPSERS to make certain elections regarding their pensions and retiree benefits.

5. What did MEA do?

MEA and AFT filed suit on behalf of their members challenging the constitutionality of PA 300.

6. What happened in the courts regarding PA 300?

On November 29, 2012, the trial court issued a ruling dismissing MEA's and AFT's lawsuits. The parties appealed to the Michigan Court of Appeals.

On January 14, 2014, the Michigan Court of Appeals issued its decision affirming the trial court ruling finding PA 300 constitutional. The Court of Appeals reasoned that the voluntary nature of the contributions under PA 300 remedied the constitutional defects found in PA 75. An application for leave to appeal was filed with the Michigan Supreme Court. The Supreme Court granted the application on May 22, 2014 in the PA 300 case.

On April 8, 2015, the Michigan Supreme Court issued its decision regarding PA 300. The Court found PA 300 constitutional. In that decision, the Court noted "we emphasize that we address in this case only 2012 PA 300 and do not decide whether the Court of Appeals correctly held that 2010 PA 75 violated those same provisions."

7. Did the defendants appeal the June 7, 2016 decision of the Michigan Court of Appeals in the PA 75 case?

Yes, through Governor Snyder. The Governor publically announced his decision to file an application for leave to appeal with the Michigan Supreme Court. The Attorney General declined representation. A special assistant attorney general was appointed. On July 19, 2016, the defendants filed their application. We have filed a response to the application. On June 1, 2017, the Michigan Supreme Court issued an order granting the defendant's application for leave to appeal. No final decision has been issued in the case. This order means that the Supreme Court has decided to review the decision of the lower court. Additional briefs will be filed by the parties, and oral argument will take place before the Michigan Supreme Court.

8. What time period does the Court of Appeals' decision cover?

The Court of Appeals concluded that PA 75 was unconstitutional "as it existed from its effective date until the effective date of 2012 PA 300." If you chose retiree health benefits under PA 300, any payments under that Act are lawful and not subject to this lawsuit. See above regarding PA 300. ORS reports the time period as July 2010 until September 2012.

9. Will I get a refund? If so, when?

Unknown. Since the Governor filed an application for leave to appeal on behalf of the defendants and the Michigan Supreme Court granted the application, it will depend on the decision the Michigan Supreme Court reaches. The Michigan Supreme Court will issue a decision either affirming or reversing the decision of the Michigan Court of Appeals. The Supreme Court can also reverse in part, meaning disagree with aspects, but not all, of the Court of Appeals' decision. If we win in the Supreme Court, the case will likely be remanded back to the trial court (Court of Claims) "which shall direct the return of the subject funds, with interest, to the relevant employees." Any disputes regarding eligibility, payment, and methodology will be decided in the trial court. If we win, MEA Legal will continue to advocate for our members to receive the quickest and largest possible refund consistent with the court decisions and the law. If we lose in the Michigan Supreme Court, the money being held in escrow would be remitted to the trust to help pay for retiree healthcare benefits.

10. What happens if I have retired?

If we are ultimately successful, it is MEA's position that all members that had monies taken out of their checks under PA 75 are owed a refund plus interest based on the actual amount taken. Different members may have had different amounts taken based on individual circumstances such as retirement dates,

leave of absences, etc. We will also advocate for a full accounting by the state in the trial court.

11. Where is the money?

As noted above, the trial court ordered the money at issue to be placed in an interest-bearing escrow account. The account has a balance of more than \$550,000,000. The money is still being held in that account.

12. If the money is ultimately returned, will it be subject to taxes?

Assuming we are successful in the Michigan Supreme Court, the trial court will make decisions about eligibility, payment, and methodology. The IRS will likely take the position that the returned money is wages subject to taxation. More information will be provided as we know more. MEA Legal will continue to advocate for our members to receive the quickest and largest possible refund consistent with the court decisions and the law.

13. Who is paying for the special assistant attorney general?

According to an MLive article dated November 8, 2017, Michigan taxpayers, as of the date of the article, have spent at least \$196,000 on outside attorneys at the Dykema law firm since Governor Snyder decided to proceed on his own.

14. What happened on November 8, 2017?

Oral argument was held before the Michigan Supreme Court. Oral argument is an opportunity for the parties to present legal arguments to the Court and the Court to ask questions. MEA, AFT, and AFSCME attorneys did an excellent job presenting our case to the Court. A link to a recording of the argument is below:

<https://www.youtube.com/watch?v=coaPdNUs2PU>

15. When will a decision be issued by the Michigan Supreme Court?

We do not know for sure. The 2017-18 term for the Michigan Supreme Court runs from August 1, 2017 through July 31, 2018. It is highly likely that the Court will issue its decision before the end of the current term. While that date is July 31, we do expect that a decision will be issued before July 31.

16. I have heard that the Michigan Supreme Court currently has only six justices. What happens if the decision is a tie?

On October 1, 2015, Governor Snyder appointed Joan Larsen to the Michigan Supreme Court. Thereafter, President Trump nominated her to serve on the U.S. Sixth Circuit Court of Appeals. Prior to oral argument in the 3% case, the U.S.

Senate confirmed Judge Larsen's appointment to the Sixth Circuit. Judge Larsen will not participate in the outcome of this case. If the Supreme Court is tied, the lower court decision stands. This would be a good outcome from our perspective. However, Governor Snyder will have the opportunity to appoint a new justice. That new justice will have the right to participate in the outcome of this case if he or she so chooses unless the current members of the Court issue a decision before the appointment. To participate, the new justice would have to be appointed before the end of the term (July 31, 2018).

17. Is this case supported by dues dollars?

Absolutely. Seven years of complex litigation is costly. This case is just one of many examples of your dues dollars in action. We are stronger when we are together.

18. What if this FAQ doesn't answer my question?

We know this case is of great interest to the membership. We will continue to update this FAQ when we have additional information to share. We ask for your patience as we continue to advocate on your behalf. If you do have additional questions, please submit those to webmaster@mea.org.