MICHIGAN AFSCME COUNCIL 25
EXECUTIVE BOARD
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This is a somewhat abbreviated report as things are moving very quickly in this end of the year session which is slated to end next Thursday. I will prepare an end of the year report after adjournment with more detailed analysis of the legislation adopted and a forecast of next year's session.

MERRY CHRISTMAS, HAPPY HOLIDAYS AND

BEST WISHES FOR A HAPPY, HEALTHY AND MUCH MORE LABOR FRIENDLY NEW YEAR.

Nick C.

LEGISLATURE COMPLETES WORK ON STATE EMPLOYEE RETIREMENT "REFORM"

The Michigan Legislature completed work on December 8th on legislation changing the compelled 3% assessment for all state employees to cover the cost of state employee retiree health care to a 4% coerced assessment for state defined members should they elect to remain in the defined benefit plan and virtual elimination of health care benefits for state employees hired after January 1, 2012. The bills are a result of an even harsher proposal recommended by the Snyder Administration

HB 4701 (Rep. Bill Rogers, R-Brighton) amends PA 240, the State Employees' Retirement Act. The legislation would affect state employees' retirement benefits in the following ways:

Requires defined benefit plan members to "choose" to contribute 4% of their compensation to the employees' savings fund to provide for the amount of retirement allowance calculated on future service. A member who makes this choice may also **designate** that this amount is to be paid only until the member's "**attainment date**"—when he or she reaches 30 years of service or retirement, whichever occurs first. Years of service beyond 30 would be treated as tier 2, defined contribution years for members who made this designation. However, the designation is optional and members who choose to contribute 4% until retirement may have years of service beyond 30 used in the calculation of their defined benefit pensions.

Deferred members reemployed on or after July 1, 2011 and former nonvested members re-employed on or after that date will become qualified participants in Tier 2.

The original proposal and the House passed version eliminated all overtime from the calculation of final average contribution (FAC). The one victory labor won in the Senate was a partial restoration on this front – on a phased in basis overtime will be included in FAC based on a **6 year average** rather than a 3 year average. Base wage FAC will continue to be calculated on a 3 year average.

Defined benefit plan members who do not elect to contribute 4% will have their pensions frozen at the current amount, with any future contributions going into "Tier 2".

Corrections and conservation officers may continue to qualify for the supplemental early retirement allowance as currently spelled out in the act for "covered employment" only if they elect to make the 4% contribution mentioned above.

Employees who were hired after 1997 and are in the Tier 2, defined contribution plan but have more than four years of service will be allowed to elect for no change in the current system or may choose to **shift their current accrued health care benefits into health retirement accounts, with the contributions to those accounts actuarially determined.**

The legislation would cease the existing 3% contributions – in the third pay period after the effective date of the act (which will be the date on which the Governor signs the bill and it is filed with the Secretary of State). Contributions already made will be refunded to employees with interest by May 1, 2012.

New hires will have no health care benefits. In lieu thereof, the State will match up to 2% additional employee contributions made to either a 401K or 457 fund. The State's contribution would go to the employee's existing 401K fund.

HB 4702 (Rep. Chuck Moss, R-Birmingham) amends PA 77, the legislation that was enacted last session to set up trust funds for retiree health care for employees in the state-operated pension plans. This bill is **tie-barred to HB 4701 and sets up a system that would mandate contributions to such trust funds, as defined in the act governing each public pension system that would be paid out under the health reimbursement accounts set up by the legislation.**

Although the only system immediately affected by this pair of bills is the State Employees Retirement Act, HB 4702 creates the structure to do the same thing for school employees, judges, state police, and legislators, should bills be introduced that would amend these acts. Reimbursable expenses include medical, dental, and vision to be paid for "past members or their funding account dependents under the applicable retirement act." "Health reimbursement account dependents" are defined in the bill as a past member's legal spouse and any unmarried children considered dependent under section 142 of the Internal Revenue Code.

The bill also permits the establishment of separate prefunding accounts by the relevant trustees. As permitted by law**, voluntary** contributions (and earnings on them) made by a member or past member who is deceased may be distributed to beneficiaries or the estate once eligible medical expenses are reimbursed. In addition to whatever mandatory contributions are required, members may make voluntary contributions from 1-5%. The vesting schedule for employer contributions is as follows:

50% after two years of service

75% after three years of service

100% after 4 or more years of service.

Following termination of employment, a trust must reimburse medical expenses to past members until their accounts are exhausted.

WORKERS' DISABILITY COMPENSATION

Both Houses of the Legislature have passed different but similar versions of House Bill 5002 which would change eligibility and benefit criteria for workers hurt on the job. The bills are a wish list of changes – many of which codify anti-worker court decisions – from the State Chamber of Commerce. Changes under consideration include:

- Under current law, if an injured worker finds a job that pays less than his previous employment, he or she gets benefits equal to the 80% of the difference between the two jobs, to offset after tax wage loss. Under HB 5002,

an injured worker's benefits could be reduced by wages **"whether or not actually earned."** Benefits could be reduced by wages you don't earn at a job you don't have. The Senate version excludes police and firefighters from this provision and provides that an employee who can demonstrate that he or she is diligently seeking work may not be assessed for wages not earned.

- The same thing could happen to older workers with their future pension. Under current law, worker comp benefits are reduced by the amount of a pension that you actually receive. Under HB 5002, your benefits could be reduced by a pension you **"are eligible to receive." This means that if you are eligible for a pension your benefit will be reduced even if you do not opt to retire.** With kids in college and a mortgage to pay, many workers can't afford to retire. But if that worker gets injured on the job, he or she could see his comp benefit greatly reduced or wiped out altogether to offset a pension that he or she doesn't receive because he or she intends to return to work. That is a complete perversion of the worker comp system, which is supposed to help people get healthy so they can return to work, not one that forces them to retire.
- Under current law, injured workers have to see the company doctor for the first 10 days of their injury. HB 5002 extends that 10 day period to 45 days in the House version and 28 days in the Senate version.

Concurrence in the Senate amendments is currently before the full House. If the House votes to concur in the Senate substitute the bill will go to the Governor. If the House rejects the Senate amendments the bill will be referred to a Joint House Senate Conference Committee.

UNEMPLOYMENT COMPENSATION

The Senate has passed a package of bill designed to save employers money to offset the cost of repaying their debt to the federal government for debt built up in the Unemployment Compensation Trust Fund (which pays the claims of workers who are laid off). The debt resulted from the Michigan's 10 year recession and from FUTA tax cuts given to businesses over the last 10 years designed to avoid the unemployment that occurred. In short we gave huge tax cuts to business to make sure there were jobs, they didn't provide those jobs, and now are insisting unemployed workers get shortchanged because of business's debts.

Part of the package would allow the Department of Treasury to bond to repay the federal debt to avoid federal penalties and require those bonds to be repaid by business based on fees assessed by the State. Assuming the State can get a cheaper interest rate than the federal penalties this is a wise approach that would save businesses money without hurting workers. However, the business community opposes this common sense unless the Legislature also adopts restrictions on worker eligibility to receive future unemployment compensation benefits. The Senate (surprise/surprise) acceded to their demands and tie barred the bonding bill to Senate Bill 806, another business wish list. Senate Bill 806 would put up 30 new barriers to unemployment claims. The bill has passed the Senate. The House Commerce Committee is expected to vote on it Tuesday and if it reports the bill the full House may act before the end of the year. I'll have a more complete analysis later.

ADDING INSULT TO INJURY OF CHILD CARE WORKERS

As you know, Governor Snyder destroyed collective bargaining for our child care workers in one of his first acts by shutting down the Michigan Home Based Child Care Council and halting dues collections for Child Care Providers Together – Michigan. The House passed HB 4003 earlier this year prohibiting collective bargaining rights for **any** subsidized public workers under PERA and even included a clause insisting that the prohibition is retroactive attempting to nullify the decision of over 20,000 child care workers. The Senate Reforms, Restructuring and Reinventing Committee has reported the bill to the Senate floor where it is pending. In addition to codifying the Governor's actions and prohibiting future Governors from recognizing the collective bargaining rights of non-traditional workers who receive state subsidies, the bill would also deprive home help care workers organized by SEIU of their collective bargaining rights.

WORKPLACE HEALTH AND SAFETY

This week the House Regulatory Affairs Committee reported and the House passed House Bill 5030 (introduced by Rep. Joe Haveman, Republican of Holland) which would prohibit the Michigan Occupational Safety and Health Administration) from promulgating any rule "strickter" than federal standards (when there is a federal standard) without legislative approval. The bill was passed the House mainly along party lines.

CHARTER SCHOOLS (AND CYBER SCHOOLS)

The Senate has passed a package of bills that, among other things, eliminates any cap on Charter Schools and Cyber Schools. Though purporting to provide some supervision over these "public schools" no real enforcement is added. Charter Schools have proven to be no more effective than traditional public schools and a huge drain on scarce resources. Cyber schools are new and difficult to monitor. When they were added to the mix last term in the Race to the Top Legislation they were limited to two pilots that were to report with recommendations on how to best operate them after two years of activity. The two years will be up in June and no report or recommendations have yet been made. Further one of the bills in the package eliminates the need for the reports. The House Education has reported the main bill in the package and it is pending on the House floor. The other bills in the package continue to be debated in the House Education Committee.

PUBLIC EMPLOYEE PAYROLL DEDUCTIONS

House Bill 4929 passed the House and if enacted into law would prohibit public school employers from collecting union dues or fair share fees through payroll deduction. The bill was considered by the Senate Committee on Reforms, Restructuring and Reinventing but was NOT reported out.

House Bill 5085 (Rep. Shirkey, R-Clarklake) and House Bill 5086 (Rep. Opsommer, R-Dewitt) would prohibit public employers from collecting PAC contributions through payroll deduction. The bills codify and expand the Supreme Court's decision that such activities are "contributions" and "expenditures" by the employer in violation of the Campaign Finance Act. The bills expand the prohibition to federal PAC's directly affecting AFSCME.

LABOR PROTECTIONS IN MERGERS AND CONSOLIDATIONS

Since the beginning of the year, Legislative Republicans, spurred by the Michigan Municipal League, have been working to eliminate all labor protections for employees affected by merger of local services. The argument given for this package of bills was to make such efficiency efforts "easier." AFSCME continually pointed out that front line workers are not opposed to service consolidation. Indeed, such consolidation often reduces administrative costs and thereby benefits our members. However, fear of the unknown and taking us out of the process could have the unintended consequence of forcing local worker opposition from organized and nonunion staff alike.

The House and Senate has completed work on, and the Governor is expected to sign, a modified package which will make our efforts to protect our members more difficult but not impossible if we understand and use the new laws carefully and timely.

Laws affected

The five bill package (Senate Bills 8 and 9 and House Bills 4309, 4311, and 4312) amended the following laws and created a new act, The Municipal Partnership Act:

- the Michigan Public Employees Relations Act (PERA)
- 57 PA 1988 – Municipal Emergency Services Consolidation
- the Intergovernmental Transfers of Functions and Responsibilities Act
- the Urban Cooperation Act

Who is affected

The following units of government are impacted by these acts:

- counties
- cities
- villages
- townships.
- public agencies created by other acts (such as the Urban Cooperation Act)
- Indian tribes recognized before 2000

The Municipal Partnership Act

SB 8 creates new authorization for the consolidation of services among local units of government trough a contract. The contract must include at least one county, city, village or township. For purposes of the Municipal Partnership Act, only, the state, a state department, division or agency cannot be one of the parties to the contract.

The contract, which is created upon resolution of the legislative bodies of the municipal parties to it, can either create a new authority or can designate the local governments which will administer the joint activities.

For any service not already being provided by one of the local units of government creating the partnership contract, competitive bids must be solicited and disclosed. However, the new partnership is not *required* to outsource the service. (The paragraph providing for this requirement specifically references EMS services but is not limited to EMS services.)

In addition to revenues made available from the communities involved, the partnership may levy taxes up to 5 mills subject to the following restrictions:

- the governing body of each local government participating must pass a resolution calling for a ballot proposal for the proposed millage
- the millage does not exceed the constitutional and statutory millage limit for each local government (including rollbacks in subsequent years)
- if only part of a local unit of government is to pay the millage voting is limited to those people who reside in that portion of the unit
- the tax proposal may be placed on the ballot only at an even numbered year November election
- a majority of the electors in each unit of government voting approves the ballot proposal unless the vote is on a renewal of millage in which case a majority of the entire area is required
- all proponents of the tax spin around three times while patting their heads (I made this last point up)

Under the act (and by amendment to PERA – see below) the following are prohibited subjects of collective bargaining:

- the decision of a local unit of government to enter into a partnership under this act
- the procedures for obtaining such a contract
- the parties to the contract

The joint endeavor contract language is a permissive subject of collective bargaining. However, if a bargaining unit engages in collective bargaining agreement with a local unit of government before a joint endeavor contract is adopted by resolution, any provision intended to bind an entity under that joint endeavor contract must be included in the joint endeavor contract.

The act does not create an employer-employee relationship between existing employees and the joint endeavor so it is critical that such a relationship must be negotiated before the adoption of the joint endeavor resolutions if there is to be one.

The act specifies that it does not relieve any local unit of the requirement to engage in impact bargaining with collective bargaining agents.

57 PA 1988 – Municipal Emergency Services Consolidation; the Intergovernmental Transfers of Functions and Responsibilities Act; and the Urban Cooperation Act

The Legislature amended the following acts to **strike the following labor protections** that had up to know been afforded workers whenever consolidation/merger occurred under their terms:

- guarantee that the employees necessary for the operation of the undertaking created by the interlocal agreement be transferred to and appointed as employees of the new entity
- that such employees receive all rights and benefits as would have been applicable without the joint venture
- seniority credits, sick leave, vacation, insurance, and pension credits in accordance with the records or labor agreements from the acquired system
- legal assurance that members and beneficiaries of any pension or retirement system or other benefits established by the acquired system continue to have rights, privileges, benefits, obligations, and status with respect to such established system.
- requirement that the political subdivisions to which the functions or responsibilities have been transferred shall assume the obligation of any system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for employees
- a provision that an employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits.
- a public agency created in the consolidation will act as the employer with the responsibility, authority, and right to manage and direct on behalf of the public the functions or services performed or exercised
- the act does not create an employment relationship between current employees and the new entity

The bills as originally introduced and passed by the State House eliminated all these protections. After bouncing the bills between the two houses several times the following provisions were added to the final bill in response to objections raised by a labor coalition that included AFSCME, Firefighters, the Fraternal Order of Police and the AFL-CIO:

- the contents and language of any instrument creating a joint exercise of power is a permissive subject of collective bargaining. If bargaining before passage of the instrument combining services occurs, any agreement between the employer and the union must be included in the consolidation contract

- the joint exercise of power is effective at least 180 days before the actual transfer of any functions or services. Before this date, the public agencies that are parties to the contract must affirm in writing to a new entity those employees of the contracting units that will be transferred to the new entity (the old provision of a required transfer of necessary personnel was struck)
- if union represented employees are transferred, those employees are subject to their previous terms and conditions of employment until those terms and conditions of employment are modified in accordance with PERA or for 6 months after transfer, whichever is earlier. Contract negotiations between the existing employees' union and the new entity are to begin no later than 180 days before the transfer
- transferred employees carry their union representation with them (a MERC election will settle any dispute where multiple unions are involved and an agreement cannot otherwise be reached)
- unless otherwise agreed in a voluntary mutual agreement, transferred employees will have seniority based on a single, unified seniority list. Any seniority disputes are to be resolved by a single arbitrator appointed by MERC.
- a public agency or a joint exercise of power is not required to assume a collective bargaining agreement between another public agency and its employees

Amendments to PERA

Senate Bill 8 amended PERA to make it "subject to" the following acts:

- The Municipal Partnership Act
- The Intergovernmental Transfers of Functions and Responsibilities Act
- The Urban Cooperation Act
- The Emergency Services to Municipalities Act

This is a particularly damaging statement as PERA has generally been considered to supersede whenever public employee labor relations were involved. Under this provision that remains true except as to any provisions included (now or subsequently, even if PERA is not amended) of these acts.

Senate Bill 493 adds the following prohibited subjects of collective bargaining to PERA:

- a decision as to whether or not the public employer will enter into an intergovernmental agreement to consolidate 1 or more functions or services, to jointly perform 1 or more functions or services, or to otherwise collaborate regarding 1 or more functions or services.
- the procedures for obtaining a contract for the transfer of functions or responsibilities under an agreement described in above
- the identities of any other parties to an agreement described above

However, the bill does specifically reaffirm the obligation of public employers of to collectively bargain with its employees as to the effect of a consolidation/merger contract on its employees (i.e., "impact bargaining").

DOMESTIC PARTNER BENEFITS

No state or local government could provide health care benefits to non-family member dependents under legislation which has passed both houses of the legislature and been sent to the Governor.