
Proposal 2: Impact on Collective Bargaining for Schools

By Ann L. VanderLaan / Oct 24, 2012

Among the many ballot proposals in the Nov. 6, 2012, general election is Proposal 2012-02 (Proposal 2). Based on a petition circulated by the "Protect Our Jobs Coalition," Proposal 2 requests voters to limit the right of the legislature to regulate collective bargaining in the state and embed this limitation in the Michigan Constitution. Proposal 2 is intended to invalidate existing and future state laws that impose any limits on labor unions' ability to bargain collectively. Any law - past, present or future - that arguably regulates items that may be the subject of collective bargaining would be nullified, other than the law prohibiting public employees from striking.

According to Michigan Attorney General William Schuette, this constitutional amendment could "abrogate or otherwise limit" 18 provisions of the Michigan Constitution and impact over 170 existing state laws. The Citizens Research Council of Michigan has published a comprehensive Memorandum discussing Proposal 2 and its implications for State laws involving collective bargaining rights, which may be found at the following website: www.crcmich.org

Because of concerns over the impact of Proposition 2 upon public school districts across the State, several Michigan public school associations have banded together in an effort to defeat Proposal 2. These groups include the following:

- Michigan Association of School Boards
- Michigan Association of School Administrators
- Michigan School Business Officials
- Michigan Association of Intermediate School Administrators
- Michigan Association of Secondary School Principals.

The groups' website containing information regarding Proposal 2 may be found at www.stop2and5.com .

As is addressed in the groups' website, board members and superintendents may take a position and speak out on the ballot proposal, but they are subject to the same limitations that would apply during a local bond or millage election. Public school administrators and employees also are subject to restrictions of state law. A board of education may pass a resolution supporting or opposing Proposal 2 and post the resolution on its website along with the board meeting minutes, if it chooses to do so. Both of these matters are addressed in the groups' website noted above.

We have received calls about whether a public employee may wear a button or t-shirt supporting or opposing a candidate or a ballot issue on work time. There are no reported cases on the issue. While those needing advice on this issue should consult their own attorney regarding their specific situation, it is our view that such activity is prohibited by the Political Activities by Public Employees Act, MCL 15.401, *et seq* . This Act limits the political activities of public employees during the public employees' work time. This statute guarantees public employees the right to "engage in political activities on behalf of a candidate or issue in connection with nonpartisan elections" [MCL 15.403(1)(d)], but such activities "shall not be actively engaged in by a public employee during those hours when that person is being compensated . . . as a public employee," [MCL 15.404.]. It is our opinion that a public employee wearing a button or t-shirt in support of a candidate or election issue during work time would be "actively engaging" in political activity during work time and, thus, be in violation of the Act.

Please contact your Clark Hill attorney if your board members or school administrators have any questions regarding Proposal 2, its potential impact on your district, and/or permissible campaign activities.