

The Impact and Interplay of Public Acts 54 and 152 in Negotiations

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Overview

Public Act 54 of 2011

- Case Law
- Impact on Negotiations

Public Act 152 of 2011

- 2013 Amendments
- Case Law
- Impact on Negotiations

Interplay between PA 54 and PA 152

Public Act 54 of 2011

- MCL 423.215b: “ . . . after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement. The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.”
- **Mandatory preservation of the “status quo.”**

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Case Law - Public Act 54 of 2011

Waverly Community Schools and Bedford Public Schools

- The issue in these cases was whether PA 54's prohibition on wage step increases also included a prohibition on wage increases based on educational advancement (lane changes).
- MERC and the MI Court of Appeals ruled that PA 54 prohibits the granting of step increase and lane changes during the time when the parties are operating under an expired contract.
- Districts do not commit unfair labor practices by refusing to grant lane changes to teachers who had otherwise qualified to receive them after a contract expired and before new contract is ratified.

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PA 54 – Impact on Negotiations

- No step advancement; no lane change; no retroactivity.
- Provides employees with an incentive to settle prior to the expiration of the current agreement.
- If employer is seeking concessions, however, PA 54 does not encourage early settlement.
- Minimizes the employer's budget deficit from growing larger during negotiations.

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Public Act 152 of 2011

- The Publicly Funded Health Insurance Contribution Act
- MCL 15.561-569
- *“AN ACT to limit a public employer's expenditures for employee medical benefit plans; to provide the power and duties of certain state agencies and officials; to provide for exceptions; and to provide for sanctions.”*

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Public Act 152 of 2011

- At the bill signing in 2011, Governor Snyder stated that the law is *“a fair and equitable approach that brings public employee benefits more in line with the private sector. Getting these currently unsustainable costs under control now helps ensure Michigan’s long-term future and allows us to all move forward together.”*
- MEA spokesman Doug Pratt stated, *“This is just another example of our teachers and other public employees being under attack from this governor and Legislature.”*
- Both would likely agree that the law has *radically* changed negotiations regarding public employee insurance in Michigan.

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Public Act 152 of 2011

- Choice of Hard Cap (Section 3) or 80/20% (Section 4) option.
- Employer's contribution limitations apply to:
 - "...reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs..."
 - *See 2013 amendments to follow.*

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Public Act 152 of 2011

- Calendar Year 2015 Hard Cap Amounts are:
 - \$5,992.30 = Single Subscribers
 - \$12,531.75 = Individual & Spouse or Individual plus 1 Non-Spouse Dependent
 - \$16,342.66 = Full Family
- These limitations are a *ceiling*, not a floor.
- See MI Dept. of Treasury website for future updates:
 - http://www.michigan.gov/treasury/0,4679,7-121-1751_2197_58826_63352-289841--,00.html

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2013 Amendments to PA 152

- 5 bills
- 4 applicable to public schools
- 1 applicable to municipalities only (SB 545)
- Except as noted, they take immediate effect, are deemed to be “curative” and thus retroactive to beginning of PA 152. (i.e., medical benefit plan coverage years beginning January 1, 2012 or thereafter.)

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Public Act 269 of 2013

Medical benefit plan coverage year

- Clarification
- The 12-month period after the effective date of the contractual or self-insured medical coverage plan that a public employer provides to its employees or public officials.
- Curative and retroactive, takes immediate effect.

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Public Act 269 of 2013

Medical benefit plan costs

- Starting with plan coverage years beginning 1.1.14 or the effective date of the amendments, whichever is later, **INCLUDES**:
 - (1) the state's health insurance claims tax
 - (2) insurance commissions
 - (3) PPACA fees and taxes
- **EXCLUDES** cash-in-lieu payments
- **EXCLUDES** health plans for retirees or those separated from service
- PA 269 takes immediate effect, is deemed curative and retroactive

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Public Act 270 of 2013

Changes to The Hard Caps

- “Clarifies” that the original **Two-Person** cap applies also to an **individual and ONE non-spouse dependent**
- Beginning with medical benefit plan coverage years on or after 1.1.14, the cap for an individual and ONE non-spouse dependent coverage, as well as the cap for individual and spouse coverage, are increased to **\$12,250**.
- Individuals with TWO non-spouse dependents remain in the family coverage category.
- SB 542 takes immediate effect; all but the increase in two- person cap coverage is deemed curative and retroactive.
- Effective date of increase in two-person cap coverage turns on when your medical benefit plan coverage year begins and language of the applicable collective bargaining agreement.

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Public Act 271 of 2013: The 80/20 Option

- Must be elected **BEFORE** the beginning of the medical benefit plan coverage year.
- Annual election is required.
- The changes in definitions under SB 541 also apply.
- SB 543 takes immediate effect.
- SB 543 is not explicitly stated to be curative and retroactive.

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Public Act 272 of 2013: Effective Date of PA 152

- Clarifies that effective date of PA 152 was September 27, 2011.
- Curative legislation and thus is retroactive.
- PA 272 takes immediate effect.
- PA 273 applicable only to municipalities. Allows them to opt-out of PA 152 by a 2/3 vote of governing body.

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Operational Questions

- Change two-person cap for medical benefit plan coverage year beginning January 1, 2014?
 - Law “curative” and immediately effective
 - Turns in part on what CBA states; if flat dollar amount negotiated, increase in two-person cap may be irrelevant.
- What about past treatment of working parent with one dependent as family coverage?
 - Must district unilaterally collect more for year-to-date or prior years?
 - Is there a “ex post facto” constitutional problem?
- Must the District treat non-union and union groups the same on this issue?
- Other?

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Case Law Regarding PA 152

Decatur Public Schools

The support staff union alleged that the District unlawfully failed to bargain its decision to implement the hard cap and make payroll deductions consistent with the hard cap.

- MERC and the MI Court of Appeals ruled that because the support staff failed (after being notified) to demand to bargain the issue, the District did not fail to bargain.

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Case Law Regarding PA 152, cont.

Decatur Public Schools

The teachers' union had requested to bargain and the parties did so but were unable to reach agreement. When the District unilaterally made payroll deductions upon contract expiration to comply with PA 152, the teachers' union alleged an unlawful failure to bargain.

- MERC stated that the public employer's choice on which method it will elect to comply with PA 152 "...is a **policy choice to be made by the employer,**" **not a mandatory subject of bargaining**, and not subject to a duty to bargain.
- MERC ruled that a public employer, upon electing either the hard cap option or the 80/20 option, **may take unilateral action to comply with PA 152** - including making unilateral payroll deductions to ensure compliance - and is not required to delay compliance to negotiate with the union.
- Because the election decision does not relate to a mandatory subject of bargaining, the employer is under no obligation to bargain to impasse before making the payroll deductions needed to comply with the law.

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Case Law Regarding PA 152, cont.

- On appeal, the MI Court of Appeals affirmed MERC's ruling.
- As the Court explained, however, employees "may still bargain for health insurance benefits up to the amount of the limits imposed by the employer, whether that limit be in the form of the hard caps or the 80/20 plan."
- As such, there remains a duty to bargain as to whether the public employer will pay the maximum allowed under the statute, or will pay some amount below the ceiling that PA 152 sets.

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Case Law Regarding PA 152, cont.

Garden City Public Schools

- Facts here different than in *Decatur* because the parties had an unexpired contract in which they agreed to a specific healthcare plan (BCBS PPO 1) and specified that the District would pay 80% of the plan.
- District attempted to convince union to agree to a new plan that would save the District money but, after being unable to do so, the Board voted to switch from 80/20% to the Hard Caps and the District discontinued the BCBS PPO 1 plan.
- The administrative law judge relied on the Commission's opinion in *Decatur* to conclude that the employer's choice between the Hard Cap or the 80/20% option is a permissive subject of bargaining (i.e., it *may* bargain the issue, but is not required to do so).

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Case Law Regarding PA 152, cont.

Garden City Public Schools, cont.

- However, the judge concluded that if an employer enters into a contract in which it agrees to provide a specific plan and to follow a specific PA 152 option, it may not unilaterally change that plan or option during the life of the contract without obtaining the other party's agreement.
- The judge ordered the District to restore the plan, to resume paying 80% of the plan, to make the employees whole for the money they lost as a result of the change, and to post a notice in its buildings stating that it committed an unfair labor practice.
- The District appealed to the full Commission, but MERC affirmed the judge's decision and recommended order.

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PA 152 – Impact on Negotiations

- An employer's decision regarding the option by which it complies with PA 152 is not a mandatory subject of bargaining.
- So long the parties do *not* have an unexpired contract in which they specify a PA 152 option, the employer's choice between those options is a policy decision that it alone may decide.
- If the parties *do* have an unexpired contract in which they specify a PA 152 option, the Employer is bound to follow that contract or risk committing an ULP.
- Healthcare benefit plans and the cost of such plans to employees continue to be mandatory subjects of bargaining, to the extent that the costs are within the parameters of the Employer's choice of options under PA 152.

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Interplay between PA 54 and PA 152

Example

- Pursuant to PA 152, the employer was paying 80% of employees' medical benefit costs during the term of the parties' contract.
- Once that contract expires and until a new contract is in effect, the employer continues to pay the dollar amount that it was paying on the expiration date of the contract.
- Pursuant to PA 54, the employer cannot continue to pay 80% of any *increased* medical benefit costs that may have taken effect after the contract expired.

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Health savings accounts

Many districts have adopted a high deductible health plan with contributions to a health savings account (HSA)

- Included in PA 152 contribution limits
- Pre-funding raises issues if employee terminates mid-year
 - Return of HSA contributions
 - Tax consequences to former employee

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Affordable Care Act

Districts subject to employer mandate must offer coverage that is “affordable” to avoid a penalty under the ACA

- Employee’s cost for single coverage for lowest coverage option providing minimum value may not exceed 9.5% of employee’s household income
- 3 safe harbors:
 - W-2
 - Rate of pay
 - Federal poverty level
- May charge any amount for dependent coverage

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This presentation is not a substitute for legal advice in a specific situation. You should contact legal counsel for advice concerning your particular facts and circumstances.

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Questions?

Thank you!

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