

Frequently Asked Questions Regarding the Retirement Litigation
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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 (MPSEERS) 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 MPSEERS 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.

The Michigan Supreme Court issued a final decision in the PA 75 case on December 20, 2017, and WE WON. See question 8 below.

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 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. In other words, the Supreme Court decided to review the decision of the lower court. The parties filed additional briefs, and oral argument was held on November 8, 2017 in which MEA participated on behalf of its members.

8. Did the Michigan Supreme Court issue a final ruling in the case?

Yes. On December 20, 2017, the Supreme Court issued a 6 to 0 decision, finding that PA 75 violated the Contract Clauses of the federal and state constitutions. In other words, WE WON. The Court held: "Because 2010 Public Act 75 is unconstitutional, the funds collected pursuant to that act before the effective date of 2012 Public Act 300 must be refunded to the plaintiffs in accordance with the Court of Appeals judgment." Since the Michigan Supreme Court is the highest court in the State, the decision cannot be appealed by the defendants to any other state court. As this case primarily presents issues of state law, an appeal to the US Supreme Court is highly unlikely.

9. What time period does the 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." Likewise, the Michigan Supreme Court held "the funds collected pursuant to that act [PA75] before the effective date of 2012 Public Act 300 must be refunded to the plaintiffs in accordance with the Court of Appeals judgment." PA 300 went into effect on September 4, 2012.

The money held in the escrow account, which is to be sent to the districts for distribution, is for the period of July 1, 2010 - September 3, 2012. The Supreme Court ruled the end date is when the 2012 law took effect and Judge Borello of the Court of Claims has confirmed this. For those who opted out of paying the 3% under the 2012 law because they opted out of retiree health benefits, money taken after September 3, 2012 has already been returned by deposit in the employee's 401(k) account. For those who opted in to paying the 3% because they opted in to retiree health benefits, any money taken out after September 3, 2012 goes toward retiree health care. If retiree health care is not available upon retirement, contributions paid by choice under the 2012 law will be returned as provided in PA 300.

If you chose retiree health benefits under PA 300, any payments under that Act are lawful and not subject to this lawsuit or eligible for refund. See above questions 4-6 regarding PA 300.

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

If you had money taken out of your paycheck under PA 75, you are entitled to a refund.

Per the Supreme Court and the Court of Appeals, the case will be remanded to the trial court “which shall direct the return of the subject funds, with interest, to the relevant employees.”

ORS has announced that reporting units will receive a transfer of the contribution and interest funds with the January 22, 2018 school aid payment. This does not mean that employers will disburse the funds on that date.

We expect for individuals who worked for districts that have closed or dissolved since 2010 to receive a check directly from the Office of Retirement Services. Such individuals should make sure ORS has a current address on file.

11. What happens if I have retired? What happens if a member died?

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.

If a member unfortunately died before the conclusion of this case, it is our position that the money should go to the member’s estate.

12. 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. The money will be distributing to reporting units on or about January 22, 2018.

13. When the money is returned, will it be subject to taxes?

But for the actions of the state, the money would have been wages. Therefore, in our view, the refund will be subject to employment taxes. If the original contribution was not subject to FICA, the reimbursement will likely be subject to FICA. Conversely, if the original contribution was subject to FICA, you should

not be taxed twice. Only your employer will know whether FICA was taken out of the original contribution. MEA cannot provide tax advice to individuals. If you have questions about the taxability of your individual refund, please consult your tax advisor.

14. What happens if there is an issue with my refund, but I am not a member in good standing?

Only members in good standing are entitled to the full range of legal services available under the MEA Legal Representation Policy. An individual must be in good standing at the “time of the action complained of” and must maintain active membership in good standing for the entire time legal services are provided. Under the Legal Representation Policy, we have the right to deny representation when it appears that an individual became a member for the purpose of receiving legal representation. Signing up for membership contemporaneous with a dispute over a refund will result in a denial.

15. Has anything happened in the Court of Claims (trial court) since the Supreme Court issued its December 20, 2017 decision?

Yes. A status conference was held with Judge Stephen L. Borello on January 18, 2018. We believe an order will be issued as a result of that status conference. Based on discussions held, we believe the order will provide for the disbursement of the escrow funds to the reporting units (school districts and participating colleges) on January 22, 2018. The Court has scheduled a second status conference for February 5, 2018. The purpose of the second status conference is to review progress of disbursement to the reporting units and discuss any issues related to disbursement.

16. Will the Plaintiffs argue for additional interest as a prevailing party and attorney fees?

Yes. However, since the state does not agree to either, the parties have agreed to a briefing schedule. The Court of Claims will issue a decision on those issues thereafter.

17. Is this case supported by dues dollars?

Absolutely. More than seven years of complex litigation is costly. This case is just one of many examples of your dues dollars in action. No one person could have taken on this fight alone. We are stronger when we are together.

18. I heard MEA is asking for members' contact information. Is that true? Why?

MEA wants to keep all members up-to-date on this important case and might need to communicate with you on an individual basis regarding your refund. We suggest that you make sure that MEA has your current contact information including home address, telephone number, cell phone number, and home email address. You can send that information to the webmaster@mea.org. It is helpful if you identify yourself by name, membership number (if you know it), and local association/school district. We make all attempts to not communicate with members on their school email because of legal concerns.

19. Who paid for the special assistant attorney general?

According to an MLive article dated December 26, 2017, Michigan taxpayers, as of the date of the article, have spent more than \$380,000 on outside attorneys at the Dykema law firm since Governor Snyder decided to proceed on his own.

20. How much additional interest were we awarded?

On July 24, 2018, Judge Stephen Borello ruled that individuals will receive the interest rate specified in the Revised Judicature Act, MCL 600.6455(2), minus the amount of interest earned on the funds while they were held in escrow. This is a complicated calculation that the plaintiffs' attorneys are working diligently on determining.

21. When can I expect to receive the additional interest?

To some extent, this depends on whether or not the Attorney General, Bill Schutte, decides to appeal Judge Borrello's decision. The AG has 21 days from the date of the decision to file an appeal in the Michigan Court of Appeals. We will provide updates as soon as we have them.

22. 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.