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BILL ANALYSIS

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Senate Bill 850 (as passed by the Senate)
Sponsor: Senator Patrick J. Colbeck
Committee: Reforms, Restructuring and Reinventing

Date Completed: 6-26-14

RATIONALE

The public employment relations Act (PERA) governs the resolution of disputes between governmental agencies and their employees through the mediation of grievances and collective bargaining. Before PERA was amended several years ago, when a collective bargaining agreement (CBA) expired and a new agreement had not been reached, public employers were obligated, in most cases, to grant employees wage increases according to the terms of the expired CBA, while negotiations continued. Public Act 54 of 2011, however, added Section 15b to PERA to freeze wages and benefits at the rate in effect when a CBA expires, until a new agreement takes effect; and require employees who receive health care or other insurance benefits under a CBA to bear any increased cost of maintaining those benefits after the CBA expires, until a new agreement is reached. In addition, Section 15b prohibits the parties to a CBA from agreeing to, and prohibits an arbitration panel from ordering, any retroactive wage or benefit levels that are greater than those in effect when the CBA expired. Although Public Act 54 evidently was designed to expedite bargaining between school districts and teachers, the amendments apply to all public employers and employees subject to PERA, including police officers and firefighters.

Some people believe that Public Act 54 of 2011 has created a hardship for those public safety workers, who apparently are hired with low salaries and benefit levels that do not increase for a number of years, and who are subject to compulsory arbitration of labor disputes under a separate statute, Public Act 312 of 1969. Thus, it has been suggested that an exception to Section 15b of PERA should be made for this category of public employees.

CONTENT

The bill would amend the public employment relations Act to provide that Section 15b would not apply to a public employee eligible to participate in compulsory arbitration of labor disputes under Public Act 312 of 1969.

MCL 423.215b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When the legislation that became Public Act 54 of 2011 was proposed, advocates evidently wanted to halt the salary and benefit increases for public school teachers that were being granted automatically during contract negotiations. Typically, teachers receive "step increases" in salary based on seniority, as well as increases based on graduate degrees or coursework (sometimes called "lane changes"). As described in a recent Michigan Court of Appeals opinion, "A teacher's salary would be determined by a table in the CBA with the vertical axis being years of work experience and the horizontal axis accounting for the extent of the teacher's graduate education" (*Bedford Public Schools* v *Bedford Education Association MEA/NEA*, Docket No. 314153). When a collective bargaining agreement expired and a new CBA had not been reached,

a public school employer was obligated to pay its teachers both types of increases according to the terms of the expired CBA while negotiations were ongoing. Apparently, many people believed that this created an environment in which teachers' unions had a disincentive to negotiate in a timely manner, and school districts were forced to pay automatic increases they could no longer afford. Public Act 54 therefore was enacted to address this situation.

As added by Public Act 54, however, Section 15b of PERA applies to *all* public employees who are covered by that statute. The Act's definition of "public employee" includes a person holding a position by appointment or employment in State or local government, in the public school service, and in any other branch of the public service; no exception is made for police officers or firefighters.

Unlike public school teachers, police officers reportedly are hired at very low wages and benefits and do not receive increases for a number of years. When their wages and benefits are frozen after a CBA expires, many experience serious financial hardship, especially when they have to pay additional costs to maintain health care coverage. In fact, some are forced to obtain food assistance benefits from the State, according to committee testimony by a representative of the Public Officers Association of Michigan. Also, because wages cannot be retroactively increased, an officer might be promoted but will be denied the raise that he or she otherwise would receive.

Compared with other public employees, police officers and firefighters are in a unique position because they are subject to compulsory arbitration of labor disputes under Public Act 312 of 1969 (which also covers emergency medical service personnel and dispatchers employed by a public police or fire department). Under that law, when negotiations are at an impasse, the conflict must be resolved through binding arbitration conducted by a neutral arbitrator. Public Act 54 is not needed to give the parties an incentive to negotiate. In addition, an arbitrator under Public Act 312 has the authority to enter an award retroactively, something that is prohibited by Public Act 54. The two laws are incompatible.

Furthermore, while Public Act 54 gives employees' representatives an incentive to come to the bargaining table, it also creates an incentive for public employers to procrastinate.

Response: It is not in the interest of governmental agencies to delay contract negotiations. Municipalities and school districts have to set budgets and need the certainty of contracts.

In addition, according to an attorney testifying on behalf of the Michigan Municipal League, decisions of the Michigan Employment Relations Commission have found no conflict between Public Act 54 and Public Act 312, and there is no confusion in the legal community regarding the application of the two.

Opposing Argument

Before Public Act 54 of 2011 was enacted, representatives of public employees were not always coming to the bargaining table in a timely manner. The Act has provided the incentive necessary for the parties to reach an agreement before a CBA expires. If that is accomplished, wages and benefits will not be frozen and the prohibition against retroactive increases will not be a problem.

There is no need to carve out an exception for employees subject to Public Act 312. Although the discussion might have focused on teachers when Public Act 54 was enacted, all versions of that legislation referred to a "public employer" and did not distinguish between teachers, police officers, and any other public employees.

Response: As a result of the inclusive language of the amendment, some provisions of Public Act 312 have been circumvented. Whether this was inadvertent or not, it can be corrected now.

Opposing Argument

It is unfair for any public employee to be denied pay raises and benefit increases during contract negotiations. Public Act 54 should be repealed.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would no fiscal impact on the State, and a minor, but likely negative, fiscal impact on local units of government. The bill would exempt police officers and firefighters from the prohibition on increases for wages of public employees after the expiration of a collective bargaining agreement. The bill also would exempt those employees from having to pay any increased costs of insurance and other benefits that occur after the expiration of a collective bargaining agreement. The bill would presumably pass the costs related to any wage increases and increased benefit costs after the expiration of a collective bargaining agreement onto the municipality served by the employing police or fire department until a new agreement was in place.

Fiscal Analyst: Josh Sefton

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