ORS LAWSUIT UPDATE

(as of December 20, 2023)



What the Law Says v. Interpretation

The Public School Employees Retirement Act - MCL 38.1303a

- Created in 1996 to define compensation and prevent a union services agreement scenario.
- Subsection (2): What is considered compensation
- Subsection (3): What is not considered compensation
 - o ORS' interpretation of (3)(f) led to the creation of their Normal Salary Increase table (NSI) to stop compensation increases that they believed could be considered pension spiking: "Compensation in excess of an amount over the level of compensation reported for the preceding year except increases provided by the normal salary schedule for the current job classification. In cases where the current job classification in the reporting unit has less than 3 members, the normal salary schedule for the most nearly identical job classification in the reporting unit or in similar reporting units shall be used."
 - o MASA believes Subsection (3)(e) was designed as the pension spiking provision within the law: "Remuneration paid for the specific purpose of increasing the final average compensation."

Batista v. ORS Legal Timeline

(2019) Summer

 Original suit filed arguing that the NSI was created contrary to statutory authority dismissed by the Michigan Court of Claims.

2023 Summer

- Oral arguments heard before the Michigan Supreme Court due to ORS appeal.
- Supreme Court issued an order in lieu of granting appeal.
 - o Affirmed that ORS had no authority to create the NSI.
 - Remanded the case back to the Court of Appeals to determine the applicability of MCL 38.1303a(3)(f) to non-CBA employees.

2023 Present

- MASA filed a Brief for Leave to Appeal with the Supreme Court, essentially arguing the result of previous rulings is absurd and there is ongoing harm to retirees.
- Additional education groups and stakeholders including MASB, MSBO, MASSP, MEMSPA, and the Alliance for Student Opportunity – have filed Amicus Briefs to support the appeal.
- MASA also filed an application for a legal Stay to stop ORS from causing ongoing harm by applying the statute pursuant to the most recent Court of Appeals opinion.

– Summer (

2021

- Michigan Court of Appeals heard MASA appeal of Court of Claims dismissal and argument that the NSI was created contrary to statutory authority.
- The Court of Appeals agreed and found the NSI to be unlawful.

- Fall (2023)

- Court of Appeals held that there are essentially two categories of employees for retirement calculation purposes:
 - Group 1: An employee who works in a job classification with three or more members.
 - If a person in a group of three or more members does not have a "normal salary schedule," then that person's salary increases do not factor into retirement calculations and they cannot increase their retirement amount.
 - o Group 2: Employees who work in a job classification with fewer than three members.
 - For employees as part of a unit of two and below, increases are possible.
- Court of Appeals opinion also explicitly called for a legislative fix.

Michigan Association of Superintendents & Administrators