

# Public Employment Relations Act (PERA)

## Introduction

The Public Employment Relations Act (PA 336 of 1947), commonly known as PERA, was enacted to declare and protect the rights of public employees, which includes municipal employees, to organize and collectively bargain, and to prohibit strikes by public employees. It also lays out rules for disciplinary action and the mediation of grievances arising from activities covered by the Act.

In 2011, Section 15 of PERA was amended in three ways which had substantial impact on municipal employers.

## Public Act 4 of 2011—Emergency Management

PA 4 made significant changes to the way state-imposed emergency management of local government is handled. Among those changes, it modified the powers afforded to state appointed emergency managers (formerly known as emergency financial managers, or EFM's).

PA 4 allows an emergency manager to reject, modify, or terminate a collective bargaining agreement, and section 15 of PERA incorporates this language by reference. It also exempts public employers operating under a consent agreement provided for in PA 4 from PERA's requirements to collectively bargain. This exception is provided for the term of the consent agreement.

## Public Act 54 of 2011—Pay and Benefits

PA 54 incorporates within PERA as Section 15(b) a cap on wages and benefits for public employees at the level in effect when the collective bargaining agreement expired, including preventing automatic step increases. Further, it requires that public employees pay any increased costs of maintaining benefits after the contract expires. Finally, it prohibits retroactivity in pay and benefits once a new agreement is reached.

## Public Act 260 of 2011—Prohibited Subjects of Bargaining

PA 260 amended Section 15 of PERA, adding to the list of prohibited subjects of bargaining for public employers. This amendment gave sole discretion to the employer whether or not to enter into intergovernmental agreements to consolidate, jointly perform, or otherwise collaborate regarding one or more functions or services. The public sector employer also has the sole discretion whether to bargain about the procedures for obtaining a contract for the transfer of functions or responsibilities under an intergovernmental agreement. Consolidation/collaboration would be a prohibited subject of bargaining. The public employer would remain obligated, however, to bargain with the union as to the impact of the consolidation/collaboration.

Since the 2011 changes, a number other amendments to PA 336 have been enacted. These include the following:

## Public Act 45 of 2012—Employer-Employee Relationship

PA 45 of 2012 amended Section 1(e) of PERA by adding a subsection (iii) that provided that any individual whose position does not have sufficient indicia of an employer-employee relationship using the 20-factor test announced by the IRS in venue ruling 87-41, 1987-1 C.B. 296 is not a public employee entitled to representation or collective bargaining rights under the Act.

## Public Act 53 of 2012—Independent Audit

PA 53 added the following to subsection 4 to Section 10 of PERA: "By March 1 of each year, each exclusive bargaining representative that represents public employees in this state shall file with the commission an independent audit of all

expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year. The commission shall make the audits available to the public on the commission's website."

### **Public Act 76 of 2012—Definition of Public Employee**

- PA 76 amended Section 1(e)(i) of PERA by excluding as a public employee, a person employed by a private organization or entity who receives a direct or indirect government subsidiary as his or her private employment; and
- PA 76 amended Section 14 by adding a subsection 2 as follows: "An election shall not be directed for, and the commission or a public employer shall not recognize, a bargaining unit of a public employer consisting of individuals who are not public employees. A bargaining unit that is formed or recognized in violation of this subsection is invalid and void."

### **Public Act 349 of 2012—"Right to Work"**

PA 349 of 2012 amended Section 9(1) to provide that public sector employees had the right to choose to refrain from becoming or remaining a member of a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.

### **Public Act 323 of 2014—Firefighter—Other Employment**

PA 323 added Section 15a which gives an employee of a public fire department the right to volunteer or seek and accept part-time or paid on-call employment with another fire department if that employment does not conflict with his or her performance of the original employment as determined by the original employer.

### **Public Act 414 of 2014—Independent Examiner**

PA 414 of 2014 amended Section 10(9) to require an exclusive bargaining representative engage an independent examiner to verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during a calendar year and file the verification with the Michigan Employment Relations Commission. The exclusive bargaining representative is also required to file a declaration identifying the local bargaining units that are represented.

This publication was written by Melvin Muskovitz, [mmuskoviyz@dykema.com](mailto:mmuskoviyz@dykema.com) a member of the labor and employment law group of the law firm of Dykema Gossett PLLC, [www.dykema.com](http://www.dykema.com).