Notes - OPEB Protections
March 13, 2017

1. Retiree OPEB claims are generally contractual in nature – A retiree generally must point to a specific contract which granted OPEB to them.

2. Courts interpret contract provisions. The interpretation of OPEB provisions in collective bargaining agreements changed in 2015. Before then, the US Supreme Court had held that a general grant of healthcare to retirees was presumed to be a lifetime benefit.[1]

   In 2015, the US Supreme Court reversed itself and held that, unless the contract clearly grants lifetime benefits, a general grant of benefits is presumed to only last for the duration of the contract.[2] Under the Supreme Court's ruling, if the CBA at the time of retirement does not provide lifetime benefits, then the retiree only is entitled to what is promised in the current CBA. The result is that many retirees are likely not vested with lifetime benefits anymore under the new Supreme Court standards.

3. Vesting for a lifetime pension should not be confused with vesting for lifetime OPEB; they are completely different matters subject to different contract terms. Most often, if OPEB benefits do vest, they vest at the time of retirement.

4. Only if a retiree is vested do they have a contractual claim for OPEB. Employer reductions of a vested benefit could result in a breach of contract.

5. If a state law reduces a contractually vested benefit, both the federal and Michigan constitution may be violated unless a specific judicial standard is met.

   a. The "Contract Clause" is found in Article I, §10 of both the Federal and Michigan Constitution. Courts have held that they mean the same thing.
      i. Courts first consider whether a "substantial impairment" of contract has resulted from the law.
      ii. If so, then courts must evaluate the legitimacy and urgency of the purpose of the law and weigh that against the method and severity of the contractual impairment.
      iii. When the government is a party to a contract being impaired, courts hold the law to a higher standard.
      iv. There is case law suggesting that when a financial emergency is the justification for a contractual impairment, the impairment must be temporary.[3]

[1] See *UAW v. Yard-Man, Inc*., 716 F.2d 1476 (1983)
[2] See *M & G Polymers USA, LLC v. Tackett*, 574 U.S. --, 135 S.Ct. 926 (2015)
[3] *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398 (1934)