For many years, public employment was known as the place to receive great benefits as an employee—including retiree healthcare. With the tightening of municipal budgets during and after the recession, townships have begun to look for creative ways to manage increasing employee benefits costs. Efforts to change retiree contributions toward health care premiums or the retiree health care plan itself met with inconsistent and unpredictable results, because it was difficult to evaluate whether retirees were vested in their particular contribution level or coverage under the existing law. This uphill battle resulted from court decisions of the Sixth Circuit Court of Appeals, under whose jurisdiction Michigan falls. Thanks to a recent U.S. Supreme Court decision, however, townships and other employers in Michigan may find that there is now a realistic opportunity to reign in retiree health care costs.

M&G Polymers v Tackett
(MS Sup Ct, 2015)

M&G Polymers Changes the Landscape of Retiree Health Benefit Modifications

The Sixth Circuit has long been considered an unfavorable place for employers attempting to alter retiree health benefits, because it applied a legal presumption that lack of clarity in collective bargaining agreements (“CBAs”) must be interpreted as an intent that retiree healthcare benefits vest immediately. Once a benefit is vested, it is guaranteed and nearly impossible to change. It had become difficult to devise any language in the CBA (or similar written agreement or policy) that was sufficient to overcome this presumption and allow townships to reserve rights to make changes to retiree health benefits post-retirement. This was the federal law of the land, despite more favorable case law from Michigan courts.

The Supreme Court decision in M&G Polymers changed the way retiree health benefits will be analyzed in the Sixth Circuit. The private company, M&G Polymers, attempted to make changes to retiree health benefits of its current retirees, including requiring those current retirees to contribute to the cost of their health care for the first time. The retirees argued that the CBAs under which they retired provided them a vested right to the exact level of contribution-free health benefits described in the CBA—an argument that the Sixth Circuit upheld based on its legal presumption of vesting.

The Supreme Court refused to use the Sixth Circuit’s presumption of vesting, instead holding that when the CBA is silent about the duration of the retiree healthcare benefit (contribution levels or coverage, or both), it is improper to presume that the benefits to vest for life. This means that, unless expressly stated otherwise,
obligations under a CBA end when the CBA expires. In other words, townships and other employers can change the benefit after the CBA expires.

Retirees Must Prove Vested Rights to Healthcare Benefits through Language or Past Practice
The Supreme Court explained that retirees must affirmatively prove that they have a vested right to certain benefits, instead of merely relying on an arbitrary presumption of vesting. They must show specific contract language that demonstrates the intent to vest or support their argument with a past practice that clarified missing or ambiguous provisions within the CBA regarding the duration of the retiree healthcare benefit described in the contract.

A true “past practice” between the parties will help clear up the ambiguity if there is a dispute about a missing or ambiguous provision within a CBA, or can even supersede contrary language in the agreement. For example, if a CBA refers to an 8-hour work day, but does not define what constitutes a “day,” past practice could be used to clarify what the employer has previously counted as a day (i.e., where past practice has been to treat a “day” as midnight to midnight). Or if the CBA defines a “day” as midnight to midnight, but the parties have always treated “day” as the work day or the scheduled shift, the past practice would overcome the definition in the contract.

A good example of the impact of the lack of past practice with retiree benefits is found in a Michigan court case, Butler v Wayne County (Mich Ct of App, 2010). In that case, the employer attempted to change the premiums of supplemental life insurance purchased by retirees from a flat-rate premium structure to an age-related premium, because the existing premium rate was insufficient to fund the coverage. Although the parties agreed that the employer was obligated to make the supplemental life insurance available to the retirees under the CBA, the retirees were unable to show that they had an express right within the CBA to a flat-rate premium structure or that any past practice created a right to a flat-rate premium structure. The result of the retirees’ inability to prove their case allowed the change to an age-related premium.

What Can Be Changed?
M&G Polymers is a major turning point for employers who are facing a financial burden due to retiree healthcare obligations, especially public employers like townships that must specifically note in their audit the liabilities associated with Other Postemployment Benefits (OPEB) provided to retirees, from health care benefits and life insurance, to disability, legal and other benefits. There is now a clearer path to modify benefits for current retirees, which depends on the language of the CBA under which the employee retired—not on a presumption of vesting that may not relate at all to what the township and employees actually intended.

The changes to retiree benefits may take several forms, including contribution calculations or amounts or health care plans themselves, since retiree health benefits consist of various components. Determining what aspects of retiree health benefits may be altered is also clearly dependent on the language of the CBAs. For example:

- A CBA might expressly provide that a certain level of coverage must be maintained forever, but have no language that prohibits requiring retirees to contribute to premiums at a certain point, or vice versa.
- A CBA may tie retiree health benefits to those of active employees, to avoid long-retired individuals having far-superior health benefits to those of active employees, including coverage levels and premiums.
A CBA may also expressly reserve the right to alter premium contribution or coverage levels for retirees to further clarify that an employee who retires under that particular contract is doing so with knowledge that these benefits may change in the future. (In other words, the employee knows that he or she will have healthcare benefits in retirement, but there is no guaranteed contribution level or plan.)

Now, more than ever, the language in your township’s CBAs truly means something. We encourage townships to evaluate what they have been promising regarding retiree health care benefits, what they want to offer, and what language will best state that intent—especially if the language will be a change.

Other Considerations
Social media policies must walk a fine line between protecting the township and respecting employees’ rights. The considerations involved in deciding whether to alter retiree health benefits can of course still be quite challenging. Although a township must be sure that it is making its decision about retiree health care changes based on a contractually and legally-sound basis, that decision cannot be made in a vacuum. The township board should also consider the likely effects of that decision on labor relations, budgets and politics, as well as unintended consequences that might result from making such changes.

If your township board does decide to explore making changes to retiree healthcare benefits, we recommend consulting legal counsel, as every collective bargaining agreement presents unique language to which current, more favorable, law must be applied.

By: Helen “Lizzie” Mills and Steve Koski

YOUR TOWNSHIP ATTORNEYS . . . ON THE ROAD

Township Attorneys from Fahey Schultz Burzych Rhodes PLC will be presenting educational sessions for the Michigan Townships Association (MTA) and the Michigan Association of Township Supervisors (MATS) in the coming months. Join us at these wonderful networking and educational opportunities:

MATS Spring Education Conference & Annual Meeting—Comfort Inn, Chelsea

Regulating Alternative Energy Projects. Michigan has made a strong commitment to developing alternative energy in the state, primarily wind projects. But the principal responsibility for regulating the local impacts of wind projects has been left to townships and other local units. Whether you are for or against the location of wind projects in your township, officials need to know the available techniques for proper regulation of such issues as noise, setbacks, height limits and shadow flicker. Chris Patterson, Thursday, April 23 at 8:15 a.m.

Employment Law Urban Legends—Why They Matter to Your Township. Some urban legends are so entrenched that it is hard to believe they aren’t true. Attend this session to learn what you should, and shouldn’t, believe when it comes to employment law basics. Lizzie Mills, Thursday, April 23 at 9:15 a.m.
MTA Township Governance Academy—Kalamazoo

Managing Human Resources. Human resource issues need to be addressed in all townships—even small townships with only a few employees or volunteers. Hiring, firing, discipline, compensation, and recruiting and managing volunteers are just a few of the human resource related issues about which all township officials must be knowledgeable. We’ll help you build your township’s personnel policies, from the basic components to how to keep it current. Steve Schultz and Lizzie Mills, June 12.