Senate Fiscal Agency

NOVEMBER 2012 BALLOT PROPOSAL 12-2

An Overview

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On November 6, 2012, Michigan voters will decide whether to amend the Michigan Constitution to prevent any present or future laws from infringing on the rights of Michigan employees and employers to bargain collectively on wages, hours, and other working conditions. Proposal 12-2 reached the ballot by initiative petition, and will appear on the ballot as follows:

A PROPOSAL TO AMEND THE STATE CONSTITUTION REGARDING COLLECTIVE BARGAINING

This proposal would:

- *Grant public and private employees the constitutional right to organize and bargain collectively through labor unions.*
- *Invalidate existing or future state or local laws that limit the ability to join unions and bargain collectively, and to negotiate and enforce collective bargaining agreements, including employees' financial support of their labor unions. Laws may be enacted to prohibit public employees from striking.*
- *Override state laws that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements.*
- *Define "employer" as a person or entity employing one or more employees.*

Should this proposal be approved?

If a majority of the electors vote "yes" on Proposal 12-2, it will add Section 28 to Article I of the State Constitution and amend Article XI, Section 5.

Background

The U.S. Bureau of Labor Statistics reported that in 2011, 703,000 Michigan employees were members of a union, or were represented by a union. This number represents about 18.3% of Michigan workers, compared with about 13.0% nationally. According to unions.org, these employees in Michigan are represented by 51 unions which consist of 870 local unions.

Based on the most recent Civil Service Workforce Report, there are 50,333 State classified employees, of whom 36,152 are represented by unions. The current collective bargaining process for State classified employees was established by the Civil Service Commission in the early 1980s through the administrative rule-making process. It is relevant to note that Civil Service Commission rules provide that the Commission retains the authority, during the term of a collective bargaining agreement, to modify the agreement without the approval of the parties.

Article XI, Section 5 of the Michigan Constitution governs the classified State civil service and the role of the Civil Service Commission, which makes wage and benefit recommendations to the Governor for inclusion in the executive budget. The Legislature has the authority to reject or reduce recommended increases in rates of compensation. Specific provisions govern the collective bargaining rights of State Police troopers and sergeants. The Legislature and Judiciary are not subject to the civil service collective bargaining process. No Michigan Supreme Court employees are represented by unions and the same is true for most legislative employees.

Other public employees, including municipal employees and public school employees, are subject to the public employment relations act, which authorizes public employees to form labor unions, and governs collective bargaining between public employers and representatives of their employees.

The collective bargaining rights of employees in the private sector are governed by the National Labor Relations Act.

Proposed Constitutional Amendments

The language that Proposal 12-2 would add to the Constitution in Article I, Section 28 is described below, by subsection.

Subsection (1) contains the following language:

"The people shall have the rights to organize together to form, join or assist labor organizations, and to bargain collectively with a public or private employer through an exclusive representative of the employees' choosing, to the fullest extent not preempted by the laws of the United States."

Subsection (2) states that "to bargain collectively" means "to perform the mutual obligation of the employer and the exclusive representative of the employees to negotiate in good faith regarding wages, hours, and other terms and conditions of employment, and to execute and comply with any agreement reached". This obligation does not compel either party to agree to a proposal or to make a concession.

Subsection (3) prohibits any existing or future law of the State or a political subdivision from abridging, impairing, or limiting the rights described above, although the State may prohibit or restrict strikes by public employees. Also, when exercising its power to enact laws related to hours and conditions of employment, the Legislature may not impair or limit the right to bargain collectively for wages, hours, and other terms and conditions of employment that exceed minimum levels set by the Legislature.

Subsection (4) prohibits any existing or future law of the State or a political subdivision from impairing, restricting, or limiting the negotiation and enforcement of any collectively bargained agreement with a public or private employer respecting employees' financial support of their collective bargaining representative according to the terms of that agreement.

Subsection (5) defines "employee" as a person who works for any employer for compensation, and defines "employer" as a person or entity employing one or more employees.

Subsection (6) provides that Section 28 is "self-executing" (which means that no laws need to be enacted to implement it). Also, if any part of Section 28 is found to violate the U.S. Constitution or Federal law, that part can be severed from the section and the balance will remain in effect.

Proposal 12-2 also would add the following language to Article XI, Section 5:

"Classified state civil service employees shall, through their exclusive representative, have the right to bargain collectively with their employer concerning conditions of their employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment except promotions, which will be determined by competitive examination and performance on the basis of merit, efficiency, and fitness."

Collective Bargaining in Other State Constitutions

A search of the constitutions of the other 49 states revealed that at least seven have some mention of collective bargaining rights in their constitutions. This number does not include states that have "right-to-work" provisions in their constitutions, but does include two states (Arkansas and Nebraska) that have "right-to-work" provisions that prohibit discrimination against both employees who refuse to join a union (the conventional notion of "right-to-work") and employees who belong to a union. That is, the constitutions of these two states essentially say that employers may not fire someone for either joining or refusing to join a labor union.

Provisions regarding collective bargaining rights in the other five states (Hawaii, Missouri, New Jersey, New York, and Oregon) vary in the rights enumerated. The constitutional sections regarding collective bargaining in each of these states are detailed below.

Hawaii: Article 13, Sections 1 & 2

Section 1. Persons in private employment shall have the right to organize for the purpose of collective bargaining.
Section 2. Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law.

Missouri: Article 1, Section 29

Section 29. Organized labor and collective bargaining.—That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

New Jersey: Article 1, Section 19

Section 19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

New York: Article 1, Section 17

Section 17. Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. No laborer, worker or mechanic, in the employ of a contractor or subcontractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall he or she be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used. Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

Oregon: Article 15, Section 11, Subsection 3, Subparagraph f

(f) For purposes of collective bargaining, the Commission shall be the employer of record of home care workers hired directly by the client and paid by the State, or by a county or other public agency which receives money for that purpose from the State. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the Commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration as the method of concluding the collective bargaining process. Home care workers shall not have the right to strike.

All of these five states except Oregon specify that workers in the private sector have the right to collectively bargain. Missouri, New Jersey, and New York do not separate private sector from public sector employees, while Hawaii allows lawmakers to determine the rights of public employees to organize. Oregon is different from the other four in that the only mention of collective bargaining in its constitution is for home care workers, who are granted collective bargaining rights. This section was added to the Oregon constitution in 2000 by a ballot proposal.

Apart from the seven states mentioned above, it is possible that courts in other states have established collective bargaining rights based on constitutional provisions not directly related to collective bargaining.

Impact of Proposal 12-2

If Proposal 12-2 were adopted, it would have an indeterminate impact on State and local units of government. The actual fiscal impact would depend on the extent to which existing laws were found to violate collective bargaining rights, and the effect of the proposed amendment on the terms of future negotiated contracts. Examples of current laws that would be affected by this proposal include Public Act (PA) 152 of 2011, commonly referred to as the "80/20 law", which requires State and municipal governments to pay no more than 80% of workers' health care premiums or up to a set amount according to statute. Under the proposal, unions and public employers would be able to bargain on those premiums again.

Public Act 4 of 2011 is another example of laws that likely would be affected by Proposal 12-2. Public Act 4 (which has been suspended pending the vote on a different ballot proposal, Proposal 12-1) enumerates powers of emergency managers (EMs) for municipal governments and school districts. Public Act 4 allows EMs to modify or terminate collective bargaining agreements. If this power were found unconstitutional, it is unknown what the fiscal impact would be, as one of the principal responsibilities of an EM is to balance the budget of the municipality or school district for which he or she is appointed. If an EM no longer had the power to modify, renegotiate, or terminate collective bargaining agreements, he or she would have to find other means of reducing expenditures, such as reducing services offered by the municipality or school district, or laying off workers.

Proposal 12-2 also could affect a number of other existing laws. One example is the public employment relations act, which lists a number of items that cannot be the subject of collective bargaining between a public school employer and a representative of its employees. As amended by Public Act 103 of 2011, the listed subjects include, among others, teacher placement; classroom observation; and a performance-based method of compensation.

It is not possible to calculate the potential impact of Proposal 12-2 on existing laws of this nature, or its prohibition against future laws that would similarly restrict the subjects of collective bargaining or regulate the terms and conditions of employment in conflict with collective bargaining rights.

One reason the scope and impact of Proposal 12-2 cannot be determined is that it does not define "terms and conditions of employment", and how that phrase would be interpreted cannot be predicted.