MIAAA Legal Update

Senate Bill 294

This Bill would've amended the Single State Construction Code Act to do the following:

- Exempt certain outdoor sporting event viewing facilities, such as a press box, and related buildings, such as a ticket booth or concession stand, for K-12 schools from heating requirements provided under the Act.
- Require the heating to be in full compliance with the Act if it were installed in an interior space, building, or structure that otherwise was exempt from the heating requirements of the Act.

SB 294 was introduced after the Madison School District had it plans for a new football press box facility flagged by the Michigan Department of Licensing and Regulatory Affairs (LARA), which required the facility to include a heating unit capable of maintaining a temperature of 68 degrees. According to the District, a heating system for the press box project would've cost $250,000. Thus, the Bill would save Michigan school districts from having to spend more time and money constructing sport-related facilities by making them exempt from the Act's heating requirements.

SB 294 passed both legislative chambers but was vetoed by the Governor. In her veto letter, the Governor explained that she disagreed with the principle of drafting legislation that makes construction in the state less safe as a response to a single license denial – "Such piecemeal legislation undermines the effectiveness of state government."

Marion Public Schools v. Marion Education Association, MERC Case No. CU17 E-016 (2019)

Issue: Is discipline affecting a teacher's coaching position, rather than his or her teaching position, a prohibited subject of bargaining?

Facts: This case resulted from an unfair labor practice (ULP) filed by Marion Public Schools. The ULP charge alleges that the Union violated the Public Employment Relations Act (PERA) by filing a grievance over the school district's decision not to renew the appointment of a teacher as coach of the boys' varsity track team and by advancing that grievance to arbitration over the school district's objection. The school district contended that because the teacher's employment is regulated by the Teacher Tenure Act, the grievance filed by the Union over the non-renewal of the teacher's coaching position pertains to teacher discipline, which is a prohibited subject of bargaining under PERA.

An Administrative Law Judge (ALJ) held that the Legislature intended, by using the statutory phrase "whose employment is regulated by the Teacher Tenure Act," that the prohibition against bargaining teacher discipline under PERA is determined by the specific duty or task that the individual was assigned to do. Since the teacher was discharged in the performance of a Schedule B activity, the ALJ concluded that it was not a prohibited subject of bargaining in regard to discipline, because the teacher did not have to be certified to occupy a coaching assignment. The school district filed exceptions to the ALJ decision, claiming that it overturns years of findings from the courts and the Tenure Commission that hold that teachers can be disciplined for misconduct committed in Schedule B positions.

MERC affirmed the decision and agreed with the analysis of the ALJ. It also noted the lack of Tenure Commission decisions addressing discipline in coaching positions. While the Tenure Commission has upheld *teacher* discipline for misconduct in coaching positions, this case involved discipling a tenured teacher in a *coaching* position.

Rule: Discipline affecting a teacher's coaching position is not a prohibited subject of bargaining.