

COA Opinion: Macomb County violated its duty to bargain when, without bargaining, it changed the method used to calculate benefits under a collective bargaining agreement.

21. September 2011 By Kristina Araya

In *Macomb County v AFSCME Council 25*, No. 296416, the Court of Appeals considered whether Macomb County committed an unfair labor practice under the Public Employment Relations Act when, without bargaining, it adopted a new mortality table for calculating pension benefits. Macomb County provides pension benefits to employees pursuant to collective bargaining agreements with several labor unions. In 2006, Macomb County adopted a new mortality table to calculate the monthly pension benefit, effectively reducing the monthly pension benefit paid under the collective bargaining agreements. Macomb County made the change without bargaining on the issue, leading the labor unions to file a claim with the Michigan Employment Relations Commission (MERC). The majority of the Court of Appeals affirmed MERC's determination that Macomb committed an unfair labor practice by violating its duty to bargain when Macomb County changed the method used to calculate the benefits under the collective bargaining agreement without bargaining on the issue. Judge Markey filed a [dissent](#).

The majority reasoned that under the Public Employment Relations Act, a public employer has a duty to bargain in good faith over "wages, hours, and other terms and conditions of employment." The majority noted that although public employers may not be required to bargain actuarial assumptions used to determine whether a retirement system is receiving sufficient contribution, an employer is required to bargain those assumptions when they are used to calculate pension benefits under a collective bargaining agreement. The majority also concluded that the collective bargaining agreements' use of the term "actuarial equivalence" was ambiguous, and that the parties' past practice of accepting the previous mortality table constituted a tacit agreement by the parties that the table would continue to be used for calculation of the pension benefits. Accordingly, Macomb County

was required to bargain with the unions before changing the mortality table used to calculate pension benefits under the collective bargaining agreement.