



## THE PUBLIC SECTOR

### California PERB sides with management on vested rights issue

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On June 3, 2015, the Public Employment Relations Board (PERB) issued its decision in *County of San Luis Obispo v. San Luis Obispo Government Attorneys' Union, et al.*, finding that two employee organizations representing attorneys employed by San Luis Obispo County violated the Meyers-Milias-Brown Act (MMBA) when they refused to negotiate over the county's proposal to evenly split any future increases in pension costs.

This is the most recent case to apply the rules applicable to claims of "vested" rights, which were defined in the California Supreme Court's groundbreaking decision in *Retired Employee Association of Orange County, Inc. v. County of Orange (REAOC)* in 2011. The fact that the new decision comes from an administrative agency, rather than a court, adds an element of intrigue because some public-sector labor law practitioners believe that only a court can decide whether a constitutionally vested right to a pension exists.

#### ***San Luis Obispo's independent pension system***

Unlike the majority of California counties, San Luis Obispo County has an independent pension system, the San Luis Obispo County Pension Trust. The trust is governed by a set of bylaws and a retirement plan and is overseen by a seven-member board of trustees. Trust benefits are funded primarily through a combination of county and employee contributions.

Unlike other public-sector pension systems, employee contributions are not set by a fixed formula. The core question in the case before PERB was whether employees had a "vested" right to have their contribution rates determined by the board of trustees' actuary or whether those rates could be set differently (and in this instance higher) by the county's board of supervisors.

#### ***Unions won't bargain over 'vested' contributions***

The county had historically paid for any increases in pension costs by absorbing them as increases in the county appropriation rate. However, following the stock market crash in 2007, the county reached out to

its employee organizations during labor negotiations in an effort to have employees share some of the responsibility for the increased pension costs.

Two unions representing county attorneys (deputy district attorneys and deputy county counsel) refused to negotiate with the county over the subject, claiming their members had a "vested" right under the retirement plan to have their contribution rates set by the board of trustees' actuary and, as a result, the county had no authority to negotiate over or impose any proposed increases to those rates.

Ultimately, the county declared impasse in negotiations and unilaterally imposed increases on the employees' pension contribution rates. In response, the two unions filed a lawsuit in superior court asserting that the county's action violated their members' "vested contractual rights" under the retirement plan.

The county recommenced negotiations in 2010, proposing that the parties split any future increases in pension costs 50/50 (with employee contributions not to exceed the normal cost of the basic pension benefit). The unions refused to bargain over the proposal, once again asserting that if agreed to, it would impair their members' vested rights.

The county filed unfair labor practice charges with PERB asserting that the unions' refusal to bargain violated the MMBA. That triggered a long administrative process in which an administrative law judge (ALJ), and then PERB itself, found that the unions' refusal to bargain was unjustified under vesting principles and that the unions had violated their duty to bargain under the MMBA.

#### ***No vested rights without clear legislative intent***

PERB's decision relied heavily on the standards set forth by the California Supreme Court in *REAOC*. Embracing *REAOC*, PERB observed that "unless the Unions can show a clear legislative intent to create vested rights and thereby remove employee compensation or otherwise negotiable subjects from the scope of bargaining, those matters remain subject to negotiation." Applying that standard, PERB concluded that *REAOC* did not support the unions' position that the retirement plan clearly bound the county regarding the amounts or distribution of employee contributions toward future retirement benefits.

Instead, PERB found that the retirement plan “reserve[s] ultimate authority for making such changes to the county’s Board of Supervisors.” Given the unions’ refusal to bargain over the county’s 50/50 cost-share proposal, PERB concluded that the unions had violated their duty to bargain in good faith with the county. *County of San Luis Obispo v. San Luis Obispo Government Attorneys’ Union, et al.* (2015), PERB Decision No. 2427-M.

**Bottom line**

PERB’s decision is the most recent application of the standards articulated by the California Supreme Court in *REAOC*—and one that is particularly employer-friendly. Equally significant, it shows that PERB views its jurisdiction to include the right to

apply constitutional standards to the extent necessary to resolve allegedly unfair labor practices. It is also a relatively rare victory for employers before the union-friendly PERB—rarer still because the decision found the conduct of employee organizations to be illegal.

**Editor’s note:** Renne Sloan Holtzman Sakai LLP represented San Luis Obispo County in the PERB case and represents the county in the related superior court litigation.



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