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THE PUBLIC SECTOR

Union resistance to California pension reform dealt (another) blow

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It's been 2½ years since Governor Jerry Brown signed the California Public Employees' Pension Reform Act of 2013 (PEPRA), which mandated changes to pension benefits and contributions for virtually all public employee pension systems in California. While you would think that the reality of pension reform would have set in by now, a recent California Court of Appeal case reminds us that California's labor movement continues to challenge pension reform by claiming that PEPRA can't trump existing collective bargaining agreements. The decision shows, once again, that unions will have a hard time succeeding with those arguments in cases involving "new employees."

Refresher on PEPRA

PEPRA's stated goal was to create a more sustainable pension system by reducing employer liability and increasing employee contributions. Although the Act contains some important provisions governing current employees, most of its changes apply only to employees who become retirement system members on or after January 1, 2013.

The new employee changes are substantial and include reduced retirement formulas, a cap on pensionable compensation, three-year averaging for final compensation, and a heightened level of employee cost-sharing. For details, see our firm's white paper at http://publiclawgroup.com/2012/12/12/white-paper-a-guide-to-pension-reform-under-ab-340-and-ab-197/.

Case at hand

The Deputy Sheriffs' Association of San Diego County challenged PEPRA's mandate that new hires receive a significantly lower benefit than existing employees. Deputies hired before January 1, 2013, enjoyed a defined pension benefit based on a "3% at age 55" formula (3% of their final salary for each year of service, with a regular retirement age of 55). The county also paid a percentage of the employees' retirement contributions. On the other hand, new employees received lower benefit levels mandated by PEPRA: a 2.7% at age 57 formula and a requirement that they pay 50% of the cost of the benefit.

Here's the rub: The county and the association were parties to a memorandum of understanding (MOU) that expired on June 30, 2014—eight months *after* PEPRA mandated that its provisions would apply to new hires. When the county applied the Act's provisions to employees hired after January 1, 2013, the association asserted that the MOU was binding for all employees in the bargaining unit and that implementing PEPRA changes before the MOU's expiration would impair employees' contract rights under the California Constitution.

Court's decision

The court disagreed, finding that new employees were not entitled to the previously negotiated higher retirement tier because the contract clause did not protect unvested contractual pension rights. Accordingly, an employee's pension rights are protected from contract impairment only after he commences employment. Thus, employees hired *after* the implementation of PEPRA would have a vested right only to the 2.7% at 57 formula.

However, the court did find merit in the association's challenge of PEPRA's employee contribution standard. As noted above, PEPRA requires new employees to pay 50% of their pension benefit costs. However, the Act specifically prohibits the application of this provision during the term of an existing MOU if it would impair the negotiated contribution amount. The court therefore concluded that the county unlawfully applied the 50% employee contribution requirement to new employees before the MOU's expiration. *Deputy Sheriffs' Ass'n of San Diego Cnty. v. Cnty. of San Diego,* California Court of Appeal, 4th Appellate District, 1/22/15.

Bottom line

This decision affirms that new employees hired after the implementation of PEPRA don't have a constitutional right to the higher benefit formula pre-2013 union employees enjoy. In that regard, PEPRA trumps collective bargaining under the Meyers-Milias-Brown

Act (MMBA). Thus, under the court's ruling, public employers' implementation of PEPRA's benefit levels for new employees will not result in an unlawful contract breach—even if the benefit levels conflict with those under an MOU.

This isn't the end of litigation involving vested rights under PEPRA, however. In three labor arbitrations in Northern California, the Service Employees International Union (SEIU) argued that employers were required to pay new hires the preexisting pension benefit applicable to current employees. The SEIU's arguments were based on unique MOU language and the lack of an adequate "savings" clause, which would have enabled the employer to disregard contract language in light of PEPRA. The SEIU prevailed in one of those cases *(Santa Clara Valley Water District)* and lost in two others *(County of Napa* and *City of Berkeley).* Similar cases remain pending; stay tuned!

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