First District Court of Appeal Weighs in on the Law of Vested Rights in California

08.29.2016 | By Ashley K. Dunning

On August 17, 2016, Division Two of the First District Court of Appeal issued a unanimous published decision in *MAPE et al. v. MCERA*, et al. (August 17, 2016, A139610) ___ Cal.App. 4th ___, ___ Cal.Rptr.3d___ [2016 WL 4379316] ("*MAPE v. MCERA*") upholding the constitutionality of certain aspects of the Legislature's Public Employees' Pension Reform Act of 2013 ("PEPRA") that apply to legacy, as opposed to new, members of California's 20 county retirement systems that operate under the County Employees Retirement Law of 1937 (CERL).

Specifically, the Court held that prospective exclusions of standby type payments and in-kind conversions from retirement allowance calculations were constitutional both on their face and as interpreted and applied by the Board of Retirement of the Marin County Employees' Retirement Association (MCERA). That result should not have been a surprise. These specific exclusions were consistent with both the statutory "plan in effect" and the most recent case law prior to those amendments, as MCERA had argued, so the specific limitations on such inclusions to delineate the scope of the prior general statute did not impair the vested rights of MCERA members when the MCERA Board implemented those amendments as to post-January 1, 2013 time periods only.

However, the Court took a much more critical view of the plaintiff/appellants' arguments about the scope of vested rights law in California than had either the retirement system and board defendant/respondents or the State of California, which had intervened in the case to defend the constitutionality of the statute through the Attorney General.

The Court directly challenged the plaintiff/appellants' assertions that the prior inclusions were vested as to current employees in perpetuity and that in order for PEPRA to have been constitutional, a "comparable new benefit" was *required* to be provided to any alleged disadvantaged legacy members. The Court first examined the numerous State Supreme Court and Court of Appeal cases on which appellants' relied and

concluded that the correct statement of law on the comparable new benefit point was that a reasonable modification to a member's pension rights bearing a material relation to the theory of a pension system and its successful operation was constitutionally permissible, and that a comparable new benefit merely "should," rather than "must," be provided if an impairment was found.

Next, the Court concluded that in the context of MCERA's implementation of PEPRA the legislative modification of the statutory definition of compensation earnable in order to curtail "pension spiking" did not qualify as a "substantial impairment of plaintiffs' contracts of employment with its right to a 'reasonable' and 'substantial' pension," and that a "new benefit" was in fact provided in any event because the newly specified exclusions from compensation earnable rules applied to future time periods as to current employees only and would result in decreased contributions and thus more monthly cash in hand for the affected members.

> The change in policy adopted by MCERA—which is not an employer of any individual plaintiff or of persons employed by other governmental entities—is not alleged to have changed [sic made a change] in the way compensation is calculated by those entities. Thus, for all we know, employees who prior to MCERA changing its policy in December 2012 collected any of the items or payments at issue . . . continued to have those items or payments included in their monthly compensation. However, due to MCERA's change in policy, each of those employees' paychecks is no longer being reduced by deductions to cover those sums in funding the employee's retirement. Put simply, the new benefit is an increase in the employee's net monthly compensation. Put even more simply, it is more cash in hand every month.

Finally, and perhaps most significantly from the perspective of potential future legal developments, the Court included a long discussion of the inherent implied authority of a Legislature to make "reasonable" "alterations, changes, and modifications," in retirement benefit plans that result in "reducing or eliminating" certain aspects of a retirement benefit, so long as they apply to *active*, not retired or deferred, employees, and so long as they do not "destroy" an employee's "anticipated pension." The Court stated that neither the United States Constitution nor the California Constitution prohibit such legislative actions, nor by extension would they prohibit such actions by either public employers or retirement boards within each of their respective areas of authority, presumably if also authorized by legislation. The Court did characterize the legislative changes that it was approving in this case to be limited, pointing out, "The extent of the new rule of [CERL] section 31461 is quite modest, as is the scope of the parties' disagreement." Moreover, as the Court discussed at length, an apparent legislative motivation to curb pension spiking is fully consistent with the theory of a pension system and its successful operation as is required even under the cases relied upon by the Court of Appeal.

However, the potential reach of the reserved legislative power to modify future accruals of ongoing pension benefits and related rights for current public employees found in the decision's open ended discussion is certain to be the source of many future disputes.

It remains to be seen whether appellants in the case will petition for California Supreme Court review.