



No Surprises in Recent Vested Rights Decision: *Fry v. City of Los Angeles*

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The recent decision in *Fry v. City of Los Angeles* (California Second District Court of Appeal Case No. B259791, March 7, 2016) held, after careful parsing of the language in the City Charter and the applicable City ordinances, that City safety retirees had no vested right to have the City Fire & Police Pension Board determine the amount of any increases to their annual retiree health care subsidies. The *Fry* decision creates no new law. It simply reinforces the familiar rule governing vested rights litigation that it is necessary to perceive the terms of the contract and to utilize those terms to measure the claimed impairment. See *Lyon v. Flournoy* (1969) 271 Cal.App.2d 774, 783.

In particular, in 2005 the Los Angeles City Charter was amended to provide that the City Council had the authority to set the maximum subsidy level, and that The Council may by ordinance authorize the [Pension] Board to increase or decrease the subsidy payments pursuant to factors, standards, and limitations prescribed in the ordinance. In fact, the City Council itself determined the amount of the subsidy in 2005. In 2006, pursuant to the 2005 Charter authorization, the City Council delegated to the Pension Board the authority to make discretionary changes to the retiree health subsidy on an annual basis subject to certain maximum limitations, which the Board did in each subsequent year up to 2011.

At that point the City Council passed another ordinance that froze the maximum subsidy at the Board-set 2011 level, but included a statement that the freeze may be revisited periodically by the City Council... The unions and the City disagreed on whether or not the annual increases were vested, but resolved the issue by a negotiated letter of agreement that the employees who made an irrevocable commitment to contribute an additional 2% of pay to fund their retiree health care benefits would have a vested right to each annual increase presently authorized by the LACC [City Council]. Later that year the City Council passed an ordinance reflecting that the freeze did not apply to [e]mployees who irrevocably opt to make voluntary Additional Contributions in exchange for vested rights to increase in subsidies....

Thereafter certain safety members and the retired safety members' association filed the action alleging that the 2011 Freeze and Opt-In Ordinances unconstitutionally impaired their vested right under the 2005 Charter amendment, and particularly under the 2006 Delegation Ordinance adopted pursuant to it, to have the Pension Board decide on the amount of the increases in their annual health subsidy without consideration of either the 2011 Freeze, or the 2% additional contribution required by the Opt-In Ordinance later that year in order to get out from under the freeze. The plaintiff members partially prevailed in the trial court, which held that although the members did not have a vested right to the annual increases themselves, they did have a vested right to have the Pension Board make the determination of whether or not to grant such an increase without regard to the freeze limitation and the additional contribution requirement adopted in 2011.

However, the Court of Appeal reversed, explaining that the 2005 Charter provision that authorized the City Council to delegate authority to the Pension Board over the health subsidy levels subject to the factors, standards, and limitations prescribed in the ordinance did not relinquish the City Council's authority to determine whether to make increases or decreases to the subsidy itself, as indeed, it initially had chosen to do in 2005. Turning to the Delegation Ordinance in 2006, the Court of Appeal found that although the City Council had made a delegation to the Pension Board, subject to certain limitations and maximums, the Delegation Ordinance did not state that the delegation of authority to the Board was absolute or in perpetuity or that the Council was divesting itself of authority to set the subsidy under other circumstances. Under these circumstances the appellate court concluded, Respondents did not carry their heavy burden of demonstrating a clear intent in the Delegation Ordinance to create a vested right to a Board-determined subsidy. Accordingly, by passing the 2011 freeze the City Council in effect revoked its delegation of authority to the Board, exercised its own discretion and authority to set the subsidy [under the 2005 Charter], and fixed the subsidy at the [now frozen] July 1, 2011 amount, all in accordance with the scope of the terms of the legal requirements created by the 2005 Charter and the 2006 Delegation Ordinance.