



THE PUBLIC SECTOR

Limited reach of supreme court's *Orange County* decision clarified

by Jonathan V. Holtzman

In November 2011, the California Supreme Court issued its controversial and somewhat opaque decision in *Retired Employees Assn. of Orange County v. County of Orange* (2011) 52 Cal. 4th 1171. In that decision, the court held that a “vested” right to lifetime retiree health benefits may be “implied” into legislation adopted by a local agency’s governing body. Before the decision, many practitioners believed that public employees couldn’t have a “vested” right to retirement benefits without express language in a statute, resolution, or some other formal legislation guaranteeing that such benefits would continue unchanged in perpetuity. Now, some believe it loosened the interpretation of a vested benefit.

While the *Orange County* decision created a stir among public employers, a new decision, *City of San Diego v. Haas*, provides solace. The decision—one of the first published appellate decisions to interpret and apply *Orange County*—confirms that a vested right may be implied only when a public employer’s governing body intends to confer such a benefit.

Background

In 2005, San Diego negotiated a series of memoranda of understanding (MOUs) with its employee organizations. The parties agreed that new employees hired on or after July 1, 2005, wouldn’t be eligible to receive certain retirement benefits (the four benefits). However, claiming that the city attorney “had not filed the paperwork” necessary for modification, the San Diego City Employees Retirement System (SDCERS) began advising employees hired on or after July 1, 2005, that their eligibility to receive the four benefits would continue.

A year and a half later, the city council finally adopted an ordinance amending the city’s Municipal Code to reflect the negotiated benefit changes. The ordinance took effect on February 16, 2007. The SDCERS used the 2007 date as the date that the benefit changed and advised employees hired between 2005 and 2007 that they were still eligible for the four benefits.

The city filed a lawsuit against the SDCERS arguing that employees hired after 2005 were ineligible for the four benefits. The SDCERS claimed the city’s position would impair employees’ “vested contractual rights.” The superior court entered judgment in the city’s favor. On appeal, a unanimous panel of the Fourth Appellate District agreed.

Court of appeal’s decision

Relying on the *Orange County* decision, the SDCERS claimed that a vested right to the four benefits was implied into new employees’ contracts since the benefits were still included within the city’s Municipal Code at the time they were hired—that is, the city’s implementing ordinance wasn’t effective until February 16, 2007. The court flatly rejected that argument, reasoning that “vested rights may not be implied from the [Municipal Code] where, as here, they are contrary to the express terms of the parties’ contract.”

The SDCERS also argued that a vested right may be implied based on the fact that it told new employees that they were entitled to the four benefits. In rejecting that argument, the court explained: “[W]e may only look to whether the City Council, not [the] SDCERS, intended to grant vested rights to the Four Benefits. . . . This is because . . . *only the City Council has the power to grant employee benefits, and [the] SDCERS exceeds its authority when it attempts to ‘expand pension benefits’ beyond those the City has granted.*” *City of San Diego v. Haas* (California Court of Appeal, Fourth Appellate District, 6/29/12).

Implication

Following the *Orange County* decision, there was concern that it could open the door to arguments that an employer’s conduct created implied contractual rights. That was problematic because any number of “representations” can be made by any number of individuals and agencies in the course of employment, but only the governing body (e.g., a board of supervisors or city council) has the power to grant benefits. The Fourth District’s *San Diego* decision confirms that whether a vested right may be implied under the *Orange County* decision turns exclusively on whether the local agency’s governing body intended to confer such a benefit. This clarification, assuming it is adopted by other courts, will restrict litigation over implied contractual rights (including implied “vesting”) by rendering conduct by parties other than the governing body inconsequential.



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