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Redding v. IBEW: Is the past or the future calling?

by Jonathan Holtzman

Even before the California Supreme Court decided *Retired Employees Assn. of Orange County, Inc. v. County of Orange* in 2011, when, how, and whether retiree healthcare benefits may become vested was a hot topic. The topic may get hotter in light of the recent decision in *International Brotherhood, etc. v. City of Redding* by the 3rd Appellate District of the California Court of Appeal.

Background

The International Brotherhood of Electrical Workers, Local 1245 (IBEW), filed a petition for a writ of mandate (i.e., a request for the court to order a government entity to follow the law by correcting its past actions or ceasing illegal acts) alleging that the city of Redding had unlawfully impaired its members' vested rights when it changed its level of subsidy for active employees' future retiree health insurance premiums. That subsidy in the parties' expired memorandum of understanding (MOU) provided that the city would "pay fifty percent (50%) of the group medical insurance program premium for each retiree and dependents, if any, presently enrolled and for each retiree *in the future* who goes from active status to retirement and continues the group medical insurance without a break in coverage."

The city sought to have the case dismissed because the MOU's language didn't expressly grant active employees a vested right to the retiree healthcare subsidy—nor could it since the MOU was fixed in duration. The Shasta County Superior Court agreed, concluding "the only reasonable interpretation" that could be afforded to the parties' MOU was that "the benefits [would] remain in full force and effect during the term of the MOU, not that the City intended to agree to benefits that could never be modified unless the Union agreed to those changes." The IBEW appealed.

As the IBEW's appeal was pending before the court of appeal, the California Supreme Court decided *Orange County*. The supreme court held in that case that in evaluating whether a vested right may be inferred from legislation adopted by a public agency's governing body, "it is presumed that a statutory scheme is not intended to create private or contractual or vested rights." The court cautioned that "as with any contractual obligation that would bind one party for a period extending far beyond the terms of the contract of employment, implied rights to a vested benefit should not

be inferred without a clear basis in the contract or convincing extrinsic evidence." That high bar "ensure[s] that neither the governing body nor the public will be blindsided by unexpected obligations."

Court of appeal's decision

In a unanimous published decision, the court of appeal reversed the Shasta County Superior Court's ruling. The appellate court, relying on *Orange County*, held that the IBEW's petition "adequately alleged a mutual intention to extend future retirements to active employees" and that "for pleading purposes" the petition sufficiently alleged an intention on the part of the city council "to create an obligation that survived expiration" of the parties' MOU. If the opinion had stopped there, it wouldn't be particularly notable. But the court also suggested that language in the MOU addressing benefits for "future" retirees constituted an *express* promise of a vested benefit. In particular, the court stated that "the most reasonable interpretation of 'each retiree in the future' is that the benefit was promised for active employees when they retired, even beyond the term of the MOU."

That conclusion is very problematic. First, there's a presumption against "any contractual obligation that would bind one party for a period extending far beyond the terms of the contract of employment." That's because MOUs are normally fixed in duration, and as a result, in the absence of exceptionally clear "vesting" language, their terms are subject to the outcome of future negotiations. Second, the case cannot be squared with the *Orange County* decision, which holds that there's a "presumption against vesting" and that a complaining employee has a "heavy burden" to overcome. Third, the opinion misreads the actual language of the MOU and ignores other language in the same *paragraph* of the memo suggesting that Redding had the express right to terminate the retiree healthcare program.

Bottom line

The moral: While I think this case badly misreads the MOU, it's best to avoid using the term "future" in a document that's intended to have limited duration.



The author can be reached at Renne Sloan Holtzman Sakai LLP in San Francisco, jholtzman@publiclawgroup.com. ❖