

CASE

Representing the State's Legal Professionals

October 17, 2016

Chief Justice and Honorable Members of the Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco CA 94102

Re: Amicus Curiae Letter in case no. S237460, Marin Association of Public Employees v. Marin County Employees' Retirement Association

Dear Chief Justices and Associate Justices of the Supreme Court:

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") is the exclusive collective bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents approximately 3600 legal professionals in more than 90 different state departments, boards, and commissions. Pursuant to California Rule of Court 8.500(g), CASE is hereby submitting this letter in support of the petition for review filed in the above-entitled case.

All members of Unit 2 are also members of the California Public Employees Retirement System ("CalPERS"). A primary inducement for Unit 2 members to work for the state is the pension system administered by CalPERS. Many Unit 2 members forego more lucrative legal careers with other public sector or private sector employers in order to take advantage of their vested pension rights. The decision of the appellate court in this case throws into question whether those vested pension rights have any meaning whatsoever, because it holds that a public employer may make unilateral modifications to a pension system that devalue future benefits, without any requirement of offering comparable alternative benefits in exchange for the modifications. This holding represents a threat to the future economic security of all Unit 2 members, as all of them have detrimentally relied on the pension benefits they were promised at the start of their employment.

Review in this case necessary to secure uniformity of decision and to settle an important question of law. The Court of Appeal's decision held that "while a public employee does have a 'vested right' to a pension, that right is only to a 'reasonable' pension" that can be reduced by the Legislature prior to the employee's retirement. (Slip opn. at 2.) Later, the decision stated "[u]ntil retirement, an employee's entitlement to a pension is subject to change short of actual destruction." (Slip opn. at 27.) The decision also held that there is no constitutional requirement that elimination or reduction of an anticipated retirement benefit must be counterbalanced by a comparable new benefit. (Slip Opn. at 23-27.)

These holdings not only conflict with prior decisions of this Court and other courts of appeal, but they also raise fundamental questions of law that need to be resolved by this Court.

The conflict with prior cases is acknowledged in the decision itself. At pages 23-24 of the slip opinion, the decision candidly recognizes that this Court previously stated:

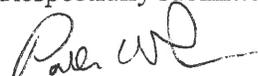
With respect to active employees, we have held that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages. [Citations.]

(*Allen v. Board of Administration* (1983) 34 Cal.3d 114, 120., italics added.) The decision then proceeds to spend several pages explaining why “must” does not actually mean “must” (see slip opn. at pp. 24-26) and in the process observes that it is disagreeing with the “must” formulation in numerous lower court decisions, including some of its own prior decisions. (Slip opn. at p. 26, citing *In re Retirement Cases* (2003) 110 Cal.App.4th 426.) These conflicts alone warrant review by this Court to secure uniformity of decision.

In addition to the conflicts, the holding of the case raises more questions than it answers. By declaring that a public employee’s only vested right is to a “reasonable pension” (slip opn. at pp. 2, 22) the opinion simply begs the question: what is reasonable? Or, to put it another way, exactly how much can the benefits in a vested pension be reduced without violating the constitutional prohibition on the impairment of contracts? The opinion seems to suggest that a reduction of 25% (from two thirds of an employee’s salary to only one half of an employee’s salary) is acceptable. (See slip opn. at pp.22-23, fn. 18.) But it set no real limit on the permissible level of reduction, other than to blithely declare that they cannot be entirely “destroyed.” (Slip opn. at p. 23.) By apparently condoning virtually any level of “modification” (i.e. reduction) short of actual elimination, the decision will only lead to countless lawsuits about just how close to actual destruction the line is for acceptable modifications. Can a pension be reduced to half its originally bargained-for value? A third? Is it permissible to reduce the pension to something at or below minimum wage? All of these questions will inevitable be asked as various public employers try to push the envelope in reducing previously promised benefits. And of course, the courts will have to answer them, in piecemeal fashion. The far better course is for this court to grant review and provide guidance so that hundreds of thousands of public employees can make informed choices about their investments, their retirement plans, and the advisability of continuing to defer compensation in the form of pensions.

The State of California already is at or near the bottom in terms of salary and benefits offered to starting attorneys, and this is based on comparisons only to other *public sector* agencies in California, to say nothing of private sector legal salaries. The decision in this case threatens to further undermine California’s ability to compete for legal talent by giving the employer the ability to retroactively reduce compensation in the form of a promised pension after the compensation was already bargained for and earned. Accordingly, CASE respectfully requests this Court grant review in order to provide swift and clear resolution of the issues raised in this case. CASE members collectively have tendered hundreds of years of service in anticipation of the very benefits that the decision below threatens to reduce. They have labored under and have detrimentally relied on the promise that their pensions would be there for them at retirement, and that any changes or reductions would be offset with comparable new benefits.

Respectfully submitted,



Patrick Whalen
CASE General Counsel

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sacramento, California. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1231 I Street, Ste. 300, Sacramento, CA 95814.

On October 20, 2016 I served the following documents:

1. **Amicus Curiae Letter in support of review**

I served the aforementioned document(s) by enclosing them in an envelope and (check one):

XX depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

_____ placing the sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelopes were addressed and mailed as follows:

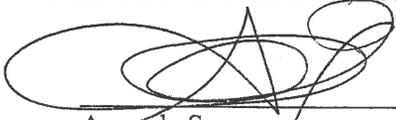
Party	Attorney
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Catherine Hall : Plaintiff and Appellant	Arthur Wei-Wei Liou Leonard Carder, LLP 1330 Broadway, Suite1450 Oakland, CA
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Marin County Management Employees Association : Plaintiff and Appellant	<p>Gregg McLean Adam Messing Adam & Jasmine LLP 235 Montgomery Stree, Suite 828 San Francisco, CA</p>
Joel Chandler : Plaintiff and Appellant	<p>Gregg McLean Adam Messing Adam & Jasmine LLP 235 Montgomery Stree, Suite 828 San Francisco, CA</p>
Angelo Sacheli : Plaintiff and Appellant	<p>Gregg McLean Adam Messing Adam & Jasmine LLP 235 Montgomery Stree, Suite 828</p>

	San Francisco, CA
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Retirement Board of the Marin County Employees' Retirement Association : Defendant and Respondent	Ashley Kathleen Dunning Nossaman LLP 50 California Street, 34th Floor San Francisco, CA
The State of California : Intervener and Respondent	Anthony Paul O'Brien Office of the Attorney General 1300 "I" Street - Suite 125 Sacramento, CA
Teamsters Joint Council No. 7 : Pub/Depublication Requestor	Teague Pryde Paterson Beeson, Tayer & Bodine 483 9th Street, Suite 200 Oakland, CA
California State Teachers' Retirement Board : Pub/Depublication Requestor	Brian J. Bartow California State Teachers' Retirement System Office of the General Counsel 100 Waterfront Place West Sacramento, CA
Orange County Attorneys Association : Pub/Depublication Requestor	Marianne Reinhold Reich Adell & Cvitan 2670 North Main Street, Suite 300 Santa Ana, CA
Orange County Managers Association : Pub/Depublication Requestor	Marianne Reinhold Reich Adell & Cvitan 2670 North Main Street, Suite 300 Santa Ana, CA
International Federation of Professional and Technical Engineers, Local 21 : Pub/Depublication Requestor	Arthur Wei-Wei Liou Leonard Carder, LLP 1330 Broadway, Suite1450 Oakland, CA
Public Employees Union Local No. 1 : Pub/Depublication Requestor	Arthur Wei-Wei Liou Leonard Carder, LLP 1330 Broadway, Suite1450

	Oakland, CA
Alameda County Management Employees Association : Pub/Depublication Requestor	Arthur Wei-Wei Liou Leonard Carder, LLP 1330 Broadway, Suite1450 Oakland, CA
Physicians' and Dentists' Organization of Contra Costa : Pub/Depublication Requestor	Arthur Wei-Wei Liou Leonard Carder, LLP 1330 Broadway, Suite1450 Oakland, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on October 20, 2016.


Amanda Savage