Gain Sharing & UCOLA Decisions:
Implications for Future Legislation

Anne Hall & Sarah Blocki
Washington Attorney General's Office

WEA I – UCOLA Case

WEA II – Gainsharing Case

UCOLA benefit & GS benefit were enacted subject to a RESERVATION CLAUSE

"The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time."

Former RCW 41.40.197(6) (UCOLA)

REPEAL

2007--GS repealed

2011—UCOLA repealed

"[W]hen analyzing whether a law impairs public pension contracts we will apply the . . . three-part test governing all public contracts."

UCOLA, 332 P.3d 439, 444

Three-prong test:

(1) contractual relationship?
(2) substantial impairment?
(3) reasonable and necessary?

The Court held that
a contractual right to
a pension benefit is
defined by
the language
in the statute.

When the Legislature
repealed GS & the UCOLA,
it was simply
putting into effect
the provisions of the contract.

Questions

- Can the Legislature repeal any benefit that has a reservation clause?
- Can the Legislature reserve contractual rights for any future benefit improvement?
- Will courts treat core benefits differently from benefit enhancements when considering contractual rights?
- SCPP questions

CAVEAT

- The following remarks are not legal advice
- The following remarks discuss policy only
- If SCPP has legal questions regarding how draft legislation may be interpreted consistent with WEA I-II, please consult with AAG Mark Lyon (early and often)

FIRST. Can the Legislature repeal any benefit that has a reservation clause?

"Turning first to the reservation clause, no Washington court has held such a clause unenforceable in a public pension statute . . ."

"Rules of statutory construction demand enforceability of the reservation clause."

UCOLA, 332 P.3d 439, 444-45

FIRST. Can the Legislature repeal any benefit that has a reservation clause?

"The respondents' contract rights are defined by the language of the statute creating those rights. Here, that language includes a right to amend or repeal. . . . The . . . repeal merely executed a provision of the established contract."

UCOLA, 332 P.3d 439, 444-45

". . . the express language of the gain-sharing statute provided for its repeal."

Gain-Sharing, 332 P.3d 428, 434

FIRST. Can the Legislature repeal any benefit that has a reservation clause?

Clear and express

"The ordinary rules of construction link the enforceability of reservation clauses to the degree of specificity contained in the clause."

UCOLA, 332 P.3d 439, 445

Location of reservation

"The legislature is allowed to condition its grant of pension enhancements using express language in the statutory provision that creates the right."

Gain-Sharing, 332 P.3d 428, 434

SECOND. Can the Legislature reserve contractual rights for any future benefit improvement?

"If the respondents' contract rights were violated, they were violated by the enactment of UCOLA or by including a reservation of rights provision in that legislation."

UCOLA, 332 P.3d 439, 444

"The employees' contract rights were impaired, if at all, by the . . . enactment of the gain-sharing program and its reservation of the right to amend or repeal the program in the future."

Gain-Sharing, 332 P.3d 428, 434

SECOND. Can the Legislature reserve contractual rights for any future benefit improvement?

"Because the Office of the State Actuary was uncertain of gain sharing's long-term impact on the pension system and believed the program may need to be revised over time, the legislature expressly reserved its right to amend or repeal gain sharing."

Gain-Sharing, 332 P.3d 428, 432

THIRD. Will courts treat core benefits differently from benefit enhancements?

"The legal issue presented here is whether the legislature's 2007 repeal of gain sharing— *a pension enhancement* . . . —unconstitutionally impairs the contract between the State and its employees. The companion case *[UCOLA]* presents the same issue."

Gain-Sharing, 332 P.3d 428, 431

THIRD. Will courts treat core benefits differently from benefit enhancements?

"The nature of the UCOLA benefit also supports the enforceability of the legislature's right to repeal [it]."

"Whereas a basic pension plan is deferred compensation and induces long and faithful service over time, a COLA merely enhances the value of the basic pension payment for adjusting for inflation and cost of living increases."

"[The UCOLA] differs significantly from the deferred and compensatory basic pension that was at issue in *Bakenhus.*"

UCOLA, 332 P.3d 439, 446

THIRD. Will courts treat core benefits differently from benefit enhancements?

"[W]hen analyzing whether a law impairs public pension contracts we will apply the . . . three-part test governing all public contracts."

UCOLA, 332 P.3d 439, 444

"[T]he pension-specific principles outlined in *Bakenhus* inform [the application of the 3-prong test] in the pension context."

Gain-Sharing, 332 P.3d 428, 433