

SELECT COMMITTEE ON PENSION POLICY –

SIGNIFICANT PENDING CASE SUMMARY

October 21, 2014

There are no significant changes in pension cases since last month

Levy v. Department of Retirement Systems

Court: King County Superior Court

Claim Summary: In 2011, the Legislature extended retiree return-to-work restrictions to those who retire and receive a retirement benefit, then return to work in a higher education position but continue to receive their retirement benefit (sometimes referred to as “double-dipping”). Under the 2011 law, retirees who return to work are to have their retirement benefits suspended after working more than 867 hours each year.

A class of about 50 PERS 1 retirees whose pensions were actually suspended in 2012 and 2013 was certified by the court.

Status: On June 6, 2014 Judge Monica Benton, King County Superior Court held that suspension of a PERS benefit to retirees who have returned to work in a higher education position was a violation of the retirees’ contractual right to a pension. The State and the plaintiffs have reached a settlement agreement and the class is being notified.

Dolan v. King County, and Department of Retirement Systems, intervener

Court: Washington Court of Appeals, Division II

Claim Summary: The King County Public Defender organizations were admitted into PERS membership based on a Supreme Court decision. After remand the Public Defender organizations and King County settled the remaining issues in the lawsuit. The settlement (1) waived the statute of limitations on this action, (2) waived the interest required to be paid on King

County's overdue employer and employee contributions due to the PERS fund (the loss of which to the trust fund is estimated to be around \$100,000,000), (3) calculated the amount of contributions owed when King County had not yet provided the data to DRS that was necessary to determine how much was owed in contributions, and (4) required the PERS trust fund to pay the attorney fees to plaintiffs' attorneys on behalf of the members of the PD organizations (\$12 million) or, in the alternative, allow King County to pay the attorney fees out of the employee contributions that it owed to the PERS trust fund instead of paying that amount to the trust fund, with DRS having to make up the difference in future billings to the Public Defender members when they retired.

Because of the impact of the settlement agreement to the PERS trust fund, and because of other legal concerns, DRS moved to intervene to challenge the settlement agreement. The trial court allowed only very limited intervention.

Status: The case is now on appeal at the Court of Appeals, Div. 2 and oral argument occurred on September 4, 2014. The legal question is whether a settlement agreement can bind a non-consenting non-party (here, DRS) to a settlement agreement which requires the non-consenting non-party to bear the costs of that settlement agreement.