

Bond Case Briefs

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Hipsher v. Los Angeles County Employees Retirement Association

Court of Appeal, Second District, Division 4, California - June 19, 2018 - 24 Cal.App.5th 740 - 234 Cal.Rptr.3d 564 - 2018 Employee Benefits Cas. 216, 395

Retired employee from county fire department brought action seeking writ of mandate and declaratory relief, challenging retirement benefits forfeiture determination by county employees retirement association.

The Superior Court issued peremptory writ of mandate but found in favor of association with regard to cause of action for declaratory relief. Employee and county appealed.

The Court of Appeal held that:

- Employee's felony conviction for gambling was a condition subsequent that would permit a limited forfeiture of vested retirement benefits under Public Employees' Pension Reform Act (PEPRA), and thus PEPRA did not violate contracts clause as applied to employee;
- Forfeiture provision of PEPRA did not violate ex post facto clause;
- Process afforded to employee in forfeiture proceeding was deficient; and
- Such deficiency prejudiced employee, violating due process.

County retiree's felony conviction for gambling was a condition subsequent that would permit a limited forfeiture of vested retirement benefits under Public Employees' Pension Reform Act (PEPRA), providing for forfeiture of portion of public pensioner's retirement benefits following a conviction of a felony offense that occurred in performance of official duties, and thus PEPRA did not violate contracts clause as applied to county retiree, whose vested retirement benefits were reduced based on finding by county employees retirement association that gambling conduct which gave rise to conviction was committed in scope of official duties, even if no new comparable advantage was provided following modification of pension benefits.

Forfeiture provision of Public Employees' Pension Reform Act (PEPRA), providing for forfeiture of portion of public pensioner's retirement benefits following a conviction of a felony offense that occurred in performance of official duties, did not violate ex post facto clause of state constitution; PEPRA was a civil statute, reduction in retirement benefits was not historically regarded as punishment in penal sense, and preserving pension system by curbing abuses was rational, nonpunitive purpose.

Process afforded to retired county fire department employee, who was convicted of gambling offense, was deficient under due process clause, in proceedings which resulted in forfeiture of portion of retirement benefits, pursuant to provision of Public Employees' Pension Reform Act (PEPRA) providing for benefit forfeiture following conviction for felony that occurred in performance of official duties; issue of contention in proceeding was whether offense was job-related, offense was not per se job-related, employee was not provided notice and opportunity to be heard as to whether

conviction was job-related, and, in determining that conviction was job-related, agency relied on Homeland Security reports prepared in federal investigation, but employee was not notified of this review.

Retired county fire department employee was prejudiced by deficiency in process afforded to him in proceedings regarding whether employee's felony gambling conviction was job-related, in which proceedings an affirmative answer to such issue resulted in retirement benefit forfeiture under Public Employees' Pension Reform Act (PEPRA), and thus employee was deprived of due process, where employee's offense was not on its face job-related, employee rejected notion that conviction arose out of performance of official duties, and employee was not given notice or opportunity to contest allegation that conviction was job-related.