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Cherry v. Mayor and City Council of Baltimore City

Court of Appeals of Maryland - August 16, 2021 - A.3d - 2021 WL 3611768

Police officers and firefighters filed class action lawsuit against Mayor and City Council of Baltimore, alleging claims for declaratory relief and breach of contract.

The Circuit Court certified class of plaintiffs and three sub-classes and ruled that city did not breach its contract with sub-class of active employees, but it did breach its contract with retired and retirement-eligible sub-classes and awarded more than $30 million in damages to them.

Police officers' and firefighters' petition for writ of certiorari was granted.

The Court of Appeals held that:

- City did not breach its contract with pension plan members by underfunding plan;
- City breached its contract with retired police officers and firefighters and retirement-eligible police officers and firefighters;
- City had authority to make reasonable prospective modifications to pension plan, provided they were reasonable and necessary;
- Ordinance was reasonable and necessary, as required to be enforceable; and
- Circuit court correctly declined to order specific performance and calculated damages.

City did not breach its contract with pension plan members by underfunding plan, since plan did not require city to "fully fund" retiree reserves and provision governing calculation of city's annual contribution to fund contemplated possibility of either underfunding or overfunding of plan.

City, by way of ordinance that retrospectively divested benefits belonging to those pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment, breached its contract with retired police officers and firefighters and retirement-eligible police officers and firefighters by unlawfully withdrawing or removing previously earned and accrued benefit entitlements.

City had authority to make reasonable prospective modifications to pension plan, provided they were reasonable and necessary, notwithstanding provision that contractual relationship existed between plan members and city and benefits provided under plan thereafter could not be diminished or impaired in any way, since benefits set forth in plan did not vest until members reached service retirement eligibility and provision did not eviscerate city's reserved power to make such reasonable and necessary prospective changes to plan.

Ordinance retrospectively divesting benefits belonging to public pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment was reasonable and necessary, and therefore it did not violate Contract Clause, since ordinance was reasonably intended to preserve integrity of plan, changes to plan, as they affected active members, were reasonable changes promoting paramount interest of city without serious detriment to

employee, active member employees received substantially plan for which they bargained, and to extent any benefits were lessened or other terms became more onerous, those changes were balanced by combination of overwhelming public welfare considerations and new benefits or qualifying conditions.

Circuit court correctly declined to order specific performance, i.e., reinstitution of variable benefit for retired and retirement-eligible police officers and firefighters, and calculated damages owed to retired and retirement-eligible police officers and firefighters from ordinance retrospectively divesting benefits belonging to public pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment (COLA) by assessing how retired and retirement-eligible members would have fared if, hypothetically, city had retained variable benefit for them but made prospective changes to plan for members whose rights to benefits had not yet vested, since retired and retirement eligible were “closed” from changes but city was permitted to apply new COLA to active members.

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