

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **NYT: Struggling, San Jose Tests a Way to Cut Benefits.**

SAN JOSE, Calif. — This metropolis of nearly a million residents is the third-largest city in California, home to tens of thousands of technology industry workers, as well as many thousands more struggling to get by. Yet even here, in the city that bills itself as the capital of Silicon Valley, the economic tidal wave that has swamped Detroit and other cities is lapping at the sea walls.

San Jose now spends one-fifth of its \$1.1 billion general fund on pensions and retiree health care, and the amount keeps rising. To free up the money, services have been cut, libraries and community centers closed, the number of city workers trimmed, salaries reduced, and new facilities left unused for lack of staff. From potholes to home burglaries, the city's problems are growing.

"We're Silicon Valley, we're not Detroit," said Xavier Campos, a Democratic city councilman representing San Jose's poor East Side. "It shouldn't be happening here. We're not the Rust Belt."

The situation in San Jose is not anywhere near as dire as it is in Detroit or two other California cities, Stockton and San Bernardino, already in bankruptcy. But government officials and municipal bankruptcy experts across the country are watching San Jose closely because of a plan to reduce benefits — drafted by Mayor Chuck Reed, a Democrat, and passed by 70 percent of voters in a referendum last year.

The plan is being opposed in court by unions that represent city workers and say it is illegal under state law. It would introduce a second tier for new city employees involving much lower pension and health benefits. It would also alter pension benefits for existing workers, allowing them to choose either a similar, second-tier benefits plan or to pay significantly more out of their own pockets for the benefits they had come to expect.

The outcome of the case is expected to have a major impact on municipal budgets around the state and, perhaps, the country. If a state court rules later this year or early next year that the referendum allows San Jose to alter pension plans for existing workers, and it survives appeals, similar measures are expected to pop up elsewhere.

By pushing the cuts, Mr. Reed joins a small but growing group of Democratic officials, including Mayor Rahm Emanuel of Chicago and the Rhode Island treasurer, Gina Raimondo, who are talking about altering municipal pension plans in ways that unions do not like, and that Democratic officials have avoided because of their traditional alliance with labor. "I think it needs to be led by Democrats," Mr. Reed said. "It can't become something Republicans are doing to unions."

City unions, led by the San Jose Police Officers' Association, say that by California law, the pension deal in effect when government workers are hired cannot be lowered for the rest of their career. Mr. Reed and his supporters believe that state law, backed by the referendum, allows the city to cut future pensions as long as it does not touch the benefits that workers have already accrued. The mayor has gone forward with the lesser benefits for new employees.

Mr. Reed said he was also contemplating a campaign with other California mayors to mount a

statewide ballot initiative for November 2014 that would grant city officials even greater power over pension and health care benefits.

A decision on whether to go ahead with the initiative must be made by early next month, Mr. Reed said.

Even some supporters of Mr. Reed's plan do not blame the workers or the unions.

"These employees did nothing wrong, and their unions did nothing wrong for pushing for these benefits," said David Crane, a lecturer at Stanford University and special adviser to former Gov. Arnold Schwarzenegger on pensions and other issues. "Nobody forced government officials to make these promises and not fund them. And now you have some really brutal things happening to people who had counted on a certain level of retirement."

Staff cuts, lower salaries, uncertainty about their pensions and the threat of having to pay higher contributions for lower benefits are causing hundreds of San Jose officers to try to move to less troubled police departments, union officials say.

"They're kind of encouraging us to leave," said Officer Pete Urrutia.

Officer Steve Gibson said he intends to join the exodus of experienced San Jose officers. "I'm leaving as soon as I get my 25 years in," he said. That will happen in a few months.

Officer Gibson and three others had pulled their patrol cars into the center of St. James Park, on the edge of downtown, following complaints of a fight among homeless people living there.

"What they're doing is destroying what had been a great police department," said Officer Deborah Manion as she oversaw the scene of the dispute.

The impact has been hard on families hit by both lower salaries and possible benefit cuts.

"I have to sell my house," Officer Steve Brownlee said as he directed city workers toward a pile of debris. The only alternative, he said, was to work endless overtime to make up the difference. "I'd rather lose my house than do that," he said.

Cities in California are under particular pressure because it is so difficult to raise property taxes in the state, and because in 1999, at the height of the tech bubble, the Legislature voted for a huge benefit increase allowing, for instance, police officers to retire at age 50 with 90 percent of their salaries.

"We have this all over the state of California," said Karol K. Denniston, a bankruptcy lawyer with the firm of Schiff Hardin in San Francisco, who is advising a number of local taxpayer groups. "There is growing recognition that there is not enough money to keep doing what they're doing, and something's got to change."

Picturesque, prosperous Sonoma County has cut road maintenance to just \$4.2 million a year to make way for the growing cost of its workers' pensions.

The seaside city of Pacific Grove is considering whether to form a combined fire service with other municipalities nearby.

San Diego, which has been in pension-related turmoil for a decade, has fallen hundreds of millions of dollars behind on its program of fixing roads, sidewalks and storm sewers. Last year, voters there

approved their own ballot measure requiring all new city employees, except police officers, to be given 401(k)-style retirement plans instead of defined benefit pensions.

As in San Jose, public employees' unions sued. In March, a state administrative labor-law judge found that the city had failed to bargain as required with its workers. The city went ahead with the ballot-measure change, but the administrative finding portends further litigation.

Mr. Crane blames the political leadership in Sacramento, San Jose and all similarly struggling cities for failing to deal with the pension problem while it was still manageable. Mr. Reed agreed. "I have to accept my share of the responsibility," he said. "There's plenty of blame to go around."

Now, he said, city workers must understand that the 10 percent pay cut they accepted a few years ago, in a previous attempt to right the city's imbalance, was not sufficient to solve the problem and that deep, painful pension and retiree health care changes were needed.

Already, the city payroll has dropped by thousands of workers in recent years — a decline that in the case of the police has been exacerbated by the departure of veteran officers.

"It was pension layoffs," said Sharon W. Erickson, the city auditor. "We had to lay off employees because pensions were going up. The park department alone was cut 47 percent."

Joe Nieto, president of the Plata Arroyo Neighborhood Association in the heart of the city's East Side, said he has definitely noticed the service cutbacks. Vandalism in the neighborhood's park has gotten so bad that he said he has stopped trying to keep ahead of the graffiti that festoons its sprawling skateboard ramps.

"What's the point in cleaning it up?" he said. "It'll look just the same in two weeks' time. The bottom line is that we don't feel as safe as we used to feel here."

No one wants to cut workers' wages and benefits, Ms. Erickson said, least of all Democrats. Providing city services was the reason most Democrats went into government, she said.

"But for every one of us, there was a tipping point," she said. "For me, it was when they announced that swimming pools wouldn't open in the summer. Then you drive around the city, and roads are in abysmal shape."

Police response times for Priority 1 calls, meaning a violent crime that is still under way, have stayed steady, at about seven minutes, Ms. Erickson said. But response times for Priority 2 calls, involving violent but not active crimes, have crept up, and lower priority calls are taking hours and sometimes more than a day to generate a response.

"We have a huge opportunity here to get it right," Ms. Erickson said. "And if we can't get it right here in San Jose, where can we get it right?"