

# **Bond Case Briefs**

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## **PENSIONS - WASHINGTON**

### **Washington Educ. Ass'n v. Washington Dept. of Retirement Systems**

**Supreme Court of Washington, En Banc - August 1, 2014 - P.3d - 2014 WL 3970233**

Unions and unaffiliated group of public employees brought action against State challenging the repeal of gain-sharing in public employee retirement systems, under which a portion of the excess investment returns were distributed to member employees, on the basis that the repeal was unconstitutional. The Superior Court entered summary judgment in favor of unions and employees. State appealed.

The Supreme Court of Washington held that:

- Unions' and public employees' contract rights were not impaired by the Legislature's 1998 enactment of the gain-sharing program;
- Department of Retirement Systems' (DRS) communications did not estop Legislature from repealing gain-sharing; and
- DRS communications did not create a unilateral contract.

Unions and public employees' contract rights were not impaired by the Legislature's 1998 enactment of the gain-sharing program, under which a portion of the excess investment returns in public employee retirement systems were distributed to member employees, and its reservation of the right to amend or repeal the program in the future. Legislature was allowed to condition its grant of pension enhancements using express language in the statutory provision that created that right, and employees impliedly consented to the gain-sharing program, including its reservation clause, because gain-sharing was a gratuitous, favorable addition to their employment contract.

Failure of DRS handbooks to mention Legislature's reserved right to repeal gain-sharing program, under which a portion of the excess investment returns were distributed to public employees who were members of retirement systems, and statements that gain-sharing "will be" passed on if there were extraordinary investment returns did not estop Legislature from repealing gain-sharing. DRS communications did not promise a perpetual right to gain-sharing, all DRS handbooks contained qualifying statements advising employees to consult the statute for a fuller description of rights, and, taken as a whole, the DRS communications did not promise that gain-sharing would continue, rather, they merely described how gain-sharing would operate.