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Board of Trustees of City of Pontiac Police and Fire Retiree Prefunded Group Health & Ins. Trust v. City of Pontiac

Court of Appeals of Michigan - March 17, 2015 - N.W.2d - 2015 WL 1214687

Board of Trustees of the City of Pontiac Police and Fire Retiree Prefunded Group Health and Insurance Plan filed complaint to require the city to pay its required annual contribution to the trust for the fiscal year ending June 30, 2012. The trust was established in 1996 as a tax exempt voluntary employees' beneficiary association (VEBA), 26 USC 501(c)(9), to hold the contributions of police and firefighter employees and those of the city pursuant to collective bargaining agreements (CBAs) between the city and the various unions of the city's police officers and firefighters.

At issue was the efficacy of Executive Order 225 issued on August 1, 2012, pursuant to § 19(1)(k) of 2011 PA 4, MCL 141.1519(1)(k), by the city's emergency manager (EM), which purported to amend the trust to remove the City's annual obligation to contribute to the trust agreement "as determined by the Trustees through actuarial evaluations."

The trial court accepted the City's argument that the City's EM properly modified the City's obligation to contribute to the trust for the fiscal year ending June 30, 2012, by modifying the existing CBAs between the city and police and firefighter unions.

The Court of Appeals held that the EM had the authority under the terms of the trust agreement to retroactively eliminate the city's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

But the question remained whether Executive Order 225 did, in fact, eliminate the City's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

The Court of Appeals concluded that it did not.

"The plain language of Executive Order 225 provides that the trust was 'amended to remove Article III obligations of the City *to continue to make* contributions to the Trust.' (Emphasis added.) The term 'continue' means to 'go on or keep on without interruption, as in some course or action.' Plainly, the term

'continue' relates to present and future action. Further, Executive Order 225 provided it 'shall have immediate effect.' Because Executive Order 225 was adopted August 1, 2012, given immediate effect and applied to the present of present or future obligations under art III, § 1, by its own terms, it did not apply to the to the city's already accrued actuarial required contribution to the trust for the already ended fiscal year July 1, 2011 through June 30, 2012."