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Moro v. State

Supreme Court of Oregon - April 30, 2015 - P.3d - 2015 WL 1955591

Active and retired members of the Public Employee Retirement System petitioned for judicial review of legislation aimed at reducing the cost of retirement benefits, which eliminated income tax offset benefits for nonresident retirees and modified the cost-of-living adjustment.

The Supreme Court of Oregon held that:

- Tax offsets were not contractual as required for their repeal to violate Contract Clause;
- Cost-of-living adjustment requirement was a term of the Public Employee Retirement System benefit offer;
- Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause, abrogating *Oregon State Police Officers' Ass'n. v. State. of Oregon*, 323 Or. 356, 918 P.2d 765;
- Legislation reducing cost-of-living adjustment cap and bank and imposing fixed rates on benefits received impaired the contractual obligations of public employers in violation of the Contract Clause;
- Supplemental payments were void in whole; and
- Prohibiting payment of tax offset benefits to non-residents did not violate the Privileges and Immunities Clause.

Tax offsets of 1995, which were calculated by applying a formula intended to negate from Public Employee Retirement System benefits the maximum Oregon personal income tax rate, were not contractual, as required for repeal of the tax offsets to violate state Contract Clause, even if the 1995 Legislative Assembly expected that a future legislature would repeal that provision. The legislature had not, in fact, repealed it, statute expressly stated that it was not contractual, and, thus, legislature clearly intended that the 1995 offset would not be contractual.

Tax offsets of 1991, which provided a benefit to both active and retired members of Public Employee Retirement System based on years of service, were not part of the Public Employee Retirement System contract, as required for repeal of the tax offsets to violate state Contract Clause, although it was intended to compensate Public Employee Retirement System members for the losses that they would incur when the state repealed the income tax exemption, as required by federal law. Statute itself was, neither an offer that members had accepted by rendering services nor initially supported by an exchange of consideration, and instead, legislature enacted offset as a type of pre-emptive damage payment to mitigate a claim for breach of Public Employee Retirement System contract that no court had yet sustained, and, thus, it was not a component of the type of employment compensation benefits otherwise found in the contract.

Cost-of-living adjustment requirement for Public Employee Retirement System benefits was a term of the Public Employee Retirement System benefit offer, as required for its amendment to violate the state Contract Clause, rather than merely a continuation of the discretionary dividend payment benefits system that preceded the requirement. By enacting the cost-of-living adjustment system, the

legislature made the Public Employees Retirement Board's function ministerial and the application of the adjustment automatic, and legislature continued to make additional discretionary ad hoc payments during periods of particularly high inflation so that employees could reasonably expect that adjustment statute codified some minimum automatic protection of the purchasing power of their future benefits that was separate from any discretionary and gratuitous ad hoc benefits that the legislature might otherwise have provided.

Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause. Benefit was not an irrevocable term of Public Employee Retirement System benefits offer such that it could not be changed prospectively; abrogating *Oregon State Police Officers' Ass'n. v. State. of Oregon*, 323 Or. 356, 918 P.2d 765.

Legislation that reduced the cost-of-living adjustment cap for Public Employee Retirement System benefits from plus or minus 2% to plus or minus 1.5% for 2013, and, beginning in 2014, eliminated the cap and imposed a fixed rate of 1.25% on benefits received by retired members up to \$60,000 and a fixed rate of 0.15% on retirement income in excess of \$60,000 impaired the contractual obligations of public employers to apply cost-of-living adjustment provisions to Public Employee Retirement System benefits earned before the effective dates of those amendments in violation of the state Contract Clause. Case involved public employers's financial obligations and, thus, did not automatically fall within reserved powers that could not be contracted away, public employers failed to establish that funding was so inadequate as to justify allowing the state to avoid its own financial obligations.

Amendments to cost-of-living adjustments for Public Employee Retirement System benefits were void as violative of the state Contract Clause only to the extent that they applied retrospectively to benefits already earned, and, thus, Public Employee Retirement System members who earned a contractual right to benefits by working for participating employers both before and after the effective dates of the amendments were entitled to receive during retirement a blended cost-of-living adjustment rate that reflected the different cost-of-living adjustment provisions applicable to benefits earned at different times. Prospective application of amendments was consistent with the legislative intent, because amendments provided employers with long-term savings.

Supplemental payments provided for in legislation amending cost-of-living adjustments for Public Employee Retirement System benefits by reducing cap and imposing a fixed rate could not be severed from the unconstitutional retrospective application of legislation to benefits already earned in violation of the state Contract Clause and were, therefore, void in whole, even though the supplemental payment provision itself was not unconstitutional. Impact on the benefits Public Employee Retirement System members would have received was adverse.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not upset the substantial equity between resident and non-resident members in violation of the federal Privileges and Immunities Clause, where nonresidents were not subjected to the tax that the tax offsets were intended to offset.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not violate the Equal Protection Clause; objective was to remedy damages resulting from the imposition of Oregon income tax, and it was rational to provide that remedy to only those who suffered the damages by paying Oregon income tax.

