

Bond Case Briefs

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PENSIONS - CALIFORNIA

Marzec v. California Public Employees Retirement System

Court of Appeal, Second District, Division 3, California - May 8, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 4587 - 2015 Daily Journal D.A.R. 5078

Former police officers and firefighters employed by local public agencies that provide employee retirement benefits through the California Public Employees' Retirement System (CalPERS) brought putative class actions against CalPERS.

In order to enhance their service retirement benefits, plaintiffs had purchased additional years of service credit through one of several optional programs offered by CalPERS. Subsequently, each plaintiff was disabled on the job and took an industrial disability retirement under the Public Employees' Retirement Law (PERL) before reaching service retirement age. As a result, CalPERS pays each plaintiff a monthly disability retirement allowance of 50 percent of his or her final compensation. CalPERS *does not*, however, pay plaintiffs any additional allowance as a result of their purchase of additional years of service credit.

Former police officers and firefighters sued CalPERS for breach of statutory duty, breach of contract, rescission, breach of fiduciary duty, and violations of due process and equal protection

The Superior Court sustained demurrer without leave to amend and granted judgment on pleadings. Former police officers and firefighters appealed.

The Court of Appeal held that:

- Purchases of service credit were not contributions in respect to service rendered in a "category of membership" giving rise to a right to an annuity upon disability retirement;
- Failing to provide additional income for the service credit purchases upon disability retirement was not a breach of contract;
- Former police officers and firefighters stated a cause of action for rescission;
- Former police officers and firefighters stated a cause of action for breach of fiduciary duty;
- Failing to provide additional income for the service credit purchases upon disability retirement did not violate equal protection; and
- Failing to provide additional income for the service credit purchases upon disability retirement was not an unconstitutional impairment of contract.

Police officers' and firefighters' purchases of additional years of military service credit and "additional retirement service credit" were not contributions in respect to service rendered in a "category of membership" under the PERL provision stating that a disability retiree is entitled to an annuity in addition to a disability allowance if he or she has made contributions in respect to service rendered in a "category of membership" other than the category in which he or she was serving when he or she became disabled.

CalPERS offer letters for police officers and firefighters to purchase additional years of military service credit and "additional retirement service credit" did not include a promise that the

purchases would result in additional income upon disability retirement, and thus the failure to provide additional income was not a breach of contract, even though the letters identified an “estimated monthly pension increase” for each purchaser, where the letters contained a warning that if the purchasers took disability retirement “this additional service credit may not benefit” them.

Former police officers and firefighters stated a cause of action against CalPERS for rescission of their contracts to purchase additional years of military service credit and “additional retirement service credit” that did not result in additional income to them because they received disability retirements, in alleging that as a result of the totality of CalPERS’s disclosures to its members their consent to the contracts was induced by mistake of fact and law, fraud, and undue influence, and enforcement of the contracts would be contrary to public policy.

Former police officers and firefighters stated a cause of action against CalPERS for breach of fiduciary duty in connection with CalPERS’s sale to them of additional years of military service credit and “additional retirement service credit” that did not result in additional income to them because they received disability retirements, in alleging that CalPERS failed adequately to disclose the risk of forfeiting the investments if they took industrial disability retirement, since CalPERS owed fiduciary duties to the officers and firefighters as a public pension system.

Former police officers and firefighters who received no benefit from additional years of military service credit and “additional retirement service credit” that they bought from CalPERS before disability retirement were not similarly situated with CalPERS members who received disability retirement without purchasing additional years of service credit, and thus CalPERS’s allegedly disparate treatment of members who purchased the credits in accepting payment from them without giving them any additional benefits did not violate equal protection.

CalPERS failure to grant former police officers and firefighters any benefit from additional years of military service credit and “additional retirement service credit” that they purchased from CalPERS before disability retirement was not an unconstitutional impairment of contract, since the officers’ and firefighters’ rights to service retirement benefits were subject to conditions and contingencies requiring them to remain in their local safety positions until at least age 50, and those conditions never matured because they took industrial disability retirement before age 50.