

# **Bond Case Briefs**

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## **PUBLIC PENSIONS - OHIO**

### **Sherman v. Ohio Public Employees Retirement System**

**Supreme Court of Ohio - October 22, 2020 - N.E.3d - 2020 WL 6163923 - 2020 Employee Benefits Cas. 408,701 - 2020 -Ohio- 4960**

Public employment retiree who returned to public employment brought action against Ohio Public Employees Retirement System (OPERS), alleging a violation of Ohio's Equal Protection Clause based on OPERS's practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions.

The Court of Common Pleas granted OPERS's motion to dismiss for failure to state a claim upon which relief could be granted. Retiree appealed. The Court of Appeals reversed and remanded. OPERS appealed.

The Supreme Court held that:

- Retiree's allegations were sufficient to negate OPERS's justification based on cost of identifying all retirees in non-OPERS-covered positions, and
- Additional costs purportedly incurred only with respect to retirees reemployed in OPERS-covered positions did not constitute rational basis requiring dismissal of retiree's claim.

Rational-basis test applied to determination of whether a public employment retiree, who was reemployed by a public employer within the Ohio Public Employees Retirement System (OPERS) network, stated a claim against OPERS for violation of Ohio's Equal Protection Clause based on its practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions.

Allegations of former state employee, who received a health insurance subsidy from the Ohio Public Employees Retirement System (OPERS) in connection with his OPERS pension, and whose subsidy was reduced after he was reemployed by a public employer within the OPERS network, that it was administratively feasible to require OPERS retirees reemployed in non-OPERS-covered positions to send a form notifying OPERS of a retiree's reemployment, as was required for retirees reemployed in OPERS-covered positions, and that OPERS regularly requested information from OPERS retirees, were sufficient to negate OPERS's proffered justification for not reducing health insurance subsidies of retirees reemployed in non-OPERS-covered positions, namely, the cost of identifying all reemployed retirees, and thus retiree stated a claim for violation of Ohio's Equal Protection Clause.

Additional costs incurred by the Ohio Public Employees Retirement System (OPERS) when its retirees were reemployed in OPERS-covered positions that allegedly were not incurred when its retirees were reemployed in non-OPERS-covered positions did not provide a sufficient rational basis to require dismissal of state retiree's claim for violation of Ohio's Equal Protection Clause based on OPERS's practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions; if an employer in the OPERS network did not hire an OPERS retiree, the position would still need to be

filled, but it was unclear whether the costs OPERS incurred administering an employee's pension equaled or exceeded the costs OPERS incurred administering a retiree's contributions.