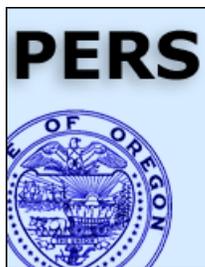


Resources & Features



PERS Retirees' Case

PERS Retirees' Case**August 16, 2007**

We appeared today before Judge Kantor on a number of issues concerning his June 20 decision ruling in our favor as to the PERB's attempts to recover alleged overpayments from retirees. As a matter of procedure, the judge allowed the State and local employers to intervene on the side of defendant. That just means more lawyers will be showing up when we argue in court. The judge also allowed Greg Hartman's motion to amend the complaint in the Arken case to add a claim for prejudgment interest.

The judge also granted the Motion for Clarification in Arken at least to the extent that he withdrew his decision in that case and will issue a new one. The problem was that the judge's June 20 decision ruled in favor of the Arken plaintiffs on a basis they had never argued. The judge agreed with Greg that the Arken plaintiffs are entitled to a ruling on their claim for breach of contract because the ruling in favor of the Robinson petitioners doesn't answer that claim.

Most of the hearing was devoted to getting an explanation from the PERB lawyers about what they intend to do, which has been difficult thusfar. Here's their position: They argue that the January, 2006 Repayment Order from PERB was only about repayment of benefits allegedly overpaid because of the 20% earnings allocation for 1999. They contend that Judge Kantor's June 20 decision did no more than to prohibit enforcement of the Repayment Order, that is, it prevented PERB from collecting past overpayments, BUT IT DID NOTHING TO STOP PERB FROM RECALCULATING AND REDUCING ONGOING BENEFITS. PERB said it intends to continue recalculating monthly benefits for those whose benefits haven't been reduced yet, and to reduce those monthly benefits.

However, the claim in Arken for breach of contract is not limited to the PERB attempts to recover alleged overpayments. That claim demonstrates that there WAS NO OVERPAYMENT, and, if the Judge rules in favor of the Arken plaintiffs, PERB's ongoing reduction of monthly benefit amounts will be declared illegal. That's the decision the Judge is considering now.

CLASS ACTION NOTE: Concerning the retirees' request for certification of the Robinson and Arken cases as class actions, the Oregon Supreme Court issued a decision August 16 in Joant v. Autozone, Inc, allowing for the appeal of a trial court decision where no class has yet been certified. This probably means the Judge's decision in this case could be appealed without the need for prior class certification, which could save some time and process. Whether or not this happens is a matter for the court of appeals to decide in its discretion.

Court Decision June 20, 2007

STC partner Jim Coon has agreed to represent the PERS "Tier One Window Retirees" (those retirees who began work for a PERS employer before January 1, 1996 and retired between April 1, 2001 and April 1, 2004) on the appeal by the PERS Board from the Multnomah County Circuit Court's decision of June 20, 2007. The Circuit Court held that, under the 2003 amendments to the PERS statute, any recoupment of alleged overpayments of PERS benefits based on the 1999 allocated earnings rate, must be recovered as an administrative cost. PERS may not bill retirees or reduce their benefits or COLAs. (Credit for fine work successfully representing the retirees in the trial court goes to Gene Mechanic,

formerly of Goldberg & Mechanic, who has moved to Florida to organize for SEIU in the Southeast but will be helping out with the case from a distance.)

The PERS Board will certainly appeal the trial court decision to the Oregon Court of Appeals. The trial court has recommended that the case be expedited directly to the Oregon Supreme Court, but that is just a suggestion. Meanwhile, the PERS Board has agreed to stop billing retirees, but not to return funds already received in response to past billing. Stay tuned.

July 27, 2007

The PERS Board has asked the trial court to STAY its order during the appeal the Board plans to file, which would mean continued benefit reductions for some or all of those who retired between April 1, 2000 and April 1, 2004 until the case is finally decided on appeal. We will be opposing the Board's request for a stay. We will argue that the Board ought to stop reducing benefits and should refund any amounts it has collected so far. There will be a court hearing on August 16 to take up this and other issues.

The PERS Board has decided that it will be paying the cost of living increase for 2007 in the August 1, 2007 benefit checks. No decision has yet been made about the past COLAs for 2003-06 required under the Oregon Supreme Court's Strunk decision.