SUPREME COURT OF CALIFORNIA

Cal Fire Local 2881 v. Cal. Pub. Employees' Ret. Sys.

244 Cal. Rptr. 3d 149 (Cal. 2019) · Decided March 4, 2019

SUMMARY

The California Supreme Court considered whether public employees acquired an implied vested contractual right to purchase additional retirement service credits under Government Code section 20909. The court concluded that the opportunity was accepted through election and payment of the statutory purchase price, not merely through entering or continuing public employment, and therefore was not protected from later alteration or revocation by the California Constitution's contract clause. The document includes a concurring opinion explaining the contract-law basis for that conclusion.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Kruger, J.; Chin, J.; Corrigan, J.; Liu, J.; Cuéllar, J.; Zelon, J.
JURISDICTION	California
DECIDED	March 4, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs petitioned for a writ of mandate challenging the elimination of the opportunity to purchase additional retirement service credit under the California Public Employees' Pension Reform Act of 2013. The trial court and Court of Appeal rejected the constitutional challenge, and the California Supreme Court affirmed.
STANDARD OF REVIEW	Whether statutory employment benefits create vested contractual rights protected by the Contract Clause is reviewed as a legal question under principles of statutory interpretation and contract law.
PRECEDENTIAL VALUE	Published precedential California Supreme Court opinion
PARTIES	Cal Fire Local 2881, Individual Cal Fire employees v. California Public Employees' Retirement System, State of California

TOPICS

employee benefits · employment law · contracts · constitutional law · statutory interpretation

PRACTICE AREAS

employment law | employee benefits | constitutional law | contracts

QUESTIONS PRESENTED

1. Whether the statutory opportunity for public employees to purchase additional retirement service credit constituted a vested contractual right protected by the Contract Clause of the California Constitution.
2. Whether the elimination of the ARS-credit opportunity constituted an unconstitutional impairment of public employees' contractual rights.

HOLDINGS

1. The statutory opportunity to purchase additional retirement service credit was not a vested contractual right protected by the Contract Clause.
2. Because no constitutionally protected contractual right to continued access to ARS credit existed, its elimination did not implicate or violate the Contract Clause.

KEY QUOTATIONS

> *"No implied unilateral contract arose simply from an employee's entering or continuing in public service during the period the ARS program was in force."* (244 Cal. Rptr. 3d at 175-176)

> *"As a consequence, the contract clause of the California Constitution did not protect the right to purchase ARS credits from later alteration or revocation."* (244 Cal. Rptr. 3d at 176)

FACTUAL BACKGROUND

California Government Code section 20909, enacted in 2003, allowed eligible public employees with at least five years of public employment to purchase one to five years of additional retirement service credit. Employees had to make a one-time election and pay an amount calculated to equal the increase in employer liability. The California Public Employees' Pension Reform Act of 2013 eliminated the opportunity to purchase ARS credit for existing public employees, prompting the constitutional challenge.

PROCEDURAL HISTORY

Cal Fire Local 2881 and four employees challenged the elimination of additional retirement service credit, commonly called ARS or airtime credit, as an unconstitutional impairment of vested contractual rights. The trial court permitted the State to intervene and ruled against plaintiffs. The Court of Appeal affirmed, and the California Supreme Court affirmed that judgment.

DISPOSITION

affirmed

CASES CITED

- Betts v. Board of Administration, 21 Cal. 3d 859, 148 Cal. Rptr. 158, 582 P.2d 614 (1978)

- Kern v. City of Long Beach, 29 Cal. 2d 848, 179 P.2d 799 (1947)
- McGrath v. Rhode Island Retirement Board, 88 F.3d 12 (1st Cir. 1996)
- Moro v. State, 357 Or. 167, 351 P.3d 1 (2015)
- Brant v. California Dairies, Inc., 4 Cal. 2d 128, 48 P.2d 13 (1935)
- Meyer v. Benko, 55 Cal. App. 3d 937, 127 Cal. Rptr. 846 (1976)
- Foley v. Interactive Data Corp., 47 Cal. 3d 654, 254 Cal. Rptr. 211, 765 P.2d 373 (1988)
- State of California v. Agostini, 139 Cal. App. 2d 909, 294 P.2d 769 (1956)
- O'Dea v. Cook, 176 Cal. 659, 169 P. 366 (1917)
- Miller v. State, 18 Cal. 3d 808, 135 Cal. Rptr. 386, 557 P.2d 970 (1977)
- White v. State of California, 30 Cal. 4th 528, 133 Cal. Rptr. 2d 648, 68 P.3d 74 (2003)
- Olson v. Cory, 27 Cal. 3d 532, 178 Cal. Rptr. 568, 636 P.2d 532 (1980)
- Creighton v. Regents of University of California, 58 Cal. App. 4th 237, 68 Cal. Rptr. 2d 125 (1997)
- United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977)

OPINION

CHIN, J.

CHIN, J. CORRIGAN, J. LIU, J. CUÉLLAR, J. KRUGER, J. ZELON, J.* KRUGER, J. I concur in the majority opinion, which I have signed. I write separately to expand briefly on a key element of the analysis: why the opportunity to purchase additional retirement service (ARS) credits was not an employment benefit that vested by implication, as were the pension benefits at issue in **455Betts v. Board of Administration (1978) 21 Cal.3d 859, 148 Cal.Rptr.

158, 582 P.2d 614, Kern v. City of Long Beach (1947) 29 Cal.2d 848, 179 P.2d 799, and similar cases. Our cases concerning the vesting of public employee pension rights are most easily understood through the lens of ordinary contract law principles.

Under those principles, an implied-in-fact unilateral contract can arise from the government's offer of an employment benefit in exchange for the public employee's acceptance by entering into or continuing in public service. When the benefit is one that will be provided only in the future-like a pension-the formation of such a contract vests the right to that benefit, making the government's offer irrevocable as to employees who have worked for the deferred benefit and earned it as part of the employment bargain.

(Maj. opn., ante, 244 Cal.Rptr.3d at p. 166, fn. 12, 435 P.3d at p. 448, fn. 12; Betts v. Board of Administration, supra, 21 Cal.3d at p. 863, 148 Cal.Rptr. 158, 582 P.2d 614; Kern v. City of Long Beach, supra, 29 Cal.2d at pp. 851-852, 855, 179 P.2d 799; see McGrath v. Rhode Island Retirement Bd., etc. (1st Cir. 1996) 88 F.3d 12, 16-17; Moro v. State (2015) 357 Or.

167, 351 P.3d 1, 20-22.)1 *175*996Of course, not every statute or ordinance providing an employment benefit (or even every aspect of a statutory pension program) constitutes an implied offer for a unilateral contract, and thus not every future benefit is the subject of a vested right; if that were so, the implied-right exception would swallow the general rule that the terms and conditions of public employment are set by statute rather than contract.

(Maj. opn., ante, 244 Cal.Rptr.3d at pp. 160, 169-170, 435 P.3d at pp. 442, 450-451.) Our cases have treated deferred compensation programs, such as pension plans, as special in this regard. An understanding of why these programs create implied vested rights is important to our understanding of why the particular program at issue here does not. Deferred compensation programs provide a particularly clear case for formation of an implied unilateral contract.

Monetary compensation, whether received periodically for work performed during the period or deferred until retirement in the form of a pension benefit, is the central consideration for which public employees, like other workers, enter and continue in employment. An implied contractual promise protecting this type of pension right arises because neither party could reasonably understand a deferred compensation offer to be revocable at will after employment.

(See Brant v. California Dairies, Inc. (1935) 4 Cal.2d 128, 133, 48 P.2d 13 [intent of contractual parties determined objectively from their words and conduct]; Meyer v. Benko (1976) 55 Cal.App.3d 937, 942-943, 127 Cal.Rptr. 846 [mutual assent to contract determined by "what the outward manifestations of consent would lead a reasonable person to believe"]; 1 Witkin, Summary of Cal. Law (11th ed.

2017) Contracts, § 767, p. 821.) No reasonable employee would agree to defer significant portions of his or her compensation without a vesting guarantee, and no reasonable employer would imagine that employees had agreed to work on such terms. None of this is true of the opportunity to purchase ARS credits provided by Government Code section 20909.

For reasons the majority opinion discusses, the parties could not reasonably have understood that opportunity as an offer that could be accepted simply by employment in a participating California Public Employees' Retirement System agency. (Maj. opn., ante, 244 Cal.Rptr.3d at pp. 168-169, 435 P.3d at p. 450.) Among other things, no new service was required of public employees who had already served five years when section 20909 was enacted (a period corresponding to the general pension vesting period and to the requirements of **456federal tax law) and purchasers had to pay the full estimated value of the additional credits under Government Code sections 20909 and 21052.

Objectively speaking, a party looking at this arrangement *997would understand that the ARS purchase option was not offered in exchange for any period of public service but rather in exchange for the statutorily mandated purchase price. (See Foley v. Interactive Data Corp. (1988) 47 Cal.3d 654, 677-678, 254 Cal.Rptr. 211, 765 P.2d 373 [parties' intent to agree on implied contractual terms is determined from their conduct]; Rest.2d Contracts, §§ 19, 30, com. d, p. 86, 71, com. b, p. 173 [terms of offer and acceptance governed by objective *176manifestations of assent].)

The offer was one that could be accepted only by the employee's election and actual purchase of ARS credits, not simply by staying on the job. For these reasons, I agree with the majority: No implied unilateral contract arose simply from an employee's entering or continuing in public service during the period the ARS program was in force.

As a consequence, the contract clause of the California Constitution did not protect the right to purchase ARS credits from later alteration or revocation. I Concur: LIU, J. Associate Justice of the Court of Appeal, Second Appellate District, Division Seven, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

We often ask whether a statute creates implied vested rights, but when the terms of a pension plan are set by statute for all public employers participating in the plan, it is the employer's offer of employment subject to the plan, rather than the statute itself, that constitutes the contractual offer. (See Moro v. State, supra, 351 P.3d at p. 21 ["Although the [Public Employee Retirement System] contract results from an offer and acceptance, the PERS statutes are themselves not an offer that employees can accept.

Instead, each participating employer offers a promise to its employees to provide compensation, including PERS benefits, in exchange for the employees' services."].)