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13th ANNUAL CLIENT CONFERENCE

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WHAT WERE THEY THINKING?



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1. A county resolution adopted a memorandum of understanding between the county and a union which provided a higher pension multiplier for "all years of service," including prior service. After the resolution was adopted, the county decided that applying the increased multiplier to prior service was unconstitutional. The county alleged that the resolution violated the California Constitution balanced budget requirement and the constitutional extra compensation clause, which prohibits the payment of extra compensation to public employees after service has been rendered. The county filed suit against the pension board and the union seeking declaratory and injunctive relief. How did the court rule?

2. A union and city negotiated the terms of a new collective bargaining agreement which included substantial pension concessions. The multiplier was reduced from 2.5% to 2%, it required 25 years of service instead of 20 for full retirement, and required contributions for health care premiums, which had been provided at no cost previously. In return for the concessions, the union received a promise that none of its members would be laid off during the term of the agreement, and also procured a \$4,000.00 lump sum payment to each firefighter over and above their normal salaries. Active firefighters filed suit claiming that the collective bargaining agreement deprived them of benefits that vested under prior collective bargaining agreements. The prior collective bargaining agreement stated that each employee shall vest in his pension after 10 years of service. The firefighters claimed that the denial of vested benefits violated their due process rights under the United States Constitution. The trial court granted the city's motion for summary judgment and the firefighters appealed. How did the appellate court rule?

3. A state terminated a collective bargaining agreement pursuant to the agreement's termination clause, and then enacted legislation reducing the amount the state would spend on retiree health benefits. The union sued, arguing that the state's actions violate the state and federal constitution impairment of contract clauses and takings clauses. Was there a contractual right to the level of retiree health benefits provided in the collective bargaining agreement that the state terminated?

4. A teachers' union filed a lawsuit against the state due to the state's failure to make appropriations for several years to fund the teachers' retirement system. State law requires the state to fund the pension system. The union argued that the state's failure to fund the system amounted to an unconstitutional impairment of contract. Did the court rule for the union or the state?

5. Two pension plan participants who pled guilty to violations of federal laws were ordered by the trial court to pay restitution. The United States filed motions for writs of garnishment attempting to seize the participants' retirement interests in a pension fund. The trial court ruled that the United States may garnish participants' pension benefits. The decision was appealed by the plan participants and the pension fund, which argued that the Internal Revenue Code makes pension benefits inalienable, that forfeiture of the benefits is precluded by the Tenth Amendment to the United States Constitution, and that state laws exempt pension benefits from garnishment. How did the court rule on appeal?

6. A police officer had his pension forfeited as a result of his conviction related to unauthorized access to a computer system. While on duty, the officer created an account and password for 21 police officers in order to view the officers' civil service examination scores. The forfeiture statute mandates forfeiture after final conviction of a criminal offense involving violation of the laws applicable to his office or position. The officer appealed the forfeiture determination. How did the court rule on appeal?

7. A city established a program allowing employees to purchase service credit which was intended to be cost-neutral to the city. After the pension board implemented the program, the city made retroactive benefit enhancements to the retirement plan, which effectively caused an increase in the value of prior service credit. The board failed to increase the cost of purchasing prior service credit and instead voted to charge the city for the unfunded liability related to the service credit. Did the court rule in favor of the board or the city?

8. A deceased participant's will named his mother and brothers as beneficiaries of his estate. The will also indicated that his son would be adequately provided for by several policies and accounts, specifically naming his pension. However, the employee designated his estate on the actual pension beneficiary form. The trial court determined that the employee had intended for his pension benefits to be distributed to his estate. How did the court rule on appeal?

9. A firefighter suffered a spinal cord injury in the line of duty and applied for a line-of-duty disability. Subsequently, he withdrew his line-of-duty pension application and then filed a new application seeking a not-on-duty disability retroactive to June 1, 2005, the date of his first line-of-duty disability application. The board granted the not-on-duty disability pension and ordered the benefits paid retroactive to the date when the not-on-duty disability application was filed. The firefighter appealed the decision of the pension board as to the effective date of his disability. How did the court rule?

10. An employee suffering from multiple lower back injuries, as well as breathing problems, filed for disability benefits. The employee was a heavy smoker. Disability benefits were denied by the board on the grounds that he failed to prove permanent physical or mental impairment and that he failed to prove that his incapacity did not result from the effects of smoking. The employee appealed to the appellate court. How did the court rule?

11. Employee was a participant in a state self-directed defined contribution investment plan. The plan provided that participants could not withdraw their funds until three months after retirement. He called a telephone guidance line to inquire about distribution of the funds in his account. He was advised that participants are allowed to take a 10% distribution after one month after retirement. By the time the participant requested distribution of his account, the account had lost over \$100,000.00 in value. He filed suit claiming that the state was liable to him for the losses in that they concealed a material fact by failing to notify him that he still had the ability to reallocate his investment funds during the three-month waiting period. Did the court rule that there was any fiduciary or other duty to the plan participant?

12. While servicing a fire engine, a firefighter seriously injured his shoulder. Under the state disability laws, a firefighter is entitled to full payment of his and his spouse's health insurance premiums by his employer if he suffers a catastrophic injury responding to what is reasonably believed to be an emergency. The firefighter appealed the pension board's decision that the firefighter was not injured while responding to an emergency. How did the court rule on appeal?

IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS PRESENTATION, CONTACT KLAUSNER & KAUFMAN, P.A., 10059 NW 1ST COURT, PLANTATION, FLORIDA 33324, (954) 916-1202, FAX (954) 916-1232, WEBSITE, www.robertdklausner.com.