

THE SECOND BATTLE OF BALTIMORE - A VICTORY FOR MEMBERS

2012 represents the bicentennial of the War of 1812. The high point of that second American Revolution was the dramatic defense of Baltimore at Ft. McHenry, an event giving rise to our National Anthem. It is no small irony that in 2012, a second battle of Baltimore yielded another victory, this time for working and retired Baltimore public safety officers.

In July 2010, the City took unilateral action to reduce employee and retiree pension benefits. Claiming that the funding requirements of the City's retirement plans were too great a burden on the City budget, the City took the extraordinary step of splitting the work force benefits into two tiers for active employees and also eliminated a variable COLA benefit, replacing it with a fixed rate COLA at a level which is lower than the average of the variable benefit which has been in place for over 28 years.

City Council Bill 10-519, which addresses the police and fire retirement system, contains 12 detailed factual findings. Among other things, the findings refer to recommendations from an independent actuary and independent financial consultant, who apparently describe the plan as unsustainable given the City's structural budgetary deficit. The last finding indicates that the amendments are necessary to implement recommendations "in a manner that minimizes diminution of benefits." This assertion is debatable. Evidence that the amendments are "necessary" is belied by the fact that the City was entertaining benefit enhancements for elected officials. Furthermore, an amendment on third reading to the final enrolled version of 10-519 increases the new minimum benefit for spouses from the original proposed floor of \$12,000 to \$16,000.

Generally, City Council Bill 10-519's amendments do not apply to members who are eligible for normal service retirement or "have acquired 15 or more years of service credit as a contributing member of the system" on or before June 30, 2010. The bill did have the effect of delaying the retirement date and DROP date; a longer final average salary; increased member contributions; and elimination of the existing COLA in favor of a fixed COLA providing a tiered benefit based on age.

The City action was of particular concern in light of the fact that Baltimore has specific contract protection language in its City Charter and a long history of state courts protection of retirement benefits.

The employees and retirees filed suit challenging the changes. The federal court hearing the case decided that the City can alter future accruals of benefits for persons who were

not vested under the terms of the plan (not eligible to retire), as long as the benefit reductions are not retroactive. The Court found that the reductions in the COLA as applied to persons already retired or vested (eligible to retire) was a substantial impairment of contract.

In its September 20th ruling the Court struck down the entire ordinance, finding the provisions were not capable of being severed. The Court held that the City disregarded its constitutional obligations by failing to employ the least intrusive means possible. A City appeal is expected. In the meantime, the ruling constitutes an important decision of national significance at a time of increasingly narrowed views of the rights of public pension participants.