RETIREMENT
SECURITY INITIATIVE
Bipartisan advocacy for fair and sustainable pensions

Understanding CalFIRE v. CalPERS and the State of California

***RSI** is frequently asked about the importance of the "CalFIRE case" for which the California Supreme Court may soon issue a decision. To help everyone better understand the case, we offer the following information.*

The Basics

CalFIRE Local 2881 (CalFIRE) v. California Public Employees Retirement System (CalPERS) and The State of California is a critical case with potential nation-wide impact. Following a ruling in favor of CalPERS, CalFIRE appealed, lost again, and then appealed to the Supreme Court of California. As of May 2018, the case has been fully briefed and is waiting for a date for oral arguments.

Who brought this case and why?

The Union, CalFIRE Local 2881 initiated the case. It was initially filed only against CalPERS, but the State of California joined the case when CalFIRE appealed to the State Supreme Court after losing both the original trial and their appeal that followed.

CalFIRE (and other unions in California) want CalPERS to continue to offer "Air time," a form of pension spiking, to state employees. The practice was halted as part of the Public Employee Pension Reform Act (PEPRA) that took effect on January 1, 2013.

What should I know about PEPRA?

PEPRA, the Public Employee Pension Reform Act, primarily affects California public employees hired after January 1, 2013. The legislation, signed by Governor Jerry Brown, a Democrat, reduced pension benefit formulas and increased employee pension contributions for new employees, and it severely restricted several forms of pension spiking, including "Air time," for both current and new employees.

What is "Air time" and why is it so important to CalFIRE?

"Air time" is the practice of purchasing years of service credit without actually working those years. For a lump sum payment, an employee could purchase up to 5 years of service credit. This meant that an employee with 15 years of credit could purchase five additional years and then retire with the pension benefits generally due an employee with 20 years of service, for the rest of their life. This meant that employees could receive significantly higher pension benefits without doing the work.

"Air time" was supposed to be self-funded, the lump sum payment was to cover the cost of the additional benefits and be of no burden to taxpayers. Unfortunately, due to some incorrect assumptions and math, the lump sum paid by employees was far less than the actual cost of the benefits thereby putting an additional burden on the pension plan and taxpayers.

Recognizing the significant advantage to employees that could afford to make the lump sum payment, CalFIRE chose to file suit in an attempt to retain the opportunity for its members to purchase "Air time."

RETIREMENT
SECURITY INITIATIVE
Bipartisan advocacy for fair and sustainable pensions

Why weren't all the reforms applied to current state employees?

The California Rule has limited the ability to apply pension reform. This "Rule" is a state court interpretation of state and federal constitutional law that prohibits changes that reduce pension benefits already earned and prohibits changes to benefits for future work unless those changes improve the value of future benefits not yet earned.

Tell me more about the California Rule?

In 1955, the Supreme Court of California ruled in a case, Allen v. City of Long Beach, and explicitly stated, "...changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." Interpretation and court decisions over the last six decades have resulted in the "Rule" that prevents retroactive reductions to pension benefits and prohibits reductions to pension benefit accruals in the future. CalFIRE argues that the elimination of "Air time" is the reduction of future benefits.

Why is this case so important?

This case could be decided narrowly or broadly. A narrow decision would affirm or reject the right of employees to purchase "Air time." A broad decision would mean that benefits not yet earned might be reduced thereby creating an opportunity for pension reform.

What have the courts ruled so far?

Both the original case and the appeal have been ruled in favor of CalPERS and the State of California. In its decision, the 1st District Court of Appeal wrote,

> "While plaintiffs may believe they have been disadvantaged by these amendments, the law is quite clear that they are entitled only to a 'reasonable' pension, not one providing fixed or definite benefits immune from modification."

Many expect a ruling from the Supreme Court of California by the end of 2018. That ruling will be the definitive end of this case and may be start of serious pension reform in California.

What happens next?

If there is a broad ruling, then the door will be open to reform of the current system. The California Rule is often put forward as the basis for blocking public pension reform in other states, even though few have formally adopted it. For instance, in Kentucky, the argument of the Attorney General against recently passed pension reform by the legislature is based on applying the California Rule.

Should there be a narrow decision, then two other cases, Marin Association of Public Employees v. Marin County Employees' Retirement Association and one in Alameda, Alameda County Deputy Sheriff's Association et al. v. Alameda County Employees' Retirement Association, also pending in the Supreme Court, will proceed. Each of these cases challenges the current interpretation of the California Rule and the ability to modify future pension benefits not yet earned.

To learn more about this or other issues related to pension reform, follow us on Facebook, Twitter, or contact us via our website.