

A Municipality's Success In the Pension Wars

Retired Employees Association of Orange County v. County of Orange

Cause: Retired employees sought a declaration from the federal court that Orange County breached an implied agreement to keep the retired employees' medical insurance benefits and rates on a par with those of current employees.

Result: The judge granted summary judgment in favor of the county and denied the retired employees group's motion for summary adjudication.



Pictured above, from left, is Arthur A. Hartinger, Edward L. Kreisberg and Jennifer L. Nock

Defense team: Arthur A. Hartinger, Edward L. Kreisberg, Jennifer Nock, Neelam Naidu, Meyers Nave Riback Silver & Wilson, Oakland

Plaintiffs: Moscone, Emblidge & Quadra, San Francisco

Judge: Andrew J. Guilford, U.S. District Court, Central District of California

Orange County faced a potential expense of hundreds of millions of dollars for retiree health care, but that wasn't the only reason the labor-and-employment litigators at Meyers Nave Riback Silver & Wilson in Oakland were interested in the case.

Pensions, retired-employee health insurance and similar topics are "a hot area in the law right now," said Arthur A. Hartinger, the chair of the Meyers Nave employment group, who lead the team that defended the county.

"There's enormous potential exposure for public agencies" all over the state, Hartinger said. "We're in the business of representing public agencies... and are often called upon to evaluate these types of programs.

The program in this case turned on a 2006 decision by the county Board of Supervisors to split retired and current employees into separate pools for medical insurance - and to reduce the amount the county paid toward the retirees premiums.

The retired employees association sued, claiming a longstanding implied contract and practice bound the county to keep subsidizing the retirees premiums. Hartinger and his team countered that counties and public agencies can't be bound by implications, only by formal board actions and adopted legislation.

"Public policy considerations embedded in the Constitution give the board of supervisors plenary control" over all promises and contracts, he said.

Even though the plaintiff deposed many current and retired county managers, the defense never even tried to depose past supervisors or the like.

"Our position was the testimony of an individual board member was irrelevant," Hartinger said.

U.S. District Judge Andrew J. Guilford ruled for the county, holding that public entities need not "provide specified retirement benefits... in the absence of explicit legislative or statutory authority."

In these hard economic times, the ruling is important for local governments trying to decide between funding retiree benefits and putting cops on the street, Hartinger said.

- DON DEBENEDICTIS