

Rights of Retirees Governed by the “County Employees Retirement Law of 1937” (The 1937 Act)

The 1937 Act grants rights to retired employees of the twenty counties governed by it. The act is found in the California Government Code beginning at Section 31450.

The purpose statement of the Act in Section 31451 specifically recognizes a “public obligation to county and district employees,” and that “retirement compensation and death benefit(s) (are) additional elements of compensation for future services.”

The California Retired County Employees Association was founded in 1969 in part to identify and protect the rights of retired county employees. According to its bylaws, CRCEA’s general purpose is “. . . to provide a central coordinating group through which the desires and objectives of the 20 local county associations may be advanced and to promote the health, happiness, and continued productivity of retirees, beneficiaries, and dependents of its local county associations.”

CRCEA monitors state and federal legislation that may affect its member associations, often testifying before legislative committees, and communicates directly with various legislators or other officials on specific issues. CRCEA also sponsors and promotes its own legislative proposals, as well as monitoring or assisting litigation involving its members.

In keeping with its mission, CRCEA has identified a number of specific rights of retirees that it has found are best protected by a knowledgeable and vigilant membership. These rights are:

I) Retired County employees have a vested right to a pension for life under the terms of the defined benefit plan in effect during their active employment.

A retired County employee’s vested pension rights are as protected as the original right to be paid a salary. Both are based upon the contractual exchange of the employee’s services for a financial benefit. The only difference is the timing of the payments. The California Supreme Court in Kern v. City of Long Beach, 29 Cal 2d. 848 (1947) observed at page 853:

“public employment gives rise to certain obligations which are protected by the contract clause of the Constitution, including the right to the payment of salary which has been earned. [4] Since a pension right is "an integral portion of contemplated compensation" . . . it cannot be destroyed, once it has vested, without impairing a contractual obligation. Thus the courts of this state have . . . uniformly held that pension laws . . . establish contractual rights.”

Under the California Constitution, a “law impairing the obligation of contracts may not be passed.” (Cal. Const., art I, § 9.) Likewise, our Federal Constitution provides: “No state shall . . . pass any . . . law impairing the obligation of contracts . . .” (U.S. Const., art. I, § 10, cl. 1.)

Pension is defined in Government Code Section 31471 as “payments for life.”

II) Other Post Employment Benefits, such as Health Insurance, may become vested depending upon the statutory framework under which they were adopted, the past practice and promises of the granting authority, and the inducement for the continued service of the employees or as a factor in their decision to retire.

Because these issues are currently being actively litigated in several 1937 Act Counties at this time, further discussion will await the completion of that litigation.

III) Retirees receiving Health Care benefits from their county or retirement system are entitled to notice to their recognized representative organization and an opportunity to comment prior to changes.

Government Code Section 31693 provides:

“In any county, district, or county retirement system providing benefits under this article, the county, district, or county retirement system shall provide any organization that is recognized by the retirement system of the county or district as representing the retired employees of that county or district reasonable advance notice of any proposed changes in employee health care benefits affecting those retired employees and the organization shall have a reasonable opportunity to comment prior to any formal action by the county, district, or county retirement system on the proposed changes. As used in this section, "proposed changes" means significant changes affecting health care benefits, including, but not limited to, changes in health care carriers, plan design, and premiums.”

IV) If the Board of Retirement contemplates any changes to the benefits of retirees, or the use of any excess retirement system funds, then notice must be provided to any organization that is recognized by the Board as representing the retirees. The organization shall then be afforded an opportunity for comment prior to any formal action by the Board.

This right was added in Government Code Section 31592.5:

“The board shall provide to any organization that is recognized by the board as representing the retired employees of the county or district reasonable advance notice of any proposed changes to the retirement benefits offered by the system or the use or uses of excess funds of the retirement system. The organization shall have a reasonable opportunity to comment prior to any formal action by the board on the proposed changes.”

V) Retirees have a right to know the financial condition of the trust funds that pay their benefits. The Retirement Board must file an annual financial statement.

This right is codified in Government Code Section 31597 for a Retirement Board using calendar year accounting:

“Before June 30th of each year the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding December 31st and its financial transactions for the year ending on that day.”

Alternatively, for a Retirement Board using fiscal year accounting, this right is codified in Government Code Section 31597.1:

Before December 31 of each year, the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding June 30th and its financial transactions for the fiscal year ending that day. This section is not operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county. After the filing of the first fiscal year accounting under this Section, the provisions of Section 31597 do not apply in the County.

VI) The Retirement Board is responsible for the investment decisions and administration of the retirement system, and must administer it to assure the prompt delivery of benefits to participants and beneficiaries. The Board’s duty to participants and beneficiaries takes precedence over any other duty.

Voters passed Proposition 162, the “California Pension Protection Act of 1992” in order to strengthen the protections for retired public servants. It amended Section 17 of Article XVI of the California Constitution, and provides in part:

“(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.”

VII) In a County with a nine member Board of Retirement, the eighth member shall be a retiree elected by the retired members of the system. Where there is an eighth member, the Board of Retirement may appoint an alternate retired member from a list submitted by a recognized retiree organization, to serve a concurrent term with the eighth (retiree) member. After the initial appointment, the alternate retired member shall be elected by the retired members of the system. An alternate retiree member may participate on the Board, but may not vote if the regular retiree member is present.

Government Code Sections 31520-31520.5 deal with this issue and the procedure varies within the Counties.

CRCEA was successful in getting S.B 414 introduced in the 2009 session of the California Legislature. If passed, it will streamline the procedure for filling vacancies on a Board of Retirement. It would also provide that an alternate retired board member would become the retiree member if that position became vacant (assuming there is an alternate retired member, since 3 counties do not have one.) The bill also provides that if the alternate retired member position becomes vacant, it would be filled from a list furnished by a recognized retiree organization, instead of by election.

VIII) Active employee unions may not negotiate away any pension benefits already earned by retirees.

A retiree is entitled to the pension benefits earned while working. As noted by the Court of Appeal in Pasadena Police Officers Assn. v. City of Pasadena, 147 Cal App.3d 695 (1983) they have earned a “contractually vested right to a fixed pension which cannot be reduced.”

Because retirees are no longer employees, active employee unions have no grounds to represent their interests in negotiations with a County on pension related issues. The MEYERS-MILIAS-BROWN ACT, beginning at Government Code Section 3500, governs local public employee organizations relations with their employers. Section 3504 provides: “The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment...”

NOTE:

(The issue of employee unions undermining other retiree benefits has been raised by commentators and in passing in several cases, but no case definitively resolves the issue in the context of a 1937 Act county.

The law appears settled that neither the unions nor the public agencies can upset pension benefits. The more difficult issue is other post employment benefits, such as health care. In the private sector, if a retiree has ended his employment under a contract that “clearly and unambiguously” promises lifetime health benefits – then they are enforceable. Language in the 1937 Act is subject to various interpretations, and becomes especially problematic for those retirees whose medical benefits are tied to those received by current employees. Despite a year of study by the “Public Employee Post-Employment Benefits Commission” in 2008, many issues remain unresolved. As mentioned in Section II, ongoing litigation with our member associations concerning these benefits and the circumstances under which they may be granted, modified or enforced is occurring and we await its resolution before addressing it in this document.)

Comment:

Two additional rights to be considered:

A) Retirees should be provided services by the retirement board that are comparable to those granted active and deferred members.

Subdivision (a) of Section 17 of Article XVI of the Constitution. Also see Section 3(d) of proposition 162. Further, see, e.g., Restatement (Second) of Trusts section 183 (1959) (“When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them.”)

B) Retirees may have the right to share in the distribution of annual excess earnings.

(Different rules apply in different Counties with regard to the ability (if any) to share in excess earnings.) This right exists only in the three Article 5.5 counties. Otherwise, use of excess earnings is up to the discretion of the Board of Retirement, subject to the notice requirements of Section 31592.5.

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