

# Prior MOU Does Not Create a Vested Right to Fully-Paid Retiree Medical Premiums

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In *Vallejo Police Officers Association v. City of Vallejo*, the police association (VPOA) sued the City over reduced contributions to retirees' PEMHCA medical premiums. A 2009 agreement provided that the City would pay 100% of the premiums for active employees and their dependents, limited to the cost of Kaiser coverage. Eligible retirees would get the same level of coverage as actives, in some cases subject to a minimum service requirement.

In negotiations for a replacement MOU, the City told VPOA negotiators that its "top priority was to reduce its liability for retiree medical costs" as it recovered from bankruptcy. The VPOA maintained that retirees hired before the 2009 agreement had a vested right to fully-paid retiree medical at the Kaiser rate. The dispute arose when the City unilaterally imposed 2014 terms and conditions of employment, which capped the City's PEMHCA contributions for most retirees at \$300 a month.

The VPOA filed a petition for writ of mandate alleging the City impaired retirees' constitutionally protected vested rights. The VPOA also claimed the City engaged in bad-faith bargaining by engaging in surface bargaining and rushing to declare impasse before unilaterally imposing these reductions. Affirming judgment for the City, the Court of Appeal concluded the 2009 agreement created no vested right in the first instance and VPOA failed to show bad faith by the City.

First, the agreement language did not explicitly confer a vested right to retiree medical benefits at 100% of the Kaiser rate. MOUs and labor agreements ordinarily cover distinct periods of time and are presumed not to create vested rights. Overcoming that presumption requires a "clear showing" that the parties intended to create a vested right. The Court of Appeal reviewed the text and concluded that VPOA made no clear showing that the health benefit terms of the 2009 agreement endured beyond the term of the contract.

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Second, while MOUs can have implied terms, as the California Supreme Court held in *Retired Employees Ass'n of Orange County, Inc. v. County of Orange (REAOC)*, they cannot be at variance with the express terms of the contract or as prescribed by statute. The bargaining history and prior resolutions did not show a clear intent that full coverage for retirees, or identical treatment for retirees and employees, would be maintained in perpetuity.

Third, trial declarations by VPOA signatories to the 2009 MOU, attesting to their subjective understanding of the parties' intent, were "irrelevant." While statements made during the City Council approval process for the 2009 MOU would be admissible as evidence of the City's intent, subjective understandings of individuals, or understandings communicated outside the approval process, are not.

Fourth, the "uninterrupted history" of the City paying the full cost of retiree medical premiums did not constitute extrinsic evidence of a vested right. Quoting *REAOC*, a "practice or policy extended over a period of time does not translate into an implied contract right without clear legislative intent to create that right." Nor was the City equitably estopped from reducing benefits based on "promises" allegedly made to VPOA members about their future retiree health benefits.

Finally, the Court reviewed the well-documented history of negotiations with many formal and informal meetings, proposals, counter-proposals and concessions over a significant time period. Based on a totality of the circumstances, Court of Appeal found that the City had not engaged in surface bargaining or declared impasse prematurely, rejecting VPOA's claim of bad faith bargaining.

For more information on retiree healthcare and vested rights issues, please contact **Saskia T. Asamura**.