

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

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## PRACTICE AREAS

Municipal & Public Agency Law

Public entities are not bound by the terms of prior employee MOUs in setting retiree health benefits. In a case arising out of Vallejo's recovery from bankruptcy, the City Council reduced contributions for retirees' PEMHCA medical premiums. A 2009 agreement provided that the City would pay 100% of baseline premiums for active employees and their dependents, and eligible retirees. The dispute arose when the City, attempting to reduce liability for medical costs, unilaterally imposed 2014 terms and conditions of employment, which capped the City's PEMHCA contributions for most retirees at \$300 a month, and the Vallejo Police Officers Association ("VPOA") sued.

In *Vallejo Police Officers Association v. City of Vallejo*, the VPOA alleged the City impaired retirees' constitutionally protected vested rights to fully-paid medical premiums which could not be changed. 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.

The Court of Appeal cited several important factors in rejecting the VPOA's arguments. 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. 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*, those terms cannot vary from the express terms of the contract or terms prescribed by statute. 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 could be relevant to 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. Nor was the City 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, the 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.

This case provides important guidance for public entities considering changes to retiree health benefits. For more analysis on this case, click [here](#).

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