Are Health Benefits a Vested Right for CSU Retirees?

By Mark H. Shapiro (CSU-ERFA Webmaster)

The U.S. Supreme Court recently ruled unanimously in a case from West Virginia (M&G Polymers USA v. Tackett, No. 13-1010) that in the absence of specific language in a union contract granting retirees free lifetime healthcare benefits, the company might be able to require the retirees to contribute to the cost of their health plan, thus overturning the decision of a lower court in favor of free lifetime healthcare for the retirees. The case has been sent back to the lower court to determine the intent of the contract using principles of contract law.

This brings up the question of the status of the healthcare benefits for CSU retirees. Are these benefits a "vested right" and if they are, what exactly does that mean? First, it's important to distinguish between retiree pension benefits and retiree health benefits. California public employee pension benefits are considered a vested right (http://www.calpers.ca.gov/eip-docs/about/pubs/vested-rights-members.pdf) and cannot be reduced for current retirees, though they can be reduced for new employees through state law, and for current employees through the bargaining process.

Pension benefits are determined by formulas as are cost-of-living adjustments, so public employees know exactly what their pensions will be when they retire and how they will be adjusted for changes in the cost of living.

On the other hand, public retiree health benefits are not so clearly defined. In fact, not too long ago Orange County active employees voted for a new contract that reduced retiree health benefits, and the courts ruled that was a valid action. (http://www.calpublicagencylaboremploymentblog.com/retirement/court-finds-no-implied-promise-of-continuing-retiree-medical-benefit/.) But contracts for state employees and CSU employees mention a "vesting period" after which retirees receive full health benefits. This would imply that CSU retirees are entitled to receive "full health benefits" for life. But what exactly does this mean?

Unlike the CSU pension benefit, which is to a large extent prefunded by employer and employee contributions and is well-defined, the healthcare benefit is funded out of current revenue and consists of a monthly payment from the CSU to CalPERS for each employee and each retiree. For active employees and retirees under the age of 65, CalPERS negotiates with various providers to offer a number of HMO plans for employees and retirees that include hospital, medical, and pharmacy benefits. In addition, CalPERS offers three PPO plans and a pharmacy plan for employees and retirees under 65 who prefer fee-for-service healthcare. The monthly payment from CSU to CalPERS may or may not cover the entire cost of the chosen plan depending on the number of dependents if any enrolled in the plan. The employee or retiree is responsible for the additional cost as well as any co-pays required by the plan.

Several years ago CalPERS required all eligible retirees and their eligible dependents who had reached the age of 65 to enroll in Medicare Parts A & B, and more recently in a CalPERS Medicare Part D plan (Part A covers hospital, Part B medical, and Part D pharmacy benefits) or to enroll in one of the Medicare Advantage Plans offered by CalPERS that provide similar hospital, medical, and pharmacy benefits. In this case the monthly payment from the CSU is used to cover any additional Medicare Advantage premium above the amount paid to the plan directly by Medicare, or for retirees in traditional Medicare, it is used to pay the basic Part B premium and the basic Part D premium and the premium for a PersCARE Supplement to Medicare plan. (Under some circumstances retirees who are required to pay an income-related additional Medicare Part B premium, also may be reimbursed fully or partially.) The CSU monthly contribution also may be used to cover all or part of basic plan premiums for dependents not eligible for Medicare.

The healthcare benefit itself is a "moving target" for both active employees and for retirees. Just about every year there are changes in the plans available and what they cover, though they all must meet the basic requirements of the Affordable Care Act. This is true particularly for the pharmacy benefit, where the formulary of available drugs changes on an annual basis as may co-pays. And, clearly, those retirees over 65 don't have the same choices of healthcare plans that active employees and younger retirees have.

In this environment what does it really mean to say that healthcare is a "vested right" for CSU retirees? It obviously doesn't mean that CSU retirees are entitled to the same healthcare choices they had on their retirement date. More likely – in this writer's opinion, California courts would rule that they are entitled to health coverage that is substantially equivalent to that being received by active CSU employees. This would imply that the CSU must contribute the same monthly amount to pay for a retiree's health plan options as it does for an active employee. Whether or not the federal courts would rule this way is an open question.

Recently, CalPERS gave public employers in California the option of prefunding healthcare for their retirees through contributions to an investment program. So far, some 440 public employers in the state are contributing to the CalPERS optional California Employers' Retiree Benefit Trust (CERBT) including the State of California, which contributes on behalf of three employee bargaining units that have agreed to prefund retiree health benefits. Public employer contributions to CERBT send a strong signal to both the state and federal courts that these employers consider their retiree healthcare a lifetime benefit.

In this writer's opinion, it would be prudent for all public employee bargaining units in the state including the CSU bargaining units to join in prefunding retiree healthcare benefits. That would clarify that retiree healthcare benefits are intended to be a lifetime "vested right."

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