

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-011638

02/01/2012

HONORABLE EILEEN S. WILLETT

CLERK OF THE COURT  
J. Rutledge  
Deputy

KATIE BARNES, et al.

KRISTIN MACKIN

v.

ARIZONA STATE RETIREMENT SYSTEM, et al. JOTHI BELJAN

UNDER ADVISEMENT RULING

The Court held oral argument on December 15, 2011 and this matter was deemed submitted for decision.

The Court has considered Defendants' Motion to Dismiss filed August 11, 2011; Response to Motion to Dismiss filed August 26, 2011; Supplemental Citation of Legal Authority filed December 5, 2011; Plaintiffs' Motion for Summary Judgment and Statement of Facts filed August 26, 2011; Defendants ASRS and State of Arizona's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment filed September 30, 2011; Defendants' Controverting and Separate Statement of Facts for Summary Judgment filed September 30, 2011; Reply in Support of Plaintiffs' Motion for Summary Judgment and Response to Defendants' Cross-Motion for Summary Judgment filed October 20, 2011; Defendants' ASRS and State of Arizona's Reply in Support of Their Motion for Summary Judgment filed November 16, 2011; all authorities cited; information and attachments presented.

The issue presented to the Court is whether 2011 Ariz. Sess. Laws, 1<sup>st</sup> Reg Sess. Ch. 26 ("S.B. 1614") is constitutional as applied to public employees who were members of the Arizona State Retirement System ("ASRS") prior to the enactment of the new law. S.B. 1614 amended

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A.R.S. § 38-736 to increase the proportionate share of the annual contribution to be paid by the public employees into the ASRS pension benefit plan.

The material facts of this case are undisputed. Plaintiffs are teachers who have been participating members of the ASRS pension benefit system prior to and at the time the legislature enacted S.B. 1614. At their dates of hire as part of their pension benefit package as public employees, Plaintiffs became “members” of ASRS. A.R.S. § 38-711(23). ASRS pension benefits are funded by combined contributions from both participating employers and member employees. Pursuant to statute, however, and since the inception of the ASRS, the proportionate share of the annual contributions paid between an employer and its employee into the plan has been set at 50% employer and 50% employee. A.R.S. §§ 38-736 and 38-737. S.B. 1614 changed that formula to provide a 47% proportionate share contributed by employers and a 53% proportionate share contributed by employees. The proportionate share an employee and employer pay toward the total contributions into ASRS has no effect on the actual solvency of ASRS. ASRS remains funded by a yearly calculation of total contributions needed. At issue in this case is the percentage share each member must pay toward meeting the yearly contribution required.

In 1998, the people of Arizona passed an amendment to our State Constitution: A.R.S. Const. Art. 29 § 1. Article 29 § 1 states:

Membership in a public retirement system is a contractual relationship that is subject to Article II, § 25, and public retirement system benefits shall not be diminished or impaired.

Our State Constitution confers unique protections to public retirement system benefits. That our Constitution specifically mandates such benefits neither be diminished nor impaired is legally significant. Public retirement system benefits are treated differently as a matter of law than other employee benefits in the State of Arizona.

A.R.S. Const. Art. II § 25 is the contract clause of the Arizona Constitution. This clause is contained both in the Federal Constitution as well as in our State Constitution. Art. II § 25 states: “No bill of attainder, ex-post-facto law or law impairing the obligation of a contract, shall ever be enacted.”

When Plaintiffs were hired as teachers, they entered a contractual relationship with the State regarding the public retirement system of which they became members. Their retirement benefits were a valuable part of the consideration offered by their employers upon which the teachers relied when accepting employment. Even prior to the existence of Art. 29 § 1, Arizona courts recognized the special contractual relationship that arises from an employee’s public

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pension benefits. See *Yeazell v. Copins*, 98 Ariz. 109, 402 P.2d 541 (1965); *City of Phoenix v. Boerger*, 5 Ariz. App. 445, 427 P.2d 937 (1967). Since Art. 29 § 1 was passed by the voters, our Arizona Supreme Court has continued to recognize the special contractual relationship surrounding pension benefits. The Court found:

. . . These cases adopted what we have characterized as “the contract theory of retirement benefits.” Under that theory, the State’s promise to pay retirement benefits is part of its contract with the employee; by accepting the job and continuing work, the employee has accepted the State’s offer of retirement benefits, and the State may not impair or abrogate that contract without offering consideration and obtaining the consent of the employee.

*Proksa v. Arizona State Schools for the Deaf and the Blind*, 205 Ariz. 627, 74 P.3d 939 (2003).

Under their contract, Plaintiffs received retirement benefits for which they agreed to share 50% of the cost with their employers. The Court finds that an increase in Plaintiffs’ proportionate share of the contribution payment to their ASRS pension benefits plan is a breach of that contract and infringes upon the Plaintiffs’ contractual relationship with the State. By including in its scope teachers who were ASRS members at the time of enactment, S.B. 1614 retroactively and unilaterally seeks to substantially change terms of a contract previously agreed to by the parties. The impairment to the contract is substantial, and no significant and legitimate public purpose exists for the breach. Because S.B. 1614 is a cost-saving measure for employers, heightened judicial scrutiny is required. The State has impaired its own contract. The Court is not required to give deference to the legislature where the State’s self-interest is at stake. See *U.S. Trust Co. of NY v. NJ*, 431 U.S. 1 (1977).

The Court finds that such an interference with the Plaintiffs’ contractual relationship is unconstitutional pursuant to the contract clause of the Arizona and U.S. Constitution. The unilateral contract modification effectuated by S.B. 1614 not only violates the U.S. and Arizona Constitutions, but also runs afoul of well-established legal precedent unique to our State.

The Court further finds that S.B. 1614 as applied to these Plaintiffs, existing members of ASRS at the time S.B. 1614 was enacted, diminishes Plaintiffs’ public retirement benefits. Increasing an employee’s proportionate share of payment toward pension benefits necessarily operates to reduce the overall value of that benefit to the employee. Simply put, the percentage-rate an employee pays toward the contribution results in a cost to the employee. Increased costs incurred over Plaintiffs’ length of employment for receipt of the same benefit negatively impacts the value of the benefit the Plaintiffs ultimately receive. By paying a higher proportionate share for their pension benefits than they had been required to pay when hired, Plaintiffs are forced to pay additional consideration for a benefit which has remained the same. Art. 29 § 1 of our

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Constitution expressly prohibits the type of diminution or impairment of Plaintiffs' existing public retirement system benefits that S.B. 1614 exacts.

Defendants raise several other procedural arguments in their Motion to Dismiss. The Court finds that Plaintiffs have standing to bring this lawsuit as they were members of the ASRS pension plan prior to the date S.B. 1614 was enacted. The Court further finds that the individual employers of each member Plaintiff are not indispensable parties. Naming the State of Arizona as a Defendant is sufficient as to all political subdivisions of the State, State agencies, and State agents. All of the member Plaintiffs were employed by the State or its political subdivisions or agencies at all times relevant to this case.

The Court finds that ASRS is a proper party, as its statutorily conferred powers enable it to play an integral role in the application of revised contribution rates.

IT IS ORDERED denying Defendants' Motion to Dismiss.

IT IS ORDERED granting Plaintiffs' Motion for Summary Judgment and denying Defendants' Motion for Summary Judgment.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.