

interoffice

MEMORANDUM

to: PERS Coalition
from: Greg Hartman
subject: Case Status Report
date: October 17, 2007

Some of you have asked for an update on pending litigation. Below is the current status of litigation. This contains no confidential information so can generally be shared with members.

Cases

Strunk. This state court challenge to the constitutionality of the 2003 legislation will shortly come to a close after the recent award of attorney fees by the Oregon Supreme Court. That award will permit us to fully repay the Coalition and retain the remaining portion of the fees as additional attorney fees.

Robinson. This federal court challenge to the 2003 legislation has been concluded.

City of Eugene. This case is concluded.

Henderson. This case asks the court to construe the meaning of Judge Solomon's 1978 decree regarding actuarial tables and is currently pending before the Ninth Circuit.

White. This case challenges the settlement agreement which concluded the *City of Eugene* case, as well as a number of administrative actions taken to implement that settlement. I have taken the deposition of Eva Kripalani and have informed Joe Malkin that I would like to take the deposition of the remaining members of the board and Mark Johnson, at which time I believe the case can be resolved on summary judgment.

Arken. This is the class action on behalf of window retirees which challenges PERS's current efforts to re-allocate 1999 earnings and make collections from individual retirees. The case is once again pending before Judge Kantor for resolution of the issues which were not fully resolved in his initial opinion on this matter. We hope to have an opinion in the near future.

Robinson. This is the case being handled by Jim Coon and Gene Mechanic. This case also challenges PERS's collection efforts, arguing that they are inconsistent with Section 14(b) of the 2003 legislation. We are also waiting on an opinion from Judge Kantor resolving issues

relating to the scope of his prior decision in favor of *Robinson* plaintiffs. Again, we hope to have a decision in the near future.

Kay Bell. This is a test case to determine whether individuals who received incorrect advice from PERS which led to their retirement can sue for damages. The parties have filed cross-motions for summary judgment and this case is likely to be resolved at the trial level in the near future.

Murray. This case raises the issue of whether administrative expenses can be charged to the variable account in years in which that account has no earnings. The case has been fully briefed and we await a hearing date before the court of appeals.

Issues

Money match variable. In our last report we indicated we had an adequate number of clients, including most importantly a Multnomah County client, sufficient to pursue this litigation. We requested documents from PERS on behalf of all of these individuals to confirm that they actually had been harmed by the new methodology for calculating benefits. Unfortunately we discovered that for a number of those individuals, including our Multnomah County plaintiff, the new calculation methodology did not cause them any damage. We can proceed with the remaining plaintiffs, though that will necessitate filing in another county. Alternatively I would appreciate each of you making one last effort to find individuals who were potentially damaged by the new methodology, particularly those who reside here in Multnomah County, so that we can pursue the claims here.

Rate guaranty reserve. As I previously reported I think that the proper sizing of this reserve and how it should be distributed are likely to be items of contention in the future.

Equal-to-or-better-than. PERS is engaged in rulemaking on the new equal-to-or-better-than statute. As you know from some of the correspondence I have sent to PERS, we have expressed concerns about the proposed rules. We will continue to try to make certain that the rules adequately carry out the intentions of the legislature. It appears that we will have testing done early next year based on the effective date of the new legislation (January 1, 2008). I anticipate that a number of the jurisdictions will be found to be insufficient and therefore will be required to amend and improve their pension programs. If you are advising any individuals who are working for any of these exempt employers I would strongly urge them not to retire until after the first of the year so that they can have the benefit of whatever improvements are mandated by the testing process.

Hopefully this has been helpful in sorting out current status but call me if you have any questions.