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A Short Primer on Retirees' Vested Health Benefits

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On the heels of California's latest economic crisis, health care premiums have escalated. Many public employers have targeted employee and retiree health benefits for cutbacks. Eager to reduce costs, they are attempting to lower their premiums by increasing copays and deductibles, by curtailing coverage, or shifting premium costs onto employees or retirees. Some hope to reduce or even eliminate health care benefits for retirees. In many cases, public employers are attempting to negotiate these benefit reductions with public employee unions. But such a road is rocky, for retiree health benefits generally are a form of deferred compensation and hence a vested right that cannot be curtailed either unilaterally or through negotiations.

Retiree health benefit programs became widespread in California during the late 1960s and early 1970s at the urging of the legislature, which encouraged public employers to adopt health plans that protected retirees.[1] Typically, the plans themselves were cursorily drawn. Often they guaranteed that after retirement, employers would pay the premium costs for retirees and spouses who remain in the plans. Sometimes the plans made explicit or implicit promises concerning their scope and costs such as copays and deductibles. Frequently, the practices that accompanied implementation of the plan also contributed to retirees' and employees' expectations about the plans. Now, many public sector retirees and public sector unions are trying to protect the retiree health benefits that have existed for decades.

This article explains the origins of the constitutional protection afforded vested contract rights and the important principles that prevent governmental entities from reneging on vested retiree benefits. It also explains what constitutes a contractually vested right, in the context of premiums, copayments, and deductibles, and the scope of benefits.

Whether promised retiree benefits were created by a governmental policy before collective bargaining laws took effect, or afterward through the negotiations process, they generally are a promise and a form of deferred compensation. Once the promise has been made, and work performed in reliance on it, the law permits only the most minimal impairment of such contracts by a governmental agency after one has retired..[2] In extreme cases, the emergency modification doctrine may be employed to justify temporary, minimal modifications of vested rights. But typical employer rationales for reducing retiree health benefits (i.e., balancing the budget, making retirees share in cutbacks, or freeing up money for discretionary spending) are not compelling justifications to impair promised, deferred compensation. The law does not allow retirees' deferred compensation to be placed on par with discretionary expenditures, no matter how worthy the reasons for the cuts. In the extreme situation, where an agency is allowed to impair its debt obligations, the obligation must be restored the moment the emergency ends.

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Understanding these issues may discourage public employers from illegally reneging on promises made or attempting to negotiate changes in retiree benefits with employee unions.

An Explanation of Deferred Compensation and Vested Rights

In California, the middle of the 20th century saw retirees struggling to obtain reasonably priced health benefits. To address this problem, the California legislature enacted laws designed to encourage local public entities to provide retirees and future retirees with health benefits.[3]

These benefits often were provided before collective bargaining statutes were enacted, and thus resulted from unilaterally adopted employer policies. Those policies, however, became contracts between public employers and their employees.[4] As a result, retiree health benefits became a form of deferred compensation; employees worked in the expectation that, upon retirement, they would receive the benefits. Retiree benefits thus were comparable to pensions, a form of deferred compensation that had become well known in California for nearly a century.

The first step to understanding the law that governs deferred compensation is to consider the legal protection afforded contracts. California and federal law provide protection of constitutional dimension to many retiree health benefits.

The Contract Clause of the United States Constitution, Art. I, Sec. 10, provides, "No State shall…pass any…Law impairing the Obligation of Contracts…." Article I, Sec. 9, of the California Constitution contains a parallel provision: "A…law impairing the obligation of contracts may not be passed." This legal sanctity granted contracts is a distinctive attribute of the U.S. Constitution. James Madison viewed the impairment of the Contracts Clause as the "constitutional bulwark in favor of personal security and private rights," explaining that contract impairment was "contrary to the first principles of the social compact and to every principle of sound legislation."[5] Today these constitutional contract clauses are the only safeguards against public agencies solving their fiscal problems by shifting costs onto their retirees through the impairment of retirement contracts.

The Supreme Court has recognized the "high value" the Framers placed "on the protection of private contracts."[6] This is because "contracts enable individuals to order their personal and business affairs according to their particular needs. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them."[7]

Pension rights and retirement health benefits, unlike many terms of public employment that are purely statutory, arise from contract and thus are protected from impairment by the Contract Clause.[8] Retirement health benefits are a form of deferred compensation for public service.[9] The right to deferred compensation vests upon acceptance of employment.[10] Public employees also acquire vested rights to additional benefits granted during employment.[11]

Like pensions, retirement health benefits "help induce faithful public service and provide agreed subsistence to retired public servants who have fulfilled their employment contracts."[12] The California Supreme Court has held the right to a pension to be fundamental.[13] The same is true of vested retirement health benefits.[14] Pension laws are to be liberally construed to protect pensioners and their dependents from economic insecurity.[15] California favors this liberal construction of retirement benefit provisions to accomplish their "beneficent purpose" to "protect the reasonable expectations of those whose reliance is induced."[16]

Pensions always have been the most noted form of deferred compensation. However, the California courts hold that other forms of deferred compensation vest at the time of employment, or when granted to employees, and are protected by the federal and state contract clauses.[17] The Contract Clause protects the reasonable expectations of public employers that are defined by the terms of the contract between the employer and the employees.[18] In *Olson v. Cory*, promised salary increases for judges were vested rights protected by the Contract Clause and could not be abridged by placing a limit on cost-of-living adjustments for judicial salaries.[19] Similarly, future cost of living salary increases for public employees were held vested so that passage of a state initiative measure could not impair such contracts, even though the salary for the following year had not yet been completely earned.[20] Retiree health benefits also are a type of deferred compensation that is subject to vesting.[21]

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Key Terms of the Retirees' Post-Retirement Health Benefit Contracts

To identify the vested rights of retirees, one must analyze the policies that comprise the terms of their employment contract.[22] There are two types of plans — those unilaterally adopted before the advent of collective bargaining and those resulting from collective bargaining.

Unilaterally adopted plans are enforceable employer policies.[23] Equally enforceable are plans created through collective bargaining.[24]

These benefits may include not only the right to receive retirement health benefits but also the right to be free of premium costs, to avoid future increases in the other costs of those benefits, such as increased copays or deductibles, or less advantageous coverage. It is common for contracts to promise retirees the health benefits fixed at the time of retirement, or to promise that they will receive the same benefits as current employees. But the meaning of these terms is not necessarily self-evident.

Often the retiree plans clearly provide that the employer will pay the premium for the retiree (and frequently the spouse or dependent, at least so long as the retiree is living). What about copays and deductibles? The author successfully prosecuted two class-action lawsuits that resulted in judgments affirming that public employers promised not to increase copays or deductibles during the life of the retiree. In both cases the retirees argued that increasing the copays and deductibles was simply a mechanism to transfer costs to the retirees, which violated the retirees' vested rights. In both cases the superior court agreed.[25]

Rules and regulations resulting from unilaterally adopted policies essentially are contracts of adhesion, and ambiguities in such policies normally are resolved against the drafting employer, to benefit the retiree.[26]

California law also favors the liberal construction of retirement benefit provisions to accomplish their beneficent purpose.[27] Moreover, extrinsic evidence of the policies' intent is admissible to prove a meaning to which the language is "reasonably susceptible."[28] Contemporaneous interpretations often are useful in ascertaining meaning.[29]

Although the issue has yet to be extensively litigated in California, federal courts have frequently confronted the nature of promises to retirees. While not founded on the constitutional Contract Clause, the analysis of these federal cases is instructive. When private sector employers have promised retirees health benefits, the federal courts have protected those benefits: "As a matter of federal law, an employer who promises to pay benefits for the lifetime of a retired employee must keep that promise."[30]

Numerous federal cases have confronted the question of whether retiree health benefits vest under federal statutory laws such as the Employee Retirement Income Security Act of 1974, better known as "ERISA," and Section 301of the Labor Management Relations Act. ERISA represents a congressional judgment as to how private sector employers should treat their retirees.[31] ERISA classifies all retiree pensions as vested, but treats retiree health benefits differently. It provides that retiree health benefits *may vest*, but do not automatically vest. Under ERISA, "the parties themselves set out by agreement or by private design, …in plan documents, whether…welfare [health] benefits vest, or whether they may be terminated."[32] Several courts recognize that "normally retiree benefits are vested."[33] As with California law, if the benefit plan provides for vesting, then retiree health and welfare benefits are treated as a form of deferred compensation paid to employees for their services, and the promises made to employees under employer benefits plans are enforceable under federal law.[34]

Federal courts reviewing health benefit cases under ERISA perform an analysis similar to that of California courts to determine whether employer policies create vested rights. Federal courts "look to the intent of the parties and apply federal common law of contracts to determine whether welfare benefits have vested."[35] Numerous federal courts applying ERISA have found that retirees have been granted vested rights to receive lifetime health care benefits at virtually no cost.[36]

The federal courts have stressed the unique powerlessness of a retiree vis-à-vis his or her former employer: "[T]he relationship of retiree and employer is unadorned with those special considerations particular to the relationship between an active employee, his union and the employer."[37] In California, it is settled that retirees cannot file grievances under a union contract, nor pursue unfair labor practice charges.[38] A retiree's union cannot insist that an employer bargain over changes in retiree benefits.[39] And more importantly, a labor union representing active employees owes no duty of fair representation to retirees. Retirees are "unprotected in the collective bargaining process, since a union has no duty to bargain on the retiree's behalf."[40] Federal courts thus have recognized it is highly unlikely that retiree benefits were intended to fall within the vagaries of future collective bargaining.[41] In *CRTA Protect v. West Contra Costa Unified School Dist.*,[42] the unions representing district employees candidly acknowledged they had little interest in preserving retiree benefits because they could not justify to their active membership the dichotomy in which retirees would have greater benefits.

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Federal cases identify the principle that retiree health benefits are "status" benefits which "carry with them an inference that they continue so long as the prerequisite status is maintained."[43] Federal courts especially have been intolerant of permitting employers that have "miscalculated" by granting health benefits for life, from avoiding their promise because of financial problems or the increased cost of such benefits. In *Bidlack v. Wheelabrator Corp.*,[44] retirees sued to enforce lifetime health insurance benefits. The court rejected the employer's invitation that it entertain a presumption against vesting. The defense that health care costs were capable of dramatic increase, imposing crushing liabilities on companies and allowing retirees a windfall at the expense of those not yet retired, found no sympathy:

> Employers…certainly don't have to grant such benefits *in perpetuo*. If they did so in the past, not anticipating the recent rise in health cost, they should not expect the courts to bail them out by undoing the contractually determined allocation of risk on the question. Courts do

> not sit to relieve contract parties of their improvident commitments....[45]

Federal courts also have enjoined increased copays and deductibles. In *Golden v. Kelsey-Hayes Co.*,[46] an employer imposed annual deductibles, increased copays to 20 percent, and imposed a monthly premium contribution on retirees.[47] The court agreed with other courts that "reductions in retiree insurance coverage constitute irreparable harm" because retirees as a group have less resources, are more vulnerable to emotional distress due to additional cost, and are more likely to suffer uncertainty and worry over new costs. It recognized that due to their fixed incomes, small increases in medical costs create extreme financial hardship to retirees.[48] In *Jansen v. The Greyhound Corp.*,[49] the retirees faced imposition of changes in benefits that had been negotiated with the union representing active employees. These changes included annual deductibles, 20 percent copays, higher stop-loss limits, and a charge of $2 per prescription. Finding that these changes significantly reduced retirees' benefits, and that retiree benefits could not be affected by union negotiations for active employees, the court issued a permanent injunction.[50]

Constitutional Limits on Public Employer Impairments

Once retiree health benefits have been promised, a public employer generally cannot renege or substantially impair the promise.

The primary measures of substantiality are whether the modifications affect a basic or integral term of a contract, or whether they defeat the expectations of the affected party.[51] Changes in plans that increase costs on an annual basis are invariably substantial.

In *Allied Structural Steel*, the state's imposition of pension obligations on private companies operated as a substantial impairment of a contractual relationship because "a basic term of the pension contract — one on which the company had relied for 10 years — was substantially modified."[52] And it changed obligations "in an area where the element of reliance was vital."[53] The retiree benefit plans often are a basic term of the retirees' employment, so that their reliance on its copayment limits is manifest. Aging retirees, many of whom are on fixed incomes, often confront a bewildering array of health problems. They have an understandable need for predictability in the costs of their health needs. Many receive modest public pensions, limiting their ability to absorb cost increases.

The centrality of post-retirement compensation to retirees was confirmed in *Carman v. Alvord*,[54] which characterized a public employer's statutory pension provisions as "an integral part of the employment contract."[55] Like the employees in *United Firefighters of Los Angeles*,[56] retirees often expect that they are protected from high copays and a further post-retirement diminution in their standard of living. This reliance may influence where some chose to live; it affects the amount of money from their modest pensions that is available for other needs. For some, their retirement decisions were among the most important decisions in their lives. Retirees often have worked 20-or-more years to accrue their benefits, and thus have staked much of their post-retirement standard of living on their receipt.

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In *West Contra Costa*, it was evident that abrogation of the contract resulted in real hardship on many retirees. Retirees' testimony spoke to the persistent and painful human consequences they experienced from the defeat of their expectations.

Imagine how it felt to a 75-year-old former school teacher, retired since 1985, living on a modest STRS pension, who suddenly learned in 2003 that her prescription charges were about to increase by 500 percent. She probably felt dismayed and deceived; after all, she had worked long and hard to earn her retiree benefits as deferred compensation. And she might fear what the future holds. Anyone can imagine her distress as prescriptions piled up, when their cost increased again to $7, when the $400 cap lifted, and when huge deductibles and 20 percent copays were added.

Due to severe health problems, many retirees required more than 50 prescriptions each year. Many retirees and their spouses are in poor health, suffering debilitating, chronic medical problems and disabilities. Their ability to cope with increased charges is doubtful. Finding a "new job" at age 70 is hardly an option. When active employees suffer pay cuts or freezes, or increased copays, they often have future opportunities to recoup some of their losses. But increased retiree costs often amount to a relentless, continuing, deeply felt diminution of expectations.

In *West Contra Costa*, the retiree benefit plan, particularly the $1 copayment and an annual out-of-pocket cap of $400, was as much as wages at the heart of retirees' contracts. Moreover, the benefits were of *deferred compensation*, for which retirees already had provided the service. The severity of the impairment in *Sonoma* was confirmed when the expected wage increases guaranteed by the collective bargaining agreements were "irretrievably lost." The same situation obtains to most retirees.

Defining 'Minimal' Impairment

The courts have said that a "[m]inimal alteration of contractual obligations may end the inquiry at its first stage."[57] But for impairment to be minimal it must be narrowly drawn and "necessarily incidental to an innocent purpose."[58] The concept of minimal impairments "has no proper application as a vague license for the State to impair its obligations so long as it is only 'a little bit.'"[59] And substantiality is *not* determined by whether "it could have been worse."[60]

In every one of the dozen cases I have handled, the employer argued that the impairments it made (usually copay increases) were minimal because they did not eliminate retiree health benefits, require retirees to pay premiums, or decrease their pensions. But pensions usually are provided by STRS and PERS, and are not within the control of most public employers.[61] Although retiree benefits were not totally eliminated or premium charges imposed, evidence always has shown that the huge increases in copays and deductibles, and the elimination of the annual cap, were substantial and shifted part of the program's cost to retirees.

For an impairment to be narrowly tailored, an employer must be able to show that it considered "the possibility of alternative, less drastic methods of accomplishing its goal."[62] For example, it would be acceptable to defer the complete benefits for the duration of a brief emergency. But in the cases I have seen, as in *Valdes v. Cory* or *Allied Structural Steel*, the employer has nullified a contractual obligation and imposed a "completely unexpected liability in potentially disabling amounts."[63] Surely an employer must determine and consider the impact on retirees from increases in copays or the lifting of annual caps or other changes.

When the impairment is substantial, an employer must articulate and prove that the impairment was both necessary and reasonable.

Justifying the Impairment

When the impairment is substantial, an employer must articulate and prove that the impairment was both necessary and reasonable. Under the applicable strict scrutiny analysis, these are heavy burdens.

The courts have devised a four-part test that severely limits any impairments. Such justification requires (1) that the legislation serves to protect basic interests of society; (2) that there is an adequate emergency justification; (3) that the enactment is appropriate to the emergency; and (4) that the enactment is temporary in nature.[64] If a public employer cannot meet all of these requisites, impairment is disallowed.[65] Moreover, additional standards, including California's special protection of retiree expectations, guide application of the test.[66]

Employer's burden of proof. The burden of proof rests with the public employer to establish a compelling state interest and a necessity to impair retirees' vested rights.[67] The existence of a fiscal crisis is not sufficient by itself to justify the impairments.[68] As a pre-condition to a strict scrutiny analysis, an employer must prove that it is experiencing a fiscal crisis that was (1) unforeseeable and unforeseen, and (2) that is considered the effects of its action on the party imparted — that it studied how the benefit changes would impact its retirees.

California follows the rule that "[a] public entity cannot justify the impairment of its contractual obligations on the basis of the existence of a fiscal crisis created by its own voluntary conduct."[69]

In California, employers ordinarily have paid for retiree health benefits out of current revenues, on a pay-as-you go basis. However, several years ago the legislature began requiring many public employers to annually determine the present value of future retiree health benefits.[70] Though this is an uncertain exercise of prognostication, given the volatile variables of interest and discount rates, and actual health care increases, it would be difficult for any employer to assert it was not forewarned about the future costs.

For more than a decade commentators have warned that, the problems of post-retirement benefits are looming large on the horizon. Where an employer caused its own problems, it cannot treat retirees' deferred compensation as a "pot of money" to solve them.

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In *West Contra Costa*, the employer increased retiree copays and deductibles to lower the district's premium costs, thereby contributing to a balanced budget, and to make retirees bear part of the burden of alleviating the district's fiscal crisis. Later the district claimed it maintained the impairment for years to free up monies so as to increase teacher salaries to make it easier to recruit new teachers. A balanced budget is a worthy public purpose, but it is not a "significant and legitimate" public purpose allowed in California to impair a contractual obligation in the area of vested retiree benefits.[71] It is unlikely that freeing money for recruitment would fare any better.

As in *West Contra Costa*, many public employers cite actuarial studies showing that the future cost of benefits, and the present cost of pre-funding them, is monumental. As an excuse to cut benefits, these scary projections will not do. Retiree health benefits, like salary, virtually always have been funded out of current revenue. Assumptions about future cost of health care, discount rates, and interest rates, among other things, are not much more than guesswork when it comes to future health benefits. Besides, the huge present value of prefunding likely has existed from the creation of the plans.

When such arguments are made, the courts consider if the employer can prove, based on events that followed the initial emergency, "whether the exigency still exists" to justify continued impairment.[72] This requires careful scrutiny of employer spending decisions and budgetary assumptions. The law still requires that savings from cutting retiree benefits must be used to provide benefits advantageous to *individual* retirees as required by *Abbott*. Just because finances are "tight" does not create a legitimate purpose under *Abbott* to disregard its obligation to retirees. Unless restoring the benefits was an "extreme hardship" or "threatened insolvency" an emergency likely will not be found to exist.[73]

Sharing the burden. In *West Contra Costa*, the district compared the retirees to current employees, concluding that retirees and employees should share alike in the district's misery. This was not an apt comparison. The active employees' pay cut of 9 percent was *negotiated* by their unions — in other words, they *agreed* to it. In return, they were spared more layoffs. And their future pay was not a vested right. Even the cuts to health insurance copays for active employees were not an impairment of vested rights. Although the right to the district's retiree health plan vested upon employment, the scope of the benefits was not fixed until the time of retirement under the district's plan. Thus the district was not constrained by the Contract Clause from changing active employee health benefits. It was constrained only by the Rodda Act's duty to negotiate.[74] It met its purely *statutory* obligation to active employees by negotiating these concessions with their unions.[75]

Making retirees bear the burden of a public employer's fiscal irresponsibility is not a "significant and legitimate" public purpose. The whole thrust of California law has refused to allow salary increases to employees to compensate for diminutions in pensions.[76] The retirees here obtained no benefits from the impairment, and "it is advantage or disadvantage to the particular [individual] whose own contractual…rights, already earned, are involved which are the criteria by which modifications to pension plans must be measured."[77]

The general purpose of a retiree health policy is to help provide financial security for retirees by insuring their medical expenses will be covered even if they are on fixed incomes. The impairments in *West Contra Costa* had an effect contrary to that purpose, making retirees responsible for copays that might be financially difficult. No advantages accrued to retirees whose expectations were defeated by these impairments. The money saved went to the general fund to be used for other purposes.

Another Worthy Purpose

An employer may not treat its obligation to retirees as a "choice" it can discard for "better choices."

In cases I have handled, the employer usually asserted that preserving its retiree commitments would have placed a greater burden on the district's active employees, which would have resulted in a labor strike. The most glaring weakness of this defense is that it is highly conjectural.[78] In *Wilson*, the state "cite[ed] no evidence of any effort to deal narrowly with the exigencies of the emergency or of considerations of other less drastic alternatives.…"[79] In these cases, it was evident that the employers never gave "considered thought to the effect the emergency provisions might have" on retirees "or the possibility of alternative, less drastic, means of accomplishing its goal."[80] Instead, retiree health benefits were reduced because it was easy to disregard retiree rights. Yet "[a]s to retired employees, the scope of continuing governmental power may be more restricted, the retiree being entitled to the fulfillment of the contract which he already performed without detrimental modification."[81]

Conclusion

It is settled law that public employers and labor unions cannot negotiate over retirees' vested rights. The law forbids unions to negotiate away vested rights of retirees whom it does not represent.[82] Nor may unions waive vested rights of employees.[83] Labor unions in collective bargaining negotiations represent *future* retirees but rarely speak for retirees. Often the interests of the unrepresented retirees (the preservation of promises made and expectations relied upon) are directly at odds with unions' interest in minimizing the impact of budget problems on active employees. Still, there are many occasions when unions seek to concurrently protect the rights of their former members (retirees), and have initiated litigation to assure the protection of their vested rights, while steadfastly refusing to negotiate reductions in those benefits with employers.

Where current employees' retirement benefits were established by policies enacted before collective bargaining commenced over such benefits, it is clear that the benefits vest during employment and cannot be diminished by negotiations. This principle derives from the cases cited earlier.[84] However, where the benefits initially are created in collective negotiations, reasonable arguments exist that benefits created in negotiations can be modified through collective bargaining before retirement — that is, benefits created in bargaining can be changed through bargaining before one retires. Because the scope of such promises is as varied as the number of plans, it is impossible to generalize about any particular situation

To legally justify reductions, an employer must show that it calculated the cost of preserving benefits and gave it serious consideration, that it had alternative means to avoid reducing retiree benefits, and that it attempted a temporary copay increase while maintaining the reasonable caps to avoid severe retiree hardship. Once the immediate crisis was alleviated it must restore full benefits and repay retirees who had temporarily borne the burden. But if it puts its obligations to the retirees on the back burner, at best "on a par with other policy alternatives," and "impose[s] a drastic impairment when an evident and more moderate course would serve its purposes equally well," its action is likely illegal.[85]

This article illustrates the special protection afforded retiree benefits in California. Public employers looking to cut costs should heed the main principles — that benefits generally vest when conferred, that for retirees the courts will not tolerate actions to renege on promises, and that the biggest challenge in any situation is to discern what was promised. k

1 See Gov. Code Sec. 53205.2, and former Ed. Code Sec. 20806.

2 *CTA v. Cory* (1984) 155 Cal.App.3d 494, 511.

3 Gov. Code Sec. 53205.2.

4 *Ibid.*

5 *The Federalist* No. 44, at 282, C. Rositer ed. 1961. *Federalist* No. 44 emphasizes that a purpose of the clause was to prevent endless legislative battles between factions aimed at redistributing property through "legislative interferences, in cases affecting personal rights…." *Id.*

6 *Allied Structural Steel Co. v. Spannaus* (1977) 438 U.S. 234, 245.

7 *Ibid.*

8 See *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853; *Carman v. Alvord* (1982) 31 Cal.3d 318, 325 n. 4; *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1607 (rev. den. 1993).

9 *Thorning v. Hollister School Dist.*, *supra*.

10 *Kern v. City of Long Beach*, *supra*, at 852-853, 856.

11 *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866; *Olson v. Cory* (1980) 27 Cal.3d 532, 538, 540.

12 *Carman v. Alvord*, *supra*, 31 Cal.3d at 325; *Thorning v. Hollister School Dist.*, *supra*, 11 Cal.App.4th at 1607.

13 *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 45.

14 *Thorning v. Hollister School Dist.*, *supra*.

15 *United Firefighters of Los Angeles v. City of Los Angeles* (1989) 210 Cal App.3d 1101, 1102 (rev. den., cert. den.).

16 *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 340, 348-350.

17 *Legislature v. Eu* (1991) 54 Cal.3d 492, 534.

18 *Allen v. Board of Administration* (1983) 34 Cal.3d 114, 124.

19 27 Cal.3d at 538.

20 *Sonoma County*, *supra*, 23 Cal.3d at 304. See also *Frank v. Board of Administration of PERS* (1976) 56 Cal.App.3d 236 (disability benefits vested).

21 *Thorning v. Hollister School Dist.*, *supra*.

22 *Allen v. Board of Administration*, *supra*, 34 Cal.3d at 121.

23 *American Federation of Teachers v. Oakland United School Dist.* (1967) 251 Cal.App.2d 91, 97; *Frates v. Burnett* (1970) 9 Cal.App.3d 63, 69. See also *Rible v. Hughes* (1944) 24 Cal.2d 437, 443; *Board of Education of the Richmond Unified School Dist. v. Matthews* (1957) 149 Cal.App.2d 265.

24 *Sonoma County*, *supra*.

25 In *Contra Costa Retirees Assn. v. Contra Costa Community College Dist.* (Contra Costa Superior Court No. 302814), a stipulated judgment froze prescription copays at $1. In *CRTA Protect v. West Contra Costa Unified School Dist.* (Contra Costa Superior Court No. C93-04636), the court agreed that the district had promised no increases in copays during retirement. This judgment was upheld in an unpublished decision of the California Court of Appeals (Case AO86837).

26 *Frates*, *supra*.; *Goddard v. South Bay Union High School Dist.* (1978) 79 Cal.App.3d 98, 105.

27 *Bellus v. City of Eureka*, *supra*, 69 Cal.2d 336, 350. *CTA v. Cory*, *supra*, 155 Cal.App.3d 494, 504-508 (reciprocal consideration of work for benefits allows contractual rights to be implied).

28 *Pacific Gas & Electric Co. v. Thomas* (1968) 69 Cal.2d 33, 37.

29 *Judson Steel Corp. v. WCAB* (1978) 22 Cal.3d 658, 668.

30 *Williams v. WCI Steel Co., Inc.* (6th Cir. 1999) 170 F.3d 598, 604.

31 ERISA governs only private sector retiree benefits. 29 USC Sec. 1003.

32 *In Re White Farm Equipment Co.* (6th Cir. 1986) 788 F.2d 1186, 1193. ERISA was enacted "to promote the interest of employees and their beneficiaries in employee benefit plans," *Shaw v. Delta Airlines, Inc.* (1983) 463 U.S. 85, 90, and "to protect contractually defined benefits." *Massachusetts Mutual Life Insurance Co. v. Russell* (1985) 473 U.S. 134, 148. One of ERISA's principal purposes was to make certain that "if a worker has been promised a…benefit upon retirement — and he has fulfilled whatever conditions are required to obtain a vested benefit — he actually will receive it." *Nachman Corp. v. Pension Benefit Guaranty Corp.* (1980) 446 U.S. 359, 375.

33 *Policy v. Powell Pressed Steel Co.* (6th Cir. 1985) 770 F.2d 609, 613.

34 *Ibid.*

35 *Gill v. Moco Thermal Industries, Inc.* (6th Cir. 1992) 981 F.2d 858, 860.

36 See, *International Union, UAW v. BVR Liquidating, Inc.* (6th Cir. 1999) 190 F.3d 768, 775; *Golden v. Kelsey-Hayes Co.* (6th Cir. 1996) 73 F.3d 648; *Armistead v. Vernitron Corp.* (6th Cir. 1991) 944 F.2d 1287, 1297 (employer promised retirees life-time health benefits); *Smith v. ABS Industries, Inc.* (6th Cir. 1987) 890 F.2d 841; *Keffer v. Connors Steel Co.* (4th Cir. 1989) 872 F.2d 60, 62 (employer responsible for paying cost of retirees' health insurance plan); *Weimar v. Kurz-Kasch, Inc.* (6th Cir. 1985) 773 F.2d 669; *Policy v. Powell Pressed Steel Co.* (6th Cir. 1985) 770 F.2d 609, 612-616 (retirees promised health benefits for life); *International Union, UAW v. Cadillac Malleable Iron Co. Inc.* (6th Cir. 1984) 728 F.2d 806 (health benefits vested for duration of retirees' lives); *International Union, UAW v. Yard-Man, Inc.* (6th Cir. 1983) 716 F.2d 1476, 1480-1483 (retirees entitled to employer-paid health insurance benefits for life); *Upholsters In-*

ternational Union v. American Pad & Textile Co. (6th Cir. 1967) 372 F.2d 427, 428; *UAW v. Aluminum Co. of America* (N.D. Ohio 1996) 932 F. Supp. 997, 1007 (retiree health benefits vested at levels in effect at time of retirement so imposition of 20 percent copay violates ERISA); *UAW v. Loral* (1994) 873 F. Supp. 57, 62; *Jansen v. The Greyhound Corp.* (N.D. Iowa 1987) 692 F. Supp. 1029 (imposition of $2 prescription copay, 20 percent major medical copay and $300 annual deductible violated vested rights protected by ERISA).

37 *Yard-Man*, *supra*, 716 F.2d at 1485.

38 *San Leandro Unified School Dist.* (1984) PERB Dec. No. 450, 9 PERC par. 16017.

39 *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.* (1971) 404 U.S. 157, 176-182.

40 *International Union, UAW v. Loral Corp.* (N.D. Ohio 1994). 877 F. Supp. 57, 62.

41 *International Union, UAW v. Yard-Man, Inc.*, *supra*, 716 F.2d at 1482. See also *Cadillac Malleable Iron* (6th Cir. 1984) 1982 U.S. Dist. Lexis 17226, *aff'd* 728 F.2d 807.

42 *Supra.*

43 *Yard-Man*, *supra*, 716 F.2d at 1482.

44 (7th Cir. 1993) 993 F.2d 603.

45 *Id.* at 609.

46 *Golden*, *supra*,

47 73 F.3d 648, 652; *affirming Golden v. Kelsey-Hayes Co.* (E.D. Mich. 1994) 845 F. Supp. 410, 412.

48 845 F. Supp. at 415-416, relying on *Schalk v. Teledine, Inc.* (W.D. Mich. 1990) 751 F. Supp. 1261, *aff'd*, 948 F.2d 1290 (6th Cir. 1991); *United Steelworkers of America v. Textron, Inc.* (1st Cir. 1997) 836 F.2d 6; *Marmula v. Satralloy, Inc.* (S.D. Ohio 1983) 578 F.Supp. 563.

49 (N.D. Iowa 1987) 692 F. Supp. 1029.

50 *Id.* at 1032, 1037-1038.

51 *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at 246; *CTA v. Cory*, *supra*, 155 Cal.App.3d at 511; *Sonoma Country*, *supra*, 23 Cal.3d at 308, 309.

52 *Allied*, *supra*, at 246.

53 *Ibid.*

54 (1982) 31 Cal.3d 318, 332.

55 Accord, *Valdes v. Cory*, *supra*, 139 Cal. App.3d at 786.

56 *Supra*, 210 Cal.App.3d at 1108.

57 *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at 245; Valdes v. Cory, supra, 139 Cal.App.3d at 789

58 *Board of Administration v. Wilson*, *supra*, 52 Cal.App.4th at 1160; *Valdes v. Cory*, *supra*, 139 Cal.App.3d at 777, 791; *Sonoma County*, *supra*, 23 Cal.3d at 310-311.

59 *CTA v. Cory*, *supra*, 155 Cal.App.3d at 511.

60 *Board of Administration v. Wilson*, *supra*, at 1160.

61 Ed. Code Secs. 22000 et seq.; Gov. Code Secs. 2000 et seq.

62 *Valdez v. Cory*, *supra*, 139 Cal.App.3d at 789.

63 438 U.S. at 247.

64 *Sonoma County*, *supra*, 23 Cal.3d at 305-306; *Olson v. Cory*, *supra*, 27 Cal.3d at 539; *Home Building and Loan Assn.*, *v. Blaisdell* (1934) 290 U.S. 398, 444-446.

65 *Id.*

66 *Kern*, *supra*, 290 Cal.2d at 853. *United Firefighters*, *supra*, 210 Cal.App.3d at 1102-1103; *Bellus*, *supra*, 69 Cal. 21 at 348.

67 *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at 247 ("...no showing in the record before us that this severe disruption of contractual expectations was necessary.")

68 *CTA v. Cory*, *supra*, 155 Cal.App.3d 494, 510-512, fn. 14, relying on *U.S. Trust Co. v. New Jersey*, 431 U.S. at 26-28.

69 *United Firefighters of Los Angeles*, *supra*, 210 Cal App.3d at 1113.

70 Ed. Code Sec. 42140.

71 *Valdez v. Cory*, *supra* at 791.

72 *Sonoma County*, *supra*, 23 Cal.3d at 311, quoting *Blaisdell*, *supra*, 290 U.S. at 442.

73 See *Blue Collar Workers* v. Willis (1986) 187 Cal.App.3d 780, at 133.

74 Gov. Code Secs. 3540 et seq.

75 The district was prepared, upon impasse, to unilaterally implement its last, best, final offer governing *employee* benefits, as the law permits. *Dept. of Personnel Admin. v. Superior Court* (1992) 5 Cal.App.4th 155, 187-188. (AA:1405).

76 *Abbott v. City of Long Beach* (1958) 50 Cal.2d 438, 452-453.

77 *Id.* at 449.

78 *Sonoma County*, *supra*, 23 Cal.3d at p. 310 n. 12.

79 52 Cal.App.4th 1161.

80 *Valdes v. Cory*, *supra*, 139 Cal.App.3d at p. 791; *Board of Administration v. Wilson*, *supra*, 52 Cal.App.4th at 1161.

81 *Allen v. Board of Administration*, *supra*, 34 Cal.3d at 120.

82 *Allied Chemical, etc. v. Pittsburgh Plate Glass* (1971) 404 U.S. 157, 181.

83 *International Assn. of Firefighters v. City of San Leandro* (1986) 181 Cal.App.3d 179, 183.

84 It was affirmed in an unpublished decision, *CCCRA v. Contra Costa Community College Dist.*, First App. District, Case No. AO 64817.

85 *U.S. Trust*, *supra*, 431 U.S. at 30-31.