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WHAT WERE THEY THINKING?



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1. The City repealed two pension benefits that it had previously adopted. The first benefit was adopted via City Resolution and provided that Union Presidents could include their salaries from Union employment as part of their average final compensation. The IRS took the position that this benefit failed to comply with Section 401 (a) of the Internal Revenue Code, as it included non-governmental service.

The second benefit was adopted via ordinance and allowed for members to convert annual leave cash payouts to retirement service credit on a pre-tax basis. The ordinance contained a provision stating that if any part of the ordinance was in conflict with federal or state law, it would be deemed invalid. The Internal Revenue Service also determined that this provision violated the Internal Revenue Code. The affected members brought suit challenging the repeal of the benefits.

How did the Court rule?

2. A law was enacted in 1989 to provide certain high-ranking legislative employees with a retirement bonus of an additional 3% x average annual salary x years of service. The jurisdiction in which the law was enacted also had a constitutional provision, providing that a member of the legislature may not debate on or vote on a bill in which the member has a financial or personal interest. The retirement bonus law was repealed in 2003. A public employee who retired in 2009 claimed that he was entitled to the bonus, as a portion of his legislative service took place while the bonus was in effect.

Is the legislator/plan member entitled to the bonus?

3. A widow of a public employee contacted a pension fund shortly after the member's death, requesting information regarding survivor benefits. The Pension Fund sent the widow the Application for Survivor Benefits, but did not inform her that there was a one year deadline to apply for the benefits. The widow submitted her application after the one year deadline and the survivor benefit was denied by the Pension Fund. The widow sued claiming she was entitled to survivor benefits.

How did the Court rule?

4. A public employee applied for disability benefits from a transportation authority, while still intending to maintain his separate position as Town Mayor. A statute that allowed a public employee to retire from one public employment position while retaining an elected office was repealed several months after the employee filed his application for Disability Retirement. The Pension Fund Board applied the law in effect at the time of its consideration of the employee's application, rather than the law in effect at the time the Disability Retirement Application was filed. The employee challenged the Pension Board's refusal to consider his application unless he resigned as Mayor.

How did the Court rule?

5. A deceased public employee's adult children brought an action against a Pension Fund and the employee's girlfriend challenging the girlfriend's receipt of survivor benefits. The employee's girlfriend was listed as the employee's beneficiary on his Beneficiary Designation form. However, the form was not personally completed by the employee. Rather, his attorney, acting without a written Power of Attorney, submitted the form on the member's behalf.

Who was entitled to the benefit?

6. After a County passed a Resolution that limits the amount of money that could be spent on retiree healthcare, an association representing the retirees filed suit. The Association argued that the County's course of conduct over many years created an implied contract. The Trial Court dismissed the Complaint with Leave to Amend, as the Association was unable to identify any resolutions or ordinances that created a contractual relationship. The Association filed an Amended Complaint, which attached copies of numerous Resolutions, Memoranda of Understanding and Ordinances upon which it relied. However, the Trial Court determined again that none of these documents contained the County's express agreement not to reduce retiree healthcare benefits. The Court did not permit leave to file another Amended Complaint. The Association appealed claiming that they were entitled to Leave to File another Amended Complaint.

How did the Court rule and do you think an implied contract can be

found based on a course of conduct?

7. An employee pled no contest to multiple counts of possession of child pornography on his work computer. The State Retirement System to which he belonged forfeited his pension benefit. The law in that jurisdiction did not specify that this particular crime was a forfeitable offense. However, there was a provision in the law that provided that a felony committed by a public employee unwillfully and with the intent to obtain a profit, gain or advantage for the employee, done through the use of his employment can be deemed a forfeitable event. The employee argued that he did not commit the crime with the intent to defraud the public of the right to receive the faithful performance of his duties, and that he did not realize or obtain a profit, gain or advantage for himself.

Did the Court uphold the forfeiture?

8. A group of retired firefighters were receiving disability benefits based on line-of-duty injuries. Pursuant to the law governing the Fund, the City was required to pay the firefighters the difference between the disability benefits and their regular salary and wages. While retired, the City and Union entered into a new Collective Bargaining Agreement which included a 5% salary reduction, applicable to all Bargaining Unit Members, except as otherwise required by law. After the contract was ratified, the City notified the retired firefighters that their disability benefits would be reduced accordingly. The retired firefighters filed suit arguing that they had a vested interest in the higher salaries, and that they were not Bargaining Unit members.

How did the Court rule?

9. A retired military officer was married to his former spouse for approximately ten years while he was serving in the military and accruing applicable pension benefits. At the time of the divorce the Trial Court awarded the ex-spouse one-half of ten years worth of the officer's pension benefits. However, because the officer had not yet vested, the Trial Court did not determine the specific amount owed to the ex-spouse. The Officer argued that his pay grade at the time of the divorce should be used to calculate the amount due to the former spouse. The former spouse argued that the Officer's pay grade at the time of his retirement should govern.

Ultimately, which pay grade did the Court rely on in determining the amount due to the former spouse?

10. A Police Officer had worked at the World Trade Center for a period of 75 hours over five days between September 11 - 27, 2001. The Officer later developed a respiratory disability and applied for disability retirement in February 2002. An ordinance passed after 9/11 created a presumption that respiratory and other related diseases incurred immediately following the September 11th terrorist attacks are presumed to have occurred in the line of duty. The Pension Fund originally denied the disability by relying on a medical opinion that the medical condition was not related to the September 11th exposure. There was no other physical evidence in the record.

Did the presumption apply entitling the applicant to the disability benefit?

IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS