



A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
ATTORNEYS AT LAW

KLAUSNER, KAUFMAN, JENSEN & LEVINSON

14th ANNUAL CLIENT CONFERENCE

HYATT PIER 66
FORT LAUDERDALE, FLORIDA

MARCH 18-21, 2012

Presented by: Robert D. Klausner, Esquire
Stuart A. Kaufman, Esquire
Bonni S. Jensen, Esquire
Adam P. Levinson, Esquire
Shaun H. Malvin, Esquire

WHAT WERE THEY THINKING?



10059 NORTHWEST 1ST COURT, PLANTATION, FLORIDA 33324

PHONE: (954) 916-1202 • FAX: (954) 916-1232

www.robertdklausner.com



1. A Union filed an unfair labor practice charge after a City unilaterally eliminated a partial lump-sum distribution option. The Union alleged that the City's actions violated the duty to collectively bargain. The partial lump-sum distribution option was contained in the City Ordinance, but was not collectively bargained. The City argued that it was permitted to rescind a benefit that was implemented independent of the Collective Bargaining process.

Did the Court rule for the Union or for the City?

2. During the National Economic crisis in 2007-2008, a fund lost approximately \$40,000,000.00 on certain private equity investments. Members of the Fund brought suit against the Fund, the Board of Trustees, and investment advisors for breach of fiduciary duty, violation of federal and state securities laws, and breach of contract. The Fund members alleged that they were injured by Defendants' conduct due to potential increased employee contributions, reduced services, tax increases, and the increased risk that the Fund would not have sufficient assets to satisfy its future obligations.

How did the Court rule in this matter?

3. An actuary for a State Retirement System discovered they had made a longstanding coding error during an audit. They had treated a certain code as meaning only a straight life annuity, even though the code also included a 50% survivor-spouse benefit. The coding error resulted in a \$34,000,000.00 loss to the Retirement System. The System brought suit against the actuary for damages based on a breach of contract theory.

How did the Court rule in this matter?

4. Three Pension Boards brought a class-action lawsuit against an investment consultant arising out of an SEC investigation involving

conflicts of interest and inadequate disclosure. The suit was brought based upon a single count for breach of fiduciary duty. The Pension Funds asserted that their relationships with the investment consultant were based in trust and confidence while serving as a gatekeeper for the Retirement System. The investment consultant moved to dismiss, arguing that the claim was based upon a contract and therefore the consultant could not be sued based upon a tort theory (breach of fiduciary duty).

How did the Court rule on this issue?

5. A Pension Board denied a member's application for retroactive service retirement benefits as untimely because the request was filed more than thirty (30) days after the Board denied the member's application for normal disability retirement benefits. The applicant had been advised that she could convert her application for disability benefits into an application for normal retirement within thirty (30) days. The thirty (30) day deadline was not codified in an Ordinance, but was based upon an Administrative Rule of the Board. The member ultimately sued the Board of Trustees.

How did the Court rule in this case?

6. A Police Officer Pension Fund member sued the Board of Trustees, contesting the amount of his retirement benefits. When he was eligible for early retirement, and a few months away from normal retirement eligibility, he contacted the Pension Fund office. He was informed that his benefits would be minimally affected and that he would still have his medical benefits. After he submitted his retirement application, he was informed that he was not yet eligible for a normal service retirement only an early retirement benefit, and he was told that his monthly benefit would be substantially less than he had been told earlier. After his unsuccessful attempts to rescind his retirement application, the Officer sued the Pension Fund for breach of contract and detrimental reliance.

Did the Court rule in favor of the member or the Pension Fund?

7. A Judge was convicted of indecent exposure committed during the performance of his duties. The Pension Fund to which he belonged ordered a forfeiture of his retirement benefits. The Judge appealed to the Appellate Court, arguing that the felonies that he committed did not disrupt the trials over which he presided.

How did the Court rule on the appeal?

8. A Pension Fund member's son was appointed her guardian due to her disabling drug addiction. On her behalf, the son submitted an application for disability retirement benefits, naming himself as the beneficiary. A few years later, the Court removed the guardianship over the former employee. At that time, after benefits had commenced, she requested that her beneficiary designation be changed to another son. The Retirement System denied the request and the son who formerly served as guardian continued to receive benefits. The employee passed away and her estate sued the Retirement System and the son receiving benefits, arguing that the son was guilty of fraudulent and unauthorized misconduct and that the System should have honored the employee's request to change the beneficiary. The Pension Plan had a provision which prohibited a change in beneficiary after the retired member receives his or her first payment.

How did the Court rule in this case?

9. A long-time public employee left public service for approximately two years and then returned to work for his former public employer. Upon applying for retirement benefits, the Pension Board ruled that the service should be calculated using two separate periods of service, rather than one continuous period. The applicant had testified that he called the Retirement System's office three times and asked detailed questions about the impact of the two periods of service on his retirement benefits. He testified that he was told that if he left public

service for two years and then returned, that his benefit would be calculated using one continuous period of time.

How did the Court rule in this case?

10. A Police Officer applied for disability retirement after being diagnosed with cancer. The Retirement System wrote to the Officer stating that he needed to submit additional information in order for his application to be processed. The Officer died shortly thereafter without ever submitting the additional documents. The Board denied the application because all required documents had not been received. The Officer's wife challenged the denial of disability retirement benefits.

How did the Court rule in this matter?

IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS PRESENTATION, CONTACT KLAUSNER, KAUFMAN, JENSEN & LEVINSON, 10059 NW 1ST COURT, PLANTATION, FLORIDA 33324, (954) 916-1202, FAX (954) 916-1232, WEBSITE, www.robertdklausner.com.