

SIGNIFICANT PUBLIC PENSION DECISIONS

MAY 2014 – APRIL 2015

Presented by

Laurie McKinnon¹

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Constitutional

(1) AFT Michigan, et al. v. State, --- N.W.2d ----, 2015 WL 1578785

Plaintiffs, consisting of dozens of unions and teacher groups, filed two separate suits against the State of Michigan and others, including the Public School Employees Retirement System and Board, challenging provisions of 2012 PA 300, which amended the Public School Employees Retirement Act and altered future healthcare and retirement benefit plans available to public school employees for services performed after December 1, 2012. The Court of Claims dismissed both suits, the Court of Appeals affirmed, and the Michigan Supreme Court affirmed the Court of Appeals' judgment.

Plaintiffs appealed on four separate provisions of 2012 PA 300: (1) requiring a 3% contribution towards retiree healthcare; (2) requiring a 4% contribution to pension to remain in the Basic Plan; (3) providing a “sanction” of reduced multiplier in calculating pension benefits for those individuals who opt-out; and (4) providing the mechanism for refunding contributions to individuals who opted into the retiree healthcare plan but who ultimately fail to qualify to receive such benefits.

Within the two separate actions, Plaintiffs filed complaints alleging breach of contract and diminishment of contract, unconstitutional diminishment of members' accrued financial benefits, denial of substantive due process, and unjust enrichment to the state. The Court of Claims consolidated the two cases and considered the parties' competing motions for summary disposition. The Court of Claims concluded that even though the State was unjustly enriched by keeping the money on healthcare, it was acceptable because it was just one of a number of

¹ The views expressed are solely those of the author and do not necessarily represent the position of her employer. The author extends her appreciation to Kathleen Billings for assisting in the composition of these case summaries and NAPPA members who submitted cases.

choices, and it was made with consent. Regarding the retirement provisions, the Court stated that because there was delineation between vested and non-vested benefits, those provisions, too, were acceptable.

The Court held that the Legislature, in enacting 2012 PA 300, set forth a legitimate governmental purpose to help fund retiree healthcare benefits while ensuring the continued financial stability of public schools. It further held that pension benefits are protected only to the extent that they are for past services and that 2012 PA 300 does nothing to impact or impair members' vested pension benefits.

(2) AFT New Hampshire, et al. v. State, --- A.3d ---- , 2015 WL 222181

Plaintiffs, members of state employee pension plan and organizations representing members, brought action against the State of New Hampshire and others challenging the constitutionality of statutory amendments affecting the calculation of benefits. The Superior Court entered judgment finding that amendments to the definition of “earnable compensation” violated the Contract Clauses of the state and federal constitutions, but amendments to the statutes providing for cost of living adjustments did not. The State appealed and Plaintiffs cross-appealed. The Supreme Court held that the statute defining “earnable compensation” did not create a contractual right to a fixed definition of the term, and pension plan members did not have vested rights to a COLA.

In 2007 and 2008, the Legislature amended the definition of “earnable compensation” by largely excluding from it “other compensation,” and altering the method of funding cost-of-living adjustments. The Plaintiffs filed a petition for declaratory and injunctive relief challenging the constitutionality of the changes to the statute. In addition to claims against the State, the amended petition sought restitution against the New Hampshire Retirement System (“NHRS”).

The Plaintiffs claimed that the amendments violated the Contract Clauses of the state and federal constitutions, arguing that RSA chapter 100–A constitutes a contract, that “[t]he statute providing for the formula to calculate pension benefits, which included consideration of ‘other compensation’ in determining the retiree’s average salary, created vested rights,” and that eliminating “other compensation” from the formula constituted a substantial impairment of their vested rights. The plaintiffs also argued that “[t]he statute that promised a ... COLA to NHRS members ... created vested rights,” and that the statutory amendments constituted a substantial impairment of those rights. The Supreme Court reversed the trial court’s ruling that the statutory amendment changing the definition of earnable compensation violates the state or federal Contract Clauses. Further, the Court was not persuaded that the statutory language established a contractual obligation to provide a COLA.

(3) Burgos, et al. v. State of New Jersey, et al., and AFL-CIO, et al. v. Christie, et al., and New Jersey Education Assoc., et al. v. State of New Jersey, et al., and Probation Assoc. of New Jersey, et al. v. State of New Jersey, et al., N.J. Super. Ct. (2015)

These cases were consolidated for the purpose of deciding whether the New Jersey Constitution invalidated a legislative directive, approved and followed by the Governor for two years, which

provided a contractual guarantee to hundreds of thousands of New Jersey's public employees that the State would pay its share into New Jersey's public pension funds. The lawsuits alleged that Governor Chris Christie's budget for FY 2015 failed to include \$2.4 billion that should be allocated to the pension funds under New Jersey state law.

The Superior Court judge ruled in Plaintiffs' favor, holding that the State could not walk away from its contribution obligations. The Court emphasized that the language in the state law created a "contractual right to the annual contribution" by the State and provided that "the failure of the State . . . to make the annual contribution shall be deemed to be an impairment of the contractual right of each employee." The Court stated further that the statute provides that "[t]he rights reserved to the State in this subsection shall not diminish the contractual rights of employees." Given this language, the Court found that New Jersey legislators intended to create a contractual right to the pension contributions.

(4) Berg v. Christie, 436 N.J.Super.220 (2014)

Plaintiffs consisted of groups of retired government attorneys, state and local employees, and later, of retired police and fire members, all representing three New Jersey pension systems. The suit was filed in response to a 2011 statute that suspended COLAs to current and future retirees.

At the same time the systems were established, the Pension Adjustment Act was enacted to provide modest COLA increases to retirees. The Act was amended over the years and ultimately required employers to prefund the COLAs in the same way as "normal" employer contributions. In 1997, the Legislature established the Non-forfeitable Right Statute that provided that vested members shall have a non-forfeitable right to receive benefits that cannot be reduced. In 2011, the Legislature made significant changes to benefits, including the suspension of COLAs for current and future retirees until the systems were adequately funded. Plaintiffs filed this suit for breach of contract and violation of the Contract Clause.

The trial court judge granted Defendants' motion for summary judgment pursuant to a Debt Limitation Clause that bars courts from ordering the Legislature to appropriate funds. The judge did not decide the Contract Clause claims, but dismissed Plaintiffs' complaints. Plaintiffs appealed to the Superior Court of New Jersey, which held that the Debt Limitation Clause was irrelevant because at the current time there were sufficient funds in the pension system to pay COLAs without any need for immediate legislative appropriation and the potential eventuality that the systems would run out of funds and an appropriation would be needed does not affect the current lawsuit.

The Court acknowledged the general rule that statutes are not construed as creating contracts, but relied on 1996 legislative testimony in finding that the non-forfeitable rights statute did create a contractual right. Defendants argue that the state law might create a contractual impairment, but it was still constitutional because the suspension of the COLAs was reasonable and necessary to serve an important public purpose. Plaintiffs argued that the State is responsible for the shortfall and it should not be permitted to precipitate a pension crisis and then solve it at the expense of retirees. In support of their claim, Plaintiffs referred to a 2014 Executive Order where the Governor reduced the State's pension contributions by freezing expenditures in response to a

shortfall in expected state tax revenues to show the State continues to renege on promised contributions.

The Superior Court declined to make a decision and remanded to the trial court for an evidentiary hearing on the contract impairment claim. However, it did observe that it was not the courts' role to run the pension systems, but the strength of the pension system rests on policy choices made by the other two branches of government and on their political will to preserve the systems and satisfy prior commitments made to public employees and retirees.

(5) Board of Trustees of Riverdale Police Pension Fund v. Riverdale, 2014 IL App (1st) 130416, 14 N.E.3d 1110

The Village of Riverdale was required by the Illinois Pension Code to levy a property tax to raise revenue "equal [to] a sum sufficient to meet the annual requirements of the police pension fund." However, Riverdale failed to provide the pension fund with a full contribution. The Board sued, arguing that it had a right to full funding. The Appellate Court held that the pension protection clause of the Illinois Constitution only applied to benefits — not to the funding of pension funds. Accordingly, the Board did not have a right to a fully funded pension fund. However, the Court held that Riverdale inappropriately used money raised for the pension fund for other purposes, and required the village to pay back these funds.

(6) Justus v. State, 336 P.3d 202 (2014)

Petitioners are retired public employees who brought action against the State of Colorado and its Public Employees Retirement Association ("PERA"), among others, challenging the reduction of the cost of living adjustment from a fixed 3.5% increase to an adjustable formula calculation capped at 2%. The District Court awarded summary judgment to the State. Petitioners appealed, and the Court of Appeals reversed and remanded. Petitioners filed petition for writ of certiorari and the Colorado Supreme Court held that Petitioner's claim that the COLA amendment violated the Contract Clauses of the state and federal constitutions was subject to standard contract clause balancing test, and retirees did not have a contractual right to the COLA formula in effect at the times they became eligible for retirement or retired.

The Colorado Supreme Court held that the PERA legislation providing for cost of living adjustments does not establish any contract between PERA and its members entitling them to perpetual receipt of the specific COLA formula in place on the date each became eligible for retirement or on the date each actually retires.

Plaintiffs had contended that prior cases required a conclusion that the COLA is locked in when one reaches retirement eligibility and cannot be altered for any reason. The Court of Appeals expressly rejected that argument and concluded that contrary to that prior case law, the issues are properly decided under the modern contract clause three-pronged test: 1) is there a contract; 2) was the contract substantially impaired; 3) if so, was the substantial impairment reasonable and necessary to serve a significant and legitimate public purpose. The Court of Appeals decided that the first prong of the test, whether a contract exists, was met.

The Court adopted PERA's argument that the three-pronged test described above was the appropriate test to determine whether the COLA modification violated the Contracts Clause. In its analysis, the Court found that the retirees "could not have reasonably expected that the state's provision of any given COLA was a statutory contract protected from change by the Contract Clauses of the U.S. and Colorado Constitutions."

(7) Moro v. State, 357 Or 167 (2015)

Petitioners were active and retired members of the Public Employee Retirement System ("PERS") who challenged two legislative amendments that (1) eliminated income tax offset benefits for nonresident retirees, and (2) modified the cost-of-living adjustment applied to PERS benefits. The amendments were aimed at reducing the cost of retirement benefits and Petitioners challenged both on the basis that the amendments impaired their contractual rights and violated both the state and federal Contract Clauses. Respondents, which included the State of Oregon and other PERS employers, argued that the amendments modified non-contractual and insubstantial PERS benefits and further, that even if the amendments impaired constitutionally protected contractual rights, the impairment was justified on public purpose grounds. The Respondents argued that the amendments were a reasonable and necessary response to increases in employer contribution rates required by the PERS Board.

The Oregon Supreme Court held that nonresident petitioners had no contractual right to the income tax offset payments amended by the legislation and therefore, the Legislature did not violate the state or federal Contract Clauses by eliminating those payments to nonresident retirees. However, the Court stated that the COLA provisions amended had been in place and unchanged for 40 years and that a substantial number of PERS retirees worked their entire careers while the pre-amendment COLA provisions were in effect and then retired. The Court therefore concluded that Petitioners did have a contractual right to receive the pre-amendment COLA for benefits that they earned before the effective dates of the amendments and that insofar as they applied retrospectively to benefits earned before the effective dates, the COLA amendments impaired the PERS contract and violated the state Contract Clause.

The Court determined that Petitioners did not have a contractual right to receive the pre-amendment COLA for benefits that they earned on or after the effective dates of the amendments and that the COLA amendments did not violate the state or federal Contract Clauses when applied to benefits earned on or after the effective dates.

(8) Pendergast v. Arizona State Retirement System, 323 P.3d 1186 (2014)

Defendant Arizona State Retirement System appealed the decision of the Superior Court finding that the 2011 legislative amendment to the public service credit purchase program violated Plaintiff's constitutional rights. The Court of Appeals affirmed on the grounds that the public service credit purchase program was a public retirement system benefit when the voters passed Article 29, Section 1(C) of the Arizona Constitution, which 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." The Court held that Plaintiff's eligibility under the program was constitutionally protected from diminishment, and the 2011

amendment unconstitutionally diminished her vested rights to public retirement system benefits under the program.

(9) Professional Fire Fighters of New Hampshire v. State, 107 A.3d 1229 (2014)

Plaintiff state employee associations brought action against the State of New Hampshire challenging the constitutionality of legislative changes that increased the contribution rates paid by members of the Retirement System. The Superior Court entered judgment in favor of the Plaintiffs and the State appealed. The Supreme Court of New Hampshire held that the statute setting contribution rates for members of the Retirement System did not establish a contractual right that could not be modified, and therefore, the amendment to statutory rates did not constitute a violation of constitutional Contract Clause.

The Legislature amended state law by increasing the contribution rates for Retirement System members: for Group I, the rate increased from 5 percent to 7 percent; for Group II permanent fire fighter members, the rate increased from 9.3 percent to 11.80 percent; and for Group II permanent police members, the rate increased from 9.3 percent to 11.55 percent.

The Supreme Court of New Hampshire held that there was no indication that in enacting the original contribution rates the Legislature unmistakably intended to bind itself from prospectively changing the rate of New Hampshire Retirement System member contributions to the Retirement System and therefore, the amendment thereto did not violate the Contract Clauses of the state and federal constitutions.

Fiduciary Duty

(10) Board of Trustees of City of Omaha Police and Fire Retirement System v. City of Omaha, 289 Neb. 993 (2015)

Plaintiff Board of Trustees commenced action against the City in which it asked the Court to authorize the Board to retain consultants and independent legal counsel and declare that expenses associated with such retention would be administrative expenses. The District Court sustained the Board's motion and held that it was necessary for the Board to fulfill fiduciary duties, and the costs were administrative expenses, and the City appealed.

The Supreme Court determined that the nature of the Board is not as a separate and distinct political subdivision, but also not merely an agent of the City, but as a trustee of the System, is fiduciary in nature, yet governed by the City's charter and ordinances. The Court held that the Board had the authority to hire an actuary as part of the obligation to perform its fiduciary duties to the System and that the actuary may be paid as an administrative expense. It also held that the Board does not have the authority to hire outside legal counsel other than the City Attorney.

(11) Board of Trustees of Houston Firefighters' Relief and Retirement Fund v City of Houston, ---S.W.3d ---- (2015)

Appellant City of Houston filed a petition seeking to compel the Board to disclose information regarding actuarial valuations, studies, and reports. The District Court granted the City's petition and the Board appealed. The Court of Appeals held that (1) the materials underlying the Fund's valuations are to be audited every five years by an independent actuary, (2) before beginning the audit, the independent actuary and the City must agree in writing to maintain confidentiality, and (3) the independent actuary must meet with the Fund's manager to discuss assumptions. The scope of the information requested is a question of degree, not specified in the statute with sufficient detail to remove discretion by the Board, and a replication-level audit, requiring the disclosure of individual participants' data, is not required.

(12) Ex parte David Bronner, --- So.3d ----, 2014 WL 7403996

Members of the Employees' Retirement System of Alabama and the Teachers' Retirement System of Alabama, brought action against David Bronner in his official capacities as chief executive officer and secretary-treasurer of the Retirement Systems, as well as the officers and members of the Retirement System boards. The Trial Court denied TRSA Defendants' motion to dismiss, but granted the petition of the RSA Defendants.

Plaintiffs alleged that the RSA Defendants had violated their fiduciary duty by not investing the respective retirement funds under the Prudent Man Rule but instead making investments "in Alabama golf courses, office buildings, condominiums, hotels, resorts and stock and debt holdings in companies conducting business in Alabama which investments have historically yielded lower returns than investments which could or should have been made in compliance with the mandates of the law, the Prudent Man Rule, the Investment Policy of the RSA, and its Mission Statement."

The RSA Defendants moved to dismiss, asserting that sovereign immunity precluded prosecution of the claims. The Trial Court denied the motion to dismiss and the RSA Defendants filed a petition for the writ of mandamus with the court. The Supreme Court of Alabama held that the boards have statutory authority to invest the assets of the ERSA and the TRSA and that they are protected by sovereign immunity. The Court held that it is not within the subject-matter jurisdiction of the courts to grant the relief requested and that granting the remedy sought by the Plaintiffs would run afoul of the constitutionally-mandated principle of separation of powers.

Further, the Court stated that the Legislature delegated broad authority to the boards and that the doctrines of sovereign immunity and separation of powers require that the judicial branch honor that delegation and not take upon itself the task of reviewing the investment strategies and decisions of the boards of control, at least not under the circumstances presented.

(13) Nasrawi, et al. v. Buck Consultants, 231 Cal.App.4th 328 (2014)

Plaintiffs were beneficiaries of county employee pension trust who brought action against actuaries for actuarial negligence and aiding and abetting breach of fiduciary duty, and against the County Employee Retirement System for breach of fiduciary duty. The Superior Court sustained demurrer without leave to amend and Plaintiffs appealed. The Court of Appeal held that beneficiaries' claim against the Retirement System for breach of fiduciary duty was subject

to the Government Claims Act; the County Employee Retirement System liability for its board's alleged violation of its constitutional fiduciary duty was within "discretionary acts" immunity; the beneficiaries adequately alleged that actuaries aided and abetted the Retirement System's breach of fiduciary duty; and that the beneficiaries had standing to sue the actuaries for aiding and abetting the Retirement System's alleged breach of fiduciary duty.

Plaintiffs are retired public employees and beneficiaries of a public pension trust administered by the Stanislaus County Employees Retirement Association. Defendants Buck Consultants and Harold Loeb provided actuarial services to the Association, which is also a Defendant. Plaintiffs allege the Association deliberately underfunded the pension fund by (1) using an "unrealistic and imprudent" assumed actuarial rate of return of 8.16 percent; (2) adopting a schedule of negative amortization of the system's unfunded liability for earned benefits; (3) intentionally managing the pension fund to ensure that it was always less than 90 percent funded, thereby avoiding certain employer contributions (i.e., cost-of-living adjustments); (4) using pension fund assets to substitute for the County's employer contributions; and (5) transferring assets from nonvaluation reserves to valuation reserves.

Buck and Loeb prepared an actuarial valuation of the pension fund that materially understated the fund's liabilities because Buck and Loeb negligently relied on inappropriate actuarial assumptions. As a result of the negligently prepared actuarial valuation, the County's annual employer contribution to the pension fund was \$40 million lower than it should have been. The Association's preliminary investigation indicated that Buck had committed malpractice in the performance of services for the Association by employing assumptions that severely understated the system's experience with respect to expected withdrawals from the retirement system. The Association agreed not to assert any claims against Buck while a tolling agreement was in effect, in exchange for an agreement to toll all applicable statutes of limitations during that same time period.

The Court held that the Association can be held liable for the Board's failure to sue Buck and Loeb as that "omission was the result of the exercise of the discretion vested in" the Board given the breadth of the Board's fiduciary duties. It further stated that the decision whether to pursue litigation requires a judgment based on an evaluation of the merits of the potential claim and possible defenses, as well as a cost-benefit analysis of the litigation and as the decision, which requires comparisons, choices, judgments, and evaluations, comprises the exercise of discretion and therefore held that such decisions are immunized under state law.

The Court also held that Buck and Loeb's argument that Plaintiffs failed to state a claim against them because Buck and Loeb owe no fiduciary duties to Plaintiffs failed, stating that it ignores the distinction between liability based on conspiracy to commit a tort and liability for aiding and abetting a tort and that a defendant may be found liable for aiding and abetting a breach of fiduciary duty even though the defendant owes no independent duty to the plaintiff.

(14) New Orleans Fire Fighters Pension and Relief Fund, et al. v. City, 150 So.3d 917 (2014)

Plaintiff trustees filed a petition for writ of mandamus, requesting that the City of New Orleans be ordered to pay sums owed to the fund as mandated by law. Defendant filed a reconventional

demand (counterclaim), alleging mismanagement of the fund by trustees. The District Court granted Plaintiff's exceptions of no right of action and no cause of action to the reconventional demand and Defendant appealed. The Court of Appeal held that Defendant was not a party authorized to bring civil suit against trustees for breach of fiduciary duties, and that the Defendant had no authority to bring an action against trustees. The State of Louisiana has a pension statute that describes the fiduciary duties of the Fund's trustees and limits the parties who may bring a cause of action against the Fund. Based on that statute, the Court held that the City does not fall within that category of persons to whom the Trustees owe any fiduciary duty.

(15) Wayne County Employees Retirement System v. Wayne Charter County, 859 N.W.2d 678 (2014)

The Wayne County Employees Retirement System and the County Retirement Commission brought an action against Wayne Charter County, challenging a County ordinance concerning the Retirement System. The County filed a counterclaim, alleging violation of fiduciary duties. The Trial Court granted summary disposition in favor of the County. The Court of Appeals reversed the trial court, holding that the transfer of funds and offset against the County's contribution obligation violated the requirement that the funds be for the "exclusive benefit" of the Retirement System's participants and their beneficiaries and that the County used the IEF funds in violation of the "prohibited transaction rule." The Supreme Court agreed that the offset against the County's ARC obligation violated the Public Employees Retirement System Investment Act ("PERSIA") and that the transferred funds must be returned to the IEF.

The Wayne County Employees Retirement System ("Retirement System") consists of five defined benefit plans, one defined contribution plan, and the Inflation Equity Fund (IEF). The IEF was created by county ordinance to provide a pool of money for discretionary payments to eligible Retirement System participants and beneficiaries in addition to those payments required by the pension system, as a method to counteract the effect of inflation. Payments from the IEF are known as the "13th check." The IEF is funded by investment profits earned on the assets held in the defined benefit plans and the IEF, to the extent those profits exceed a certain rate of return.

In 2010, in order to satisfy its ARC obligation, the County passed an ordinance amendment that limited the IEF to a maximum balance of \$12 million, and directed that IEF funds exceeding that amount be transferred to the Retirement System's defined benefit plans. Because the IEF balance at the time was significantly greater than \$12 million, the ordinance resulted in a transfer of \$32 million from the IEF into the defined benefit plans. The amended ordinance further permitted the County to use the \$32 million transfer from the IEF to the defined benefit plans as an offset against its ARC obligation.

The Supreme Court affirmed the Court of Appeals holding that the transfer of \$32 million from the IEF to the retirement system's defined benefit plans and corresponding offset against the county's ARC obligation in this case violated PERSIA.

Service Credit

(16) Lanquist v. Ventura County Employees' Retirement Association, 185 Cal.Rptr.3d 166 (2015)

Plaintiffs appeal denial of request to purchase service credit for military service as midshipmen at the Federal Naval Academy. The Court of Appeal reversed the Retirement Board's holding that military service under County Employees Retirement Law did not include service as a midshipman stating that an enlisted person is allowed retirement service credit for Academy time. Because Plaintiffs are former commissioned officers who separated from the military and became civilian public employees before retiring, the military therefore would consider their attendance at the Academy to be "military service" and "active duty" for purposes of retirement service credit. The Court of Appeal further stated that the language of the County Employees Retirement Law does not suggest the Legislature intended more restrictive use of the terms.

Salary and Benefit Computation

(17) Connors v. Board of Trustees, Public Employees' Retirement System, 2014 WL 2718706

Plaintiff appeals from a final decision of the Public Employees' Retirement System ("PERS") Board of Trustees denying her application to change her pension payment option because it was made one day beyond the period permitted by state law. Thirty-one days after the effective date of her retirement, Plaintiff contacted PERS to change her payment option. Plaintiff wrote to PERS advising that she had intended to select a different option and had not realized that original option had been included in the application filed on-line by her employer. She explained that the final months of her employment "were very hectic and emotional" and that she had been out of the country following her retirement celebrating her forty-fifth wedding anniversary. Following an administrative review, PERS denied Plaintiff's request to change her retirement option, and she appealed to the Board.

The Board also denied Plaintiff's request to change her retirement option. Plaintiff appealed and requested an administrative hearing. She asserted that she reviewed the benefit options only after her employer submitted the retirement application on her behalf. Although then determining to select a certain option, Plaintiff claimed that she "did not think to have [her employer] change the application." While acknowledging receipt of the confirmation of her benefit selection, Plaintiff claimed that she did not read beyond the first lines. She maintained that her oversight constituted excusable neglect for which the Board could and should afford relief.

The Board denied the request for an administrative hearing on the basis that the facts were undisputed and Plaintiff appealed. The Superior Court upheld the Board's denial stating that allowing retirees to change their benefit selection beyond the time allowed by the regulation could obviously affect the fiscal integrity of the fund and that the prohibition against changing payment options after an allowance becomes due and payable is based on the necessity of maintaining the actuarial integrity of the pension system.

(18) Coyle v Board of Trustees, Teachers' Pension and Annuity Fund, 2015 WL 1258034

Appellant Coyle appealed the calculation of his final average salary and retirement benefits that did not contain retroactive salary increases. The ALJ agreed that the retroactive salary should be considered in calculating Coyle's pension. The Superior Court of New Jersey held that salary adjustments are not considered "compensation," defined as contractual salary for services. Supporting the finding was the fact that the retroactive increases moved Coyle from the district's lowest paid administrator to the highest paid administrator during the three years pertinent to his retirement. The retroactive payments were not compensation, but pure settlement payments to resolve a lawsuit.

(19) Marango v. Kentucky Retirement Systems and Board of Trustees, 2014 WL 5314703

Appellant, a member of the Kentucky Retirement System, filed an action against his employer for failure to pay him overtime during a certain time period. Prior to trial, the parties entered into a settlement agreement that specified the employer would pay \$40,000 to Appellant through two \$20,000 payments. During the time Appellant received both his salary and a lump sum payment, his employer reported to the Kentucky Retirement System "(KRS)" the total amount paid to Appellant each payroll period as part of his creditable compensation earned during that month in accordance with state law. Appellant's final compensation was calculated based on his three highest paid years of service, but because his employer reported the lump sum payments to KRS when paid, two of Appellant's highest years were the years in which he received the lump sum payments.

Initially, KRS advised Appellant the lump sum payments would be included in the calculation of his compensation and Appellant began receiving retirement benefits accordingly. KRS later decided the payments should be treated as severance/lump sum bonus payments which would be creditable compensation averaged over Appellant's total years of qualifying service.

The Circuit Court clarified and amended its settlement order to specify the payments were compensation for unpaid overtime and not severance pay or a lump sum bonus, and were wages reportable as earnings to Appellant for years 2008 and 2009. KRS then reclassified the payments as "unpaid overtime" then calculated the percentage of unpaid overtime compensation claimed for each calendar year and applied those percentages to the monies actually received to determine Appellant's creditable compensation. Recalculating Appellant's creditable compensation from the lump sum payments to credit them when earned rather than paid resulted in Appellant's receiving a substantially reduced monthly retirement payment.

Following an administrative hearing, the hearing officer issued a recommended order in favor of the KRS's decision to attribute the payments to the years they were earned, rather than paid and Appellant filed exceptions. The KRS Board of Trustees adopted the hearing officer's recommended order. The Circuit Court affirmed the Board's Final Order, but the Court of Appeals overturned the Circuit Court's order stating that it is clear and unambiguous that under the relevant tax laws, creditable compensation should be credited in the year it is paid.

(20) Monto & Karasik v. Board of Trustees, Police and Firemen's Retirement System, 2014 WL 2106559

Appellants, former police officers, appeal the Police and Firemen's Retirement System's Board of Trustees' decision denying them additional service credit in the Retirement System for the period during which they were wrongfully terminated. Appellants filed a complaint under the New Jersey Conscientious Employee Protection Act against the Police Department and certain supervisors, claiming that after reporting inappropriate sexual activity between a detective and a records clerk, they became the targets of harassment and retaliation causing them significant and substantial changes in the conditions of their employment. After filing their complaint, Appellants were the focus of several investigations and disciplinary actions and both were eventually terminated.

A jury found in favor of Appellants and awarded each compensatory damages for emotional distress. The parties then resolved all other issues during the punitive damages phase of the trial and reached a settlement. In return for nearly \$2 million, Appellants waived further entitlement to damages, attorneys' fees, back and future wages, and any other monetary relief against defendants to original suit. The final judgment between the parties stated that Appellants were to be reinstated to their prior positions for one day and that their employer must restore service credit from their termination day through and including the date of their reinstatement. In addition, the Appellants were to file for retirement with the Board of Pensions following their reinstatement date.

Subsequently, the Pension Board ruled that credit would not be given Appellants for any period after their termination date. The Board stated that they were each on a leave of absence and by the terms of the settlement agreement they were only to be reinstated to permit filing for retirement. The New Jersey Superior Court held that the Board's conclusion was based on a strained reading of the final judgment.

The Court stated that by nullifying the terminations and restoring the Appellants to the same positions as if they had worked through the present time, the effect of the final judgment was to entitle both to back pay from the date of their termination to the date of their reinstatement.

(21) Slaughter v. Louisiana State Employees Retirement System, La. Ct. App., 2014 WL 6854536

Plaintiff retired from state employment after 35 years, his final position as President of the Southern University System ("SUS") in Baton Rouge, Louisiana. Plaintiff filed suit against the Southern University Board of Supervisors for past due wages and the Trial Court ruled that SUS had miscalculated Plaintiff's retirement income by including supplemental pay Plaintiff had received from the Southern University Foundation. The Retirement System was then asked to recalculate Plaintiff's retirement benefit.

The Retirement System notified Plaintiff that his monthly retirement benefit had been recalculated due to a reporting error and adjusted his monthly benefit, which was significantly lower than previously figured. In addition, the Retirement System informed Plaintiff that it would again adjust his retirement benefit and it would further reduce the corrected benefit for sixty months to recoup overpayments made to him his retirement. Plaintiff responded by filing the suit against the Retirement System, seeking judgment that it was not entitled to reduce his

retirement benefits nor to recoup past benefits paid, and further seeking a writ of mandamus and injunctive relief against the System.

The matter proceeded to a bench trial where the court declared the Retirement System was not entitled to reduce Plaintiff's retirement benefits nor seek recoupment of any alleged overpayments of retirement benefits to him; and ordered the System to return all sums withheld from Plaintiff's retirement benefits to him. The System appealed the judgment.

The Court concluded that under state statutes, the Retirement System has the authority to reduce and recoup overpayment of retirement benefits. However, because the System failed to prove that it followed the proper procedure before initiating action to reduce/recoup Plaintiff's retirement benefits, the court concluded the trial court correctly granted declaratory judgment in Plaintiff's favor.

(22) State ex rel. O'Grady v. Griffing, 17 N.E.3d 574 (2014)

Appellant, a city employee who applied with the Retirement System to commence her retirement benefits, sought a writ of mandamus to compel the city's fiscal officer to certify her final payroll. In this particular case, the Appellant was attempting to retire and begin receiving benefits, but remain in her current covered position. Neither she nor her employer provided any evidence to the city's fiscal officer of her intended retirement date. The Court of Appeals granted Appellant's writ and the city's fiscal officer appealed. The Ohio Supreme Court held that without direct evidence that appellant had actually resigned or been terminated, the city's fiscal officer had no clear legal duty to file the form with Appellant's final-earnable-salary date for purposes of retirement benefits. The Court stated that while a public employee need not leave public employment permanently, the employee must terminate employment before returning to public employment.

(23) Stoker v. Milwaukee County, 857 N.W.2d 102 (2014)

Plaintiff county employee and her union filed a class action against the County and the Pension Board seeking declaratory judgment that a county ordinance that reduced the pension multiplier for county employees was invalid. The Circuit Court granted summary judgment in favor of the Plaintiff and the County and Pension Board appealed. The Court of Appeals affirmed and the County and Pension Board petitioned for review. The Wisconsin Supreme Court reversed and held that the County had home rule authority to reduce the pension multiplier with respect to non-vested retirement benefits.

Plaintiff argued that the multiplier reduction was a breach of contract because she had a vested right to have the 2% multiplier apply to her post-2011 county service and because she did not personally consent to the reduction. Defendants argued that the reduction was authorized because Plaintiff had no vested right to have the 2% multiplier apply to her post-2011 county service. The Pension Board further argued that even if she had such a right, her union lawfully consented to the reduction on Plaintiff's behalf by ratifying the collective bargaining agreement that agreed to reduce the multiplier from 2% to 1.6% for post-2011 service.

The Supreme Court held that Plaintiff did not have a vested right to have the 2% multiplier apply to her as-yet unearned service and Defendant could amend the formula and apply it prospectively because that prospective application does not “diminish or impair” benefits accrued from service credits already earned. The Court stated that Defendant had the ability to make prospective-only reductions of the multiplier without Plaintiff’s personal consent.

Correction of Errors

(24) Cross v. Elected Officials Retirement Plan, 234 Ariz. 595 (2014)

Plaintiff appeals his overpayment as a result of retiring and working in the same position for two years despite his ineligibility to hold office during that time. The Superior Court ruled the Plan was precluded by contract from changing the retirement benefits it agreed to pay after his original retirement and awarded Plaintiff past-due benefits plus interest, attorneys’ fees and costs. The Court of Appeals held that the Plan’s acceptance of Plaintiff’s original application for retirement does not create a contract, that Plaintiff was guaranteed benefits due under the law, and nothing prevents the Plan from recouping overpaid benefits. The Court of Appeals relied on the Internal Revenue Code’s definition of “separation from service,” meaning a complete and good faith termination of the employment relationship. Plaintiff was prohibited from simultaneously collecting a pension and salary by quitting his position one day and returning to work in the same position the next.

Disability Benefits

(25) Burr v. Maryland State Retirement and Pension System, 90 A.3d 1218 (2014)

Appellant was a Retirement System member who was working from home while being treated for breast cancer. During a scheduled meeting at the office with her supervisor to discuss her schedule and leave and assignments, her supervisor instead reduced the hours on her timesheet for work she had done, retroactively revoked her telework agreement, removed her from an important project she had led, reassigned her to “busywork,” and demanded that she return to work in person before her doctors cleared her.

Appellant applied for disability benefits, but in addition, claimed an accidental disability allowance as she contended that the unexpected and negative personnel decisions precipitated a sudden decline in her mental health and caused her to become suicidal. Appellant was approved for ordinary disability but was denied the accidental portion of her disability benefits by the System’s board of trustees. An Administrative Law Judge and the Circuit Court upheld the Board’s decision, and Appellant appealed to the Court of Special Appeals, which held that personnel decisions, even decisions that are surprising, cannot, as a matter of law, qualify as disabling “accidents.”

(26) Mathews, et al. v. Ohio Public Employees Retirement System, No. 2:12-CV-1033, 2015 U.S. Dist. (S.D. Ohio, March 12, 2015)

Plaintiff, a police officer, was approved for, and began receiving, disability benefits from the Ohio Public Employees Retirement System (“OPERS”). Thereafter, Plaintiff was elected to local office and after filing an annual report of earnings with OPERS showing his elected official income, OPERS notified plaintiff that his disability benefits would be terminated because of his election as the Village Council was a covered employer.

The District Court held that the oral notice provided by OPERS complied with the requirements of due process and further, that OPERS was not required to provide notice of the availability of a mandamus action as a vehicle for challenging the termination of Plaintiff’s disability benefits. The Court concluded that the process afforded Plaintiff was adequate under the circumstances to protect Plaintiff’s property interest in his disability benefits and OPERS was therefore entitled to summary judgment on Plaintiff’s procedural due process claim. In addition, because Plaintiff’s entitlement to benefits ceased after taking office, he must repay to OPERS the disability benefits paid to him after that date.

(27) Moran v. Board of Trustees, Police and Firemen’s Retirement System, 103 A.3d 1217, Nov. 25, 2014

Plaintiff firefighter appealed the New Jersey Police and Firemen’s Retirement System Board’s denial of his application for accidental disability retirement. The Board claimed Plaintiff’s disability was not due to a traumatic event under New Jersey law as the event was not “undesigned and unexpected.” The basis of Plaintiff’s application was disabling injuries sustained as a result of saving two victims from a burning building by kicking in the building’s front door. The Superior Court of New Jersey’s Appellate Division disagreed and reversed.

The New Jersey accidental disability statute requires proof that the member is permanently and totally disabled as a direct result of a traumatic event occurring during, and as a result of, the performance of his regular or assigned duties, and that such disability was not the result of the member’s willful negligence, and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him. Further, the Court provided a list of criteria in an earlier case that the Board cited and relied on that included the element of the incident being “undesigned and unexpected.” Prior to Plaintiff’s administrative hearing, the parties stipulated that Plaintiff met all the criteria for accidental disability except that the incident that caused his disability was “undesigned and unexpected.”

The Administrative Law Judge found in Plaintiff’s favor, but the Board rejected his legal conclusions, reasoning that “[s]imply kicking in a door or intentionally using one’s back to force entry does not constitute an ‘unexpected happening,’ as [Plaintiff’s] very intent in partaking in these happenings would necessarily render such happenings to be expected” and that Plaintiff’s disabling injury was caused by ordinary and intended work effort, not by an undesigned and unexpected external mishap.

The Superior Court reversed and held that in denying accidental disability benefits to a firefighter whose heroic response to an undesigned and unexpected traumatic event left him disabled, the Board misconstrued the law and reached a result at odds with the legislative intent.

The Court stated that while this case was not an accident, it was clearly an unexpected and undesigned traumatic event that resulted in Plaintiff's suffering a disabling injury while performing his job.

Death Benefits, Survivor Benefits & Refunds

(28) Merrill v. Maine Public Employees Retirement System, 98 A.3d 211 (2014)

Appellant retiree sought judicial review of the Maine Public Employee Retirement System's ("MPERS") denial of her request for a waiver of past-due life insurance premiums, which MPERS had previously awarded to her. The Superior Court affirmed and Appellant appealed. The Supreme Judicial Court held that the Board abused its discretion and acted arbitrarily and capriciously when it failed to explain its reversal of its preliminary decision granting Merrill's request for a waiver and further concluded that neither the hearing before the Hearing Officer, nor the submission of briefs and oral arguments before the Board, afforded Appellant an adequate opportunity to present evidence relevant to the Board's criteria for evaluating whether to grant a waiver. Therefore, the court stated that she was entitled to a new hearing, including adequate notice of the substantive standards that the Board will apply to her request, so that she may present evidence relevant to the Board's consideration of her request for a waiver.

(29) Sacone v. Board of Trustees of Police and Firemen's Retirement System, 98 A.3d 1158 (2014)

Plaintiff retiree appeals the Board of Trustees' of the New Jersey Police and Firemen's Retirement System's decision that he may not have his survivors' benefits paid into a first-party special needs trust for his disabled son. The New Jersey Supreme Court reversed the Board's decision to the contrary stating that the Board's strict view of how to implement the word "child" in the survivors' benefits statute when dealing with the circumstances of a Supplemental Security Income eligible disabled child of a retiree would have forced this particular class of beneficiary into an untenable situation. The Court held that the Board's determination, which required the disabled child of a Retirement System retiree to have to choose between abandoning the survivors' benefit earned by his father and forgoing public assistance programs for his medical needs was arbitrary, capricious, and unreasonable the Board's interpretive determination that foists on disabled children of PFRS retirees, such as the child involved here, what is essentially a forfeiture of survivors' benefits.

Employment After Retirement

(30) Anderson v. Executive Director, New Hampshire Retirement System, 103 A.3d 1181 (2014)

Petitioner, a retired police officer, appealed an order of summary judgment to the Executive Director of the New Hampshire Retirement System ("NHRS") and the State. Petitioner returned to work part-time with three affiliated employers. The New Hampshire law governing working after retirement stated that part-time work for retirees meant employment by a Retirement System employer of no more than 32 hours in a normal calendar week or 1,300 hours in a

calendar year. Petitioner understood that to mean he could work up to 32 hours per week each for three separate employers.

The working after retirement law was amended following Petitioner's retirement to provide retiree's part-time employment during a calendar year by "one or more employers of the retired member which shall not exceed 32 hours in each normal calendar week." (Emphasis added.)

Petitioner filed for declaratory and injunctive relief stating that application of the law as amended violated the New Hampshire Constitution as the amendment substantially impaired his vested right because he would be restored to active service with the Retirement System if he worked over the allotted time. The Court held that Petitioner's constitutional challenge to the amended law was based on a mistaken interpretation of the underlying statutes and that although the original statute, prior to amendment, referred to "an employer," the legislature intended the singular "an employer" to include the plural "one or more employers." Therefore, Petitioner had no right to work up to thirty-two hours per week or 1,300 hours per year for more than one NHRS employer.

Matrimonial

(31) Ackad v. Gobrial, Not Reported in A.3d (2015), 2014 WL 8630663

Defendant appealed Family Court Order requiring him to execute a Qualified Domestic Relations Order that designated Plaintiff, his former wife, as the beneficiary of a 25% survivor benefit from his New York City Employee Retirement System ("NYCERS") pension. Defendant argued that giving Plaintiff a survivor benefit would reduce his lifetime monthly retirement payment by several hundred dollars, and that the parties' Property Settlement Agreement did not provide for that benefit. The Family Court judge disagreed, and entered the QDRO. The New Jersey Superior Court affirmed the Family Court's holding.

Because Defendant failed to disclose the existence of his public pension until the parties had begun pre-trial mediation, the survivor annuity options were not disclosed on the date of trial. Consequently, while the parties were able to agree on a property settlement agreement covering almost all the issues between them, the agreement explicitly noted that the "parties are unable to resolve the issue of joint and survivor benefits" with respect to the NYCERS pension, and that they would thereafter attempt to resolve the issue at a later date.

After Defendant provided information about survivor options, Plaintiff filed a motion to require defendant to execute a QDRO directing that plaintiff shall be the beneficiary of a "25% survivor annuity" which would protect her interest in the pension benefit in the event defendant died prior to her receipt of fifty percent of the value of the pension benefit the parties had agreed upon. Defendant argued that the survivor's benefit is a benefit that is separate from his pension and that the Property Settlement Agreement didn't provide for it. The Superior Court held that it was clear the parties expressly reserved the survivor's benefit issue for further negotiation at the time of the judgment of divorce and execution of the Property Settlement Agreement and rejected Defendant's argument.

(32) Broomfield v. School Employees Retirement System of Ohio, Case No. 14-CV-002301 (2014)

Petitioner appeals the School Employees Retirement System of Ohio's ("SERSO") determination that even though the Probate Court found to be the common-law husband of a deceased school employee, his survivor benefits were not payable beginning on her date of death. After Petitioner successfully filed a Petition to Determine Heirs in Probate Court, which ordered that he was declared to be the common-law spouse of the decedent Retirement System member, the Retirement System determined that he was not eligible for retroactive benefits dating back to the death of the member and Petitioner appealed. The Court held in SERSO's favor stating that the statute governing payment of survivor benefits required Petitioner to establish a valid marriage at the time of death and in absence of an actual marriage certificate, a decision rendered by a court established a valid marriage. Because the Probate Court did not rule on Petitioner's petition until a later date, the Court agreed with SERSO that benefits should begin following the judgment of the Probate Court as nothing in the law specified when the date benefits should begin; therefore, the Retirement System's interpretation of the law that benefits begin upon establishment of eligibility was permissible.

Benefit Forfeiture

(33) Barnes v. Board of Trustees, Public Employees' Retirement System, Not Reported in A.3d., 2014 WL 1847216

Petitioner Barnes appeals the Public Employees' Retirement System Board's denial of his retirement application after he was convicted on 40 counts of obtaining and misusing federal funds while Mayor of the City of Paterson. Petitioner argued that the federal criminal charges were politically motivated and he only pled guilty to protect his family. The ALJ held in Petitioner's favor stating that total forfeiture was reserved for the most egregious cases, Petitioner's imprisonment and repayment of back taxes were mitigating factors, and that his criminal conduct was for a three-year period where his personnel record prior to that was unblemished. The Board disagreed and found that the ALJ gave too little weight to the pervasive and chronic nature of Petitioner's misconduct, as well as Petitioner's refusal to acknowledge responsibility for his actions.

The Superior Court of New Jersey found the ALJ and the Board relied on the same evidence in drawing opposing conclusions and the Court found no basis to second-guess the Board's application of the statutes and regulations. The Court agreed that the case involved repeated acts of corruption of a type likely to undermine the public's faith in government and that. And that complete forfeiture was warranted.

(34) Randall v. Haddad, 10 N.E.3d 1099, (2014)

Plaintiffs brought action against Defendant Marion Haddad, along with co-defendants, including the State Attorney General and the State Board of Retirement, alleging that Defendant had put \$40,000 into her state employees' retirement account from the sale of property that was the subject of underlying action. Plaintiffs sought declaration that Defendant's transfer was

fraudulent, an order that the funds were to be paid to Plaintiffs, an injunction prohibiting release of the funds until resolution of issues relating to their proper disposition, and issuance of a trustee process summons to the Board in relation to the funds.

The Superior Court Department dismissed the claims against the Attorney General and Board. Plaintiffs appealed and the Appellate Court affirmed. Plaintiffs applied for leave to obtain further appellate review. The Supreme Judicial Court reversed, holding that the statute providing that funds in state employees' retirement accounts were exempt from attachment did not apply, and that sovereign immunity did not prevent the Board from being held as trustee of the funds.

Plaintiffs are Robert J. Randall, an Orthodox monk, and Saint Nectarios Monastery, an association of Orthodox monks of the Greek Orthodox Missionary Diocese of America. Defendants in original action are Holy Annunciation, a charitable corporation, and Marion Haddad, its sole officer and director. In 2004, Plaintiffs filed an action against Haddad and Holy Annunciation to determine the proper disposition of the proceeds of what was allegedly an impending sale of the monastery and church building, title to which stood in the name of Holy Annunciation. The monastery and church building were sold to Haddad's sister, and Holy Annunciation received \$105,700.17 in net proceeds. This sum was deposited in Holy Annunciation's corporate account at Sovereign Bank.

In 2006, after a hearing in the Middlesex action at which Haddad was present, a Superior Court judge ordered the defendants to hold the proceeds of the property's sale in escrow. However, that same day, Haddad withdrew \$98,771 from Holy Annunciation's corporate account, leaving a balance of \$6,755.69. On the next day, using the withdrawn money, Haddad obtained a bank check for \$40,000 and deposited the funds with the Board in her State Employees' Retirement System ("SERS") account. The \$40,000 was used to buy back years of service with the retirement system.

On March 21, 2008, defendant's won default judgment in the Middlesex action due to Haddad's and Holy Annunciation's failure to provide discovery. On October 21, 2008, execution issued in the amount of \$163,506.62—an amount that included interest and costs—against both Haddad and Holy Annunciation. To date, the Plaintiffs have not recovered anything on the judgment against either defendant.

In November of 2008, the Plaintiffs learned that Haddad filed a request with the Retirement System Board to remove the \$40,000 she had deposited in her retirement account. The Plaintiffs then filed this case in the Superior Court in Suffolk County seeking, in part, a declaration that the transfer to the Board was fraudulent and therefore null and void, and an order that the funds be paid to the Plaintiffs in partial satisfaction of their judgment against Haddad and Holy Annunciation.

The Board and the Attorney General (collectively, the Commonwealth) moved to dismiss the complaint contending that Haddad's retirement account was exempt from attachment pursuant to Massachusetts law, and that the Commonwealth had not waived its sovereign immunity to be sued as a trustee. After a hearing, the motion judge agreed, and dismissed the Plaintiffs'

complaint against the Commonwealth. The Plaintiffs appealed, and the Supreme Judicial Court granted their application for further appellate review.

The Court held that where a member of a public employee retirement system misappropriates funds from a charitable corporation and, in violation of a court order, deposits those funds in her personal retirement account to increase her own retirement benefits at the Commonwealth's expense—the doctrine of sovereign immunity should not be applied to bar the Plaintiffs from seeking to hold the Board as a trustee of the wrongfully deposited funds.

(35) J.M. v. Hobbs, --- N.W.2d ---- (2014)

Appellant was a retired State Patrol officer convicted of first degree sexual assault of a child. The victim's guardian and conservator obtained a civil judgment against him and sought an order in aid of execution when the state's anti-attachment law, L.B. 916, was amended to include circumstances such as the victim's. Appellant challenged the order and the District Court determined that the amendment was unconstitutional as special legislation and dismissed the motion.

The Supreme Court of Nebraska held that under the Act's stated purpose of providing compensation to the victims of serious crimes, no substantial difference exists between the favored groups of victims and employees and those victims and employees who do not receive the Act's benefits and because the class members are not substantially different, the Act is special legislation, which is prohibited by the state constitution. It stated that the Legislature's attempt to create very limited exceptions to an absolute privilege from attachment of a public employee's retirement assets resulted in a law that benefits only a select group of victims. Further, it stated that the amendment arbitrarily protected public employees who are convicted of comparably serious crimes yet retain an absolute privilege from attachment of their retirement assets.

(36) Wiggins v. Philadelphia Bd. of Pensions and Retirement, --- A.3d ---- (2015)

Appellant, a former police officer, appeals the Trial Court's affirmation of the Philadelphia Board of Pensions and Retirement stripping him of his pension for committing "employment-related malfeasance." Appellant contends that the Board did not give him adequate notice to defend against the System's termination of his pension. The Commonwealth Court of Pennsylvania agreed and vacated and remanded.

Appellant was a police officer with the Philadelphia Police Department and independent of his employment, operated a karate school where he began a sexual relationship with a 12-year-old girl that continued for over eight years. The student, now an adult, reported the sexual relationship to the Philadelphia Police Department, and it investigated. Appellant resigned from the Police Department and began collecting a retirement benefit and shortly thereafter, the police arrested him and he was eventually convicted of involuntary deviate sexual intercourse, aggravated indecent assault, statutory sexual assault, and corruption of a minor, and sentenced to a prison term of up to 35 years.

The Pension Board voted to suspend Appellant's ongoing pension benefits and to disqualify him from any further pension benefits. By letter dated December 12, 2011, the Pension Board informed Appellant of its decision and advised him of his right to a hearing. Appellant requested a hearing, at which neither he nor his lawyer appeared, but filed a brief, instead. In his brief, Appellant pointed out that the Pension Board had never informed him why it voted to terminate his pension. Appellant's brief argued that the charge of "employment-related malfeasance" was error because the crimes for which he was convicted were not committed "while in or related to his office or employment." Appellant also argued that there was never a finding nor was there any evidence that "the crimes related to his employment or whether they were even committed while on duty," and that the malfeasance clause in the Retirement Code was unconstitutionally vague and overly broad because it could include any conceivable crime, such as speeding.

After Appellant appealed to the trial court, the Pension Board issued an adjudication with findings of fact and conclusions of law. The Trial Court affirmed the Pension Board's adjudication, and Appellant appealed. The Commonwealth Court remanded the matter after finding that the Pension Board did not provide notice to Appellant required by due process and did not inform Appellant of the legal authority for its forfeiture of his pension or the factual basis for its decision.

Freedom of Information/Open Meetings

(37) Empire Center for NY State Policy v. New York State Teachers' Retirement System, 23 N.Y.3d 438 (2014)

Petitioner "think tank" brought proceeding against New York State Teachers' Retirement System ("NYSTRS") for refusing to provide names of retired members pursuant to Freedom of Information Law request, and to compel disclosure of same. The Supreme Court, NY County, dismissed and Petitioner appealed. The Court of Appeals held that the Public Officers Law exempts only the home addresses, not the names, of retirees who receive benefits from public employees' retirement systems.

The Court of Appeals stated that nothing in the Freedom of Information Law required the disclosure of the home address of a retiree of a public employees' retirement system, but no mention was made of the retiree's name and therefore, that should be disclosed.

(38) State Employees' Retirement System v. Fultz, 107 A.3d 860 (2015)

The Pennsylvania State Employees' Retirement System ("SERS") petitioned for review of a final determination of the Office of Open Records ("OOR") requestor's appeal from System's partial denial of his Right-to-Know Law ("RTKL") request for the names and home addresses of certain retirees or their beneficiaries.

The Commonwealth Court held that the specific exemption under the RTKL from access by a records requestor to the home address of a law enforcement officer or judge applies even when the requestor is seeking the address of an individual who resides at the exempt address other than the officer or judge; that SERS failed to submit sufficient competent evidence showing the

likelihood of a substantial and demonstrable risk to SERS members and their beneficiaries over the age of 60 by the disclosure of the requested home addresses; but that the OOR abused its discretion by denying requests to participate in requestor's appeal by individual SERS members who were superannuated and/or over the age of 60 without permitting them to demonstrate whether disclosure of their personal information would be exempt pursuant to the RTKL's personal security exemption; and the express exception set forth under the RTKL for law enforcement officers applied only to exempt their home addresses, and not their first names.

(39) State Employees' Retirement System v. Pennsylvanians for Union Reform, --- A.3d ---- (2015)

The Pennsylvanians for Union Reform ("PFUR") requested names and home addresses of all members of the State Employees' Retirement System under the state's Right-to-Know Law ("RTKL"). After the Pennsylvania State Employees' Retirement System ("SERS") partially denied its request, Respondent appealed. The Office of Open Records ("OOR") granted the appeal in part and denied it in part. The parties appealed, and the Game Commission, Turnpike Commission, and State Education Association intervened in consolidated appeals.

In its request, Respondent sought the following from the Retirement System: The names and associated home/ mailing addresses of all active members, retired members (annuitants), and inactive vested members of SERS, excluding information relating to employees of OOR, judges of the Commonwealth Court, and justices of the Pennsylvania Supreme Court. In its request, Respondent expressed concern about and disagreement with the possibility that the System, either on its own or as a result of a directive issued by OOR, might attempt to notify individual SERS members of PFUR's request and invite objections by those third parties.

SERS provided the Respondent with the names and home addresses of 34,524 SERS members, but refused to provide access to (1) the home addresses of law enforcement officers and judges; (2) the home addresses of SERS members who reside in the same household as law enforcement officers and judges; (3) records of members seventeen years of age or younger; (4) information relating to retired members of SERS who have attained superannuation age, citing the RTKL's personal security exemption; (5) records relating to members who notified SERS of specific threats to their personal safety and security; and (6) records of another 78,784 active SERS members employed by agencies under the Governor's Office of Administration and others.

The Commonwealth Court held that the Retirement System had not met its burden that the names and home/ mailing addresses of SERS members and their beneficiaries who are superannuated and retired should be exempt under the RTKL and that the System would provide Respondent with a list of member names responsive to its request, but would withhold the home/ mailing addresses of law enforcement officers and judges per the exception in the RTKL.

The argument of the PSEA and Turnpike Commission that Pennsylvania citizens have a constitutional right to privacy in their home addresses was rejected, as was the Game Commission's contention that its regulation exempts the names and home/ mailing addresses of its employees from disclosure.