

# Federal appeals court deals blow to Oregon PERS retirees

The U.S. 9th Circuit Court of Appeals dealt Oregon public employee retirees a blow Oct. 24 by upholding two pieces of a Public Employee Retirement System (PERS) reform package passed by the 2003 Oregon Legislature.

Soon after that law was enacted, public employee unions formed a coalition to fight the reforms in court.

In a case known as *Robertson*, the federal court upheld two key Oregon Supreme Court rulings initially made in what was known as the *Strunk* case, which the high court decided in 2005. At issue were two pieces of the PERS reforms: the right for employers, through PERS, to divert the employees' 6 percent pension contribution away from the regular PERS account and into individual accounts, and the elimination of employees' ability to contribute to a variable account.

The unions filed *Robertson* because state and federal contract law are similar, but not identical. There was hope that even though the state court said the reforms were OK under Oregon law that the 9th Circuit would find the reforms illegal under federal pension law. However, the federal court said "... the 2003 legislation does not impair a term of the employees' PERS contract and, therefore, does not violate the federal contract clause."

*Strunk* was a split decision when the Oregon Supreme Court released its original 4-3 verdict in March 2005. Public employees won on two major issues when the Oregon court ruled that current Tier 1 members are entitled to an annual 8 percent interest credit in their PERS accounts and also ruled that PERS could not withhold annual cost-of-living adjustments from retirees as a means of recouping excess earnings

credited in 1999.

The PERS Coalition did not prevail on three issues in *Strunk*: the two issues that were carried on in *Robertson*, plus a challenge to the updating of mortality tables that was ultimately dropped.

The 9th Circuit decision announced Oct. 24 was issued by a three-judge panel — Barry Silverman, Ronald Gould and John Rhoades — with the opinion written by Judge Rhoades.

"This is a very disappointing decision," said Greg Hartman, attorney for the PERS Coalition. "Once again, from our perspective, a court failed to key in on the primary rights of our members in continuing their PERS contract.

One victim of the decision is the Money Match retirement option. While none of the court decisions specifically eliminates Money Match, it won't be the best option like it was for many employees when their variable earnings were funneled into their regular PERS account.

"With the employee 6 percent diverted into the Individual Account Program and employees no longer earning variable dollars that go into their PERS account, future retirees will see their best payout under the Full Formula plan — which was the point of the reforms all along," said Oregon AFSCME senior political coordinator Mary Botkin, who lobbies PERS issues for Oregon AFSCME Council 75.

The PERS Coalition could ask the entire 9th Circuit Court to reconsider the decision or it could appeal to the U.S. Supreme Court. At press time, the coalition had not yet decided how to proceed.

Hartman emphasized, however, that the *Robertson* decision has no impact on several other pending PERS-related

cases in Oregon. The *Arken* and *Robinson* cases recently completed the oral argument phase; both of those cases deal with retiree issues. Also pending is the *White* case, which mirrors the issues in the City of Eugene case (also known as the *Lipscomb* case). City of Eugene dealt with the so-called employer-PERS "settlement" and 1999 earnings; the Oregon Supreme Court initially ruled on the case but later vacated its decision, leaving the door open for *White* to revisit the entire situation.

*Arken*, *Robinson* and *White* are all currently in Multnomah County Circuit Court. Once that court renders a decision, each of the three could be ap-

pealed to the Oregon Court of Appeals and ultimately the Oregon Supreme Court.

(Editor's Note: This article was excerpted from Oregon AFSCME Council 75's E-Alert written by Don Loving.)




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