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LITIGATION

High court ruling could frustrate efforts to reform municipal pensions

State Supreme Court finds governments can enter into implied contracts with workers.

By Ben Adlin

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A state Supreme Court opinion published Monday could make it harder for cash-strapped local governments to roll back benefits for public employees.

The court ruled unanimously that governments can enter into implied contracts with workers, meaning cities and counties could be on the hook for benefits given in the past — even if the benefits aren't expressly spelled out. In certain cases, the court said, benefits may even be vested, making them nearly impossible to reform.

The court's opinion answers a question posed by the 9th U.S. Circuit Court of Appeals as it considers a suit brought by Orange County retirees against the county over a change to retiree medical insurance subsidies. Other cities facing budget deficits, including Los Angeles and Fresno, have also considered freezing or reducing retiree health benefits.

"To the extent that what we're seeing is a political tidal wave against public employee pensions, I think what the court did is erect a sea wall around existing retirees," said Ernest J. Galvan of Rosen, Bien & Galvan LLP, who represented the retirees.

But municipal lawyers warned that by opening the door to challenges over implied benefits, the decision could create more legal



Courtesy of Rosen, Bien and Galvan

Ernest J. Galvan of Rosen, Bien and Galvan LLP

difficulties for cities and counties trying to shore up budgets.

"You're going to have a lot of agencies that look to make sure they didn't create any obligations that were beyond their intent," said Arthur A. Hartinger, a Meyers Nave Riback Silver & Wilson PLC principal who argued the case on behalf of Orange County.

Hartinger stressed the importance of the court's direction that there must be clear evidence in establishing the intent to create future obligations.

"Simply providing a benefit

over time does not create an enforceable, contractual right," he said. "You have to have something more than that."

The opinion doesn't give clear guidance as to what evidence would be sufficient to establish intent, leaving the issue to be resolved by future courts.

At issue in the case is a resolution the Board of Supervisors adopted in 2007 scaling back a 23-year-old health care subsidy and increasing costs for retirees. *Retired Employees v. County of Orange*, S184059

Retirees claimed the move

broke the county's implicit promise to maintain existing health care subsidies. The county argued that because the benefit was not explicitly enshrined in a contract or resolution, it didn't commit to an ongoing obligation.

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Monday's decision doesn't resolve the case. It now returns to the federal appellate court, whose judges must decide whether the circumstances surrounding the county's subsidies actually established an implied contract.

Raymond F. Lynch, a public labor lawyer at Hanson Bridgett LLP who filed an amicus brief in the case, said the opinion's insistence on the parties' intent will be key.

"The court repeatedly talks about the fact that there needs to be clear evidence for this, and it should not be done lightly," he said.

Robert J. Bezemek, an Oakland labor lawyer, said the court's decision is a broader endorsement of public workers' "fundamental" rights to earned benefits.

"Most employees right now work in a system in which some sort of retirement health benefits are provided to them," he said. "It varies from place to place, but there's usually some sort of benefit that's been promised to them that they work toward, and you can't just pull the rug out from under them."