



Budget Buster

Teachers sue to protect pensions

by JOSHUA DUNN and MARTHA DERTHICK

Predictably, cuts in state spending coming with the economic downturn have spurred litigation. New Jersey has been ordered to restore funds for urban schools, while in Florida a class action brought by the state's teachers union seeks to protect state employee pensions from the budget knife, a fresh field of litigation.

New Jersey's supreme court in May restored \$500 million in added spending for the state's poor, urban schools, known as the "Abbott districts" (31 out of 591 districts in total), which particularly benefit from nearly 40 years of its constitutional rulings. Otherwise, a divided court left intact school spending cuts in the budget of Republican governor Chris Christie, an outspoken critic of the court, who promised to abide by its decision.

In deciding how to rule, New Jersey's court was guided by earlier decisions on behalf of the Abbott districts, stating, "Like anyone else, the State is not free to walk away from judicial orders enforcing constitutional obligations." We are guessing that other courts that receive petitions asking for restoration of funds will attempt a similar approach and will seek to defend positions staked out on grounds of equity or adequacy, but will avoid picking fresh fights with governors and legislatures if they can.

Budget cutting has precipitated another issue: the pension rights of public employees, among whom are this country's heavily unionized teachers.

In June, the Florida Education Association (FEA), the state's teachers union, filed suit in a circuit court in Tallahassee against the governor and other officials on behalf of the more than 550,000 state employees, among them 140,000 FEA members, who participate in the Florida Retirement System (FRS), charging that changes in the system made by a Republican legislature violated Florida's constitution in three ways: They impaired the employees' contract with the state, took private property without compensation, and impaired the employees' right to bargain collectively.

Participation in the FRS is mandatory for state employees. Underlying the union's complaint were revisions that would take effect on July 1, 2011. Although the FRS was created in 1970 as a contributory system, it had been noncontributory since 1974. The legislature now returned to a contributory plan under which 3 percent of a member's pay would be deducted monthly and credited to an account with the FRS. A second change addressed provisions for cost-of-living adjustments

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following retirement. Under the plan of 1974, retirees were to receive an annual cost-of-living increase of 3 percent without regard to the number of years of credited service or when the service had occurred. Under the revised plan, the 3 percent adjustment would be subject to a fractional reduction for years of service after July 1, 2011. The union's petition objected that these changes had been made unilaterally rather than having been the subject of collective bargaining. It asked for temporary and permanent injunctions, and that the funds at issue be segregated and placed in an interest-bearing account until the lawsuit was settled.

"This pay cut was used by legislative leadership to make up a budget shortfall on the backs of teachers, law enforcement officers, firefighters, and other state workers," FEA president Andy Ford said. "It is essentially an income tax levied only on workers belonging to the Florida Retirement System," he added, apparently hoping to cast as hypocritical Republicans who are opposed to tax increases.

Florida is one of only five states with a constitutional protection for collective bargaining rights, though the language is strangely ambiguous. Without specifically granting the right, the law guarantees against its abridgement. This invites discretion from a supreme court that has a pro-union past but today is composed of a narrow majority of Republican appointees.

More or less simultaneously with the filing of Florida's suit, state district judges in Minnesota and Colorado threw out public employees' suits against governments that had reduced cost-of-living adjustments to their pensions, ruling that they were not contractually protected. The Florida plaintiffs, citing both statutes and the constitution, assert such protection. The state, citing past supreme court decisions in support of its position, asserts that the FRS is entirely prospective and must allow for modification of future benefits by the legislature.

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