

CASCADE BUSINESS NEWS - Local Attorney Files Lawsuit over PERS Benefits

May 17, 2012

Bend Attorney Daniel C. Re has filed a lawsuit in the Oregon Court of Appeals arguing that three administrative rules that deal with PERS benefits for judges are unconstitutional. Re is a founding partner and current director and shareholder of the firm Hurley Re PC Attorneys at Law. Prior to founding Hurley Re in 1995, he was partner with Bryant, Lovlien, Jarvis and Lynch.

Re offers that there are two primary issues in the case: (1) I am entitled to have this case decided by non-PERS judges and (2) all of the judges on the court that invalidated Ballot Measure 8 in 1996 were PERS members and they were disqualified from deciding that case, therefore, Ballot Measure 8 is still the law of Oregon.

Ballot Measure 8 ended the PERS pick-up, the guaranteed minimum rate of return on PERS members employee accounts and, the use of unused sick leave as part of PERS members final average salary. When the court threw out ballot measure 8, those benefits were reinstated.

Re said, "We expect the court to hear oral arguments on this case in late summer and issue an opinion in couple of months later. We expect to lose this case and we will then ask the Oregon Supreme Court to review it but we do not expect the Supreme Court to do so. Then, we plan to file a case in federal court on the grounds that the Oregon courts have denied me my due process right under the U.S. Constitution to independent judges."

Re currently has a non-profit corporation, In RE The People, Inc., that is tax exempt under IRC Section 501(c)(4). Contributions to 501(c)(4) organizations are not deductible but the identity of the contributors is not subject to disclosure. That corporation has received contributions from organizations and individuals which are being used to fund this lawsuit.

An Excellent Synopsis of the History of Oregon PERS

The following is a general summary of what Re see as the main problem with PERS today.

Dan Re on PERS

The first thing we can do is to get back our right to have PERS lawsuits decided by non-PERS judges. That is what my lawsuit is aimed at. I do not expect to win in Oregon courts and if I do not, I will go to federal court. Once we have a level playing field, then PERS changes can be made. We have not had that since 1971 and that is why things are the way they are today.

My Problem with PERS

When PERS was created in 1945, it had the following provisions:

- (1) A retirement benefit after 30 years of 50 percent of salary;
- (2) PERS members and PERS employers each contribute 50percent of PERS funding;
- (3) Legislators were not allowed to join PERS;
- (4) Judges had a separate retirement plan and did not have a financial stake in PERS;

PERS began to change in 1971 and continued to change through 1989.

1971. Oregon Attorney General withdraws 1963 opinion and rules that legislators can join PERS.

1973. Legislators authorize unused sick leave to be used to determine PERS retirement benefit.

1975. (1) Legislators pass a law that allows any person who ever served in legislature to retroactively join PERS. This retroactive right is kept open for the next twelve years.

(2) Legislators pass law that allows legislators to earn PERS retirement credit for service after age 65. They become the only elected officials who can.

(3) Legislators pass another law that guarantees that employee PERS accounts will receive a "guaranteed minimum rate of return." PERS members decide what the guaranteed rate will be.

1979. 55 of the 90 legislators were PERS members. They passed the PERS pick up law, which was to expire June 30, 1981. The PERS pick up allows PERS members to make the people of Oregon pay their employee PERS contributions for them and it also increases their employer funded benefit. They passed another law allowing Executive Department to pick up PERS contributions for governor and legislators.

1981. Legislators make PERS pick up permanent.

1971 – 1981. Legislators double PERS retirement benefits and allow PERS members to make people of Oregon pay 100percent of all PERS funding.

1983. 84 of the 90 legislators are PERS members and they pass a law putting Oregon judges into PERS.

(1) Persons becoming a judge for the first time after 1983 automatically become PERS members if they are less than 72 years old. PERS judges have a 7percent employee PERS contribution but the law requires that contribution to be picked up for the judges by the people of Oregon.

(2) Existing judges given option to join PERS or stay in original retirement plan. If they stay in original plan, they must pay 7percent of salary to that plan. If they join PERS, their 7percent contribution will be picked up by the State, giving each judge who joins PERS an immediate 7 percent salary increase.

(3) Judges become the only elected officials who are required to join PERS.

1989. 82 of the 90 legislators are PERS members. They pass a law allowing the State to withhold all money owed to a public employer until that employer's PERS assessment is fully paid. This law makes funding PERS Oregon's top financial priority.

The Culmination Of The 1971 to 1989 Legislative PERS Changes.

1994. People of Oregon pass Ballot Measure 8 which eliminated:

(1) PERS pick up (created 1979);

(2) Guaranteed minimum rate of return on employee PERS accounts (created 1975); and,

(3) Use of unused sick leave as part of final average salary (created 1973).

1995. PERS members sue to have Ballot Measure 8 declared unconstitutional. If PERS members lose that case, they will have to pay their own employee contributions, they will not receive a guaranteed minimum return on their employee contribution accounts and they will not be able to include unused sick leave in their final average salary. That trial involved the following participants:

(1) The people who sued to invalidate Ballot Measure 8, who were PERS members.

(2) The people who defended Ballot Measure 8, who were PERS members.

(3) The judges who decided the case, who were PERS members.

1996. Oregon Supreme Court rules Ballot Measure 8 unconstitutional. PERS members keep benefits.

Since 1971, PERS laws have been made exclusively by PERS members. Since 1984, PERS judges have decided every PERS case. PERS members are entitled to a seat at the bargaining table when public employee retirement benefits are determined, but they are not entitled to every seat at the bargaining table. But that is what they have had since 1971 and that is why PERS is the way it is today.

THAT'S MY PROBLEM WITH PERS.

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