TEACHERS' RETIREMENT BOARD, ET AL. v. CAMPBELL, ET AL.
Case No. 03CS01503.

10:00 a.m. 4/22/2005. Hearing held. Hearing on Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

COURT'S RULING: Summary Judgment Denied. Summary Adjudication on the First and Third Causes of Action Granted.

The instant motion is one of summary judgment, or in the alternative, summary adjudication. As discussed below, the Court finds that the relevant material facts are not disputed and so a decision can be made as a matter of law.

Overview

In this case the Courts are once again faced with the California Legislature's attempt to deal with a budgetary crisis by reducing a portion of the state's contribution to a pension program. It is clear that the legislature attempted to provide a substitute remedy for the taking of vested rights. However, on the facts presented, the current effort, like others in the past, is an unconstitutional impairment of contract under the United States and California Constitutions. It is therefore appropriate to issue a writ.

Petitioners Teachers' Retirement Board ("TRB"), as manager of the California State Retirement System ("CalSTRS"), Gary Lynes, Karen Russell, and Carolyn Widner (collectively, "Petitioners") contend that they are entitled to judgment as a matter of law because the amendments made to Education Code section 22954 and the enactment of section 22954.1 by SB 20 unconstitutionally impair the vested pension contract rights of CalSTRS members. Petitioners claim that the legislation enacted by SB 20, which reduces funding by $500 million in fiscal year 2003-2004 to the teachers Supplemental Benefits Maintenance Account ("SBMA"), violates the Contract Clause (article 1, section 10 of the United States Constitution and article I, section 9 of the California Constitution) and Proposition 162 (article XVI section 17, of the California Constitution). Petitioners seek a writ of mandate under Code of Civil Procedure 1085, stated as a cause of action for unconstitutional impairment of an obligation of contract (Count 1) and a separate violation of Article XVI, section 17 of the California Constitution (Count 2), declaratory relief (Count 3), and an injunction against continued implementation of the provisions by Respondents (Count 4). Intervener California Retired Teachers Association has filed a joinder in Petitioners' motion for summary judgment.

Respondent State Controller Steve Westly did not file an opposition. Respondent Thomas J. Campbell, in his capacity as Director of Finance ("DOF"), opposes Petitioners' motion.[1] DOF contends that since the date that the parties last appeared before this Court

[1] At the time this lawsuit was filed Donna Arduin was the Director of the Department of Finance, and Ms. Arduin was named as a defendant. Thomas Campbell is the successor to Ms. Arduin, and the DOF is now acting through Mr. Campbell.

on August 20, 2004, DOF has performed an actuarial analysis of the SBMA and that, based on the actuarial analysis, the evidence shows that SB 20, passed May 1, 2003, does not violate the Contract Clause or Proposition 162. At the time of enactment by the Legislature in 2003, and in fact as far back as enactments in 1989, DOF did not conduct an actuarial analysis. The passage of SB 20 was therefore not based on such an analysis. Up until 2004, all parties were relying on cash flow projections provided by CalSTRS. DOF now contends that Petitioners' challenge to the constitutionality of SB 20 must be denied. Additionally, if Petitioners dispute the findings of DOF's actuarial analysis, then DOF contends there is a material issue of disputed fact as to the actuarial soundness of the SBMA, which also would require that Petitioners' motion be denied.

At oral argument, Petitioners and Respondents agreed that the recent DOF actuarial analysis corrected an erroneous assumption by Petitioners regarding mortality probabilities used to calculate projected future purchasing power benefit payments. The parties continued to disagree, however, as to the proper model to analyze the potential future impact of the $500 million withheld from the SBMA. Specifically, the disagreement centers upon the use of what one party described as a “stochastic” or sensitivity (multiple variable) analysis rather than a “deterministic” or single-path analysis. The Court’s analysis therefore proceeds with both the agreed upon additional fact, and the dispute regarding which model of valuation is appropriate.

Distilled to its essence, DOF contends that if it can show the SBMA is now “actuarially sound” without the $500 million being fully repaid, Petitioners cannot say their contract for a vested right to an annual appropriation at a specified dollar level has been unconstitutionally impaired. DOF’s argument is that no enactment regarding pension funds can ever be found to be unconstitutional so long as there is enough money in the fund to pay benefits through an "appropriate" date in the future. The Court rejects this argument. The Court finds that DOF has mischaracterized the nature of the vested pension rights at issue in this case. Section 22954 makes clear that the contractually enforceable promise is to make "annual contributions" equal to 2.5% of the creditable compensation for the previous year. These appropriations are a form of "defined contribution," rather than a "defined benefit" as suggested by DOF. The measure of the State's performance in this type of program is the payment of the annual contribution itself. By deferring, and potentially eliminating, the annual contribution, the State has disadvantaged the beneficiaries of the SBMA without providing any "comparable new advantages." This is an unconstitutional impairment of contract.

Background Facts

The Teacher's Retirement Board is a public entity charged with management and control of the California State Teachers Retirement System ("CalSTRS"). CalSTRS has an active and retired membership of over 735,000 and is the third largest public retirement system in the nation. All CalSTRS members are teachers or educators.

Although CalSTRS provides other benefits, the primary pension benefit is the Defined Benefit Program, which is funded by a combination of employee contributions,

employer contributions, state payments, and investment income. (Ed. Code § 22002.) To combat the effects of inflation which may reduce the actual value of benefits over time, an additional benefit, termed the "Benefit Improvement Factor," is provided by statute. (Ed. Code § 22140.) The Benefit Improvement Factor is a 2 percent annual (not compounded) increase in monthly allowances commencing each year on September 1, following the effective date of retirement, which may be adjusted by the Legislature as economic conditions dictate.

Even with the Benefit Improvement Factor, because of inflation and other economic factors, and because there is no maximum time limit on the receipt of benefits, the possibility exists that the value of a CalSTRS member's benefits will significantly erode over time. To help guard against this result, the SBMA program was established. Under this program, when a benefit currently being paid to a retiree falls to less than 80% of the purchasing power of a retiree's initial defined benefit (such as may occur if inflation exceeds the 2% annual adjustment provided by the Benefit Improvement Factor), the retiree receives a supplemental benefit payment, on a quarterly basis, to restore the total benefit paid to 80% of the purchasing power of the initial benefit. (Ed. Code § 24415.) The funds that make up the difference come from the SBMA account. Unlike other types of funds, however, the purchasing power protection in the SBMA is available only so long as there are sufficient funds in the account to so provide. If there are not enough funds, TRB would have to choose to terminate the payment, reduce the amount of the payments below 80 percent, or find funds elsewhere to make up the difference. (Ed. Code § 24416.[2])

Prior to 1998, CalSTRS members had only contingent statutory rights to an annual transfer from the General Fund to the SBMA. Under former Education Code section 22954(d), the right to the transfer was neither vested nor contractual:

> "Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415."

Similarly, former Education Code section 24414 explicitly disclaimed that the Legislature's intent in enacting the SBMA provisions was to create an express or implied contract to provide supplemental benefits for present or future CalSTRS members:

> "Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be

[2] Section 24416 provides alternatives when monies in the SBMA are insufficient to provide the purchasing power protection supplemental allowance. If the board determines that the SBMA will not have sufficient funds to provide purchasing power of up to 80 per cent for the following fiscal year, section 24416 permits the board to increase the employer contributions (which must be approved in the Budget Act), tranfer funds from the Teachers' Retirement Fund if no STRS unfunded obligation exists, and/or reduce the supplemental benefit payment for the following year. (Ed. Code § 24416.)

> construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member . . . ."

All of this changed in 1998. In 1998, legislation repealed sections 24414 and 22954 entirely, added a new section 22954, and substantially amended section 24415. The 1998 amendments to sections 24415 and 22954 were made by AB 1102 (Stats. 1998, ch. 840.) AB 1102 was part of a package of changes made to the Teachers' Retirement Law in 1998. The package also included AB 2804. AB 2804 dramatically reduced the State's contribution to CalSTRS' Defined Benefit Program by decreasing the amount appropriated from the General Fund from 4.3% to 3.102% of the annual total creditable compensation, and by reamortizing CalSTRS' unfunded liability to the year 2027. At the time of enactment, the Legislature estimated AB 2804 would result in cost savings to the State of $577 million in fiscal year 1998-1999, $158 million in fiscal year 1999-2000, $213 million in fiscal year 2000-2001, and other cost savings in subsequent years.

AB 1102 (along with AB 1150 and SB 1528) represented the portion of the package intended to provide benefit increases to California's teachers.[3] Under AB 1102, CalSTRS members received a contractual guarantee of vested, continuously appropriated, defined annual transfers from the General Fund to the SBMA. Specifically, AB 1102 repealed the existing section 22954 and replaced it with a new section 22954, as follows:

> "(a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.
>
> (b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.
>
> (c) <u>It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account</u> in the Teachers' Retirement Fund in order to

[3] AB 2804, AB 1150 and AB 1102 were "double joined," meaning that AB 1102 would only become effective if AB 2804 and AB 1150 were also enacted and became operative.

> provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415." (Emphasis added)

The intent of the Legislature to create a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account also is reflected in the legislative history to AB 1102. For example, the report to the Senate Rules Committee following the amendments to AB 1102 stated that the changes being made would "[v]est[] the funding stream from the General Fund to the Supplemental Benefit Maintenance Account." It also stated that:

> "Under current law the General Fund transfers an amount equal to 2.5% of prior year payroll to the Supplemental Benefit Maintenance Account to fund a supplemental benefit which maintains the purchasing power of the STRS allowance at [a specified percentage] of the original allowance. However, there is no guarantee that the state wouldn't reduce that funding. This will vest the funding stream at its current level."

After the enactment of AB 1102, the Legislative Counsel's Digest to that bill stated, in pertinent part:

> "The State Teachers' Retirement Law requires specified amounts to be annually transferred to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund for the purpose of funding supplemental benefit payments. [¶] <u>This bill would repeal that provision and instead require a continuous appropriation to be annually made from the General Fund to that account in a specified amount for purposes of funding these supplemental payments</u>. The bill would make a statement of legislative intent respecting the contractual obligation of those annual appropriations and would make related changes." (Emphasis added)

In 2000, the Legislature revised section 22954(a), effective July 1, 2003, to specify that the total creditable compensation shall be equal to 2.5 percent of the total of the creditable compensation *of the fiscal year ending* in the immediately preceding calendar year upon which members' contributions are based, rather than simply based on the compensation in the immediately preceding *calendar* year. (AB 2700, Stats. 2000, ch. 1021.)

On May 1, 2003, the Legislature passed SB 20, a bill proposed and sponsored by the DOF. CalSTRS opposed SB 20 and recommended the Governor veto it. Despite these objections, the Governor signed SB 20 into law on May 5, 2003.

SB 20 amended Education Code section 22954 to reduce the amount of the State's 2003-04 contribution from the General Fund to the SBMA by $500 million. Specifically, SB 20 added the following language to section 22954(b):

"However, for the 2003-2004 fiscal year only, that appropriation is reduced by five hundred million dollars ($500,000,000)."

In enacting SB 20, the Legislature made the following specific findings:

"(a) When Chapter 840 of the Statutes of 2001 was enacted, the Legislature intended to provide funding to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund to mitigate the possibility that the purchasing power of retired members of the Defined Benefit Program of the State Teachers' Retirement System would be eroded by inflation to less than 80 percent of each member's purchasing power at the time of retirement.

(b) The Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund currently has sufficient funds to provide, through the year 2035, the purchasing power protection contemplated in Chapter 840 of the Statutes of 2001.

(c) The actuary retained by Teachers' Retirement Board provides the board with periodic actuarial valuations of the funds and accounts of the State Teachers' Retirement System, which provide the Teachers' Retirement Board, the Governor, and the Legislature sufficient time to address erosions in the funding status of the system before those erosions have any negative impacts on the intended benefits of the system's retired members.

(d) It is in the best interest of the people of the State of California, in this time of fiscal crisis, to recognize the state's responsibilities as a sovereign state to revise prior commitments, if that revision does not impair the intent and effect of any contractual obligation."

SB 20 also enacted Education Code section 22954.1. Section 22954.1 requires an actuarial valuation of the SBMA every four years between 2006 and 2036, based on certain criteria established by the Legislature. If the CalSTRS Board determines the SBMA will have insufficient funds to meet an 80% purchasing power goal at any time before 2036, the amount necessary to realize that goal will be appropriated for transfer from the General Fund to the SBMA, upon certification of the amount by the Director of Finance. The aggregate amount of funds appropriated pursuant to this subdivision is limited to an amount equal to five hundred million dollars ($500,000,000) adjusted by the actual rate of return on funds in the SBMA. The actual text of section 22954.1 is as follows:

"(a) Beginning in 2006, and every four years thereafter, the board shall, based on an actuarial valuation approved by the board, report to the Legislature and the Director of Finance regarding the anticipated ability of the system to provide the purchasing power protection contemplated by Chapter 840 of the Statutes of 2001 during each year until June 30, 2036. The actuarial valuation shall take into consideration all expected contributions to the Supplemental Benefit

Maintenance Account, expected expenditures from the account, and expected investment returns.

(b) On July 30 of the calendar year following any calendar year in which the board, as a result of the quadrennial valuation required by subdivision (a), reports that the funds in the Supplemental Benefit Maintenance Account will be insufficient in any fiscal year before July 1, 2036, to provide the purchasing power protection contemplated by Chapter 840 of the Statutes of 2001, there is hereby appropriated from the General Fund to the Controller the amount necessary to provide that purchasing power protection, as determined by the actuary, taking into consideration all expected contributions to the Supplemental Benefit Maintenance Account, expected expenditures from the account, and expected investment returns, and subject to the limitation in subdivision (c). The amount appropriated pursuant to this section shall be transferred by the Controller to the Supplemental Benefit Maintenance Account upon certification of the amount by the Director of Finance.

(c) The aggregate amount of funds appropriated pursuant to subdivision (b) is limited to an amount equal to five hundred million dollars ($500,000,000) adjusted by the actual rate of return on funds in the Supplemental Benefit Maintenance Account from July 1, 2003, after taking into account any amount previously appropriated pursuant to subdivision (b). In calculating this limit, the sum of five hundred million dollars ($ 500,000,000) shall be treated as an initial principal amount, and this amount shall be adjusted at the end of each fiscal year based on the actual investment return of the Supplemental Benefit Maintenance Account during the preceding fiscal year and shall be reduced by any amounts appropriated pursuant to subdivision (b) as of the date of the transfer.

(d) This section shall become inoperative on July 1, 2036, and, as of January 1, 2037, is repealed, unless a later enacted statute that is enacted before January 1, 2037, deletes or extends the dates on which it becomes inoperative and is repealed."

Under SB 20, the State has no obligation to transfer funds to the SBMA pursuant to section 22954.1 after July 1, 2036, and any amounts not repaid pursuant to section 22954.1 are unrecoverable, absent additional legislation. As described above, repayment of funds pursuant to section 22954.1 before July 1, 2036, is dependent on an actuarial determination of necessity and certification by the Director of Finance.

Upon signing the bill into law, Governor Davis described his view of the purpose of the bill as follows:

> "I am signing Senate Bill 20 because it is an important step toward balancing the state budget. It is part of a bipartisan package of six bills that taken together is intended to achieve a critical $3.6 billion in budget

reductions . . . . As part of the state's cost savings measures, [SB 20] foregoes a one-time $500 million General Fund contribution in 2003-2004 [to the SBMA]."

In the absence of SB 20, the July 1, 2003, payment from the General Fund to the SBMA would have been $558,867,986. But because of SB 20, the State Controller transferred only $58,867.986 from the General Fund to SBMA. In other words, for fiscal year 2003-2004, SB 20 reduced the transfer to the SBMA by $500,000,000, and replaced it with a contingent obligation to transfer such sum to the SBMA over a period of thirty-three years, conditioned upon a determination by an actuary establishing before July 1, 2036, that this sum or any portion thereof is needed to meet purchasing power protection benefit obligations in any year between 2006 and July 2036, and further conditioned upon certification by the Director of Finance.

Procedural History

On October 14, 2003, Petitioners filed their Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition"). On June 4, 2004, Petitioners filed the instant Notice of Motion and Motion for Summary Judgment, or in the Alternative, for Summary Adjudication (the "Motion"). In the Motion, Petitioners move for an order that judgment be entered in favor of Petitioners and against Respondents as prayed for in the Petition. The Motion is made on the grounds that there is no triable issue of material fact that the amendments to Education Code § 22954 and the addition to Education Code § 22954.1 by enactment of SB 20 violate article 1, section 10 of the United States Constitution, and article I, section 9 and article XVI, section 17 of the California Constitution. Petitioners claim they are entitled to judgment as a matter of law granting a Writ of Mandate directing Respondents to comply with Education Code § 22954 as it existed immediately prior to the enactment of SB 20; declaring that the amendments made by SB 20 are unconstitutional; and granting an injunction against continued implementation of the provisions by Respondents.

Petitioners' Motion came on regularly for hearing in Department 16 at 1:30 p.m. on August 20, 2004. Respondent DOF (acting through Mr. Campbell's predecessor, Donna Arduin) opposed Petitioners' request for summary judgment and requested a continuance pursuant to Code of Civil Procedure section 437c (h). The motion for continuance was granted, and the matter was continued to December 17, 2004. Respondent was directed to file and serve supplemental opposition no later than November 17, 2004. Petitioners were directed to file and serve a supplemental response no later than December 2, 2004.

On August 18, 2004 the parties submitted a stipulation regarding the admissibility of most of the evidence contained in exhibits and requests for judicial notice to which objections had previously been filed. At the August 20, 2004, hearing, the Court overruled Respondent's objections to Petitioners' Exhibit 5, and overruled Petitioners' objections to the Declaration of Pryor.

The continued hearing did not go forward in December 2004 because of a discovery dispute. On January 14, 2005, the parties appeared before the Court on Petitioners' motion to compel further responses. After hearing oral argument, the Court took the matter under submission. Subsequently, the Court determined to review the withheld documents *in camera*.

On February 10, 2005, the Court conducted an *in camera* review of Respondent's documents. On or about February 16, 2005, the Court ordered that certain documents be produced, but found that other documents were privileged or conditionally privileged.

On March 1, 2005, Respondent DOF filed its Supplemental Opposition to the Motion under seal. On March 4, 2005, a conference call was held with all parties to review the filing under seal. Following the March 4, 2005, telephone conference, the parties met and conferred and stipulated that the documents filed by Respondent DOF on March 1, 2005, do not contain confidential material and shall not be filed under seal. Respondents did not request a further delay in adjudication. The Court takes this as an admission that all relevant disputed and undisputed facts regarding the Motion are now before the Court.

On April 7, 2005, Petitioners filed their Supplemental Reply in support of the Motion.

Discussion

As should be clear from the procedural history of this case, and as DOF concedes in its Supplemental Opposition, the landscape of this case has changed considerably since the parties first appeared before this Court on August 20, 2004. Since that time, for example, the DOF has dropped the "necessity defense," conducted additional discovery and performed what it claims is an accurate actuarial analysis of the SBMA as of 2005. Petitioners have admitted that an assumption in CalSTRS' original calculation of the liquidity of the SBMA fund was inaccurate. It is on the new DOF actuarial analysis which Respondent DOF primarily relies to contend that the SBMA is not unconstitutionally impaired and/or that a disputed material fact remains to be decided before this Court can rule.

Petitioners concede the mistake in future projections, but assert this is irrelevant to the instant motion because they have a vested right to an annual payment which makes actuarial soundness an irrelevant argument. Further, the stopping of that payment for one year has not been made in exchange for an equal or new or different benefit and the SBMA’s liquidity is not at all assured if certain variables come to pass.

Is this Controversy Ripe?

Respondent DOF claims the case is not ripe for consideration. As recited by DOF, the ripeness doctrine is bottomed on the recognition that judicial decision making is best conducted in the context of an actual set of facts so that issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. (*Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 170-71.) A controversy is ripe when it has reached the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made. (*Id*.) For the reasons discussed below, based in large part on the stipulated set of facts, the Court finds that this controversy has reached the point that an intelligent and useful decision can be made, and therefore concludes that this controversy is ripe for adjudication.

Does SB 20 Violate the Contract Clause of the U.S. or California Constitutions?

A public employee's entitlement to a pension "is among those rights clearly 'favored' by the law." Accordingly, pension laws are to be liberally construed to protect pensioners and their dependents from economic insecurity. Unlike other terms of public employment, which are wholly a matter of statute, pension rights are obligations protected by the contract clause of the federal and state Constitutions (U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9). (*United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095 [citing *Miller v. State of California* (1977) 18 Cal.3d 808, 814].) The contract clauses of the federal and state Constitutions (collectively, the "Contract Clause") limit the power of a state to modify its own contracts with other parties, as well as contracts between other parties.

Early on in the case Respondent DOF offered the defense of necessity as a reason for judgment in its favor. However, by the time of this hearing, Respondent DOF had dropped its "necessity defense." Thus, the Court is not called upon to decide whether any alleged impairment to the SBMA fund is nevertheless constitutional either because it is a "minimal impairment" narrowly tailored to conform with an ostensible, innocent, government purpose, or, if deemed a "substantial impairment," because it is "reasonable and necessary" to serve an important public purpose. (*Board of Administration v. Wilson*, 52 Cal.App.4th 1109, 1153-1162 ["*Wilson*"].)

Thus, the only issues remaining for this Court to decide are (1) whether vested contractual rights exist and if so, (2) whether such rights have been unconstitutionally impaired. (*Id.* at p. 1129)

1. A Vested Contract Right Exists

The ultimate question of whether vested contractual rights exist presents a question of law. (*Id.*) The question whether there is impairment is a mixed question of law and fact. (*Id.)* However, to the extent the material facts are undisputed, the question becomes one of law.

Petitioners contend that Education Code section 22954, as enacted by AB 1102 in 1998, creates a vested enforceable right to a continuous annual transfer from the General Fund to the SBMA in the amount specified. DOF, in contrast, contends that the language of section 22954 merely provides a statement of Legislative intent, but does not state an affirmative obligation on the part of the Legislature to create an enforceable contractual obligation. If it does create such a vested obligation, DOF argues in the alternative, that obligation is limited to making contributions from the General Fund to the SBMA in an amount not to exceed 2.5 percent of creditable compensation in any one year and only in an amount that maintains the SBMA as demonstrably actuarially sound. Respondent DOF cites to *Wilson* (*supra*) as support for its assertion that it need only show actuarial soundness to defense the motion for summary judgment.

The Court rejects DOF's argument that section 22954 does not create an enforceable contractual obligation. Section 22954(a) contains an express provision for a "continuous appropriation" from the General Fund to the SBMA in the amount of 2.5 per cent of the total creditable compensation from the preceding calendar year. Section 22954(d) clarifies this intent:

> "It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415."

There can be no clearer statement that the statute is intended to, and does, confer a vested contractual interest in the transfer of the required amounts into the SBMA.

Respondents' contentions to the contrary lack merit. The proffered interpretation that the language of subsection (d) does not state an affirmative obligation but "merely states the intent of the Legislature" to give only enough to cover outgoing payments made from the SBMA to its pensioners is not persuasive. The prefatory language speaks in terms of a "contractually enforceable promise <u>to make annual contributions</u>." (emphasis added.) Respondent DOF ignores not only the plain language of the statute, but the clear and unequivocal statements in the legislative history which demonstrate that the promise contained in section 22954 was part of a package of changes to the Teachers Retirement Fund in 1998.

Moreover, Respondent's reading of *Wilson* is too elementary. As explained by the Third District Court of Appeal in *Wilson* (*supra*), *California Teachers Association v. Cory* (1984) 155 Cal.App.3d 494 ["*CTA*"] and *Valdes v. Cory* (1983) 139 Cal.App.3d 773 ["*Valdes*"], a legislative intent to grant contractual rights need not be explicit; it can be implied from a statute if the statute contains an unambiguous element of exchange of consideration. That is the case here. Pension

rights have long been characterized as within the domain of contract. (*CTA*, *supra*, at p. 505.) A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. (*Id*. at p. 506.) Further, "[p]ension rights can encompass the funding mechanism for the pension when there is a palpable element of exchange involving funding; continued service as a teacher in return for enhanced assurance that funds to pay the pension benefits will be available at retirement." (*Id*.)

In *CTA,* the petitioners sought, just as Petitioners do here, to compel the State Controller to transfer funds from the General Fund to the Teachers' Retirement Fund. The statutory provisions at issue in *CTA* were Education Code sections 23401 and 23402, which concerned appropriations from the General Fund to CalSTRS. (Sections 23401 and 23402 have since been repealed and replaced by section 22955.) Section 23402, in particular, provided for a specific dollar amount of the appropriation for the year beginning July 1, 1980, with a cumulative increase or decrease based on the California Consumer Price Index. The first transfers under the statute were set to occur on July 1, 1980. Instead, the State Budget Act contained an "in lieu" appropriation of a significantly reduced amount.

Applying the principles set forth above, the *CTA* court determined that the language of sections 23401 and 23402 manifests a continuing obligation to fund the Teachers' Retirement Fund in future years pursuant to statutory formulae. The court noted that the enactment creating the obligation repealed then-existing provisions of law conditioning funding on appropriations in the State Budget. The court determined that "by these means a commitment to permanency of funding was made." (*Id.* at p. 506 [emphasis added].) Given the commitment to permanency of funding and the critical importance which funding bears to the capacity of the State to fulfill the underlying contractual promise to pay the pensions, the court implied a promise of funding in exchange for the valuable services rendered by the State's teachers. "When the promise to permanently fund the retirement system is accepted by teachers by initial or continued employment a contract is established." (*Id*. at p. 509.)

Just as in *CTA*, the statute here contains a promise of a continuing appropriation of an express amount. There is express legislative intent in the statute itself that members acquire vested contractual rights in the appropriation to the SBMA. There was a bargained for reduction in the annual amount of appropriation into the defined benefit portion of the program, specifically, a reduction of 4.3 percent to 3.10 percent and the reamortization of CalSTRS unfunded liability to the year 2027.

Moreover, it is assumed that the Legislature is aware of existing law in enacting legislation. It seems clear that the language of AB 1102 was intended to meet the standards of existing case law set forth in *Wilson, CTA* and *Valdes* regarding the creation of a vested contract right in pension benefits. Thus, Education Code section 22954, as enacted by AB 1102 in 1998, creates a vested enforceable right to a continuous annual transfer from the General Fund to the SBMA and therefore, as found in *CTA*, "a commitment to permanency of funding was made."

DOF contends that even if the Court finds an enforceable contractual obligation, that obligation is limited. DOF argues that the State is required to make annual contributions only in the amount necessary to maintain the SBMA as "actuarially sound." DOF relies on the language in the statute that the annual contributions are being made for the "purposes of making the supplemental payments under Section 24415." According to DOF, this language implicitly limits any contractual obligation of the State. Thus, if the funds in the SBMA are demonstrably sufficient for actuarial soundness without the State's annual contributions, the State can forego or reduce its annual contribution without violating the Contract Clause, according to DOF.

DOF's argument mischaracterizes the nature of the vested pension right. Section 22954 makes clear that the contractually enforceable promise is to make "annual contributions" equal to 2.5% of the creditable compensation for the previous year. The SBMA appropriations are a form of "defined contribution," rather than a "defined benefit" as suggested by DOF. With a defined contribution, the beneficiary is guaranteed the income stream and it is the beneficiary who assumes the risk that the contribution will be adequate or inadequate to provide the contemplated benefit. As a result, it is error for DOF to focus on the "actuarial soundness" of the fund. The measure of the State's performance in this type of program is the payment of the annual contribution itself, and not the "actuarial equivalent" of such payment.[4]

In this respect, this case is very similar to *CTA* (*supra*), which involved a statutorily created obligation to pay fixed sums of money over several years to the Teachers' Retirement Fund. In that case, the court held that the vested contractual right was the statutorily specified amount of the contribution: "[The statute] contains a straight-out promise to pay fixed and determinable sums of money. There is no reason to measure the contract right by any yardstick other than the amounts specified. . . . The measure of performance of a contractual obligation is the performance promised. 'The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.'" (*CTA*, *supra*, at p. 508.)

In the instant case, the language is clear and explicit and does not involve an absurdity: each year, the State has promised to transfer 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year. This is a promise to pay a fixed and determinable sum of money, and nothing less.

Moreover, DOF's argument based on the "purpose" language omits important language in the statute. What the statute actually provides is that the annual contributions are provided "in order <u>to provide a continuous annual source of revenue</u> for the purposes of making the supplemental payments under Section 24415." Thus, the actual purpose of

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[4] DOF continued to characterize the SMBA at oral argument as a defined benefit plan. However, the SBMA, which is a separate account from the Defined Benefit Plan, does not provide for a guaranteed level of payment to covered employees. Its supplemental purchasing power protection is subject to cancellation at any time if there aren't enough funds to pay it. This makes it a dramatically different animal from a defined benefit plan, which pays a set amount for the duration of the life of the pensioner.

the contributions was to create a "continuous annual source of revenue" which could be used for purposes of making the payments required by Section 24415. In this context, the "purpose" language supports Petitioners' interpretation of the statute, not DOF's.

The Court finds that AB 1102 created a vested enforceable right to a continuous annual transfer from the General Fund to the SBMA in the amount of 2.5 per cent of the total creditable compensation from the preceding calendar year. This agreement was not limited to only the amount of funds necessary to maintain the SBMA as actuarially sound.

2. The vested right was impaired.

The second and final element in the Contract Clause analysis is whether the identified contractual rights have been impaired.

The Third District Court of Appeal has recognized that an employee's vested contractual rights may be modified prior to retirement to permit adjustments in accord with changing conditions. (*Wilson*, *supra*, at p. 1137.) Such modifications must be reasonable. (*Id*.) To be sustained as reasonable, (i) alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation; and (ii) changes in a pension plan which result in disadvantage to employees must be accompanied by comparable new advantages. (*Id*. at pp. 1137, 1145 [emphasis added].)

In considering whether the modifications bear some material relation to the successful operation of a pension system, case law holds that considerations external to the functioning of a pension system will not justify a change. The justification must relate to considerations internal to the pension system, e.g., its preservation or protection. (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 665-66 ["*Claypool*"].) In the instant case, the stated need for the reduction was a fiscal budgetary crisis and the need to reduce government spending.

In *Wilson* (*supra*) and *Claypool* (*supra*) the court held that changes made to a pension to effect economies and save the employer money may bear some "material relation" to the theory of a pension system and its successful operation. (*Wilson*, *supra*, at p. 1137; *Claypool, supra*, at pp. 665-66.) However, that is not to say that a purpose to save the employer money is a sufficient justification for change. It simply means that the monetary objective will not invalidate an otherwise valid modification. To be valid, the modification must be otherwise lawful and must provide comparable advantages to the employees whose contract rights are modified.[5] (*Wilson*, *supra*, at p. 1137.) It makes no

[5] In *Wilson*, the Legislature changed the payment schedule for PERS contributions from quarterly to semiannually, and then from semiannually to semiannually in arrears. A mandamus action was brought challenging the "in arrears" financing as an unconstitutional impairment of contract. The Governor defended the suit, alleging that the change in law did not impair any rights, but merely deferred contributions to a different time. (*Wilson*, *supra*, at p. 1138.) The court rejected this argument because the Governor had failed to show any pension reform or pension-related reason for the change and because the

difference whether the modification is to a vested pension benefit or to a vested right to payment of employer contributions to the fund; in either case, the changes in the pension program must be accompanied by comparable new advantages (offsetting benefits) to the employee. (*Wilson*, *supra*, at pp. 1137-38, 1145.) If modifications to vested contractual pension rights do not provide new comparable advantages to the employees whose contract rights are modified, the employees' pension rights are deemed impaired.[6] The party claiming justification for the change -- the DOF -- has the burden of establishing to the Court that the changes are accompanied by comparable new advantages. (*CTA*, *supra*, at p. 512; *Wilson*, *supra*, at pp. 1138, 1155.)

Applying the *Wilson* "material relation" test to the facts of this case, Respondent DOF contends that it is not required to show SB 20 confers a comparable new advantage because the DOF's actuarial analysis shows that the SBMA is "fully funded" through the "appropriate" 30-year horizon. In essence, DOF contends that because its actuarial analysis shows that even without the $500 million the SBMA will have enough funds to provide purchasing power protection through 2036, the State may eliminate the $500 million contribution without causing any "disadvantage" to CalSTRS members. If the loss of the $500 million contribution does not disadvantage employees, DOF argues, it is not required to be accompanied by any comparable new advantages.

DOF is correct that the Contract Clause does not prevent laws which restrict a party to the gains reasonably to be expected from the contract. (*CTA*, *supra*, at p. 511.) However, DOF mischaracterizes the gains reasonably to be expected from the contract at issue here. When the Legislature enacted 22954, the Legislature did <u>*not*</u> guarantee 80% purchasing power protection, but rather, a continuous income stream from which such payments could be made. This contractually enforceable promise to make annual contributions is a "defined contribution plan," rather than a "defined benefit plan." The distinction is important. With a defined contribution plan, the beneficiary is not guaranteed, and cannot reasonably expect to receive, any particular benefit. Instead, the beneficiary is guaranteed, and reasonably expects to receive, a guaranteed income stream. In exchange, the beneficiary assumes the risk the income stream will be inadequate to provide the associated benefits. Therefore, as described above, section 22954 requires the State to make 2.5% annual contributions even if the SBMA is projected to be fully funded. This is not "absurd," "unjust," or "a gift of public funds," as DOF argues. Rather, it is the nature of the State's contractual obligation.

As a result, the "disadvantage" to the SBMA cannot be judged by concentrating on the "actuarial soundness" of the fund. The measure of the State's performance under the contract is the payment of the 2.5% annual contribution itself, and nothing less. The

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legislation failed to provide any comparable new advantages in exchange for the adverse effect of in-arrears financing. (*Id*. at pp. 1138, 1144-45.)

[6] By way of example, the court stated that if the Legislature directs that funds held in trust for the exclusive benefit of the members of PERS were used to satisfy the State's contractual obligations to make monthly contributions to the retirement fund so that monies regularly appropriated for that purpose could be redirected to balance the state budget, the vested rights of PERS members would be impaired. (*Wilson*, *supra*, at pp. 1137-38 [citing *Valdes*].)

beneficiaries of the SBMA assumed the risk that the SBMA will not have enough funds to provide the purchasing power protection to all the affected employees. They agreed to assume this risk in exchange for a guaranteed stream of annual contributions. The State cannot reduce that guaranteed stream of contributions without materially affecting the benefits of the bargain.

The holding in the *CTA* case is in accord with this conclusion. The court in *CTA* made clear that unilateral abrogation of a continuous funding obligation, in the absence of a comparable new advantage, "can only be viewed as an impairment of the contract." (*CTA*, *supra*, at p. 510.) At issue in *CTA* was the State's promise permanently to transfer specified amounts on a monthly basis into the Teachers' Retirement Fund. However, for four years, instead of transferring such amounts, the State appropriated reduced amounts "in lieu" of the statutory appropriation. In the fourth year, the State reduced the in lieu appropriation to one dollar, arguing that the money could better be used for other educational purposes notwithstanding that there was an unfunded actuarial liability of the Teachers' Retirement System. (*Id*. at p. 503.) After the CTA filed suit challenging the in lieu appropriations, the Controller argued that the contract right at issue is only to "substantial" annual state contributions to the fund, such that only the last appropriation constituted an impairment. The court concluded that the Controller was misreading the statute. According to the court, "[a]s a matter of state law, to extinguish a contractual obligation it is incumbent upon the obligor to fully perform." Because the statute "contains a straight-out promise to pay fixed and determinable sums of money," the court concluded that the failure to "fund the system with the installments called for by [the statute], can only be viewed as an impairment of contract." (*Id*. at pp. 508, 510.)

Viewed in this context, it is irrelevant that DOF's actuarial analysis shows that even without the $500 million the SBMA will have enough funds to provide purchasing power protection through 2036. Whether or not the SBMA currently is projected to be fully funded, the State may not eliminate the $500 million contribution without causing a "disadvantage" to the SBMA and its beneficiaries. By reducing the guaranteed income stream to the SBMA, the State has materially increased the risk that the income stream will prove to be inadequate to provide the associated benefits to the affected employees. Accordingly, the Court has no difficulty concluding that the loss of the $500 million contribution resulted in a disadvantage to the affected employees. Indeed, the loss of the $500 million payment made on time *was* the disadvantage.

In an apparent attempt to avoid this otherwise inevitable result, DOF argues in its Supplemental Brief that its latest actuarial valuation -- which it claims is the first actuarial analysis of the SBMA ever performed -- shows that the SBMA will *never* be depleted. DOF's argument apparently is that if DOF can affirmatively show that *all* of the beneficiaries of the SBMA are guaranteed to receive the full 80% purchasing power protection, then such employees will not be disadvantaged by the loss of the $500 million contribution in 2003-04. For the reasons discussed elsewhere in this ruling, the Court does not agree. Even if DOF's actuarial analysis were to establish that all of the SBMA beneficiaries with vested rights in the $500 contribution will receive the full purchasing power benefit for the duration of the relevant period, the Court still would find that the

beneficiaries are disadvantaged by the loss of the $500 million in 2003-04 because the reduction in the amount of funds available to pay such benefits has increased the beneficiaries' risk. By reducing the income stream to the SBMA, the State has materially increased the risk.

DOF effectively concedes this point. As DOF's expert acknowledges, "[i]t is not possible at this time to definitively determine whether the SBMA at any time will be unable to fund the purchasing power protection benefit in the future, because that determination would have to take into account the actual rate of inflation that occurs in the future, which cannot be known now." (Supp. Pryor Decl. at ¶ 9.) At most, DOF's actuarial analysis shows that the SBMA will never be depleted *if* certain key assumptions are met -- i.e., inflation rate, wage growth, mortality, etc. But DOF overlooks that the certainty (or uncertainty) of its projection is as important, or more important, than the projection itself. In order for DOF's argument to prevail, DOF would have to show not only that it its actuary projects the SBMA will be able to fund the purchasing power protection benefit in the future, but also that this projection is certain to come true. The undisputed evidence is to the contrary.

As the evidence shows, the contingencies, and thus the risks associated with the soundness of the SBMA, are numerous and varied. Specifically, such risks include changes in the consumer price index over time, possible future inflation paths, the possibility of changes in the active number of employees, payroll costs increasing by a certain percentage, and annual interest credits. Thus, DOF's analysis, even if accurate, does not further the DOF's position because the DOF cannot carry its burden that the statute has not disadvantaged the beneficiaries of the SBMA.

In addition, it is undisputed that neither Petitioners nor Respondents conducted an actuarial analysis of the SBMA prior to the passage of SB 20. In *Wilson* (*supra*), the appellate court considered the Legislature's failure to obtain actuarial input prior to passing legislation impairing contract rights. The governor argued in support of its statutory change to a vested pension right that a post-enactment actuarial study showed that a shortfall in a public employee retirement fund (PERS) could be avoided under certain assumptions, and thus the new statute was not unconstitutional. This argument was rejected by the Third District Court of Appeals. Specifically the appellate court found that because the Legislature did not avail itself of actuarial expertise at the time of its passage, the State was in a poor position with respect to defending the actuarial soundness of the legislation. (*Wilson*, *supra*, at p. 1144.) DOF is in no better position here.

For all of these reasons, the Court concludes that the loss of the $500 million contribution disadvantages the beneficiaries of the SBMA.

The only question remaining therefore is whether the disadvantage to the beneficiaries was accompanied by "comparable new advantages." DOF argues that SB 20's one-time $500 million reduction was accompanied by a comparable new advantage because SB 20 also enacted 22954.1, which obligates the State to restore the funding in

the SBMA in the future if purchasing power protection cannot be maintained at the 80 percent level through July 1, 2036.

Petitioners respond that this repayment obligation merely substitutes a fixed payment with a deferred contingent payment for a lesser amount and for a limited period of time. Therefore, Petitioners contend that section 22954.1 does not provide a comparable new advantage to CalSTRS beneficiaries for the loss of the $500 million contribution. The Court agrees.

Section 22954.1 does not guarantee the affected employees that they will receive 80% purchasing power benefits.[7] Nor does it guarantee the SBMA that it will receive additional future contributions to pay purchasing power benefits. In fact, section 22954.1 does not even guarantee the SBMA that it will receive as much as it has given up. Section 22954.1 creates a statutory promise to restore funds, but this promise is deferred and conditional: the funds will be restored only if actuarial valuations show that the SBMA will need the funds and only if such need arises prior to 2036.

This is significant because it is undisputed that under SB 20, the State has no obligation to return funds after the year 2036, and amounts not repaid before that time are unrecoverable and permanently lost. (Undisputed Fact 44.) Indeed, the parties have stipulated that based on the current assumed rate of return for the SBMA, the actual loss to the SBMA in 2036 dollars from the loss of the $500 million in 2003-04 is approximately $6.3 billion. (Undisputed Fact 45.)

Under the circumstances, it was error to limit the duration of the repayment obligation to the year 2036. The text of SB 20 makes clear that the duration of the repayment obligation was based on the Legislative finding that, at the time SB 20 was enacted, the SBMA had sufficient funds to provide purchasing power protection through the year 2035. This Legislative finding, in turn, was based on a CalSTRS memorandum projecting that the SBMA will remain above zero for 37 years if the $500 million transfer is made, and 32 years if it is not (each measured from June 30, 2003). (Gregory Decl. Ex. "C"; Supp. Pryor Decl. Ex "A" at p. 2.) In essence, the Legislature apparently was attempting in SB 20 to equalize the projected benefits that would have been received under the "old" program with the benefits projected to be received under the "new" program. However, the calculations performed by the State ignore the fact that the beneficiaries were entitled to receive the $500 contribution under the "old" program. Thus, according to the CalSTRS memorandum, if SB 20 had not been enacted, the $500 million would have been paid and the SBMA would have remained above zero for 37 years from June 30, 2003, or until 2040. Therefore, limiting the duration of the

[7] This fact distinguishes *Claypool* (*supra*) in which the repeal of the supplemental cost of living (COLA) program was followed by the creation of a "unique fund" of a "critically different nature," i.e., a guaranteed defined benefit amount. In addition, the court in *Claypool* found that the loss of the potential for greater benefits under the repealed statutes was offset by the greater assurance of funding under the new program. (*Claypool, supra,* at p. 667.) If anything, the opposite is true here.

repayment obligation to 2036 was not even designed to place the beneficiaries in the same position they would have occupied if the $500 million had been paid in 2003-04.[8]

In any event, most of the projections -- and all of DOF's projections -- show that the SBMA will not run out of funds prior to 2036. If these projections are correct, this means that the $500 million will not be restored and the loss to the SBMA will be complete. How then can the contingent, deferred repayment obligation be considered a "comparable" new advantage?

To illustrate this point, consider the case if both parties' experts were to agree it is certain the SBMA will be able to provide purchasing power protection through 2036. In such a scenario, it would be certain the $500 million would not be restored. Accordingly, the analysis of SB 20 would be exactly the same as if the repayment obligation did not exist at all. The Court would merely have to consider whether the loss of the $500 million contribution disadvantages the vested employees? If so, then the employees' contract rights must be deemed impaired because that disadvantage was not accompanied by any comparable new advantages.

The distinction between this example and the case at hand is merely a difference of degree. Although there is no agreement as to when the SBMA fund will be depleted, *only Petitioners* contend that the SBMA fund might be depleted prior to 2036, and *both* parties agree there is a good chance, depending on what assumptions are used, that the SBMA will not run out of funds until after 2036. Thus, it is undisputed that there is at least a significant possibility that the $500 million will not be restored, in which case the SBMA will be undeniably worse off than if the $500 million contribution had been paid in 2003-04.

Further, because of the structure of section 22954.1's repayment obligation, limiting the repayment obligation to the year 2036 will deprive the SBMA of the time value of money. Under section 22954.1, the aggregate amount of funds available for repayment is adjusted at the end of each fiscal year based on the actual investment return. However, nothing obligates the State to restore the entire amount of funds available for repayment. Rather, out of the aggregate amount of funds available for repayment, section 22954.1 obligates the State to restore only the amount necessary to fund purchasing power protection through 2036. This deprives the SBMA of the opportunity to generate investment returns that might be used to fund future benefits.

Some elaboration of this point is necessary. In the hands of CalSTRS, it is undisputed that the $500 million contribution would be expected to appreciate to $6.3 billion. If it turns out that CalSTRS would have needed only $5 billion of that amount to fund purchasing protection through 2036, the remaining $1.3 billion would have been

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[8] After correcting the assumptions in the CalSTRS memorandum for mortality, the results are even more dramatic. According to DOF's new actuarial analysis, if the retiree payouts used in the SBMA projection are corrected for mortality, the SBMA would never be depleted. If correct, this means that the duration of the repayment obligation should not have been limited at all so long as the vested beneficiaries remained eligible to receive payments from the fund.

available to fund purchasing power protection into the next decade. Under section 22954.1, in contrast, the SBMA would be limited to the amount necessary to provide purchasing power protection through 2036, i.e., the $5 billion. The remaining $1.3 billion would not be appropriated to the SBMA and would not be available to fund purchasing power benefits after 2036.

For all of these reasons, the Court concludes that the limited duration of the repayment obligation means that it cannot provide a "comparable" new advantage for the loss of the $500 million.

Even if section 22954.1's repayment obligation was not limited in duration, the Court still would find that the State's promise to restore funds "tomorrow" is not "comparable" to the payment of those funds "today." By exchanging a certainty for a promise, the SBMA has taken on additional risk (credit risk, political risk, etc.). It is basic economics that for the *promise of future* payment to be "comparable" to payment now, the obligee must be compensated for the additional risk. Here, as described above, the beneficiaries of the SBMA are either receiving less compensation for the same risk or assuming additional risk for the same compensation. In either case, this is an unconstitutional impairment of their rights.

Is SB 20 Necessary to Prevent a Gift of Public Funds?

In its supplemental briefing, DOF argues that allowing the fund to have more than is necessary to fund the 80 percent protection is a gift of public funds, citing to Cal. Const., art. XVI, section 6 and *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, modified on denial of rehearing, review denied. The argument lacks merit.

As discussed in Jordan, Section 6 of article XVI of the California Constitution provides that the Legislature has no power "to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation . . . ." The term "gift" in the constitutional provision "includes all appropriations of public money for which there is no authority or enforceable claim," even if there is a moral or equitable obligation. (*Conlin v. Board of Supervisors* (1893) 99 Cal. 17, 21-22.) "An appropriation of money by the legislature for the relief of one who has no legal claim therefore must be regarded as a gift within the meaning of that term, as used in this section, and it is none the less a gift that a sufficient motive appears for its appropriation, if the motive does not rest upon a valid consideration." It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition. [Citation.]" (*California Teachers Assn. v. Board of Trustees* (1978) 82 Cal.App.3d 249, 257.) There is nothing presented on the facts of this case that represents that public funds are being gifted for private use. This is a case of pension funds being provided for teachers in public schools in return for their hiring and continued employment authorized under the Education Code.

For all of these reasons, the Court finds that the DOF has failed to carry its burden of showing that the changes to employees' vested pension rights are accompanied by the same or comparable new advantages. Thus, the employee's vested contractual rights are deemed impaired.

Does SB 20 Interfere with the Board's Authority Under Article XVI, Section 17 of the California Constitution?

Because the Court has concluded that vested contractual rights exist and have been impaired, and because DOF has waived the "necessity" defense, the Court concludes that the change in contract rights constituted an unconstitutional impairment of contract. This renders it unnecessary for the Court to consider Petitioners' other constitutional argument, namely that Education Code section 22954.1 undermines the "plenary authority" vested in the Board by California Constitution article XVI, section 17.

Conclusion

Petitioners' Motion for Summary Judgment/Summary Adjudication shall be granted as to the First and Third Causes of Action. The Second Cause of Action is denied for the reason stated above. The Fourth Cause of Action is denied because this Court does not have the authority to order the appropriation of money. (Cal Const. art. III, § 3; *Mandel v. Myers* (1981) 29 Cal.3d 531.) The separation of powers doctrine does not, however, preclude this Court from decreeing that funds that have been appropriated by the Legislature should be paid without regard to an improper or invalid legislative restriction. Accordingly, judgment shall be issued in favor of Petitioners declaring that SB 20 violates Article I, section 10 of the United States Constitution and Article I, section 9 of the California Constitution; and a peremptory writ shall issue ordering Respondents not to enforce the provisions of SB 20 and directing Respondent Controller to transfer funds to the SBMA in accordance with the provisions of section 22954 as it existed prior to the amendment by SB 20.

Petitioners shall be entitled to recover their costs of suit upon appropriate application.