

Public Pensions Have Personnel Authority, Calif. Panel Rules

By **Lauren Berg**

Law360 (June 25, 2024, 10:58 PM EDT) -- A county public employee retirement system has the authority to create employment classifications and set its employees' salaries, a California appellate court ruled Monday, reviving the Los Angeles County Employees Retirement Association's lawsuit seeking confirmation of its authority to make key personnel decisions.

A three-judge panel for the Second District Court of Appeal, in a lengthy published opinion, reversed a Los Angeles Superior Court judge's decision denying LACERA's request to require the Los Angeles County Board of Supervisors to adopt the retirement system's employment classifications and salaries for its employees.

The trial court was bound by a 15-year-old Fourth District Court of Appeal decision in *Westly v. Board of Administration*, which held that the California Pension Protection Act of 1992, known as Proposition 162, didn't give state public employees retirement systems the power to establish employment classifications and set its employees' salaries, according to the opinion.

The appellate panel, however, said it is not bound by its sister court's decision, noting that *Westly* is "inconsistent with the language, purpose and intent of Proposition 162."

The panel said the law imposes a duty on a county board of supervisors to heed "the employment classifications adopted by a board of retirement or board of investment and to include in the county salary ordinance or resolution the salaries adopted by a board of retirement or board of investment."

"Without that mandate, a political subdivision such as a county can elevate its political priorities over the fiduciary duty of a retirement board to administer its system for the 'exclusive purposes of providing benefits to participants ... and their beneficiaries and defraying reasonable expenses of administering the system,'" the panel added, citing the California Constitution.

Back in 1992, voters approved Proposition 162, giving the governing boards of public employee retirement systems "plenary authority and fiduciary responsibility for investment of moneys and administration of the system, the opinion states. Voters also required those governing boards to maximize the rate of return and defray reasonable administrative expenses, according to the opinion.

In addition, voters determined that, in order to protect pension systems, retirement boards "must be free from political meddling and intimidation," the opinion states.

So, Proposition 162 expanded the authority of county retirement systems to manage their own systems, which includes expenditures for salaries and benefits for retirement system employees, according to the opinion.

Under the County Employees Retirement Law of 1937, the governing boards of LACERA budget and pay for its staff out of system assets, and in 1996, LA County and its board of supervisors agreed with LACERA that Proposition 162 gave the retirement system authority to create employment classifications and set salaries for its employees, the opinion states.

The county also agreed that its board of supervisors had a duty to adopt an ordinance implementing classification and compensation changes made by LACERA for its employees, according to the opinion.

And for 20 years, LACERA's board of retirement and board of investment exercised their authority, while the LA County Board of Supervisors implemented their decisions, the opinion states. But then in 2018, the board of supervisors began rejecting certain employment classifications and salaries that the LACERA boards adopted, citing the Westly decision, according to the opinion.

This prevented LACERA from hiring and compensating certain employees the boards deemed necessary, leading the retirement system in October 2021 to file a petition seeking to require the board of supervisors to adopt LACERA's employment classifications and salaries for its employees, the opinion states.

Following Westly's precedent, Superior Court Judge James C. Chalfant in January 2023 denied LACERA's petition, and the retirement system immediately appealed the judgment, court records show.

But in its opinion Monday, the appellate panel agreed with LACERA that "the plain language, purposes and intent of Proposition 162" grants it the authority to adopt employment classifications and employee salaries.

"Although Proposition 162 did not expressly grant retirement boards authority to establish employment classifications and compensation for retirement system employees, section 5 of Proposition 162 states that the 'provisions of this act shall be liberally interpreted to effect their purposes,'" the panel said.

"And it is hard to see how a retirement board can fulfill its fiduciary responsibilities to 'administer the system' and 'over the assets of the ... system' ... without having authority to determine how those assets are used, including by determining the number and types of employees and the compensation required," it added.

A board of directors has very different responsibilities and priorities, and allowing it to veto the employment classifications and compensation adopted by a retirement board "frustrates the board's ability to fulfill its duties under Proposition 162," while undermining the board's fiduciary relationship with the system's participants and their beneficiaries, according to the opinion.

"LA County workers are entitled by law to have their retirement savings managed by independent fiduciaries free from conflicting loyalties or obligations," Roman Martinez of Latham & Watkins LLP, an attorney for LACERA, said in a statement Tuesday.

"The court's decision vindicates that principle and upholds LACERA's constitutional authority to oversee its own personnel," he added. "We are pleased with the ruling, and grateful for the court's careful

consideration of these important issues."

A representative for the LA County Counsel's Office told Law360 on Tuesday that the county "intends to further appeal this decision by petitioning the California Supreme Court for review."

Justices John L. Segal, Gail Ruderman Feuer and Gonzalo C. Martinez sat on the panel that reached Monday's decision.

The LA County Employees Retirement Association is represented by Roman Martinez, Manuel A. Abascal, Nicholas Rosellini and Uriel Hinberg of Latham & Watkins LLP.

LA County and its board of supervisors are represented by Linda M. Ross, Ryan P. McGinley-Stempel and Steve Cikes of Renne Public Law Group.

The case is Los Angeles County Employees Retirement Association v. County of Los Angeles et al., case number B326977, in the Court of Appeal of the State of California, Second Appellate District.

--Editing by Jay Jackson Jr.

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