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Court rulings back pension cuts for state workers

Legislature reserved the right to repeal

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SEATTLE – The Legislature had the right to eliminate state employee pension increases that were approved during the stock market boom of the 1990s, the Washington Supreme Court said unanimously Thursday in two decisions that save the state billions of dollars but leave many public employees feeling cheated.

In twin rulings, the court found lawmakers were within their rights in 2007 when they repealed a “gain-sharing” benefit that paid employees more when investment returns on pension trust funds exceeded expectations, and in 2011 when they repealed automatic cost-of-living adjustments for certain retirees.

In each case, the Legislature had reserved the right to eliminate the benefits in the future, the court said, reversing two lower-court rulings.

“I don’t think having to take away these benefits was something anyone enjoyed,” said Sen. Barbara Bailey, an Oak Harbor Republican who chairs the Legislature’s Select Committee on Pension Policy. “But had we not done this, or had it not been upheld, the cost to the state would have been in the billions.”

Public-sector unions and others who sought to maintain the benefits concede they are pricey. But, they argued, the state had dangled the promise of the pension enhancements in the late ’90s when officials persuaded tens of thousands of workers to give up their defined-benefit retirement plans for cheaper plans.

The cheaper plans reduced the defined benefits by half while adding a mix of defined contributions and gain-sharing, which occurred when investment returns exceeded 10 percent for four straight years.

James Oswald, a Seattle lawyer who represented state ferry worker Cheryl Costello and others who sued over repeal of the gain-sharing benefit, said that when the state Department of Retirement Systems provided written material encouraging workers to give

up their more expensive plans, it never informed them gain-sharing could be repealed. The workers could not have known unless they had parsed the fine print of the statute creating the benefit, he said.

“Tens of thousands of employees gave up their benefits based on representations about what they’d receive,” Oswald said. “They were never told that these benefits could be repealed, and that’s very troubling to me. That’s the kind of bait-and-switch the court would never permit a private employer to do.”

The state conceded it never explicitly told the workers the benefit could be repealed. But the court said the provided materials could not be read as promising it would exist forever.

Furthermore, the materials contained a caveat: “If there are any conflicts between what is written in this handbook and what is contained in the law, the applicable law will govern.”

“The gain-sharing statute explicitly stated that gain sharing may be repealed in the future,” Chief Justice Barbara Madsen wrote for the court.

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