

# State fixed mistake, now court shouldn't compound it

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Last week, the state Supreme Court heard challenges to two actions taken by the Legislature to rein in unsustainable increases in pension costs. If the court rules for the public employee groups contesting the legislation, the increased burden to taxpayers amounts to billions of dollars over the next 25 years.

The state budget would be immediately impacted. According to the state actuary, undoing the reforms would cost the state \$766 million in the 2015-2017 budget cycle. Local governments would see costs climb \$570 million.

The increased budget pressure jeopardizes efforts to boost education spending. In the 2012 McCleary decision, the Court ruled that the state was not meeting its “paramount duty” to provide full funding for basic education. To reach that goal, lawmakers must come up with another \$4 billion for the schools by the 2017-2018 school year.

The Legislature set the goal several years ago, virtually inviting the court’s decision. This year, it made a billion-dollar down payment, a beginning the court will likely see as insufficient. Achieving the goal without tax increases becomes much more difficult if the pension changes are undone.

Still, no one condones a raid on pension funds solely to solve budget problems. And this is no such raid. No contractual right is at risk.

Among the states, Washington has been a leader in pension reform. Last year, the Pew Center on the States ranked Washington among the top four states for pension funding. We still have problems, but state officials have made conscientious efforts to assure the system’s integrity.

The two actions that reached the court were sensible measures designed to undo the effects of a pair of bad legislative decisions made in the 1990s: gain-sharing and the UCOLA.

In 1998, the Legislature adopted “gain-sharing,” a benefit that boosted pension benefits when stock market performance soared in consecutive years. But the money distributed to pensioners wasn’t available later to hedge against market downturns, a fact that somehow escaped lawmakers in the bubble.

Legislators left themselves an out. The gain-sharing bill included a “reservation of rights” clause, reserving the right “to amend or repeal” the measure and stating that employees did not have a contractual right to the benefit.

In 2007 lawmakers exercised their reserved right, repealing gain-sharing and replacing it with additional pension sweeteners, including early retirement benefits. Public employee unions swiftly filed suit. A King County judge gave the unions a partial win.

The “uniform cost-of-living adjustment” (UCOLA) applies to members of the state’s oldest and richest pension plans, which have been closed to new members since 1977.

In 1995, the Legislature established the UCOLA, an annual benefit increase based on years of service. The UCOLA replaced previous cost-of-living adjustments. As it did later with gain-sharing, the Legislature specified the UCOLA was not a contractual right and the state could amend or repeal the benefit.

In 2011 the Legislature repealed the UCOLA. The unions sued. And the next year a Thurston County judge found for them.

Those challenging the gain-sharing and UCOLA repeal argue that the state cannot reserve the right to amend or repeal a pension benefit. Regardless of what the Legislature stated or intended, the unions contend that the enhanced benefit amounts to a contractual obligation.

They argue that employees had a reasonable expectation that the programs would remain in place forever, the pension ratchet turns only one way.

In familiar rhetoric, one of the attorneys arguing the case prefaced his remarks with a reference to the “drumbeat of attacks on public employee pensions.” An article on the website of the Washington State Federation of State Employees called state Supreme Court chambers “Ground Zero for the nationwide fight to save public employee pensions.”

That’s overwrought. The victim’s mantle rests uneasily on the shoulders of state workers who had no legitimate expectation of any permanently enhanced benefits. More important, the repeal takes nothing away from benefits already received. The UCOLA and gain-sharing enhancements received before repeal remain in place. Core benefits are unaffected.

Gain-sharing and the UCOLA were costly mistakes. Now they’ve been corrected. In the future, legislators should avoid similar enhancements. No political or fiscal good comes from them. And the court should allow the Legislature’s correction to stand.

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