

## **SUMMARY OF JUDGE FLINN'S RULING DEC. 17, 2013**

Contra Costa Superior Court Judge David Flinn issued a "Tentative Combined Decision" on Tuesday, December 17, 2013 in the DSA v. CCCERA, et. al. coordinated lawsuits challenging AB 197's applicability to members who were hired prior to January 1, 2013.

### **Vested Rights**

In his decision, Judge Flinn concluded the post-*Ventura* settlement agreement in Alameda County, which applied to both retired and active employees, did not expressly authorize "spiking of pension benefits by selling back multiple years of accrued vacation time." Judge Flinn interpreted the settlement agreement as being consistent with *Ventura*. To the extent ACERA was reading it to authorize the inclusion of leave time accrued from periods other than the final compensation period, Judge Flinn concluded ACERA was misinterpreting the agreement. Therefore, Judge Flinn concluded the settlement agreement should be enforced consistent with the law both before and after AB 197. Judge Flinn concluded there was no vested contract rights impaired by AB 197.

Additionally, Judge Flinn concluded the court record with stipulated facts did not support a the petitioners' position that ACERA's member publications handbooks created any *implied* contract right to continue receiving past accrued leave in members' benefit calculations. Judge Flinn concluded the language of the materials submitted by the petitioners contradicted the claim of any implied right to have more leave than could be earned in a single year included in the pension calculation.

### **Equitable Estoppel**

After concluding there was no impairment of vested contract rights, Judge Flinn considered the argument, out of equity and fairness, petitioners had relied on what they had been told over the years, and were injured because of it. Judge Flinn concluded that if the four factors "equitable estoppel" were satisfied, it may be appropriate to prevent the retirement boards from imposing AB 197 on current active members who will retire in the future.

Judge Flinn reviewed the stipulated court record and considered whether these four factors were met: (1) were the retirement boards apprised of the facts; (2) did the retirement boards intend their conduct to be acted on; (3) were the members ignorant of the true state of the facts; and (4) did the members rely upon the boards' conduct to their injury.

Judge Flinn concluded that the petitioners in the CCCERA and Merced cases had established through the evidence submitted that in those counties, there are members hired prior to January 1, 2013 who can establish all four of the above factors. Judge Flinn did not point to any such evidence having been submitted by the Alameda petitioners, and is notably silent on whether the right to equitable estoppel was proven for ACERA members.

Judge Flinn concluded there was evidence in the stipulated court record to rely on in finding certain CCCERA and MCERA active members understandably relied on what they had been told by their retirement systems would be counted towards their retirement benefits, and under a very narrow line of cases found that the retirement boards could be prevented/estopped from applying the leave cash-out exclusions of AB 197 to such members. The “injury” he recognized was suffered by “those persons who did, prior to the enactment of AB 197, accumulate vacation beyond the amount that when cashed out will be in excess of the amount that, using a first-in-first-out (FIFO) calculation, will still be allowed as ‘compensation earnable. Reliance by other persons is far too speculative to qualify as ‘injury’ under the estoppel doctrine.”

In other words: If before January 1, 2013, a member accrued leave in excess of what AB 197 has defined as “compensation earnable,” when the member retires in the future, s/he will be able to count as much of that accumulated “bank” of leave as remains (after first deducting all leave used or cashed out between January 1, 2013 and the date of retirement) in the manner that the retirement board was calculating it before AB 197. By applying the accounting FIFO method to the use of leave in the future, Judge Flinn may be intending to cause members to drain their accumulated leave bank the longer they remain in active service and take leave time off or the equivalent cash value.

The impact of this ruling in Contra Costa and Merced essentially will be to maximize the value of the “legacy” method in those counties for calculating retirement allowances for those who retire sooner than later. The value will diminish over time as members take leave as time off or in cash in their future years before retirement. *The impact in Alameda County, however, is quite uncertain, because the Court made no findings or conclusions as to ACERA members’ claims to “equitable estoppel.”*

### **Standby and On-Call Pay**

Judge Flinn also addressed the question of whether compensation for services “outside of normal working hours” may be included in “compensation earnable.” He concluded the retirement boards are tasked with making these determinations, and are limited to using the rules provided by statute. Since the boards had not yet made determinations to be objected to, Judge Flinn concluded request for judicial intervention and relief at this stage was premature.

### **Exclusions for Enhanced Benefits**

Finally, Judge Flinn considered petitioners claim that AB 197’s mandate that the boards determine whether specific compensation has been paid to enhance retirement benefits would violate their vested contract rights. Judge Flinn ruled, if and when the boards took action, the petitioners may seek the Court’s interpretation of such actions.

Judge Flinn has granted the parties the opportunity to object to, seek clarification of and otherwise remark on his tentative decision by January 27, 2014. The parties will then present their positions orally in court on February 11, 2014.