

## **Appellate Court affirms removal of future increased pension payments to Countryside police officers**

In September, an Illinois Appellate Court agreed with a lower court ruling that pension payments based on calculating an additional payment to longtime police officers in the City of Countryside were illegal, and that the City was entitled to reduce payments to a properly calculable amount moving forward.

In 2002, the City began including a "longevity benefit" of \$850 to police officers who had served on the police force for more than 20 years. A "side letter" agreement was signed by the attorneys for the Countryside Police Department and the Fraternal Order of Police, which stated that an officer who took the \$850 benefit would have their benefits multiplied over each pay period for the purpose of calculating their pension benefits. This led to pension payments, according to actuarial assumptions, that were approximately \$20,000 higher than what the officer was actually earning before retirement. A Countryside officer's monthly pension payment is meant to be 75 percent of their base salary before retirement. Several officers relied upon the pension agreement.

In 2010, both the City's and Pension Board's attorneys separately asked the Illinois Department of Insurance for advice as to the legality of the payment. The Department opined that, instead of multiplying the amount over 24 annual pay periods, the \$850 should be prorated to determine a monthly equivalent for pension payment purposes. This result would have translated to a lesser amount in pension payments for the officers.

The City brought suit against the police union and the pension board, asking the Court to declare the current pension benefit calculations illegal and for them to be modified to fit the Department of Insurance's standard, as just an \$850 salary bump. The Circuit Court, and then the Appellate Court, agreed that the Department of Insurance's interpretation of the Pension Code should be granted deference, and granted judgment for the City. The Appellate Court affirmed that the side letter agreement was invalid because it was neither signed by the appropriate City representatives, nor was it included in any of the City's collective bargaining agreements with the union.

The Appellate Court dismissed a number of defenses argued by the union. Most notably, the union argued that the City's transition to the Department of Insurance's interpretation of the pension payment structure would violate the Illinois Constitution's prohibition on diminishing the pension benefits of public employees. The Court dismissed this argument. A public employer, the Court said, could not take away benefits that did not legally exist in the first place. The retirees could only bargain for benefits allowed for by law. The City's seeking to take action to bring the payment structure into compliance with the Insurance Code, the Court said, is not a diminishment of pension benefits in violation of the Illinois Constitution.

The Appellate Court stressed however that retirees would not have to pay back money already vested to them due to the side agreement. The Court made clear that the change to the payment structure, as articulated by the Department of Insurance, would be prospective, and not be done retroactively. This decision will have a clear impact on plans to enhance pension benefits at the time to retirement – referring to so-called pension spikes. Accordingly such plans need to be carefully reviewed in light of this decision.

ASHER, GITTLER & D'ALBA, LTD.  
200 West Jackson Boulevard, Suite 720  
Chicago, IL 60606 – 312.263.1500

© 2018 Asher, Gittler & D'Alba, Ltd.  
All rights reserved.  
Dated: November 29, 2018

This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

U.S. News & Report's Best Law Firms Designation is for Chicago Tier 1 rankings in Employment Law (Individuals), Labor Law (Union), and Litigation (Labor and Employment) and a National Tier 2 ranking in Litigation (Labor and Employment).

