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July 2010

The California Court of Appeal sheds light on the scope of and the deference given to a county's definitions of grade or class of positions under California Government Code section 31461 for the purposes of calculating an employee's retirement benefits.

A County's Failure to Define "Grade or Class of Positions" May Undermine Ability to Meet Retirement Funding Obligations

By Michael A. Gregg and Muizz Rafique

Many county employees receive retirement benefits under a retirement system established pursuant to the County Employees Retirement Law of 1937 (CERL).¹ The pension amount an employee receives is based in part on the employee's "compensation earnable." "Compensation earnable" is defined in Government Code Section 31461 as "the average compensation . . . for the period under consideration upon the basis of the average number of days ordinarily worked by the persons in the same grade or class of positions during the period, and the same rate of pay." In *Stevenson v. Board of Retirement of the Orange County Employees' Retirement System*, a former narcotics investigator alleged that the Orange County Employees Retirement System (OCERS) erred by excluding from his "compensation earnable" the overtime he, along with other narcotics investigators, was required to work in connection with narcotics investigations. The court affirmed the trial court's decision that the overtime worked by the plaintiff was properly excluded from his "compensation earnable" and sought to clarify the proper scope of a retiree's "grade or class of positions" within the meaning of Government Code section 31461.

Factual and Procedural Background

Plaintiff Robert Stevenson began his career with the Orange County Sheriff's Department in November 1986 as a deputy sheriff. After a series of promotions, he worked as an investigator with the narcotics bureau until June 2001, when he was seriously injured and began the process of applying for disability retirement. As a narcotics investigator, Stevenson was regularly scheduled to work from 8:00 a.m. to 7:00 pm. and was required to be available to work overtime when necessary to complete ongoing investigations. According to Stevenson, he worked 20 or more hours of overtime each week.

During Stevenson's employment, the County of Orange and the peace officer association had entered into two different memoranda of understanding (collectively,

“the MOUs”). Each of the MOUs identified the following as the “[c]lasses included in the Peace Officer Unit”: (1) deputy sheriff I; (2) deputy sheriff II; (3) deputy sheriff trainee; (4) investigator; and (5) investigator-polygraph operator.

After Stevenson received his disability retirement allowance, he challenged the OCERS’s calculation. He argued that OCERS failed to consider “narcotics investigators” as a grade or class under CERL and therefore improperly excluded from his compensation earnable the overtime he and other narcotics investigators were required to work to complete ongoing investigations. For example, because opportunities to set up controlled buys with informants often occurred late-night, Stevenson had to be available by pager 24-hours a day.

OCERS’s manager of member services conducted an independent review of Stevenson’s claim and found that the exclusion of his overtime pay from his compensation earnable was proper. Stevenson then sought review from OCERS’s chief executive officer. The chief executive officer agreed with OCERS’s original calculation and noted that the overtime worked by Stevenson was incidental and not routine. The chief executive officer further explained that a resolution passed by the OCERS Board excludes from compensation earnable calculation overtime wages that are neither mandatory nor “ordinarily worked by others in the same pay grade or class.” Stevenson appealed to the OCERS Board, which upheld the staff’s decision. Stevenson then appealed the OCERS Board’s decision by requesting an administrative hearing.

The referee assigned to conduct the administrative hearing cited to OCERS Board resolution, the classifications listed in the MOUs, and the language of Government Code section 31461. The referee concluded that Stevenson’s overtime compensation should not be included in his compensation earnable because Stevenson’s grade or class under CERL was that of the class of “investigators” and not of a subgroup comprised of “narcotics investigators.” The OCERS Board adopted the referee’s recommendation. Stevenson then filed a petition for writ of administrative mandate challenging the decision of the OCERS Board. Stevenson’s petition was denied by the trial court and Stevenson appealed.

The Court’s Analysis Regarding “Grade or Class of Positions”

The court began its analysis regarding the meaning of “grade or class of positions” by recognizing that any “ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute.”²

The court noted that “[n]either section 31461 nor any other section of the CERL defines ‘grade or class of positions’ for the purposes of determining an employee’s compensation earnable.”³ However, the court emphasized that the use of the plural term “positions” in section 31461 to modify grade or class “strongly suggest[s] that a particular grade or class is not limited to one specific type of position but might encompass more than one type of position.”

The court gave particular weight to the MOUs and other documentary evidence effected through resolutions made by the board of supervisors because, pursuant to Government Code section 25300, the Legislature delegated to each county’s board of supervisors the power to “prescribe the compensation of all county officers and . . . provide for the number, compensation, tenure, appointment and conditions of employment of county employees.”

The court found it compelling that the MOUs identified five classes of positions within the peace officer unit but narcotics investigator was not identified as a grade or class of positions. Second, the court reviewed information on the County’s website identifying and defining the classification of “investigator” and noted that there was no dispute that the investigator duties accurately described Stevenson’s position as a narcotics investigator. Finally, the court reviewed an alphabetical listing of all class titles in the county as contained on the county’s website. While the listing included “Investigator 1” and “Investigator,” it did not identify narcotics investigator as a separate class.

The court did not find persuasive the fact that the record contained testimonial evidence showing that Stevenson specialized within

the class of investigator by specifically investigating narcotics and generally shared the same types of duties and responsibilities and worked the same hours as other narcotics investigators:

[T]he Legislature did not define or otherwise intend the phrase ‘grade or class of positions’ to consist of the smallest unit of workers who have the most in common as to duties, responsibilities, and schedule. Imposing such a specialized and perhaps also transient analysis, without regard to the county’s determination of classes of positions might undermine “the ability of the county to anticipate and meet its funding obligation” which would be in contravention of legislative intent.⁴

Conclusion

The *Stevenson* decision suggests that in determining the proper scope of a retiree’s “grade or class of positions” under CERL, courts should give particular weight to evidence effected through resolution made by a county’s board of supervisors because the Legislature vested the board of supervisors with the power to prescribe the terms and conditions of employment for county employees. At the same time, the court said that the class of positions reflected in the MOUs, which were effected through board resolution, was not dispositive in determining the grade or class of positions under CERL. Thus, *Stevenson* leaves unanswered the full scope of evidence courts should consider in determining a retiree’s grade or class of positions under CERL and the weight that should be given to such evidence. It is also unclear whether the court would have reached the same result if the county’s website listed narcotics investigator as a class title in contradiction to the MOUs. Thus, counties offering retirement benefits pursuant to the CERL should ensure that their “grade or class of positions” are specifically defined and provide procedures for modifying such grades or classes of positions.

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¹ Cal. Gov’t Code §§ 31450 et seq.

² *Ventura County Deputy Sheriffs’ Ass’n. v. Board of Retirement*, 16 Cal. 4th 483, 490 (1997).

³ *Id.* at 493 (finding section 31461 unclear as to the meaning of the phrases “remuneration paid in cash” and “average compensation”).

⁴ *Id.* at 490.