

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MICHAEL ARKEN, DALE CANNON, ROBYN)
CARRICO, CAROL YOUNG, JOHN HAWKINS,)
LESLIE HUNTER, RICK MULLINS, S.M.)
RUONALA, PATRICIA THOMPSON WESTOVER,)
and MYRNA WILLIAMS, et al.,)

Case No. 0601-00536

Plaintiffs,)

v.)

CITY OF PORTLAND, WESTERN OREGON)
UNIVERSITY, PORTLAND SCHOOL DISTRICT,)
CITY OF GRESHAM, LINN COUNTY,)
UNIVERSITY OF OREGON, PORTLAND)
COMMUNITY COLLEGE, MULTNOMAH)
COUNTY, CENTRAL SCHOOL DISTRICT 13J,)
FOREST GROVE SCHOOL DISTRICT #15, and)
PUBLIC EMPLOYEES RETIREMENT BOARD,)

Defendants.)

**OPINION AND
ORDERS IN
RELATED PERS
CASES**

RUTH ROBINSON, GERALD BUTTON, NORMAN)
FABIAN, BECKY HANSON, RENE REULET,)
LINDA GRAY, LAREN FERRELL, STUART)
GILLET, ROBERT PEARSON, GARY REESE,)
BRUCE JOHNSON, et al.,)

Case No. 0605-04584

Petitioners,)

v.)

PUBLIC EMPLOYEES RETIREMENT BOARD)
and STATE OF OREGON,)

Respondents.)

These cases, filed as putative class actions just months apart, came for separate hearing before the court last year. While these cases have not been consolidated and have not gone through class determination, they present important related issues concerning the Oregon Public Employees Retirement System (“PERS”), in particular arising out of the significant 2003 PERS legislation. For that reason, the motions argued and heard in both cases are being decided together in this Opinion and Orders, which shall be filed in both cases.

The Parties and Their Lawyers

Each of the plaintiffs in *Arken* and the petitioners in *Robinson* is what is called a Tier One member of PERS (someone who joined PERS before January 1, 1996) and who retired between April 1, 2000 and April 1, 2004. These plaintiffs and petitioners seek to represent classes of an estimated 38,000 similarly-situated Tier One retirees. The *Arken* plaintiffs are represented by Gregory A. Hartman and Aruna A. Masih of their attorneys. The *Robinson* petitioners were represented by Gene B. Mechanic and Jennifer Marston of their attorneys (and now are represented by James S. Coon).

The Public Employees Retirement Board (“PERB”), which under Oregon law administers PERS, is a defendant in *Arken* and a respondent in *Robinson*. PERB is represented by Joseph M. Malkin, Leah L. Spero and Townsend Hyatt of its attorneys.

Western Oregon University and University of Oregon are defendants in *Arken* who employed one or more of the *Arken* plaintiffs and are referred to herein as the “State

Defendants.” The State of Oregon is a respondent in *Robinson*. These parties are represented by Stephen S. Walters and Jeremy D. Sacks of their attorneys.

City of Portland, Portland School District, City of Gresham, Linn County, Portland Community College, Multnomah County, Central School District 13J and Forest Grove School District #15 are defendants in *Arken* who employed one or more of the *Arken* plaintiffs and are referred to herein as the “Non-State Defendants.” These parties are represented by William F. Gary of their attorneys.

All counsel ably presented their clients’ positions and arguments. The court cannot help but to defer to the deep knowledge and understanding of the significant history and issues possessed by Mr. Hartman and Mr. Gary in particular and in conjunction with other counsel, gained through long-standing and distinct involvement in the key political and legal events which bring the parties to their current disputes. Still, it has taken the court a long time to process the issues and publish this decision, especially in light of ongoing conflicts with pending criminal, family and civil law trials.

The Other PERS Decisions and The Likely Appeal in This Case

There have been several significant decisions concerning the 2003 PERS legislation by Oregon’s state and federal appellate courts over the past two years. In this decision, the court has deleted what was a lengthy (but ultimately unnecessary) review of those cases. Instead, the court assumes the reader’s general familiarity with the discussions and holdings in *Strunk v. PERB*, 338 Or 145, 108 P3d 1058 (2005)

(“*Strunk*”), *on atty. fees*, 341 Or 175, 139 P3d 956 (2006); *City of Eugene v. PERB*, 339 Or 113, 117 P3d 1001(2005) (“*City of Eugene*”), *on recon.*, 341 Or 120, 137 P3d 1288 (2006); and *Robertson v. Kulongoski*, 466 F3d 1114 (9th Cir 2006).

This court fairly anticipates an appeal from this decision as well. Contrary to the issues presented in *Strunk* and *City of Eugene*, appellate or original jurisdiction over the determination of the issues presented in these PERS cases was not conferred directly or exclusively on the Supreme Court under Oregon Laws 2003, chapter 625, sections 17 and 17a, or Oregon Laws 2003, chapter 537, section 1. Therefore, any appeal from any final judgment following this decision will go directly to the Court of Appeals under ORS 2.516 or, to the extent necessary and appropriate, via the certification process applicable to class actions under ORS 19.225 and ORAP 10.05.¹

In the event of any such appeal in these cases, this court respectfully urges the Court of Appeals to certify the appeal to the Supreme Court under ORS 19.405 and ORAP 10.10 for the very reasons the 2003 Legislative Assembly conferred original or exclusive jurisdiction on the Supreme Court for other appeals regarding the 2003 PERS

¹ This court is aware both that the Court of Appeals has issued an unpublished order apparently holding that certification under ORS 19.225 is not available to a case filed as a class action but where no class has been certified and that the Supreme Court has allowed review of that order. *Joant v. AutoZone, Inc.*, CA A131776 (July 19, 2006), *rev allowed*, 342 Or 253 (2006). This court believes that, otherwise and meanwhile, any ORS 19.225 certification process in these cases would be governed by the rules set out in *Pearson v. Philip Morris, Inc.*, 208 Or App 501, 503-14,145 P3d 298 (2006), and *Shea v. Chicago Pneumatic Tool Co.*, 164 Or App 198, 203-205, 990 P2d 912 (1999), *rev denied*, 330 Or 252 (2000).

legislation, as referred to in *Strunk*, 338 Or at 151 and 155, and *City of Eugene*, 339 Or at 117 n1.

The PERB's Decision at Issue in These Cases

On January 27, 2006, PERB issued its “Order Adopting Repayment Methods” (“Order”). It is written simply and straightforwardly, so instead of summarizing it the court sets out the text of the Order in its entirety:

This matter came before the Board at its regularly scheduled meeting on January 27, 2006. As a result of Oregon Supreme Court decisions in *Strunk v. PERB*, 338 Or 145, 108 P3d 1058 (2005), and *City of Eugene v. PERB*, 339 Or 113, 117 P3d 1001 (2005), and the settlement agreement between the parties in the latter case, the Board previously determined that the earnings on Tier One member regular accounts for 1999 should be reallocated at an earnings rate of 11.33 percent, instead of the 20 percent rate that originally was used. That reallocation, together with the effect of eliminating the so-called “COLA freeze”² as required by *Strunk*, results in a recalculation of benefit payments made to persons who had Tier One member regular accounts that received earnings crediting for 1999. This recalculation will affect Tier One members who retired on or after April 1, 2000, and before April 1, 2004, other persons who received or are receiving benefits based on those 1999 Tier One account balances, and former members or beneficiaries who withdrew their accounts prior to the earnings reallocation (referred to collectively as “recipients” hereafter). These recipients have received benefits in excess of the amounts they were entitled to under ORS chapter 238.

ORS 238.715 requires the Board to collect amounts paid in excess of the benefit amounts recipient is entitled to under ORS chapter 238. ORS 238.715 provides several methods by which the Board may recover such overpayments, but does not require the Board to make all of the methods available in every case.

IT IS HEREBY ORDERED that each recipient who, based on the decisions in *Strunk* and *City of Eugene*, including the settlement agreement in the latter case,

² COLA = Cost of Living Adjustment. *Strunk*, 338 Or at 154.

has received benefits in excess of amounts that the recipient is entitled to under ORS chapter 238, shall repay the amounts overpaid using one of the following methods:

1. Each recipient shall repay the amounts overpaid in a single lump sum unless the recipient is receiving monthly payments.
2. Any recipient receiving a monthly payment will repay the overpaid amounts by actuarial reduction of their monthly payment pursuant to ORS 238.715(1)(b), unless the recipient elects to repay the overpaid amount in a lump sum by paying that amount within the time allowed in the explanation to be provided to the recipient by PERS.
3. If a recipient is due a payment from PERS other than a monthly payment, the amount overpaid shall be deducted from the recipient's next payment and subsequent payments, if any, until the amount overpaid is recovered.³

The Parties' Claims and Defenses

In their Amended and Supplemental Complaint, the *Arken* plaintiffs bring their First and Second Claims for Relief against the State and Non-State Defendants for Breach of Contract and Wage Claim, contending that the employers have breached the pension contracts by withholding COLAs and pursuing collection under the Order. In their Third and Fourth Claims for Relief, the *Arken* plaintiffs seek judicial review of the Order and an injunction against the enforcement of the Order. In its answer, PERB asserts in substance that the methods for recovery are neither arbitrary nor capricious; that the plaintiffs lack standing; that it acted in accordance with the law; that the plaintiffs' claims are barred by

³ The text of the Order is copied from: http://www.oregon.gov/PERS/MEM/docs/strunk_eugene/boardorder.pdf (last visited on June 1, 2007).

the doctrines of res judicata and/or collateral estoppel; that it acted within its lawful discretion; that any breach is excused by the defenses of illegality, impossibility and/or impracticability; that it acted with reasonable cause; and that it discharged any duty it owed to the plaintiffs. In their answers, the State and Non-State Defendants assert in substance that the plaintiffs have not been damaged by their conduct; that they acted reasonably, in good faith and in accordance with the law; that the plaintiffs' claims are barred by the doctrines of res judicata and/or collateral estoppel; that the plaintiffs lack standing; that they are excused by the defenses of illegality, impossibility and/or impracticability; and that they discharged any duty they owed to the plaintiffs.

In their petition, the *Robinson* petitioners bring two related claims for relief concerning the Order. They seek a declaration that the Order is unenforceable and invalid and an injunction prohibiting PERB from collecting any erroneously paid benefits except as permitted by Oregon Laws 2003, Chapter 67, Section 14b(1)(b). In its answer, PERB asserts in substance that the methods for recovery are neither arbitrary nor capricious; that the petitioners lack standing; that it acted in good faith and did not violate Oregon law; that the petitioners' claims are barred by the doctrines of res judicata and/or collateral estoppel; and that any reduction in benefits was made within its discretionary and/or rule-making powers.⁴

⁴ The court could not locate an answer filed by the State of Oregon in the *Robinson* case. However, as the State joined in PERB's motion for summary judgment and in PERB's opposition to the petitioners' motion for summary judgment, the court presumes that the interests of PERB and the State are fully aligned in *Robinson*.

(continued...)

The Motions Presented for Decision

Before the court for hearing and decision are the following motions, first in *Arken*: Plaintiffs' Motion for Summary Judgment, which seeks summary judgment in their favor on Count One of their First Claim for Relief (breach of contract) and on their Second Claim for Relief (wage claim); PERB's Cross-Motion for Summary Judgment, which seeks summary judgment in its favor on all claims for relief; and Non-State Defendants' Cross-Motion for Summary Judgment, which seeks summary judgment in their favor on all claims for relief. And in *Robinson*: Petitioners' Motion for Partial Summary Judgment, which seeks summary judgment in their favor on their petition (to set aside a PERB order); and PERB's Cross-Motion for Summary Judgment, which seeks summary judgment in its favor against the petition.⁵

The Controlling Statutes

⁴(...continued)

⁵ In *Robinson*, PERB argued that the petitioners' petition was filed late and therefore should be denied without consideration of its merits. The court rejected that argument without much discussion on the record. In support of its decision, the court cites to *Hawes v. State of Oregon*, 203 Or App 255, 262-69, 125 P3d 778 (2005), and *Pangle v. Bend-LaPine School District*, 169 Or App 376, 382-85, 10 P3d 275 (2000), *rev den*, 332 Or 558 (2001).

ORS 238.715 Recovery of overpayments; rules. (1) If the Public Employees Retirement Board determines that a member of the Public Employees Retirement System or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter and ORS chapter 238A, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment; or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous

payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was not caused by the system or by a participating public employer, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the system in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than \$50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section.

Oregon Laws 2003, Chapter 67, Section 14b. (1) If the Public Employees Retirement Board is required to correct one or more of the erroneous benefit calculation methods identified in *City of Eugene et al. v. State of Oregon*, Case Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the board shall recover the cost of benefits erroneously paid to retired members as a result of those erroneous benefit calculations by one or both of the following methods:

(a) The board may withhold cost of living increases under ORS 238.360 from a retired member whose benefit is greater than the correctly calculated benefit of the

member until such time as the member's benefit is equal to the correctly calculated benefit.

(b) The board may treat all or part of the present value of the benefits erroneously paid and payable to retired members as a result of the erroneous benefit calculations as an administrative expense of the Public Employees Retirement System, to be paid exclusively from future income of the Public Employees Retirement Fund, and to be amortized over an actuarially reasonable period not to exceed 15 years.

(2) In no event may the cost of erroneous benefit calculation methods identified in *City of Eugene et al. v. State of Oregon* be considered an employer liability or charged to employers through employer contributions.

The Controlling Issue

While each party makes numerous arguments for or against the various claims and defenses, there is a single question of law which this court concludes is both controlling and dispositive:

In enacting the 2003 PERS reform legislation, did the Legislative Assembly intend to limit the methods by which PERB could recover amounts determined to have been paid in error to the two methods set out in Oregon Laws 2003, Chapter 67, Section 14b, and thereby prevent PERB from utilizing the methods for recovery set out in ORS 238.715?

If the answer is “yes,” then PERB’s Order is invalid, unenforceable and possibly a breach of contract, and the result is that the overpayments will be treated as administrative

expenses to be borne remaining and future PERS members. If the answer is “no,” then PERB’s Order is valid, enforceable and not a breach of contract, and the result is that the overpayments will be recouped from the retirees who received them.

In answering the question, this court’s role is not to decide which alternative result is better public policy or more fair to one or another group of retirees or PERS members. Instead, the court must determine the legislature’s intent as guided by both statutory and case law.

Pertinent Principles of Statutory Construction

ORS 174.010 General rule for construction of statutes. In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

ORS 174.020 Legislative intent; general and particular provisions; consideration of legislative history. (1)(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.

(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.

(2) When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.

(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.⁶

“ * * * When interpreting a statute, this court must discern and give effect to the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We begin by considering the text and context of the statute in question. *Id.* at 610-11. We give ‘words of common usage their plain, natural, and ordinary meaning[,]’ and ‘[w]ords that have a well-defined legal meaning are given that meaning.’ *Norden v. Water Resources Dept.*, 329 Or 641, 645, 996 P2d 958 (2000). Statutory context ‘includes other provisions of the same statute and other related statutes, as well as the preexisting common law and the statutory framework within which the law was enacted[.]’ *Denton and Denton*, 326 Or 236, 241, 951 P2d 693 (1998) (internal citations omitted). Finally, the ‘use of the same term throughout a statute indicates that the term has the same meaning throughout

the statute[.]’ *PGE*, 317 Or at 611 (internal citation omitted). If, upon an analysis of text and context, the legislature's intent is clear, we proceed no further. *Id.*” *Atkinson v. Board of Parole*, 341 Or 382, 387, 143 P3d 538 (2006) (footnote omitted).

“ * * * As part of the text and context, the court includes consideration of its own prior interpretations of the statute. * * * *” *Davis v. O’Brien*, 320 Or 729, 741, 891 P2d 1307 (1995).

Discussion

⁶ The application of ORS 174.020 has been problematic. *See State v. Rodriguez-Barrerra*, 213 Or App 56, 60-62, ___ P3d ___ (2007) (reviewing cases). As Judge Landau concluded, it seems best to allow the parties to offer legislative history but not to allow that legislative history to “alter the unambiguous meaning of a statute.” *Id.* at 62.

The parties argue that the statutes are unambiguous and support each side's position. The parties offer legislative history to demonstrate the correctness of their opposite positions. This court concludes, rather easily, that the statutory language is not so clear as to be unambiguous as to its intent and that legislative history is both helpful and necessary to decide the important legal issues.

What is clear is that the people who caused the enactment of Section 14b had one complete understanding: they firmly believed that nothing they were doing would result in requiring the PERS members who retired between April 1, 2000 and April 1, 2004 to have to pay the money back if it was determined that they received erroneous payments. This is supported most persuasively by the written testimony of Mr. Gary before the Senate General Government Committee for that committee's consideration on May 7, 2003, when it moved the bill to the floor, one day before the bill was debated in and passed by the Senate:

"Thirdly, Section 14b authorizes the PERS Board to recover the costs of complying with the judgment in the *City of Eugene* case by one of two methods: treating the cost as an administrative expense to be paid out of future fund earnings, or withholding COLAs from benefitted retirees. The court in the *City of Eugene* case identified a number of errors that the PERS Board made in administering the retirement system and told the board that it could not charge the costs of those errors to the employers. Section 14b provides two alternative methods for paying those costs. They can be recovered through a COLA adjustment or they can be recovered from future earnings. Either alternative is less drastic than the only remedy provided in current PERS statutes, which is to recover benefit overpayments from the retired members. *See* ORS 238.715."⁷

⁷ This written testimony was marked as Exhibit D to the Minutes of the Senate Committee on General Government, May 7, 2003, and is attached as Exhibit 12 to the

(continued...)

It is this explanation of the bill which echoes throughout the floor debates on May 8, 2003, which resulted in the passage of the bill in the Senate, and on May 9, 2003, which resulted in the passage of the bill in the House:

“In the case of retirees who retire between 2004 and 2004, they will forego their COLAs. As a matter of simple fairness, House Bill 2003 provides that people whose retirement benefits were inflated upon retirement as a result of that over-crediting, will forego the annual cost-of-living adjustment until their proper benefit catches up the elevated benefit that they already receive.

“Finally, House Bill 2003 gives the PERS Board the tools it needs to correct the errors that the court identified in *City of Eugene v. State of Oregon*, better known as the Lipscomb decision. The remedies presented by this Bill will only take effect if the PERS Board is ordered to implement that decision.”

“Fourth, they applied the language that specifies that the crediting limitations that are placed on Tier 1 members for the purposes of recovering the over-crediting that occurred in 1999 do not apply to members who retire April 1, 2004.”⁸

This also is consistent with the original and continuing desire and intent of the Governor, who demanded that any bill he sign would not reduce the benefits of people who have already retired. *See* The Governor’s Standards for Public Pension Reform, Exhibit 6 to the Declaration of Gene Mechanic in *Robinson*, at page 2.⁹

⁷(...continued)
Declaration of Gene Mechanic in *Robinson*.

⁸ Comments of Senator Corcoran followed by Representative Knopp, attached as Exhibits 14 (at pages 3-4) and 15 (at page 2) to the Declaration of Gene Mechanic in *Robinson*.

⁹ The various comments by various legislators and legislative counsel proffered by the defense simply lack the force and effect of the above statements, especially as they mostly involved earlier versions of the bill which later became law.

The legislators and governor were faced with what seemed like insurmountable legal and financial problems and could not possibly have predicted how the Supreme Court would decide the *Strunk* and *City of Eugene* cases. They did their best to set up a legislative structure which would permit PERS to survive the differing potential outcomes and to be as fair as possible to the affected retirees, while not punishing the employers who at that point had prevailed in the early stages of *City of Eugene*. They knew that one of the results might be that remaining and future PERS members would bear the cost of overpayments and they chose the administrative expense and COLA freeze options to implement that result. The purpose for Section 14b came into being upon the Supreme Court rulings and now has to be implemented, just as foreseen by its drafters.

It is true that the Supreme Court in *Strunk* did not discuss much less rule on the meaning or scope of the COLA freeze option in Section 14b(1)(a). However, it is plain to this court that, if the Supreme Court were to deal with that question, it would decide that the COLA freeze option in Section 14b(1)(a) is no different than the COLA freeze option it held was illegal in *Strunk* and would hold accordingly. Therefore, this court concludes as a matter of law that the only option available to PERB is to treat the overpayments as administrative expenses under Section 14b(1)(b).

The foregoing discussion and conclusions mandate that this court rule in favor of the *Arken* plaintiffs on their Third and Fourth Claims for Relief and for the *Robinson* petitioners on their two claims for relief and against the defendants in *Arken* and the respondents in *Robinson* on all defenses relating to those claims for relief.

Without discussion, the court rules against the *Arken* plaintiffs on their Second Claim for Relief (Wage Claim) and in favor of the *Arken* defendants for the grounds stated by the *Arken* defendants, without reaching the affirmative defenses.

Without discussion, the court concludes that the *Arken* plaintiffs' First Claim for Relief (Breach of Contract), without reaching the affirmative defenses, is moot in light of the rulings on the Third and Fourth Claims for Relief.

Orders

The parties' cross-motions for summary judgment are granted in part and denied in part as stated above. The court declares that the PERB's Order Adopting Repayment Methods dated January 27, 2006, is invalid and unenforceable as a matter of law. The court enjoins the *Arken* defendants and the *Robinson* respondents from seeking to enforce

the Order in any way and further to account for and restore any funds collected from or charged to retirees pursuant to the Order as if they had never been collected or charged.

Dated June 20, 2007.

Henry Kantor
Circuit Court Judge

cc: Gregory A. Hartman/Aruna A. Masih
Gene B. Mechanic
Jennifer Marston
James S. Coon
William F. Gary
Joseph M. Malkin/Leah L. Spero
Townshend Hyatt
Stephen S. Walters/Jeremy D. Sacks