

FILED
Superior Court of California
County of Los Angeles

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SEP 13 2013

Sherri R. Carter, Executive Officer/Clerk
By N. DiGiambattista Deputy

Los Angeles City Attorneys Association,)
Petitioner,)

Case No. BS135294

v.)

City of Los Angeles, et al.,)
Respondent.)

Decision and Order
Granting Writ of Mandate

Petitioner Los Angeles City Attorneys Association ("LACAA" or "Petitioner") and Intervenor Engineers & Architects Association ("Intervenor") seek a writ of mandate commanding Respondent City of Los Angeles ("City" or "Respondent") and Real Party in Interest Board of the Los Angeles City Employees Retirement System to establish the maximum retiree health subsidy for each of Petitioner's and Intervenor's members and former members without regard to Ordinance Number 181746 ("freeze ordinance"), or in the alternative, staying enforcement of Ordinance Number 181746 against Petitioner's and Intervenor's members and former members. In addition, Petitioner and Intervenor seek an order declaring that Ordinance Number 181746 impairs the contractual obligations of Respondent to provide a fully funded and/or substantial retiree medical premium plan subsidy, which is a vested right of the affected employees.

The matter was argued and submitted on September 12, 2013. After reading and considering the pleadings and the parties' briefs, the Court renders the following decision and order:

Evidentiary and Other Objections

Pursuant to California Rules of Court rule 3.1113, the Court does not consider Respondent City's April 23, 2013 memorandum in response to Petitioner's and Intervenor's reply briefs. The City did not obtain permission from the Court to file a sur-reply or an additional memorandum in response to the parties' reply briefs. In addition, the Court finds that the reply briefs have not raised issues or presented evidence on matters that were not considered in the opening and opposition briefs.

Pursuant to the Court's instructions, the parties submitted a Joint Submission of Revised Objections. The City's objections to Petitioner's evidence were attached as Attachment A and Petitioner's objections to the City's evidence were attached as Attachment B. The Court overrules objection numbers 1-3, 5-8, 12, and 14 in Attachment A. The Court sustains objection numbers 4, 9-11, and 13 in Attachment A. The Court overrules objection numbers 2, 3, 6, 7, and 12 in Attachment B. The Court sustains objection numbers 1, 4, 5, and 8-11 in Attachment B.

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Requests for Judicial Notice

The Court grants Respondent City's request for judicial notice of Exhibits A-EE.

The Court grants Petitioner's request for judicial notice 1-23. In addition, the Court grants Petitioner's request for judicial notice 1-3 in support of the reply.

Evidence Code section 452(b) provides that the Court may take judicial notice of "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." Pursuant to Evidence Code section 452(c), the Court may also take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." "Official acts include records, reports and orders of administrative agencies." Rodas v. Spiegel, (2001) 87 Cal.App.4th 513, 518.

Statement of the Case

1. Legislative Enactments Establishing LACERS and the Medical Subsidy

Section 1150 of the City Charter established the Los Angeles City Employees' Retirement System ("LACERS") for officers and employees of the City of Los Angeles. Respondent's RJN Exhibit B. According to the City Charter, "[t]he benefits of the System's Plan shall be adopted by ordinance in accordance with Section 1168 of this Part 1 and shall be set forth in the City Administrative Code." Id. Section 1168(b) of the City Charter, entitled "Limitation on Council Authority to Increase or Modify Benefits," states that the City Council "may, by an ordinance adopted pursuant to the requirements contained in subsection (a) modify or add to the benefits set forth in the Administrative Code or change conditions of entitlement. However, the Council may not increase or modify benefits if doing so would violate limitations imposed by federal or state law." Id. Finally, Section 1162 of the City Charter notes that "[e]ach Member shall contribute to the System by salary deduction at the rate of contribution established by ordinance." Id.

Chapter 11 Article 3 section 4.1103 of the Los Angeles Administrative Code was added by Ordinance No. 145067, effective October 8, 1973. Respondent's RJN Exhibit C. Section 4.1103 of the Los Angeles Administrative Code provides that "[t]he medical plan premium subsidy and administrative costs will be provided solely by the Los Angeles City Employees' Retirement Fund . . . in order to lessen or defray part or all of the cost of such medical plan to such eligible employee."

Los Angeles Administrative Code section 4.1103.2 outlines the amount of medical subsidy an eligible retired employee can receive based on a number of factors that include, *inter alia*, the number of years of City service, the employee's eligibility to receive Part A and Part B Medicare benefits, and the date of the employee's retirement. For example, Los Angeles Administrative Code section 4.1103.2 defines the "Basic Monthly Subsidy" as available to an employee who has 10 years of City service, allowing that employee to receive 40% of the maximum monthly medical plan premium subsidy amount determined by the City Council or the frozen subsidy amount (whichever is applicable). Similarly, retired employees with more than 10 years of City

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service are entitled to an "Additional Monthly Subsidy," which adds a monthly subsidy of 4% to the Basic Monthly Subsidy for each whole year of City Service in excess of 10 years. Id.

2. Administration and Funding of the Medical Subsidy System

LACERS administers the retirement benefits for un-sworn City employees. Hsi Decl. ¶ 4. Each year, Respondent City undergoes separate actuarial valuations for its pension and retiree health benefits to determine Respondent City's liabilities for each. Id. ¶ 8. After the actuary has determined Respondent City's liabilities for pension and retiree health care benefits, the actuary determines Respondent City's contributions for each, which is expressed as a percentage of payroll. Id. ¶ 11. Employees of Respondent City contribute 7% of their pay to their pension benefits. Id. ¶ 13. Until 2011, employees only contributed their pay toward their pension benefits; Respondent City funded the health care benefits. Id.

Pursuant to Los Angeles Administrative Code section 4.1103.1, the Board of Administration of the Los Angeles City Employees' Retirement System ("Board"), in its discretion, may change by resolution the maximum monthly amount of the medical plan premium subsidy provided to members who retired on or before June 30, 2011, as long as any increase:

- (1) does not exceed the dollar increase in the Kaiser two-party non-Medicare Part A and Part B premium; and
- (2) the average percentage increase for the first year of the increase and the preceding two years does not exceed the average assumed actuarial medical trend rates for the same period.

Each year, LACERS follows a process to set the maximum monthly amount of the medical plan premium subsidy. Payne Decl. ¶ 4. First, LACERS staff negotiates premiums with its medical insurance carriers for the upcoming year. Id. ¶ 5. Second, LACERS determines the increase in the Kaiser two-party non-Medicare premium (the "Kaiser rate") and determines whether the Kaiser increase is within the limits of the Board's discretion under Los Angeles Administrative Code section 4.1103.1 by comparing the average of the increase in the Kaiser rate for the plan year under consideration and the preceding two plan years with the average of the medical trend rates for the same time period. Id. The medical trend rates are obtained from the yearly actuarial valuation by the LACERS outside actuary. Id. After LACERS staff determines the amount, if any, that the Board may increase the maximum monthly amount of the medical plan premium subsidy, the Board considers the options presented by LACERS staff and determines whether to increase the subsidy. Id. ¶¶ 6-8.

The Board has not always exercised its discretion to increase the maximum monthly amount of the medical plan premium subsidy so that it is indexed to increases in the Kaiser rate. Since 2001, the Board has approved an increase that was less than the Kaiser rate increase four times (2001, 2004, 2005, and 2007). Payne Decl. ¶ 9. However, the Court notes that since 2002 the Board has consistently increased the maximum monthly amount of the medical plan premium subsidy:

July 23, 2002

\$872

| | |
|--------------------|----------------------|
| August 12, 2003 | \$883 |
| August 9, 2005 | \$928 |
| September 12, 2006 | \$983 |
| August 28, 2007 | \$1,022 |
| September 9, 2008 | \$1,120 |
| September 8, 2009 | \$1,123 |
| September 14, 2010 | \$1190 |
| August 28, 2012 | \$1,367 ¹ |

LACAA 1698-1728. In the vast majority of the foregoing years, the amount of the medical plan subsidy has also usually covered all or substantially all of the cost of the Kaiser Two-Party Plan, which covers a retiree and one dependent. Id.

Since 1987, Respondent City has pre-funded retiree health benefits. LACAA 464. An assumption that medical trend rates and medical inflation is built into the Annual Required Contribution during Respondent City's calculations for pre-funding retiree health benefits. LACAA 466-68; Peters Decl. ¶ 17. The theory behind pre-funding is to have the benefits partially funded by investment income, instead of being purely paid from City and member contributions. LACAA 466; Hsi Decl. ¶ 22. The amount of the contribution required changes over time depending on the results of annual actuarial valuations conducted by Respondent City. Hsi Decl. ¶ 22.

The Court notes that LACERS has informed its members that the subsidy may or may not be sufficient to cover the premium cost of an employee's chosen medical plan and that the amount of the subsidy may change each year. Payne Decl. Exhibits F-H. However, LACERS did inform its members that if an employee worked full-time for Respondent City for at least 25 years, the employee would receive 100% of the maximum subsidy. Id. Exhibits F, G.

3. The Freeze Ordinance and Subsequent Legislative Amendments

On June 3, 2011, Ordinance number 181734 was approved, amending section 4.1031.2 of the Los Angeles Administrative Code: effective July 1, 2011, covered employees are required to contribute 4% to the retirement fund in exchange for the benefit set forth in section 4.1103.4. Respondent's RJN Exhibit I. Under section 4.1103.4, employees who made the additional 4% contribution pursuant to section 4.1031.2 "shall obtain a vested right to, and the board by resolution shall set, the increase in the maximum medical plan subsidy provided to such members at an amount not less than the dollar increase in the Kaiser two-party non-Medicare Part A and Part B premium." Id.

On June 14, 2011, Ordinance number 181746, the so-called freeze ordinance, was approved, amending sections 4.1103.1, 4.1103.2, 4.1106, and 4.1107 of the Los Angeles Administrative Code: members who did not contribute the additional 4% and retired after June 30, 2011, would receive a maximum monthly medical plan premium subsidy capped at \$1,190 and no increases to the maximum subsidy would be provided. Respondent's RJN Exhibit J. For members retiring

¹ For eligible employees who retired prior to July 1, 2011 or eligible employees who retired after June 30, 2011 and made additional contributions to LACERS.

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on or before June 30, 2011, these retirees would be eligible to receive increases to the maximum subsidy by Board resolution so long as any increase “does not exceed the dollar increase in the Kaiser two-party non-Medicare Part A and Part B premium” and “the average percentage increase for the first year of the increase and the preceding two years does not exceed the average assumed actuarial medical trend rates for the same period.” Id.

4. Allegations by Petitioner and Intervenor

Petitioner filed the verified Petition with the Court on March 8, 2012. It alleges causes of action for (1) writ of mandate; (2) declaratory relief; (3) injunctive relief; and (4) promissory estoppel. Petitioner asserts that since the adoption of the freeze ordinance, LACAA’s members are subject to the frozen retiree health subsidy because it rejected the economic concessions sought by Respondent City. Petition ¶¶ 10, 38.

On November 13, 2012, Intervenor Engineers & Architects Association (“EAA”) filed a Complaint in Intervention, incorporating the allegations of Petitioner LACAA’s Petition. Complaint in Intervention ¶ 3. Intervenor EAA claims an interest in the instant litigation because EAA represents an employee representation unit of City employees (“Unit 31”), which is governed by a Memorandum of Understanding between EAA and the City that is substantially identical to the MOU governing the terms and conditions of Petitioner’s members. Davies Decl. ¶¶ 2, 3.

On September 12, 2013, the parties argued their respective positions and the matter was submitted.

Summary of the Law

Code of Civil Procedure section 1085(a) provides in relevant part:

A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. California Ass’n for Health Services at Home v. Department of Health Services, 148 Cal.App.4th 696, 704 (2007). “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy ...” Pomona Police Officers’ Ass’n v. City of Pomona, 58 Cal.App.4th 578, 583-84 (1997).

A writ of traditional mandate will lie only “to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust or station,” or to correct an abuse of

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discretion. Wasko v. Department of Corrections, 221 Cal. App. 3d 996, 1000 (1989); Saleeby v. State Bar of California, 39 Cal. 3d 547, 562 (1985).

Under Code of Civil Procedure section 1085, if the function of this Court is to decide a question of law, the applicable standard of review is *de novo*. Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd., 181 Cal. App. 4th 915, 919 (2010); Burden v. Snowden, 2 Cal. 4th 556, 562 (1992).

“A ‘ministerial duty [or act]’ is one generally imposed upon a person in public office who, by virtue of that position, is obligated ‘to perform in a prescribed manner required by law when a given state of facts exists.’” City of King City v. Community Bank of Central California, 131 Cal.App.4th 913, 926 (2005)(internal citations omitted); Kavanaugh v. West Sonoma County Union High School Dist., 29 Cal.4th 911, 916 (2003)(defining a ministerial act).

“Where the duty in question is not ministerial, mandate relief is unavailable unless the petitioner can demonstrate an abuse of discretion.” Mooney v. Garcia, 207 Cal.App.4th 229, 235 (2012). “In determining . . . whether an abuse of discretion has occurred, a court may not substitute its judgment for that of the administrative board . . . and if reasonable minds may disagree as to the wisdom of the board’s action, its determination must be upheld.” Manjares v. Newton, 64 Cal.2d 365, 370-71 (1966)(internal citations omitted).

The Court considers whether an agency has “abused its discretion, namely, whether its decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.” Khan v. Los Angeles City Employees’ Retirement System, 187 Cal.App.4th 98, 106 (2010).

“[T]he petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085.” California Correctional Peace Officers Assn. v. State Personnel Bd., 10 Cal.4th 1133, 1154 (1995).

Analysis

Petitioner LACAA asserts that the City unconstitutionally impaired a contractual obligation to Petitioner’s members because a maximum medical plan premium subsidy is a vested right. Petitioner LACAA argues that the right to the maximum subsidy vested upon employment and the freeze ordinance impairs that vested right such that the impairment is not reasonable or necessary for a legitimate public purpose. In addition, Petitioner argues that even if it does not have a contractual right to the maximum subsidy, promissory estoppel entitles Petitioner to the maximum subsidy.

Intervenor EAA argues that a vested right exists to a retiree medical subsidy indexed to the medical trend rate through an implied promise for continued retiree medical benefits. Alternatively, Intervenor EAA asserts that the freeze ordinance violates a basic, vested right to a substantial or reasonable retirement benefit. Finally, Intervenor EAA adopts Petitioner’s promissory estoppel arguments.

In opposition to Petitioner LACAA's opening brief, the City argues that the law does not recognize a vested right in conflict with the express provisions of the City Charter, which expressly reserves the City's right to change the conditions of entitlement to the subsidy. Similarly, the City maintains that its City's discretion in choosing whether or not to increase the subsidy, and the City's discretion in selecting the amount of any increase, preclude the creation of a vested right or implied promise to perpetual increases to the subsidy.

In opposition to Intervenor EAA's opening brief, the City contends that the discretionary terms of the reservation of rights precludes an implied promise to a perpetually increasing subsidy. In addition, Respondent argues that the extrinsic evidence proffered by Intervenor EAA provides no basis for the finding of a vested right to a perpetually increasing medical premium subsidy. Furthermore, the City asserts that there is no absolute right to a substantial or reasonable retirement benefit but only to benefits authorized by law. Finally, the City maintains that the freeze ordinance is reasonable and necessary for a legitimate public purpose. The City also contends that Intervenor EAA's claim for promissory estoppel should be denied because the City never promised perpetual increases to the subsidy.

These contentions are discussed below.

1. Whether there is a Vested Right to a Medical Subsidy

As a threshold matter, the Court must consider whether Petitioner LACAA and Intervenor EAA have a vested right to a medical subsidy before determining whether Petitioner and Intervenor have a vested right to a perpetually increasing subsidy or a subsidy that is indexed to the medical trend rate.

“[T]he law does not recognize implied [contract terms that are at variance with the terms of the contract as expressly agreed or as prescribed by statute.” Retired Employees Assn. of Orange County, Inc. v. County of Orange, (2011) 52 Cal.4th 1171, 1181. “[A]s a general matter, implied terms should never be read to vary express terms.” Carma Developers (Cal.), Inc. v. Marathon Development California, Inc., (1992) 2 Cal.4th 342, 374. Instead, the California Supreme Court noted that:

The judicial determination whether a particular resolution was intended to create private contractual or vested rights or merely to declare a policy to be pursued until the legislative body shall ordain otherwise requires sensitivity to “the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the [governmental body]. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body.” “Thus, it is presumed that a statutory scheme is not intended to create private contractual or vested rights and a person who asserts the creation of a contract with the state has the burden of overcoming that presumption.”

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Retired Employees Assn. of Orange County, Inc. v. County of Orange, (2011) 52 Cal.4th 1171, 1186 (internal citations omitted). “[W]e conclude generally that legislation in California may be said to create contractual rights when the statutory language or circumstances accompanying its passage ‘clearly ‘... evince a legislative intent to create private rights of a contractual nature enforceable against the [governmental body].’” *Id.* 1187. Indeed, the California Supreme Court affirmed that “[i]n California law, a legislative intent to grant contractual rights can be implied from a statute if it contains an unambiguous element of exchange of consideration by a private party for consideration offered by the state.” *Id.* 1186. “The requirement of a ‘clear showing’ that legislation was intended to create the asserted contractual obligation should ensure that neither the governing body nor the public will be blindsided by unexpected obligations.” *Id.* 1188-89 (internal citation omitted).

Here, the Court finds that Section 4.1103 of the Los Angeles Administrative Code evinces a clear legislative intent to create private contractual rights in the provision of a medical subsidy that covers all or part of the cost of an employee’s medical plan. Section 4.1103 of the Los Angeles Administrative Code provides that “[t]he medical plan premium subsidy and administrative costs will be provided solely by the Los Angeles City Employees’ Retirement Fund . . . in order to lessen or defray part or all of the cost of such medical plan to such eligible employee.” The statutory language is clear—the medical plan premium subsidy “*will be provided.*” Los Angeles Administrative Code section 4.1103 (emphasis added). This demonstrates a clear commitment on the part of the City and LACERS to provide a medical subsidy.

Indeed, under the requirements of Retired Employees Assn. of Orange County, Inc. v. County of Orange, there is an unambiguous element of exchange of consideration by a private party for the consideration offered by the state. Los Angeles Administrative Code section 4.1103.2 defines the “Eligibility for a Retired Employee Medical Plan Premium Subsidy.” In exchange for the provision of a medical premium subsidy, employees become eligible to receive such a subsidy only after providing Respondent City with a minimum of 10 years of City service and being at least 55 years-old or older.

In short, the Court finds that Los Angeles Administrative Code section 4.1103.2 creates a vested right in a medical subsidy that covers part or all of the cost of a medical plan to eligible employees. The Court notes that such a determination results in neither the governing body (Respondent City) nor the public being blindsided by unexpected obligations. The City Charter clearly contemplates a system of providing retiree benefits and Los Angeles Administrative Code clearly provides for a medical premium subsidy on the part of the City in exchange for a minimum of 10 years of City service, among other requirements, for an eligible employee to receive a medical premium subsidy. The City’s reservation of rights to set the precise amount of the medical premium subsidy does not operate to defeat the finding that its employees have a vested right to a medical premium subsidy in the first place.

Furthermore, like the pension rights in Betts v. Board of Administration, the vested right to a medical premium subsidy vested upon the acceptance of employment. In Betts, the California Supreme Court determined that “a public employee’s pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of

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employment. (1978) 21 Cal.3d 859, 863. "The employee does not obtain, prior to retirement, any absolute right to fixed or specific benefits, but only to a 'substantial or reasonable pension.'" *Id.* "Health insurance and other fringe benefits are 'compensation, terms, conditions, or privileges of employment.'" Newport News Shipbuilding and Dry Dock Co. v. E.E.O.C., (1983) 462 U.S. 669, 682. "Group insurance coverage is an element of the employees' compensation and fringe benefit package negotiated through the collective bargaining process . . . which are a form of additional compensation to them." Metropolitan Life Ins. Co. v. State Bd. of Equalization, (1982) 32 Cal.3d 649, 661. "[P]ublic employees do not have a vested right to be paid any amount other than that which it is promised they will be paid." Harris v. Bloodgood, (1982) 132 Cal.App.3d 477, 482.

2. Whether there is a Vested Right to a Perpetually Increasing Subsidy or a Subsidy that is Indexed to the Medical Trend Rate

The Court next determines whether Petitioner LACAA and Intervenor EAA have a vested right to a perpetually increasing subsidy or a subsidy that is indexed to the medical trend rate.

a. *Reservation of Rights*

Section 1168(b) of the City Charter states that the City Council "may, by an ordinance adopted pursuant to the requirements contained in subsection (a) *modify or add to the benefits* set forth in the Administrative Code *or change conditions of entitlement*. However, the Council may not increase or modify benefits if doing so would violate limitations imposed by federal or state law." Respondent's RJN Exhibit B (emphasis added). Pursuant to Los Angeles Administrative Code section 4.1103.1, the Board, in its discretion, may change by resolution the maximum monthly amount of the medical plan premium subsidy provided to members.

In the instant case, the Court finds that Section 1168(b) of the City Charter and Los Angeles Administrative Code section 4.1103.1 provide the Board and Respondent City with discretion to set the amount of the medical premium subsidy. Under Section 1168(b) of the City Charter, the City Council may modify or add to the benefits or change conditions of entitlement. Similarly, Los Angeles Administrative Code section 4.1103.1 provides the Board with the discretion to set the maximum monthly amount of the medical plan premium subsidy provided to members. It is immaterial that the foregoing reservation of rights do not include the terms "repeal" or "limit." According to the plain language in the City Charter and Los Angeles Administrative Code, the Board and the City Council have discretion to determine the amount of the medical subsidy.

The Court rejects Petitioner's and Intervenor's argument that they have a vested right to a perpetually increasing subsidy or a subsidy that is indexed to the medical trend rate. Neither the City Charter nor the Los Angeles Administrative Code requires the Board to perpetually increase the subsidy, index the subsidy to the medical trend rate, or set the subsidy at a particular amount. Instead, because discretion was reserved in the hands of the Board and City Council, Petitioner and Intervenor do not have a vested right in a particular amount of a medical subsidy or a particular result upon the Board's exercise of its discretion. "The employee does not obtain, prior to retirement, any absolute right to fixed or specific benefits." Betts v. Board of Administration, (1978) 21 Cal.3d 859, 863.

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b. *Extrinsic Evidence*

As Respondent City argues, prefunding is not evidence that the City legally committed itself to perpetual increases of the medical insurance premium subsidy. Instead, the City did so out of a recognition that the amount of the subsidy may rise in the future and the subsidy along with it, should it exercise its discretion to increase the subsidy. Such financial planning does not demonstrate a vested right to a perpetually increasing subsidy but rather reflects prudent financial practice on the part of the City. Similarly, letters from actuaries and statements from City executives regarding their opinions on the goals, historical practices, and assumptions about increasing the amount of the subsidy are unavailing. These statements fail to demonstrate a clear and binding legislative intent on the part of the City to provide a perpetually increasing medical premium subsidy.

Intervenor EAA argues that the formula for calculating the amount of the subsidy in Los Angeles Administrative Code section 4.1103.1 also demonstrates an intent for the medical premium subsidy to keep pace with inflation and the rising costs of medical coverage. The Court disagrees. While Los Angeles Administrative Code section 4.1103.1 does limit the increase of the subsidy so that any increase does not exceed current costs of the Kaiser rate, this merely represents an upper limit on the subsidy and does not represent a legislative commitment to a perpetually increasing subsidy. Instead, Los Angeles Administrative Code section 4.1103.1 specifically vests discretion with the Board for any increases to the medical premium subsidy. Such discretion to determine whether the maximum subsidy should increase or decrease or not change at all is not extrinsic evidence of a commitment to a perpetually increasing medical premium subsidy.

3. Whether the Freeze Ordinance Constitutes an Impermissible Impairment of a Vested Contractual Obligation

Respondent City attempts to distinguish Intervenor's reliance on Betts v. Board of Administration by asserting that the line of cases cited by Intervenor already found a vested right to a particular benefit. This attempt to distinguish Betts is unavailing because the Court has already determined that there is a vested right in a medical premium subsidy covering all or part of the cost of medical coverage. Accordingly, Betts v. Board of Administration and Allen v. City of Long Beach, which both considered whether there was an impermissible impairment of a vested right, are controlling as discussed below.

a. Betts v. Board of Administration

As discussed in Betts v. Board of Administration, (1978) 21 Cal.3d 859, 862, Betts served as Treasurer of the State of California from 1959 to 1967 and sought a writ of mandate directing the Board of Administration of the Public Employees' Retirement System to compute his retirement benefit on the basis of the salary payable to the present Treasurer, rather than on the basis of the highest salary received by Betts during his term of office. In 1974, after Betts had left office but before his retirement and application for benefits, the legislature changed the method of benefit computation by amending Government Code section 9350, *et seq.* Id. The effect of the 1974

