



# SAN DIEGO CITY ATTORNEY JAN I. GOLDSMITH

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## NEWS RELEASE

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### **San Diego Achieves Major Court Win on DROP**

In a major court decision released today, the U.S. Court of Appeals ruled decisively for the City of San Diego that Deferred Retirement Option Program {"DROP"} salary is not a vested right subject to protection of the Contracts Clause of the Constitution. The Court also ruled that the City's retiree medical benefits are not vested rights protected by the Contracts Clause. In the case of San Diego Police Officers Association v. City of San Diego, where the Association challenged changes to DROP and retiree health imposed by the City Council, the Court stated that the Association suffered "a total loss on the merits".

The Court stated: "We hold that DROP salary is not a vested right subject to the protection of the Contracts Clause". Significantly, the Court also found that consideration of DROP members as "retired" is a "legal fiction" and that they are, in fact, "subject to all other terms and conditions of employment." A vote of members under Charter section 143.1 is not required to change terms of employment, only retirement benefits.

In explaining its decision on DROP, the Court stated:

"...any contractual rights that Association members have to DROP benefits is **contingent** upon the salary amounts that they contribute and does not save them from having to establish a vested contractual right in that salary." [emphasis added]

"...DROP members are considered as 'retired'—a legal fiction—only for purposes of calculation of pension benefits, while they remain subject to all other terms and conditions of employment, including disciplinary actions up to and including termination. Termination by its very nature

would reduce a member's DROP 'salary' to zero and is specifically authorized by the terms of the members' MOU."

In explaining its decision on retiree medical, the Court stated:

"[The City] presented evidence showing that retiree medical benefits here were considered a term of employment that could be negotiated through the collective bargaining process. As such, they were longevity-based benefits that continued only in-so-far as they were renegotiated as part of a new agreement and were not protectable contract rights."

"We believe this decision is well-reasoned and based upon the law," stated City Attorney Jan Goldsmith. "This decision supports our legal position that DROP and retiree medical are not vested rights and that they can be modified or eliminated without a vote of the members. We also understand the City's obligation to meet and confer and negotiate in good faith. While we must assert the City's rights, we respect the rights of employees and hope that we can come together to work through these issues."

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