

Grimm v. City of San Diego,
34 Cal.App.2d 514 (1979)

“Thus, while it is the function of the [Pension] Board to act upon individual cases, the city council has been conferred with the authority to control the Board’s activities by ‘general ordinances’”

San Diego City Charter

Article IX, The Retirement of Employees

Section 143. Contributions

“The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount. . . .”

San Diego City Charter

Article IX, The Retirement of Employees

Section 143. Contributions

“The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employees.”

Proposition H

Amend Section 143 of Article IX of the San Diego Charter

(THIS PROPOSITION WILL APPEAR ON THE BALLOT IN THE FOLLOWING FORM)

<p>PROPOSITION H. Amend Section 143 of Article IX of the Charter of The City of San Diego. This amendment provides that any retirement system authorized by the Council shall be based upon a contributory plan, with the City contributing equally with the employees for normal allowances, and authorizes the employees to receive additional benefits at higher rates of contribution; except in the case of financial liabilities accruing under a new or revised retirement plan because of past service of the employees, the City is not obligated to contribute more than that necessary for normal allowances.</p>	58,239 YES	X
	23,808 NO	

City Employee Pension Plans On Primary Ballot Explained

City employes are anxiously awaiting the fate of three propositions up for a vote in Tuesday's primary election.

The propositions are G, H and I. Each amends a section of the City Charter to pave the way for a general overhaul of the city employe retirement system.

If the voters approve all three, then the City Council can adopt an ordinance to put the plan into effect without a hitch.

Half Pay After 30 Years

Basically, it would provide half-pay pensions after 30 years service for employes retiring at age 62, lift the lid on salary levels and maximum benefits and raise employe contributions about 30 per cent.

Under the present setup the maximum pension is \$150 with a salary ceiling of \$300.

Retire at 55

It would also allow employes, other than police, firemen and lifeguards, to retire at 55 under reduced benefits.

The plan covers police and firemen hired since June 30, 1946 and gives police, firemen and fulltime lifeguards the right to retire with full benefits at 55, and with reduced benefits at 50.

It calls for a compulsory retirement age of 65 instead of the present 72, but allows a department head to continue an employe past that age at his own discretion.

Cost to City

Cost for the city would run around \$516,326 a year, according to actuaries. Under the present plan the city is contributing \$602,182.

But, if the voters don't approve all three measures, the revision plan isn't necessarily dead.

The voters could knock out either G or I or both, says Shelley Higgins, assistant city attorney, and the revision could still go through.

But, Higgins pointed out, a turndown on Proposition H would probably be the death blow to employe hopes.

Proposition H

Proposition H provides that the initial cost of implementing the revised system can be paid by the city. After that the city and employes share equally in contributions.

Here's the situation on Propo-

sition H as explained by Higgins:

To activate the new system the city will have to pay about \$40,000 a year for 30 years.

Pay Lump Sum

If it falls at the polls, each employe now covered who wanted to join the new system would have to pay a lump sum sufficient to cover the period he would have to serve before retirement to make up for the higher benefits.

And that lump sum would probably be so high, says Higgins, that most employes couldn't afford to join.

As for Proposition G, a turndown wouldn't be too drastic. It would tilt the actuarial charts and require some more figuring, but the main issue here is this:

New Age Level

It puts into effect a new age level for retirement comparable to the state system.

Proposition I could go either way, says Higgins, without crippling the retirement system.

Actually, it protects employes from any arbitrary change in their basic retirement system by the City Council.

A majority vote of all active employes (those on the

retired list have no voice) covered in the system would be necessary for any change affecting benefits.

Affirms Courts

And it merely affirms, says Higgins, in charter language what is now being enforced in the courts on pension systems.

The Supreme Court has held that cities can't arbitrarily change the basic plan of a pension system. Long Beach tried to several years ago, Higgins pointed out, and that led to the court test and ruling.

But city employes want the amendment written into the charter to avoid any court fights or conflict in the future from what they called political action by a new council.

What Happens

Now suppose the charter amendments come through on Tuesday. Here's what happens:

An ordinance is drafted and the council is poised to introduce it possibly by Thursday.

One item remains to be ironed out. That's the five-year base period for setting the pension.

The plan calls for the last five and employes want it pegged on the highest five.

Indications are that the council will switch to the highest five and introduce the ordinance on Thursday.

Proposition H

Proposition H provides that the initial cost of implementing the revised system can be paid by the city. After that the city and employes share equally in contributions.

Montgomery v. Board of Admin. of City Employees’ Retirement System of San Diego, 34 Cal.App.2d 514 (1939)

“[Charter section 146] ...gives no authority to pass any enactment that conflicts with the charter provisions . . . we must hold that it is only an ordinance that puts into effect charter provisions that is to have the same force and effect as though a part of and included in the charter; that the section [146] does not empower the city council to pass any ordinance conflicting with the charter or that may have the effect of amending it.

* * *

If section 146 of the charter must be construed as giving authority to the city council . . . by ordinance to add or subtract from the charter provisions . . . it must be held to be unconstitutional as attempting to permit the amendment of the charter in an unauthorized manner.”

February 25, 2010
Manatt Legal Opinion

“The current ordinance Section 24.0801 regarding City contributions also covers ‘all deficiencies’ indicating that all accrued liabilities not covered by existing valuation assets or expected future normal cost contributions must be included in the City’s contribution.”

San Diego Municipal Code
Article 4: City Employees' Retirement System
Division 8: City's Contribution

§24.0801 City's Contribution

Effective July 26, 2004, based upon the advice of the Actuary, the Board separately determines and adopts, the City's employer contributions for General Members, Safety Members and Elected Officers. All deficiencies that occur due to the adoption of any Retirement Ordinances must be amortized over a period of thirty years or less.

February 25, 2010
Manatt Legal Opinion

“The fact that the City’s obligation to pay off all system liabilities not covered by other contributions was built into the City Employees Retirement System from its inception gives rise to a vested right in the membership. See *Association of Blue Collar Workers v. Wills*, 187 Cal.App.3d 780 (1986).”

Association of Blue Collar Workers v. Wills,
187 Cal.App.3d 780 (1986)

“The operative language is instructive and nearly identical in both sections. The city is responsible to make contributions for all amounts necessary to fund current and past service liability for all pensions and ‘*all other benefits* allowable under the retirement system.’ (Italics added.)

* * *

We hold that the past unfunded liability of the Fresno City COLA system was made the city’s obligation by ordinance.”

Bellus v. City of Eureka,
69 Cal.2d 336 (1968)

“Section 10 of the ordinance requires the City to contribute a sum ‘not less than’ that contributed by the employees....

* * *

We recognize that the City will not be so obligated if the pension plan which it adopts, either in the ordinance itself or the statutory scheme which it incorporates, clearly and explicitly limits its liability to the fund which the pension plan establishes.”

Int'l Ass'n of Firefighters v. City of San Diego,
34 Cal.3d 292 (1983)

“Prior to the 1978 rate increase, City’s contributions to the system were more than twice as large as safety members’; after that increase, City still contributes approximately one and one-half times as much as such members. It is apparent that this shift thus merely makes City’s contribution more “substantially equal” to that of the members, as City’s retirement system requires. That system provides both the authority and the mechanism to revise members’ rates

Change in contribution is implicit in the operation of City’s system and is expressly authorized by that system and no vested right is impaired by effecting such change. In this essential regard, City’s retirement system differs from those described in the authorities relied upon by plaintiff, and its reliance thereon is misplaced.”