

Summary Judgment Hearing Update

The state has a contract with state and local government retirees to provide them an annual increase in pensions and the Legislature's reduction of that adjustment was an unconstitutional move that must be overturned, an attorney for a group of retirees told a district judge Tuesday.

"We're talking about a guaranteed, permanent benefit," Helena lawyer Leo Berry said during arguments in a lawsuit over lawmakers' 2013 decision to slash the 3 percent yearly increase to 1 percent.

The increase was promised to employees from their first day of work and many made life-altering decisions to retire based on the state's commitment to provide the annual increase, Berry told Judge Jim Reynolds before a courtroom packed with retirees.

He said the reduction substantially impaired the state's contract with employees and retirees and was neither reasonable nor necessary.

Assistant Attorney General J. Stuart Segrest argued that the state's contract to pay pension benefits to retirees does not include the annual increase, known as a guaranteed annual benefit adjustment, or GABA.

"There is no contractual promise of a permanent increase for retirees," he said.

Reynolds seemed to disagree, saying the GABA appears to be part of the permanent monthly benefit that is established as a contract with employees from their first day on the job. "You sign someone up to work for you and you tell them 3 percent is part of their retirement," he said.

When Segrest suggested the judge may be interpreting the law with a conservative or liberal bent, Reynolds said, "I'm not trying to read it conservatively or liberally; I'm trying to read it accurately."

Both sides agreed that the threshold issue is whether GABA is part of the contract the state has with retirees regarding their retirement benefits. If not, the claim by the Association of Montana Retired Public Employees that the Legislature unconstitutionally impaired its contract with retirees would fail.

If the judge concludes GABA is part of the state's contractual obligation, he must then decide whether the reduction is a "substantial impairment" of that contract and whether such impairment was reasonable and necessary.

Berry, representing the association, said the GABA reduction takes \$697 million from thousands of retirees and that amounts to a very substantial impact. State officials have made repeated statements to employees and retirees indicating they could count on the annual increase, prompting those people to rightfully expect their monthly pensions would rise by 3 percent a year, he said.

Berry argued that the GABA cut was not necessary because other financial adjustments made by the 2013 Legislature to improve the Public Employees Retirement System were enough to restore it to sound financial footing. The Legislature also had many other options for sources of money rather than targeting retirees, he said.

Reynolds expressed concern about being asked to second-guess the Legislature's choices for addressing the retirement system's financial needs. Chad Adams, Berry's colleague, said the judge does not have to do that; he need only fulfill the judiciary's obligation to determine the constitutionality of a law.

Segrest contended GABA does not become part of the retirement contract with employees and retirees until the increase is actually applied each year to pensions. He said the GABA cut is not a substantial impairment of any contract since frequent changes in the law put employees and retirees on notice that a 3 percent GABA cannot be relied upon to be permanent.

Segrest said that, even though the financial condition of the retirement system has improved substantially in the past two years due to healthy investment returns, the Legislature was not wrong in 2013 to include a GABA reduction as part of its repair efforts.

Judge Reynolds indicated he would try to issue a ruling while the Legislative Session was still in progress in case they felt some other action needed to be taken. Meanwhile, an injunction he issued 13 months ago remains in place and allows the 3 percent annual increases to occur.