

Court hears suit over State retiree benefits

by **Jan Anderson**, editor
“It should be in Montana your word is your bond,” attorney Chad Adams told District Judge James Reynolds during oral arguments in Helena January 13.

The Association of Retired Montana Public Employees, represented in court by Adams and colleague Leo Berry, sued the State of Montana to stop implementation of a portion of a bill adopted by the 2013 Montana Legislature. That bill would reduce a three percent GABA (guaranteed annual benefit adjustment) to one percent for all employees, including those already retired.

Adams and Berry urged Reynolds to restore the GABA to the former level.

That factor is important to the 20,000 retired state employees who left their jobs at the end of their careers relying on the promises they had received, they told the court. It was a contract the state has an obligation to honor, they said.

Berry shared the tale of a woman who worked for 32 years as a kitchen aide at the Warm Springs State Hospital. She was told the adjustment was “guaranteed and “not subject to the whims of the market,” he said.

Then, with the interest return on pension funds very low, jeopardizing the longterm actuarial stability of the retirement system, the legislature adopted revisions in the retirement system which reduced the GABA.

For the retired Warm Springs kitchen aide, that could mean she is forced to go back to work again at the age of 72, said Berry.

Representing the state, Assistant Attorney General J. Stuart Segrest told the court the base benefit is guaranteed but “there is no contractual promise of a permanent increase for retirees.”

The legislature benefitted the retirees by making sure the retirement system was stable into the future, he maintained. The Montana Constitution requires the legislature to keep the retirement system actuarially sound, he noted.

Montana’s Constitution also requires the state to honor its contracts, said Berry.

The reduction in the GABA for retirees would take about \$700 million from retirees, said Berry. He also argued that the savings were not necessary, since the retirement system is now actuarially sound even though the court stayed the change in the GABA pending a ruling. The change has not been enforced, but the retirement system balances as required, he said.

Berry said the 2013 legislators told him the already retired state employees had to lose GABA funds to “have some skin in the game.”

“Well, the retirees not only have some skin in the game, they’ve got their whole hide in the game, and maybe some body parts, too,” said Berry.

The linchpin of the lawsuit, said the state’s attorney Segrest, is whether a permanent GABA is part of a contract. It is not, he contended.

The only permanent part of the GABA, maintained Segrest, is retroactive. The gains already given cannot be taken away, but future gains can certainly be

My take: Why it matters to all of us

by **Jan Anderson**, editor

Picture this: I tell you that you are hired and money will go toward your retirement beginning the first day you work for me. Every year I reassure you that your retirement is secure. I tell you in writing a “guaranteed annual benefit adjustment” (GABA) is part of your retirement. I increase that GABA from 1 1/2 percent to three percent. I tell you in writing that your benefit will never be jeopardized by the investment market.

You retire after double checking with me for one last assurance. Yes, your retirement is safe and here is what you can expect to get, I tell you.

After years and years of satisfactory service, you retire.

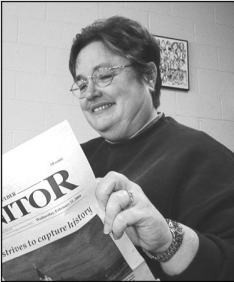
Then I tell you, “Oops, sorry. But I don’t have enough money. You won’t be getting that 3 percent guaranteed annual benefit adjustment after all. Take one percent instead.”

And, as a final blow, I go before a judge and say that withdrawing the GABA wasn’t any benefit for me. I completely ignore the value of the work I got from you, in part by dangling those retirement promises.

That, in essence, is what the State of Montana has done on behalf of all of us. And the retirees have sued.

Readers should know that I am not impartial on this issue. I have a vested interest. My husband is a State of Montana retiree affected by what the state has done. But I would like to think I would consider it unfair even without that. Treating the employees who work for the state in such a way jeopardizes the quality of employees we will be able to attract to serve us in the future.

We urge readers to learn more about the case and a similar one filed by members of the Teacher’s Retirement System and pay attention to the court rulings and legislative action, if any.



Jan Anderson

changed by legislative action, he maintained.

He also said the \$700 million was of no benefit to the state since the money can only be spent on retirement benefits. That money will make a difference down the road for retirees but not the state, he argued.

Judge Reynolds responded by saying if the adjustment made by the legislature had applied only to prospective employees, “I don’t think we would be here.”

Segrest urged the judge to read the relevant statutes conservatively rather than liberally.

“I’m not trying to read either liberally or conservatively,” replied the judge. “I’m trying to

read it accurately.”

Judge Reynolds also asked about promises made to retirees through the state agency Montana Public Employee Retirement Administration publications. “Are you telling me employees should not be able to rely on MPERA statements?” asked Judge Reynolds. “There’s a lot of documents out there.”

Reynolds questioned both sides about the ability of one legislature to bind future legislatures and about applying information available now on the stability of the retirement system to the decisions of the 2013 legislature when that information was not available.

At the heart of the case, however, said the judge, is whether

there was a contract with employees that included the GABA or simply a policy subject to legislative change. He noted that “permanent monthly benefit” is part of the language used when the GABA was originally adopted.

Reynolds took the case under advisement, saying he would try to rule as quickly as possible so that the current legislature could act if necessary. Until his ruling, the stay on the reduction of the GABA remains in effect.

He noted that a similar lawsuit by members of the Teacher’s Retirement System is also under consideration in a different district court and set for a hearing in mid-February.