



FDSA

FRESNO DEPUTY SHERIFF'S ASSOCIATION

First CA On-Duty Death of 2014

I am sad to report the month of January started off with a Line of Duty Death (LODD) out of the Bay Area Rapid Transit (BART PD). Sergeant Tom Smith Jr., a 20 year veteran, was killed during a probation search/arrest warrant. Sgt. Smith was killed by friendly fire. The details are still very preliminary as to what occurred at the time of the search that resulted in Sgt. Smith's death. The suspect the officers were searching for had been in custody for over a week.

We pray for Sgt. Smith's family that is left to grieve for him during this extremely difficult time.

Pension Debate in California

As we continue to crawl ever so slowly and cautiously out of this recession, public employees are still being blamed for a lot of California's budget problems. Whether you are part of the state, county, or city retirement system, the finger pointing continues on both sides.

Governor Brown passed PEPRA in 2012, which took effect January 1, 2013. Even with these types of pension movements at the state level, there are still people, primarily ultra conservatives who blame government pensions as the demise of public funds.

Recently, an article was sent to me by fellow PORAC board member and DSA President Ken Westerman of Contra Costa DSA. Contra Costa is very similar to Fresno County in the size of government workforce and sheriff's office. Also, we are both under the 1937 Act Retirement System.

The article is authored by Harvey Liederman. It compares California's pension systems to the Bankruptcy in Detroit, Michigan. Harvey is considered an expert in California Pension Law and provides legal counsel for both Contra Costa and Alameda County Retirement Systems.

There continues to be a tremendous amount of talk in both California and throughout the nation in regards to government's (counties and cities specifically) filing for bankruptcy. Some feel it will take the pension burden off everyone's back. To date three municipalities have filed for bankruptcy in California, they are the City of Vallejo, Riverside and Stockton.

I have included the article below as it illustrates why so many people are attempting to still take pensions from the California government worker.

“Professionals Protecting and Serving Fresno County”

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Pensions & Investments Online

Not so fast in applying Detroit bankruptcy precedent — at least in California

By Harvey L. Leiderman

Lest California cities in, or considering, bankruptcy get too euphoric over the mileage they might get from the Detroit ruling on public employee pension rights ("Detroit ruling reverberates with pension funds around country," Pensions & Investments Dec. 9), a check under the hood might be useful.

Fifty years ago, Michigan changed its constitution to grant public employees contract rights to their pensions in retirement. The state's employees thought that this would be an ironclad way to protect their pensions against impairment, given the added state and federal constitutional protections afforded contracts. Instead, Michigan inadvertently exposed their public servants' pensions to the chop shop of federal bankruptcy courts, which are in the business of doing just what employees fear — impairing contracts. And Michigan declined to go further in protecting pension plan participants' rights. Indeed, as U.S. Bankruptcy Court Judge Steven W. Rhodes said in his Detroit ruling Dec. 3, Michigan could have added additional protections for retirees. "It could even have explicitly required the state to guarantee pension benefits. But it did none of these." For that reason, it was pretty easy for Mr. Rhodes to conclude that since the only rights pension plan participants had were contract rights, "they are subject to impairment in a federal bankruptcy proceeding."

But here is where California's vehicle for delivering pension benefits has a few options that might give its public pension plan participants better mileage in the long run. In California, retirees do not have a contract with their former public employers. They are not "creditors" of the municipalities for whom they once worked and they don't have "claims" against those municipalities. What's more, the unfunded liabilities on the books of the retirement fund are not even a "debt," according to the California Court of Appeals.

The obligations owed to California retirees to pay their retirement benefits are owed by an independent public agency — the retirement trust fund — not by their former employer. That's by statutory design, not by contract. And the obligation owed by the employer to the pension trust fund is also not one of contract, but of statute. It was the exercise of the state of California of its governmental powers that created these statutory obligations, independent of any contractual rights and obligations between the employer and employee while in the employment relationship.

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As a result, there can be no "contract" between a California retiree and a former employer that is in danger of "impairment." And the federal bankruptcy courts may not interfere with the exercise of the state political and governmental powers, under the 10th Amendment of the US Constitution and Section 903 of the Bankruptcy Code.

Only while the employee is working for the employer is there a contract that can be rejected (a la the Vallejo city bankruptcy proceedings) or impaired by a bankruptcy court. Once in retirement, the retiree looks to the pension trust fund for a monthly benefit check, and the trust fund looks to the employer for full funding. This is the statutory framework in California. In contrast, the Detroit bankruptcy judge was stuck with a Michigan law that only described the contractual relationship of two of the parties. California law, however, presents the full picture, with all the vehicles' retirement features protected by statute. Call it the California "lemon law" for pensioners.

Detroit's pension guzzler cannot compare with the California hybrid. The California model includes the optional equipment employees in Michigan never got -- an explicit guarantee of their pension benefits. California state, county, and city pension laws all require full funding of retiree benefits by statutory mandate, not contract, expressly written into the Public Employees' Retirement Law, the State Teachers' Retirement Law, the County Employees Retirement Law, and in virtually every other city charter and municipal code. As a result, public agency retirees in California have a statutory engine powering their rights, and need not fear that a bankruptcy court will run them off the road.

So let's be careful when we assume all vehicles for delivering pension promises might run out of gas in federal bankruptcy court. At least in California, your mileage might differ.

Upcoming things at FDSA

I want to update you about a few upcoming events/issues at the Fresno Deputy Sheriff's Association.

I will be taking a look at the FDSA bylaws this year. I anticipate there will be some additions, deletions and revisions, since the last time was 2006. There are some procedures currently written in standing rules that will need to be drafted into by laws for the transparent operation of this organization. I will keep you informed about any updates that occur throughout the process.

The FDSA kicked off our annual monthly BBQ's on January 29 for the 2014 year. What a successful day! We sold 322 lunches and if we had more food- we could have sold closer to 400. We will be increasing the amount of food ordered each month to meet the demands of the orders. Again, anyone who wants to help please come down between 9

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and 12pm on the days of the barbeque. Your help will be greatly appreciated. Remember proceeds go to assist in the Peace Officer Memorial Fund.

Also mark your calendars for Thursday, May 1, 2014. We will be having our third annual Peace Officer Memorial Event at the FDSA from 5:30-8pm. This event is held the Thursday before Peace Officer Memorial Week in California, which is held on Monday May 5th 2014. This is preceded by the Candlelight Vigil on Sunday May 4th. This event on May 1st allows us at the FDSA to remember our deputies who were killed in the line of duty. We invite all of you to attend, along with family members of the fallen and those who contribute to the FDSA Peace Officer Memorial Fund.

Fraternally,

-Eric

A handwritten signature in blue ink, appearing to be "Eric Schmidt", written over a light blue circular scribble.

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