

Summary of Measure B Final Decision
20 February 2014

Judge Lucas has issued a final ruling in the challenges to San Jose's pension measure, "Measure B." This follows her "tentative decision" which was issued last December and is the result of objections and requests for modification to the tentative decision. The final decision almost completely adopts the tentative decision and preserves City of San Jose employees' right to receive the pension promised to them when they began working for the City under the terms in place when they began working. The ruling also addresses changes to disability retirement, retiree health and the SRBR benefit.

This final ruling is not the last word on Measure B: There may be appeals and AFSCME Local 101 and other city employee unions are currently litigating challenges to Measure B's adoption before PERB. If PERB finds the City failed to bargain in good faith over retirement benefits prior to adopting Measure B, the entire Measure may be thrown out. Returning to Judge Lucas' ruling, below is a summary of the ruling's major holdings:

- Pension Benefits are Vested and Cannot be Changed. The Court found that a clause in the City Charter permitting the City to amend or alter retirement plans did not mean that the right to receive the promised pension was not "vested" or guaranteed, as argued by the City. This means that the City is not permitted to modify pensions for current employees in any other ways in the future. It also protects San Jose employees from any statewide ballot initiatives that attempt to amend the state constitution to eliminate the right to earn their promised pension on a going-forward basis (that is, protects them from a repeal of California's "vested rights" doctrine which, for example, is the purpose of Mayor Reed's now-languishing initiative that he has been promoting with the aid of out-of-state anti-union and anti-government allies).
- Pension Contributions may not be Increased. The City Charter and Municipal Code provided that city employees pay 3/11ths of the annual "normal cost" of their pension benefit. This is a vested right, as is the City's obligation to bear the risk of pension underfunding, Judge Lucas held. Measure B would have imposed on employees an up to 16% pay deduction pegged to the pension system's unfunded liabilities (in addition to the 12% pay reduction imposed on members in the past two years). Under Measure B members could have "voluntarily" accepted a lesser tier of benefits to avoid the 16% pay deduction, and the court struck down this provision as unconstitutional.
- Lower, Second Tier Pension is Invalidated. Judge Lucas determined that Measure B's provisions authorizing a second tier pension to current employees, even on a voluntary basis, was not permissible.
- No Reduction or Suspension of Cost of Living Adjustments (COLA). The guaranteed annual 3% COLA benefit is a vested component of employees' pensions, and the City cannot be authorized to suspend or reduce it, as contemplated by Measure B.
- Disability Pension Benefit Preserved. The Disability Pension benefit, like the service pension benefit, is vested, however the Court permitted some of Measure B's alterations to eligibility determinations for disability pensions, including:
 - Measure B requires independent medical experts to make that decision, instead of the Retirement Board. The Court found this change to who determines whether an employee is disabled and entitled to a disability pension is an acceptable adjustment in plan administration.
 - Changes to eligibility requirements: Under Measure B, members are entitled to a disability pension only if they are unable to perform any job within the City's classification system. Although this was a change, the court found it reasonable

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because Measure B provides a “comparable advantage” by reducing the disability pension waiting period to one year.

- The Supplemental Retiree Benefit Reserve (SRBR) May be Eliminated. Judge Lucas ruled that the SRBR benefit, which allows the City the discretion to issue a “13th Check” to retirees, was not a vested benefit because of its unfunded and discretionary nature. In other words, the Court found that there was never a guarantee that retirees would ever receive the benefit and, since its adoption, the benefit has rarely been paid.
- Retiree Healthcare Changes Mostly Upheld: The Court found that, with respect to retiree health benefits, Measure B mostly incorporates provisions already contained in the municipal code. The Court’s retiree health rulings are:
 - The City may not increase employee retiree health contributions beyond a 1:1 ratio. The Court found that employees have a vested right to pay only as much as the City pays towards retiree health benefits.
 - Measure B may require employees to pay half of retiree health plan costs, but the court struck down the portion of Measure B that authorized the City to require employees to pay more than half.
 - The Court ruled the City may change the retiree health plan, even for retirees. The Court’s reasoning is based on the municipal code and is strangely at odds with the actual wording of the code. The court found that the code doesn’t refer to specific benefits plans, but refers only to the retirement system. Yet the Municipal code directly refers to eligibility in “medical insurance plans” and even contains a definition of that term, and so this is a perplexing ruling that also departs from the Court’s tentative decision.
- Wage Reductions Only if Permitted by Law: Local 101 challenged the portion of Measure that authorizes the City to reduce employee pay in the event a court of law finds Measure B’s increased pension contribution requirements to be illegal. The Court upheld this provision stating that it “simply recites what is already the law: that the City may adjust employee compensation to the maximum extent permitted by law.” Because state law requires the City to bargain over pay, the Court’s ruling makes clear that the City has no right to unilaterally adjust compensation under Measure B.
- The Voters May Reserve Authority to Approve Benefit Improvements. The Court upheld this provision, which was challenged by the San Jose Retirees Association, and provided that before pension or other retiree health benefits can be improved, voter approval is required. It appears the provision does not apply to OPEB improvements, as the City has consistently contended that Measure B does not affect the City’s authority over changes to retiree health plans.