

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

WASHINGTON EDUCATION ASSOCIATION;) **CLASS ACTION**
STACIA BILSLAND; LISA BRACKIN-)
JOHNSON; MICHELE C. CASTANEDO; TEDD)
DAVIS; RANDY JENSON; SUSAN LEAVELL;)
DEBORAH ROSE; APRIL SEAMON; KEVIN) No. _____ SEA
TEELEY; KATHIE ZURFLUH; and)
All Others Similarly Situated,)

Plaintiffs,

vs.

WASHINGTON DEPARTMENT OF)
RETIREMENT SYSTEMS; STATE OF)
WASHINGTON,)

Defendants.)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

COME NOW the plaintiffs, appearing through counsel, and allege as follows:

1. PRELIMINARY STATEMENT: This lawsuit seeks to overturn recent legislation repealing the “gain-sharing” program for some 235,000 active and retired members of many of Washington’s retirement systems. This repeal violates Article 1,

Section 23 of the Constitution of the State of Washington and Article 1, Section 10 of the Constitution of the United States.

In addition, when selecting a retirement plan, thousands of members of the retirement systems relied on assertions, actions and promises from the defendants and others regarding gain-sharing. The repeal of gain-sharing is inconsistent with those assertions, actions and statements. Under these circumstances, equitable and promissory estoppel bar the defendants from repealing gain-sharing.

2. JURISDICTION AND VENUE:

This court has jurisdiction under Article 4, Section 6 of the Constitution of the State of Washington, RCW 02.08.010, RCW 07.24.010, and RCW 07.40.010. Venue is properly in this court under RCW 04.92.010(1) because plaintiffs Lisa Brackin-Johnson and April Seamon reside in King County and plaintiff WEA's principal place of business is in King County.

3. PLAINTIFFS:

A. The Washington Education Association is a voluntary membership organization comprising more than 77,000 elementary and secondary teachers, higher education faculty and staff, educational support professionals, retired educators and college students preparing to become teachers. It is a labor organization representing both certificated teachers and educational support staff at over 300 school districts. WEA has a long history of aggressive and effective representation of its members and others in similar circumstances. Its principal place of business is in King County at 32032 Weyerhaeuser Way S., Federal Way WA, 98001.

B. Stacia Bilslund retired from her teaching career after 32 years of service. She retired under TRS 1 and is a resident of Grays Harbor County.

C. Lisa Brackin-Johnson entered TRS 2 in January 1990, then switched to TRS 3 hoping that the gain-sharing program available only in TRS 3 would make up for the fact she entered TRS at a later age. She is President of the Kent Education and a resident of King County.

D. Michele C. Castanedo entered PERS employment in April 2006. She works for the Employment Security Department in Olympia. After reviewing the information provided by the Department of Retirement Systems, elected to enter PERS 3 because it provided gain-sharing benefits.

E. Tedd Davis entered TRS 2 in 1979, then transferred to TRS 3 because of incentives, including gain-sharing. He is a teacher in the Port Townsend School District and a member of the Port Townsend Education Association Executive Board.

F. Randy Jenson is employed by the Central Valley School District and lives in Spokane County. He has almost 31 years of teaching experience and is an active member of TRS 1.

G. Susan Leavell joined PERS 1 in 1981, then switched to SERS 3 because it provided a gain-sharing benefit. She lives in Kitsap County and is the President of the WEA Olympic Council and a member of the WEA Board of Directors.

H. Deborah Rose was hired in 1978 and has 29 years of service. She originally entered TRS 2, then switched to TRS 3 during the open window because

TRS 3 had gain-sharing. She teaches in the Mead School District, is on the Mead Education Association Board and resides in Spokane.

I. April Seamon is a teacher in the Everett School District and resides in King County. She entered public service as a teacher in 1988 and became a member of TRS 2. She shifted to TRS 3 because it had gain-sharing while TRS 2 did not.

J. Kevin Teeley has been a teacher in Washington since 1978. He originally was in TRS 2 but was convinced by the promise of gain-sharing to transfer to TRS 3. He has been President of the Lake Washington Education Association since 1991 and is a member of the WEA Board of Directors.

K. Kathie Zurfluh has been a teacher for 26 years. She originally was in TRS 2, but transferred to TRS 3 in 1998 during the open window period in part because of gain-sharing. She resides in Pierce County and is President of the University Place Education Association.

3. THE DEFENDANTS:

A. The Washington Department of Retirement Systems implements the retirement laws and administers the gain-sharing program;

B. The State of Washington derives its political powers from the consent of the people and is established to protect and maintain individual rights.

4. CLASS ACTION ALLEGATIONS:

A. The class consists of all active and retired members of PERS and TRS Plans 1 and 3, and SERS, Plan 3, a total of about 235,000 persons. Subclasses may include (1) all PERS and TRS Plan 1 active and terminated vested members (about

30,000 persons); (2) all PERS and TRS Plan 1 retired members (about 94,000 persons); (3) all PERS, TRS and SERS Plan 3 active and terminated vested members (about 111,000 persons); and (4) all PERS, TRS, SERS Plan 3 retired members (about 1,750 persons).

B. This lawsuit is properly maintainable under Superior Court Civil Rule 23(a) because: (1) the class, and any likely sub-class, is so numerous that joinder of all members is impracticable; (2) the principle questions of law -- such as the validity of the Legislature's effort to reserve the right to break its promise to members, and of its right to remove statutory benefits if this lawsuit is successful -- and questions of fact -- such as whether the harm caused by the repeal of gain-sharing exceeds the value of improved benefits -- are common to the class and any likely sub-class; (3) the claims made by the named class representatives are typical of the claims of the class or any likely sub-class; and (4) the representative parties and the Washington Education Association will fairly and adequately protect the interest of the class and any likely sub-class.

C. This lawsuit is properly maintainable under Superior Court Civil Rule 23(b)(1) because requiring the prosecution of separate actions by individual members of the class would create a risk that (1) inconsistent rulings in individual members' lawsuits would make it impossible for the defendants to consistently administer and implement the retirement laws; and that (2) adjudications as to individual members would impair or impede the ability of other, non-party members to protect their interests.

D. This lawsuit is appropriate under Civil Rule 23(b)(2) because the defendants will act against all individual members on grounds generally applicable to the class as a whole, thus making final injunctive and declaratory relief appropriate for the entire class and any likely sub-class.

5. THE HISTORY OF GAIN-SHARING:

A. Gain-sharing is a mechanism created by the Legislature in 1998 to increase retiree benefits in PERS and TRS Plans 1 and PERS, TRS and SERS Plans 3. Additional benefits must be paid when the compound average rate of return on pension funds contributed by members of the retirement systems and their employers exceeds ten percent over the previous four years. RCW 41.31 and RCW 41.31A. The statutes contain a calculation that determines the amount of the benefit and describe how that benefit is distributed to members.

B. At various places throughout the gain-sharing laws in RCW 41.31 and RCW 41.31A, the following provision, or something similar, appears: "The legislature reserves the right to amend or repeal this chapter in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that amendment or repeal."

C. Gain-sharing payments were distributed to members in 1998 and 2000 based upon investment returns for the previous four years.

D. Based upon the extraordinary investment returns for the four years that will end on June 30, 2007, it is all but certain that the compound average return will

exceed ten percent and that members will receive gain-sharing payments beginning January 1, 2008.

E. Engrossed House Bill 2391 was enacted by the Legislature and signed by the Governor on May 15, 2007. The bill repeals gain-sharing for Plan 1 and 3 members effective after the January 1, 2008, distribution. It also enacts new benefits for some, but not all, persons who will lose their gain-sharing benefits. However, the value of these other benefits falls well short of the value of the gain-sharing benefit to be lost by Plan 1 and 3 members.

F. Based upon the extraordinary investment returns for the last two years, it is substantially likely that investment returns will exceed ten percent for the four-year period ending June 30, 2009. If so, members will be entitled to gain-sharing payments beginning January 1, 2010, or the promise of future gain-sharing payments, unless the repeal of gain-sharing is allowed to stand.

5. FIRST CAUSE OF ACTION: UNCONSTITUTIONAL IMPAIRMENT OF CONTRACTS.

A. Engrossed House Bill 2391 repeals the gain-sharing laws effective after the January 1, 2008, gain-sharing payments.

B. The so-called reservations of rights referred to in Paragraph 5.B. above are invalid to the extent they purport to allow the State to retroactively repeal gain-sharing for current members of PERS and TRS Plans 1 and 3 and SERS Plan 3 or to eliminate their contractual rights.

C. The effect of EHB 2391 is to impair the vested, contractual right to gain-

sharing payments granted to current members of PERS and TRS Plans 1 and PERS, TRS and SERS Plans 1 and 3.

D. Therefore, the legislation violates Article 1, Section 23 of the Washington Constitution and Article 1, Section 10 of the United States Constitution.

6. SECOND CAUSE OF ACTION: EQUITABLE AND PROMISORY ESTOPPEL

A. The Department of Retirement Systems and the State of Washington, by and through elected officials, employees and representatives, have taken actions and made assertions and statements on behalf of the defendants regarding the gain-sharing program, or have failed to take actions and make assertions and statements regarding the gain-sharing program when the circumstances created a duty to make such actions, assertions or statements. Those actions, assertions or statements, or the lack thereof, are inconsistent with the repeal of gain-sharing.

B. Current members of PERS, TRS and SERS reasonably relied upon those actions, assertions or statements, or the lack thereof, when making the decision which retirement plan was better for them. Their reliance was reasonable because those who took actions or made assertions or statements, or failed to do so, acted in a fiduciary capacity and had a fiduciary responsibility to avoid making promises that would be broken.

C. As a result of these actions, assertions and statements, or the lack thereof, and the reasonable reliance upon them by the members in making momentous lifetime decisions, the members will suffer injury if the legislation is allowed to go

into effect or be implemented.

D. If the defendants are allowed to repeal gain-sharing, the members will suffer a manifest injustice in that they will receive lower retirement benefits because of the broken promises made by representatives of the defendants. Striking down the legislation repealing gain-sharing will not impair the exercise of any important government function.

E. The doctrines of equitable and promissory estoppel bar the repeal of gain-sharing.

7. DECLARATORY RELIEF:

A. Plaintiffs seek declaratory relief in order to determine the validity of Engrossed House Bill 2391 before it takes effect and before defendants take actions implementing that law. Such relief is appropriate under RCW 07.24.010-.030.

B. The court should declare that (1) the reservations of the right to repeal or amend gain-sharing in the future in RCW 41.31 and RCW 41.31A are not effective to allow repeal of gain-sharing retroactively for persons currently eligible for such benefits; and (2) the disavowals of a contractual right in RCW 41.31 and RCW 41.31A are invalid because those rights have vested.

C. Further, the court should declare that EHB 2391 is unconstitutional under the Washington and United States Constitutions because (1) its repeal of gain-sharing impairs a vested contractual right; and (2) its repeal of new retirement benefits if this or any other lawsuit is successful also impairs a vested contractual right.

8. INJUNCTIVE RELIEF:

A. Plaintiffs seek injunctive relief under RCW 07.40.

B. They request that the court enjoin the defendants from taking any action to enforce the reservations of rights in RCW 41.31 and RCW 41.31A for current members and enjoin the implementation of the portions of EHB 2391 that repeal gain-sharing for current members.

PRAYER FOR RELIEF

Therefore, the plaintiffs seek the following relief:

1. A determination that this action is a class action under Superior Court Civil Rule 23(a) and (b)(1) and (2);
2. A determination that the plaintiffs are adequate class representatives;
3. An order identifying the class and any sub-classes;
4. A declaratory judgment stating as follows:
 - A. the so-called reservations of the right to repeal or amend gain-sharing in the future found in RCW 41.31 and RCW 41.31A do not allow the retroactive repeal of gain-sharing found in EHB 2391;
 - B. the disavowals of a contractual right in RCW 41.31 and RCW 41.31A are invalid because those rights have vested;
 - C. the portions of EHB 2391 that repeal gain-sharing are unconstitutional under Article 1, Section 23 of the Constitution of the State of Washington and Article 1, Section 10 of the United States Constitutions because those repeals impair a vested contractual right;

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D. the portions of EHB 2391 that repeal newly enacted retirement benefits if this or any other lawsuit is successful are invalid because they also impair a vested contractual right;

E. an award of attorneys fees and costs against the defendants; and

F. such other relief as is just and equitable.

RESPECTFULLY SUBMITTED this 15th day of May, 2007.

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