

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

MODESTO BEE, et al. vs. STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOC
Plaintiff(s) Defendant(s)

NATURE OF HEARING: DECISION NO: 644964

JUDGE: HURL JOHNSON Bailiff: Mike Brady Date: 11/02/09
Clerk: J. Carvalho Reporter: none Modesto, California

Appearances:
None

This matter was taken under submission October 20, 2009 and the court has had an opportunity to consider the oral arguments of counsel, again reviewed their points and authorities and completed additional research. The court's decision is set forth below.

Respondent, Stanislaus County Employees Retirement Board (Stan CERA), is a public agency acting under the authority of the County Employees Retirement Law (CERA) by authority of Government Code section 31450 et seq. The Stan CERA Retirement Board has the responsibility of administering payment of retirement benefits to retired members and their survivors and beneficiaries. The Board administers retirement benefits for eight different county employers within Stanislaus County (See Answer to Petition Paragraph 2). The Petitioners, The Modesto Bee and The California Newspapers Publishers Association, California First Amendment Coalition have requested the release of the names and pension amounts of the approximately 2,757 retirees/beneficiaries that are members or received benefits paid out by Stan CERA and those who received \$100,000.00 or more per year.

A public employee's retirement is based upon a formula approved by the Stanislaus County Board of Supervisors which takes into account such things as the employee's salary and years of employment. The formula also allows for additional things to be factored in such as accrued vacation time, sick leave, etc. (Mr. Hank Skau's declaration page 2 paragraph 4 and 7). Stan CERA has the fiduciary duty to manage and invest the funds, in the 2008-2009 fiscal year 62% of the monies eligible for retirees came from investments by Stan CERA, 24% from money paid by the public agencies and 14% from employee contributions. The employee contributions and public agency contributions are made during active employment. In fiscal year 2008-2009 \$71,86,210.00 was paid out as retirement benefits, employee contributions were \$20,199.786 and employer contributions were \$23,410,965.00 (Mr. Skau's declaration paragraph 6).

The issue presented to this court is whether or not the disclosure of the names and amounts paid to members/beneficiaries of Stan CERA is public information. The Public Records Act (PRA) provides a broad definition of what constitutes a public record and includes "... any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic." (Government Code section 6252(e)). Government Code section 6254(K) provides an exception for public records to include "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Respondent's position is that Government Code Section 31532 specifically excludes disclosure of: "sworn statements and **individual records** of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization of a member". (Emphasis in bold added).

The parties were unable to find any California case directly on point that addressed the issue, however case law from other jurisdictions support the concept of public disclosure as mentioned in International Federation of Professional and Technical Engineers Local 21 (IFPTE) v Superior Court (2007) 52 Cal. 4th 319 (citations omitted) in determining salaries of public employees which found public employees' salaries are not confidential. The legislature has also determined that CALPERS employee's retirement benefits are not confidential as to the amount of such benefits. (Government Code section 20230). The Commission of Peace Officer Standards and Training v Superior Court 42 Cal. 4th, 278 also supports that "individual records" deal with matters that should be protected from disclosure such as addresses, medical records, etc.

Various Attorney General Opinions were cited by the parties and were mentioned in the California Supreme Court opinion (IFPTE, supra). The 1977 Attorney General Opinion (citations omitted) dealt with a situation where the individual names and amounts paid to retirees were provided by a list to the County Controller who would write monthly warrants to retirees. The Respondent argues that the providing of the list made the information public, that StanCERA does not provide a list with the names and amounts but only provides the gross amount paid out each year. StanCERA argues since the Controller had the list it is not public but while the information remains with StanCERA it

is an individual record of each member. This court does not find such reasoning to be persuasive. The only distinguishing factor found by this court is that the warrants are now being written by a different public agency and the Retirement Board does not provide a printout to the Board of Supervisors. The public has a right to know how taxpayer money is being spent. The Respondent's argument that the legislature specifically did not amend section 31532, while section 20230 has been amended, shows an intent by the legislature to keep county employee information confidential is also not persuasive. The largest public employer is the State of California and CALPERS employees' information relating to amounts paid in retirement is not confidential but the information within their "individual records" remains confidential. A logical reading of "individual records" deals with matters of personal identification such as an address, medical information, and particular retirement elections chosen, etc. Such information does not reveal how taxpayer dollars are being spent and should remain confidential. The expectation of a public employee as to the employee's salary and benefits paid in retirement is much less than that of a private employee due to the nature of the source of money (partial taxpayer money) that makes up the retirement benefit.

The monies paid to retirees/beneficiaries under the Stan CERA retirement system involves the use of taxpayer money and both the Board of Supervisors and Stan CERA uses the amounts paid to make decisions that affect a person's retirement which, in turn, will affect the amount of taxpayer money required to meet retirement obligations. The public has a right to know how this taxpayer money is being spent and the disclosure of such information outweighs any expectation of privacy interest of a former public employee.

The court is aware that public disclosure of such information may result in public information that a retiree/beneficiary may find unwarranted but that concern does not outweigh the disclosure of such information. The Petitioner has shown a legitimate public interest in having the information released and the disclosure of such information outweighs any expectation of privacy a former public employee may have. The Petition is Granted. Since this appears to be a case that has not been decided by an appellate court or the California Supreme Court this court will grant a reasonable stay if either party should elect to take a writ/appeal this court's findings.