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UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

SANDY L. HENDERSON, ANNA
MARGARET WICKER, JANE GRAY, and
CARMELLE L. HARTIN,

Plaintiffs,

v.

THE STATE OF OREGON BY AND
THROUGH THE BUREAU OF LABOR
AND THE BOARD OF HIGHER
EDUCATION; NORMAN O. NILSEN,
COMMISSIONER OF LABOR; DR. ROY
LIEUALLEN, CHANCELLOR OF THE
BOARD OF HIGHER EDUCATION; THE
PUBLIC EMPLOYEES RETIREMENT
SYSTEM; and JOSEPH J. ADAMS, HUGH
McKINELY, CHALMERS L. JONES,
ROGER S. MEIER and EDWIN H.
ARMSTRONG, in their capacity as members
of the PUBLIC EMPLOYEES RETIREMENT
BOARD,

Defendants.

CV 74-538

CONCISE STATEMENT OF
MATERIAL FACTS IN SUPPORT OF
MOVANTS' MOTION FOR
SUMMARY JUDGMENT

(Oral Argument Requested)

Pursuant to Local Rule 56.1, movants Eileen Shaffer, Tim Woolery, Richard Mullins, Jerry Trierweiller, Gina Santacroce, and Jacqueline Davais submit this Concise Statement of Material Facts as to which there is no genuine issue.

1. This matter was first filed in August 1974 under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et, seq.), and 42 U.S.C. § 1983. A final judgment and permanent injunction entered in this case on September 20, 1978 applied to all employees whose retirement benefits were administered by the defendant PERB after September 20, 1978. Ex. 11.

2. This Court retains jurisdiction to enforce the permanent injunction.

3. Movants are current members of the Oregon Public Employees Retirement System (“PERS”), who intend to retire within the next several months or years. Exhibits 18 p.2, 19 p.2, 20 p.2, 21 p.2, 22 p.2, & 23 p.2.

4. Upon retirement, movants will receive benefits which are substantially lower than the benefits they would have received based on the male-only refund annuity tables in effect on July 1, 1978. Exhibits 18 p.3, 19 p.3, 20 p.3, 21 p.3, 22 p.3, & 23 p.3.

5. On December 10, 1975, the Honorable Gus J. Solomon of this Court determined that the use of sex segregated tables did violate Title VII. Ex. 7. Following notice by PERB that it intended to appeal the decision to the Ninth Circuit Court of Appeals, Judge Solomon stayed the implementation the injunctive relief. Ex. 7; Ex. 8.

6. Defendant PERS Board took the position in this case that lowering the payment rates for male retirees would be a violation of Oregon trust law, and would expose the PERS Board to additional suits for damages. Ex. 5, p.6.

7. While this matter was pending before the Ninth Circuit Court of Appeals, the U.S. Supreme Court issued its decision in *Manhart v. City of Los Angeles*, 435 U.S. 702, 98 Sup. Ct. 1370, 55 L.Ed.2d 657, holding that Title VII, as amended, did forbid discrimination between males and females in pension contribution/benefit tables. Ex. 9, 10.

8. After issuance of the *Manhart* decision, counsel for defendant PERB met with the PERB to discuss further litigation options, as recorded by the May 1978 minutes of PERB. Ex. 10. The PERB discussed its concern that it may be faced with the prospect of making retroactive payments to female retirees for the previous three years. Ex. 10, p. 6-7.

9. In May 1978, defendant PERB directed its attorney, William Hoelscher, to negotiate a consent judgment with plaintiffs which would relieve PERS of the possible expense of retroactive payments, in exchange for the promise to raise the female refund annuity benefit tables to equal the existing male-actuarial rates in effect on July 1, 1978. Ex. 10, p. 6-7.

10. The PERS Board proposed and plaintiffs agreed, that if the PERS Board would prospectively raise the female actuarial tables to equal the existing male-only actuarial rates in effect at that time, plaintiffs would agree to forego any claim for retroactive payments. Exhibits 9, 10, 11, 12, & 13.

11. After reaching this agreement, the parties scheduled a conference with Judge Solomon to present a stipulated injunction and consent decree. Ex. 9, p. 3.

12. Judge Solomon approved the joint recommendation and entered the stipulated judgment and permanent injunction on September 20, 1978. Ex. 9, p. 3-4; Ex. 11.

13. The stipulated judgment and permanent injunction, provides in part, that:

Defendant Public Employees Requirement System is permanently enjoined and restrained from the use of sex-segregated life expectancy tables in calculating 'refund annuity' retirement allowance prospectively only for members retiring effective July 1, 1978, and *thereafter, shall provide a monthly "refund annuity" retirement allowance to female members retiring after that date which is identical to the "refund annuity" retirement allowance males of the same age and amounts of contributions received prior to that date.* Defendant shall have no obligation to recalculate "refund annuity" retirement allowances to female members already retired or retiring before July 1, 1978.

(Emphasis added) Ex. 11. The "date" referred to on the 6th and 9th lines above is July 1, 1978.

14. The term "refund annuity" refers to a monthly retirement allowance to a PERS member which is calculated based on the member account balance. All refund annuity tables used by PERS since the early 1970s calculate refund annuity benefits as a function of the assumed earnings rate and the assumed life expectancy of the member. Ex. 24.

15. Between July 1, 1978 and January 1, 1993, the PERS Board applied the male-only refund annuity tables in effect before July 1, 1978 without change, for all PERS members both male and female. Ex. 14, 15, 16, 17, & 24.

16. The PERS Board modified its earnings assumptions in 1979 and 1989. In 1979 the earnings assumption was raised from 7% to 7.5%. In 1989 the earnings assumption was raised to 8%. In 1979 the PERS actuary compared male-only mortality at 7% with blended mortality at 7.5 percent and recommended no changes to the annuity tables. Ex. 14, 15, 24.

17. In 1989 the PERS actuary compared the 1978 male-only mortality/7% assumptions to 1990s blended-mortality/8% earnings assumptions, and again recommended no changes to the annuity tables. Ex. 15, 16, 24.

18. 1991, the PERB authorized a complete review of actuarial factors, and issued a report in 1992 which found that “The grandfathered . . . factors from 1978 were still more favorable at most ages than the factors based on current assumptions.” Ex. 16, p. 4.

19. In 1993 the PERS Board amended their actuarial tables to accept those actuarial factors where the newer blended tables/8% assumption produced the higher benefit, and revised OAR 459-05-055 to provide that new actuarial factors would be adopted only in those cases where they provided a higher benefit than the July 1, 1978 male-only tables. Ex. 14, 15, 24.

20. Prior to 2004, no defendant ever requested modification of this Court’s decree and injunction, nor did any defendant ever attempt to inform this Court of any plan to implement legislation reducing the retirement allowance below male-only refund annuity tables in effect before July 1, 1978.

21. Movant Eileen Shaffer was a member of the PERS system continuously since 1974 and has not yet retired; if she retires this year, as planned, her refund annuity retirement allowance will be *lower* than the level required by the pre-July 1, 1978 tables. She will get no benefit from the decree, despite her status as a member of the beneficiary class to whom the decree was directed at the time it was issued.

Dated this 12th day of April, 2004.

/s/ Henry J. Kaplan

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Attorneys for Movants

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOVANTS' MOTION FOR SUMMARY JUDGMENT upon the following persons at the following addresses:

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by the following indicated method or methods:

- ± by **mailing** the original in a sealed, first-class postage-paid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- ± by **hand delivering** a copy thereof to the attorney(s) listed above, on the date set forth below.
- ± by **faxing** a copy thereof to the attorney(s) at the fax number(s) shown above, on the date set forth below.
- X by service **electronically** pursuant to LR 100.13.

DATED: April 12, 2004

/s/ Henry J. Kaplan
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Of Attorneys for Movants

CERTIFICATE OF SERVICE