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# **EXHIBIT 10**

## **Case No. 2010 cv 1589**



## **SIGNIFICANT FACTS**

Effective July 1, 2009

*Denver Public Schools Retirement System*  
*Denver, Colorado*



## Introduction

Laws of the State of Colorado permit first class school districts to establish an employee's retirement fund which shall be controlled by the Board of Education of the school district concerned. State law goes on to provide that the Board of Education may create a board of managers for the retirement system. On December 1, 1945, the Denver Board of Education, therefore, established the Denver Public School Employees' Pension and Benefit Association (DPSEPBA). All active employees on or after December 1, 1945, were declared to be members of the Association. Active employees prior to December 1, 1945, were given the option to stay out of the Association.

In October, 1945, 89% of the employees chose to join the DPSEPBA.

Prior to December 1, 1945 (beginning in 1919), the Board of Education provided a pension to employees who retired with a maximum benefit of \$50.00 per month. These pensions were paid out of current operating tax funds.

Effective on January 1, 2000, the statute governing the Association was completely rewritten. The name of the Association was changed to the Denver Public Schools Retirement System (DPSRS).

In 2009, legislation was enacted requiring the merger of DPSRS and the statewide retirement system, the Colorado Public Employees' Retirement Association (PERA). DPSRS will merge into PERA on January 1, 2010, and will no longer exist after that date.

## ● Chronological Plan and Assumption Changes

A summary of important facts and changes that have been made in the Denver Public Schools Retirement System Retirement and Benefit Plan (Plan) follow in chronological order:

### 1945

December 1, 1945, contributory plan established.

#### *Financed by:*

1. 6% contribution from each employee,
2. an amount calculated by the actuary to be budgeted annually from tax funds, and
3. investment income from both Employees' and Employer's Funds.

#### *Managed by: Retirement Board*

1. The 15-member board is made up of 11 elected members from various employee classifications, 2 members from the Board of Education, the Superintendent or his designee, and an Administrative Officer of the Retirement Board (assigned by the Board of Education). Each member entitled to one vote.
2. All actions of the Retirement Board are subject to final approval by the Board of Education.

#### *Investment Authority*

1. Investments are allowed only in securities as authorized by the State of Colorado (municipal bonds, U.S. Treasury Bonds and first trust deed loans to employees).
2. Investments are approved by an Investment Committee, consisting of three members of the Board of Education and one employee member, prior to being presented to the Board of Education for approval.
3. The interest assumption rate is 2 1/2%.
4. The Treasurer of Denver Public Schools manages investments and is custodian of the funds.

## *Benefits*

1. All employees are eligible for a maximum pension at age 65 with 35 or more years of service.
2. The Board of Education agrees to include all prior service in the Denver Public Schools and as much as ten years prior service outside of Denver for benefit purposes.
3. Pensions are based on a table furnished by the actuaries giving a maximum benefit of 25% of final average salary, as the Board of Education's share, plus an annuity based on the employee's contributions.

## **1949**

1. Pension assessment of employees is set at \$2.50 to be reviewed annually.

## **1951**

1. The interest assumption is changed from 2 1/2% to 3%.

## **1953**

1. The Board of Education agrees to pay for the employee's share of the prior service costs, which in effect, provides a maximum benefit of 50% of final average salary including the annuity value of the employee's contributions.
2. There is consensus that the Plan would be fully funded in 35 years, December 1, 1988.

## **1954**

1. The basic retirement allowance for retirees with 35 years of service and a retirement age of 65 is increased to one-half of the employee's average salary.

## **1957**

1. As of April 1, retired employees retain life insurance at a decreasing level. (This is not part of pension program benefits, provided through DPS policy.)

## **1959**

1. Investments
  - a. Agency agreements with local banks are created to allow investment in first mortgage loans on Colorado real estate.
  - b. Investments in corporate bonds are approved.
  - c. The Investment Committee is increased from one to two employee members and continues with three Board of Education members.
2. Death and survivor benefits are added.
3. Deferred annuity provisions are added.

## **1962**

1. The Plan is rewritten completely and revised on the assumption of a 1/60th formula which means that an employee accrues credit at the rate of 1 2/3% per year of service, but continues a maximum pension of 50% for 30 or more years of service. This formula provides equitable treatment for short-term service.
2. A revision of the Plan extends the funding to a later date.

## **1965**

1. The maximum benefit is raised to 55% with 33 years service.
2. A 1% cost of living is paid to retirees for each full year of retirement. This increase is paid for from excess earnings in the Employees' Fund retroactive to 1954.





## 1966

1. The Board of Education contribution is reduced to 9% and the funding date is extended. The contribution rate is reviewed annually in accordance with the actuary's study and report.
2. The Office of Fund Investments is established with an Investment Officer as custodian of pension funds and in charge of the investment program. An Assistant Investment Officer also is appointed.

## 1967

1. Investment of up to 10% of Employees' Fund in common and preferred stocks is approved.
2. The maximum benefit increases to 58.33% (with 35 years of service).

## 1968

1. A provision is made for a retired employee member on the Retirement Board.

## 1969

1. Approval is granted to invest up to 25% of Employees' Fund in common or preferred stocks.

## 1970

1. The maximum benefit is increased to 65% with 39 years of service.
2. Survivor benefits are increased by 25% to \$250.00 per month.
3. The interest assumption rate is changed to 3 1/2%.

## 1972

1. Credit is granted for all years of service without limit.
2. Health Insurance premiums are paid for all retired employees by the Board of Education. (This is not part of pension program benefits, provided through DPS policy.)

## 1974

1. Regular and deferred retirement at 60 without actuarial reduction is allowed with 25 years of service.
2. The interest assumption rate is changed to 5%.
3. A 2% cost of living for retirees is granted, retroactive to 1954, with 1% to be paid from Employees' Fund earnings and 1% to be paid by the Board of Education. This now is a provision of the Plan.
4. Survivor Benefits are increased to a maximum of \$360.00 per month.
5. A minimum annuity benefit of \$10 for each of the first 10 years of service and \$4 for each additional year is established.

## 1976

1. Regular and deferred retirement at age 56 without actuarial reduction is allowed with 25 years service.
2. The interest assumption rate is changed to 5 3/4%.
3. The Retirement Board is restructured to allow voting by employee classification.
4. A 1% increase in basic benefits is paid to retirees for each full calendar year of retirement from 1954.

## 1978

1. The interest assumption rate is changed to 6 1/2%.

## 1979

1. The Plan is amended to ensure consistency with the Age Discrimination in Employment Act.



Significant Facts

DENVER PUBLIC SCHOOLS RETIREMENT SYSTEM

## 1980

1. The Plan is amended to conform with negotiated agreements between employee groups and the Board of Education.  
January 1, 1980 - Unit Benefit changes to 1.75% (from 1.67%)  
January 1, 1981 - Unit Benefit changes to 1.90%  
January 1, 1982 - Unit Benefit changes to 2.0%
2. Regular and deferred retirement age is changed to 55 with 25 years of service.
3. A 1% cost-of-living adjustment in basic benefits is paid to retirees for each full calendar year of retirement since 1954.
4. Qualifiable leaves commencing on or after 1/1/80 must be fully accredited within two years of an employee's return to work.

## 1981

1. The interest assumption rate is changed to 7%.
2. The Board of Education appoints two active employees upon the recommendations of the Superintendent to replace the two Board of Education members on the Retirement Board.
3. A graduated pension assessment, maximum of 0.5% times monthly salary, is implemented.
4. The Annual Retirement Allowance Adjustment (ARAA) becomes 3% per year.
5. Retiring employees are granted their first ARAA increase on the first January 1 following the date of retirement.

## 1982

1. The Investment Committee requires two members and an alternate from the Retirement Board to be elected annually by the Retirement Board.
2. Parliamentary Authority (Robert's Rules) are written into the Plan.
3. Survivor Benefits are improved.

## 1983

1. Final average salary is defined as the best 36 out of the last 72 months.
2. Equal treatment of options for female and male members (unisex) is implemented.
3. The interest assumption rate is changed to 7 1/2%.
4. A 1% cost-of-living increase in basic benefits is paid to retirees for each full calendar year of retirement since 1954.

## 1984

1. The interest assumption rate is changed to 8%.
2. Survivor Benefits are improved (Section 100.3031).
3. 1981 provision (# 2 - above) is rescinded. Two members of the Board of Education are appointed to serve as members of the Retirement Board.
4. The remarriage clause is deleted which eliminates survivor benefit payments for eligible dependents if the employee dies on or after January 1, 1984.

## 1985

1. The minimum benefit is increased to \$15 for each of the first 10 years, \$20 for each additional year.
2. The accrual of benefits beyond age 65 to age 70 is allowed, beginning with those retiring in 1984.
3. The assumption rate is increased to 8 1/2%.
4. The ARAA is increased from 3% to 3 1/4% for each January 1 beginning January 1, 1985.



## 1986

1. The ARAA is changed to 3 1/4% for each eligible year since 1954.
2. The assumption rate is increased to 9%.
3. Employees with 25 years of active DPS service are allowed to retire without an age requirement but with an actuarial reduction to benefits.
4. Employees with 15 years of active DPS service who are not eligible for a superannuation retirement are allowed to retire with an actuarial reduction in benefits, if they are 55 years old or older.
5. Automatic Option B for single or divorced, not remarried, active contract employees is allowed.
6. Ten-month vocational teachers are included as contributing members. Present ten-month vocational teachers are permitted to qualify service within a two-year period.
7. Employer pickup of employee contributions is implemented.
8. Employees appointed or reappointed on or after January 1, 1986, are required to fully accredit casual service within two years of the time of appointment or reappointment.
9. Total Temporary Disability (TTD) Leaves commencing on or after January 1, 1986, must be fully qualified within two years of the time the employee returns to work full time.

## 1987

1. The application for retirement is final and binding 30 days prior to the effective date of retirement.

## 1988

1. The Unit Benefit Factor is changed to 2.07%.
2. A 3% cost-of-living adjustment in basic benefits is paid to retirees for each full calendar year of retirement since 1954.
3. Survivor Benefits are improved (Section 100.3032).
4. The crediting rate is changed from 3% to the assumed Actuarial Assumption Rate beginning January 1, 1988. The rate charged on arrearage contributions is permitted to continue at 3% for payments that conclude prior to January 1, 1989.
5. Effective April 4, 1988, the Retirement Board is increased to 16 members by adding an additional retired member.

## 1989

1. The Plan is amended to ensure consistency with the Age Discrimination in Employment Act (ADEA), which makes accrual of service beyond age 70 mandatory.

## 1990

1. The Plan is amended to require lump sum arrearage payments to be made prior to December 1 of any calendar year.

## 1991

1. The rate of interest credited to employee account balances for years beginning after 1990 is changed to 5%. This includes deferred members' contributions.
2. Employees' and Employer's Funds are combined into the Association Retirement Trust Fund (ARTF).
3. Established within the Plan is the Reserve for Future Benefit Enhancements, funded by one-half of excess earnings.
4. The entire 3 1/4% ARAA is an obligation of ARTF.
5. Members filing an election to receive a deferred annuity, including those who in the past filed an election to receive a deferred annuity, are allowed to designate a beneficiary for funds held by the Association on their behalf.



6. The refund for the beneficiary of a person who has been retired for disability and dies prior to the time when benefits are recomputed, is calculated based upon the difference between the employee's total accumulated contributions and the total portion of the benefit purchased from employee contributions (annuity share).
7. The time period for filing the report identifying current status of retirees is changed from quarterly to annually.
8. Effective on July 1, 1991, part-time employees are required to contribute to Social Security or to the Retirement Plan.

## 1992

1. Effective January 1, 1992, the Employer Contribution Rate is fixed at 12.5%, allowing the amortization period to float but not to exceed 30 years.
2. An Early Retirement Incentive Plan (ERIP) is offered. The ERIP added five years to both age and service for those employees signing to retire between April 20, 1992, and May 22, 1992, with an effective retirement date of September 1, 1992. Additional expenses to the Plan are to be borne by the Board of Education.

## 1993

1. Effective July 1, 1993, the Employer Contribution rate to fund ERIP is set at 3.77%.

## 1994

1. For retirements effective on and after July 1, 1994, the actuarial reduction for optional early retirements is 5%.
2. For retirements effective on and after July 1, 1994, in calculating retirement benefits for contributing members, Highest Average Salary replaces Final Average Salary.

## 1995

1. The normal contribution for regular employees appointed or reappointed after January 1, 1995, is 7%. New affiliate members are required to contribute 7% of gross salary.
2. Any adjusted CPI increase is applied to retired members' benefits effective April 1, 1995, that reflects 65% of the full cost-of-living calculated from the effective date of retirement. The supplement is adjusted accordingly.
3. Plan provisions are modified concerning disability retirement to assure conformance with the Americans with Disabilities Act and to establish more rigid reporting requirements for disabled annuitants.
4. Effective December 1, 1995, the composition of the elected categories for active employees on the Retirement Board is restructured.
5. Effective December 1, 1995, the composition of the Investment Committee is modified to include seven members. The requirement that employee members must be active employees is eliminated.

## 1996

1. Effective January 1, 1996, Plan provisions are modified to allow reappointed employees the option not to accredit prior contract service with the District instead of requiring that they do so, and additionally to allow such reappointed employees the option to accredit prior contract service with tax-sheltered funds.
2. Effective January 1, 1996, Plan provisions are revised to treat non-accredited DPS service in a like manner to "outside service" in other public entities.
3. Effective July 1, 1996, the service eligibility requirement for a deferred annuity for affiliate members is reduced from 10 years of active service to 5 years of accredited service.
4. Effective July 1, 1996, the actuarial assumption rate is reduced from 9% to 8.75%.
5. Effective July 1, 1996, the Employer Contribution Rate is reduced to 12.25% for the UAAL and to 3.50% for the ERIP liability.
6. Effective July 1, 1996, offices move to 1301 Pennsylvania Street. Expenses, including rent, are charged to the Association Retirement Trust Fund.



## 1997

1. Effective January 1, 1997, the active service eligibility requirement for a deferred annuity for contributing members is reduced from 10 years of active service to 5 years of active service.
2. Effective January 1, 1997, changes are incorporated into the Retirement Plan necessitated by state law requiring DPSEPBA to adhere to Domestic Relations Orders.
3. The Annual Signature Verification process is eliminated.
4. On July 17, 1997, the District contributed an additional \$377.2 million in proceeds from Pension Certificates of Participation to fully fund the Plan. District contribution requirements are reduced to Normal Costs only with provision that future excesses or Unfunded Actuarial Accrued Liabilities (UAALs) be amortized yearly over a 15-year fixed period.

## 1998

1. Effective January 1, 1998, interest crediting provisions are implemented to credit interest at the end of each month based on the balance at the beginning of the month, replacing the yearly interest crediting provisions.
2. Effective January 1, 1998, "purchase of service credit" provisions are implemented that enable active members to purchase a maximum of 10 years of non-covered service outside the school district and service with the school district that was not qualified within the normal time limits to count as active/accredited service. The cost required to purchase service credit is 22.5% of highest average salary per year of purchase.
3. Effective January 1, 1998, payment of deferred retirement benefits and survivor benefits commence on the first day eligible rather than at the beginning of the month following the eligibility date.
4. Effective for retirements on or after January 1, 1998, a 10-year payment guarantee to the joint and survivor options is added. This is applicable for Options C and E.
5. Effective July 1, 1998, the Unit Benefit Percentage Factor is increased to 2.25%, funded primarily by an increase in the Employee Contribution rate to 8%.
6. Effective July 1, 1998, an adjusted CPI increase is applied to retired members' benefits that reflects 80% of the full cost-of-living calculated from the effective date of retirement. The supplement is adjusted accordingly.
7. Effective July 1, 1998, provisions of the Retirement Plan are amended for members whose disability retirement benefits are recalculated to compensate, under specified circumstances, for the discontinuance of LTD benefits at age 65.
8. Effective July 1, 1998, the cost of purchase of service credit is increased from 22.5% of highest average salary (HAS) to 24.5% of HAS for each year of service purchased.

## 1999

1. Effective July 1, 1999, the cost required to purchase non-covered service credit is reduced from 24.5% of highest average salary (HAS) to 20.75% of HAS for each year of service purchased.

## 2000

1. Effective for members who retire on or after January 1, 2000, the relationship requirement for a named co-annuitant under Options C and E is eliminated.
2. Effective for active members who die on or after January 1, 2000, eligible survivors will be provided with the greater of survivorship benefits, or if the member were eligible for optional early retirement immediately prior to death, automatic optional early retirement benefits.
3. Beginning January 1, 2000, if a retired member is re-employed by the district on a contractual basis and works at least one year before retiring a second time, the member will earn an additional retirement benefit based upon provisions in effect at the time of the second retirement. Such benefit will be added to the original benefit the retiree was receiving before re-employment. Retirement benefits are suspended during any period of contractual re-employment.
4. Effective January 1, 2000, the Retirement Plan is completely restated to reflect significant changes in the governance structure. The 16-member Retirement Board is replaced by an 11-member Board of Trustees. Fiduciary responsibilities, including administration of the Plan and investment of Plan assets, become functions of the Board of Trustees. Plan design and funding remain responsibilities of the Board

of Education. The name of the Association is changed to the Denver Public Schools Retirement System (DPSRS). The Executive Director and staff became employees of the DPSRS.



## 2001

1. Members and survivors of members who retired prior to January 1, 2001, received an increase in the annual basic benefit equal to \$25.00 for each full year of accredited service at retirement.
2. Effective January 1, 2001, the Annual Retirement Allowance Adjustment (ARAA) is compounded at 3.25% each year.
3. Effective for members who retire on or after January 1, 2001, the Unit Benefit Percentage Factor is increased to 2.50%.
4. Members may retire on or after January 1, 2001, without an actuarial reduction in benefits if they have 30 years of active service and have attained the age of 50.
5. For retirements on and after January 1, 2001, the actuarial reduction for optional early retirement is 4%.
6. Beneficiaries of active members who die on or after January 1, 2001, may select the greater of regular retirement benefits under Option B or Option C, if the member were so eligible, or survivor benefits.
7. Active members who terminate employment with the District on or after January 1, 2001, and elect deferred retirement may, at the time they first are eligible to receive retirement benefits, select:
  - a. A refund of 200% of the then accumulated contribution balance, or
  - b. The greater of
    - (1) A money purchase retirement benefit based upon 200% of accumulated contributions and the minimum employer-provided benefit, and
    - (2) The defined benefit calculated under Plan provisions in existence at the time of termination of employment.
8. Effective July 1, 2001, the cost required to purchase non-covered service credit is increased from 20.75% of highest average salary (HAS) to 25% of HAS for each year of service purchased.

## 2002

1. The requirement that an internal control audit be performed at least every five years was eliminated beginning in the year 2002. The need for an internal control audit will, however, be evaluated every year.
2. Service accrual for all permitted leaves of absence is made consistent with the type of service accrual that existed immediately preceding the permitted leave.
3. Effective January 1, 2002, contributions, benefits and service credit related to qualified military service are to be provided in accordance with 414(u) of the Internal Revenue Code.
4. Effective July 1, 2002, any changes in the employer contribution rate become effective on the July 1 that is 18 months after the end of the calendar year on which the actuarial valuation is based.
5. An amendment is added to Plan Section 110.40(7) to clarify that a deferred member electing to receive a refund of 200% of contributions shall not have any amounts contributed for purchase of outside service considered in the calculation of the refund.

## 2004

1. As of January 1, 2004, each active DPSRS member will be credited with the greater of the active or accredited service and that service shall be called "Earned Service." Earned Service shall be used to determine eligibility for a retirement benefit and to determine the amount of the retirement benefit.
2. A requirement is imposed that a DPSRS covered employer may re-employ a retired member of the DPSRS, but only after a break in service of at least 30 days from the date of retirement. This amendment is intended to meet the Internal Revenue Service bona fide termination requirements.
3. The purchase of service provisions of the Plan are amended to prohibit an active member from purchasing service that already has been purchased for credit in another retirement system.
4. Conditioned on the merger of the DPSRS into Colorado PERA, the date for the final Annual Retirement Allowance Adjustment (ARAA) is set for December 31, 2004, and the amount is set at the greater of



(1) the percentage rate increase that will be given by PERA to its retirees and survivor benefits recipients as of March 1, 2005, or (2) the rate otherwise provided by the DPSRS Plan to be effective on January 1, 2005. (This provision was repealed December 31, 2004.)

5. The calculation to determine credit for casual service is changed from one based on hours of employment to a calculation based on the compensation of the member. One month of service will be credited for each month the individual's earnings equal or exceed 80 times the hourly federal minimum wage in effect at the time of the service.
6. In the event of merger with Colorado PERA effective January 1, 2005, the requirement that a member cannot retire until at least 30 days after filing a retirement application is waived for applications for retirements effective on or after January 1, 2005. (This provision was repealed December 31, 2004.)
7. Effective January 1, 2004, the cost required to purchase non-covered service credit is increased from 25% of highest average salary (HAS) to 34% of HAS for each year of service purchased.
8. Effective January 1, 2004, language is added to bring the Plan into compliance with the Internal Revenue Code and Limitation of Benefits requirements.
9. Effective December 31, 2004, the Option A benefit is enhanced by adding a death benefit that provides the payment to the designated beneficiary(ies) of the remaining amount of an annuitant's account balance at the time of death.
10. Effective December 31, 2004, two new joint and survivor annuity options, continued at 100% (P3) and 50% (P2) respectively, are added that provide a "pop-up" feature in the event the joint survivor predeceases the annuitant. The P2 or P3 benefit amount will pop-up to the Option A benefit amount in such event.
11. Effective December 31, 2004, the reference to the use of female mortality tables in establishing the option factors for the joint and survivor annuity options is deleted from the Plan.

## 2005

1. The provisions governing the Employer Contribution Requirements are amended to allow for a phase-in of the employer contribution rate to achieve the full annual required contribution rate by July 1, 2008.
2. The Actuarial Reduction Percentage for an Optional Early Retirement for members hired or rehired on or after July 1, 2005, is changed to 6% for each year the member is short of the full age or service eligibility requirements.
3. For members who are hired or rehired on or after July 1, 2005, the Annual Retirement Allowance Adjustment (ARAA) will be changed from the current 3.25% per year compounded to the lesser of 3% per year compounded or the increase in the Consumer Price Index for urban wage earners and clerical workers compounded each year. The effective date for the ARAA will be March 1 of each year following the year of retirement. Also, the calculation of the first ARAA, effective in the year immediately following the year of retirement, will be calculated in a pro-rated manner based on the number of months retired.

## 2006

1. Clarification is made as to the members who are covered by the new tier of benefits which became effective on July 1, 2005.
2. The method of calculating earned service is refined.
3. The employer contribution rate is changed in accord with the funding policy of the Plan and the scheduled four year phase-in to achieve the full annual required contribution rate by July 1, 2008.
4. To comply with new Internal Revenue Code regulations on joint and survivor annuities, revisions are made which reduce the continuing benefit that a co-annuitant will receive if the co-annuitant is a non-spouse and has more than a 10-year age difference from the member.

## 2007

1. Effective January 1, 2008, Plan is modified to allow payment for qualifying past casual service by appointed or reappointed employees in installment payments, or an initial lump sum plus installment payments, not to exceed two years.
2. The employer contribution rate is changed in accord with the funding policy of the Plan and the scheduled four year phase-in to achieve the full annual required contribution rate by July 1, 2008.

## 2008

1. In April, the District contributed to DPSRS \$397.8 million in proceeds from taxable variable rate certificates of participation (PCOPs) issued by the District for the purpose of fully funding the System. As a result, the Plan's employer contribution rate was reduced to 7.58%, reflecting normal cost only, for the fiscal year July 1, 2008 through June 30, 2009.
2. Clarification was made to the Plan as to when a deferred member is first eligible to commence receiving retirement payments.
3. Language was added to the Plan detailing the employer's obligation to pay contributions on current employees' hourly service arrearages, even if that service was performed for a previous participating employer.
4. The Plan was modified to charge all hourly service arrearages for employees appointed or reappointed on or after January 1, 2009 at the current employee contribution rate, rather than the contribution rate in effect at the time the service was rendered.
5. The Plan was changed so that members with five or more years of earned service who resign or are terminated from employment on, or after, January 1, 2009 automatically will become deferred members.
6. Colorado House Bill 08-1403 was enacted which permitted, but did not require, a merger between DPSRS and Colorado Public Employees' Retirement Association (PERA). The legislation allowed the three parties who would be involved in a merger – DPSRS, DPS and PERA – to try to reach a mutually satisfactory agreement that would result in merging the two retirement systems. For a number of reasons, including the complexities of the transaction and the severe decline in the financial markets in the latter months of 2008, an agreement was not reached.

## 2009

1. Colorado Senate Bill 09-282, mandating a merger between DPSRS and Colorado PERA was approved and on May 21, 2009, Governor Bill Ritter signed the bill into law, making the long discussed merger between DPSRS and PERA effective January 1, 2010. As of that date, DPSRS will no longer exist and the entire DPSRS membership will be placed into a new PERA division to be known as the DPS Division. The merger legislation also allows for the following:
  - a. Prospective portability for active and inactive members;
  - b. Avoidance of PERA's working after retirement rules for certain retired individuals already working for a PERA affiliated employer at point of merger;
  - c. Participation in PERACare, PERA's retiree healthcare program, for all eligible benefit recipients and certain beneficiaries and survivors;
  - d. Continuance of a healthcare subsidy offsetting the cost of PERACare through a separately funded Denver Public Schools Division Health Care Trust Fund for retirees meeting eligibility requirements;
  - e. An annual credit or offset to expected DPS employer contributions reflecting payments to PCOP debt so that the District's total pension contribution does not exceed the required amount legislated in the merger bill; and
  - f. Inclusion of all DPS hourly employees in the DPS Division, instead of participating in Social Security.



# **EXHIBIT 11**

**Case No. 2010 cv 1589**



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FORMAL )  
OPINION )  
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of )  
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KEN SALAZAR )  
Attorney General )

No.04-4  
Alpha No. TR TR GANCN  
November 18, 2004  
Changes to PERA Retirement  
Benefits and Contributions

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This opinion concerns limits to the ability of the General Assembly to alter retirement benefits for public employees under the pension program administered by Public Employees' Retirement Association of Colorado ("PERA"). It is issued at the request of Colorado Treasurer Mike Coffman.

*Questions Presented and Answers*

*Question:* What, if any, limitations exist upon the Legislature's ability to reduce the capacity of current employees to earn additional retirement benefits to assure the long term actuarial soundness of the plan?

*Answer:* The rate and amount of retirement benefits may qualify as a partially vested pension right protected by the contract clause of the constitution. An adverse change to a partially vested pension right is lawful only if it is balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan. Once a PERA member fulfills all the statutory requirements for a pension benefit, retires and begins receiving a pension, the member's fully vested pension right cannot be reduced by the General Assembly.

*Question:* What, if any, limitations exist upon the Legislature's ability to increase the percentage of their wages current employees contribute to PERA in order to assure the long-term actuarial soundness of the plan?

*Answer:* The percentage of wages that employees contribute to PERA may qualify as a contractual right protected by the constitution, but that legal conclusion is not certain.

Employees have some reasonable expectation that contribution rates to PERA may increase because of historical increases and the PERA statute that reserves the right of the General Assembly to change the rate of employer and member contributions. If the rate of employee contributions is in fact a protected contractual right, any increase by the General Assembly would be an adverse change to a partially vested pension right, and would be lawful only if the change is balanced by a corresponding change of a beneficial nature, is actuarially necessary, or strengthens or improves the pension plan.

## *Discussion*

### **Background**

PERA is the administrator of a defined benefit pension plan that provides retirement benefits for State employees and certain municipal, city, county, and school district employees. Section 24-51-201, C.R.S. (2004). Membership in PERA is a condition of employment. Section 24-51-301, C.R.S. (2004).

PERA's Board of Trustees is the fiduciary of the plan. The Board is required to carry out its functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. Section 24-51-207, C.R.S. (2004). Colorado's Treasurer is a statutorily appointed member of the PERA Board. Section 24-51-203, C.R.S. (2004).

### **Vested Nature of Pension Benefits**

Rights that accrue under a pension plan can be contractual obligations protected under Colo. Const. Art. II, § 11 and the U.S. Const. Art. 1, § 10. *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992); *Colorado Springs Fire Fighters Association v. City of Colorado Springs*, 784 P.2d 766, 770 (Colo. 1989). Vested contractual rights are constitutionally protected from statutory impairment. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998).

PERA retirement benefits become a vested right when an employee has complied with the statutory conditions entitling the employee to the receipt of retirement benefits. *See Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992) (citing *Police Pension & Relief Board of City and County of Denver v. Bills*, 148 Colo. 383, 366 P.2d 581 (1961)).

Some vested pension rights cannot be eliminated. When a PERA member retires from active service and begins receiving a pension, the member's pension becomes a vested contractual obligation of the pension program that is not subject to unilateral change of any type by the General Assembly. *Police Pension & Relief Board of City and County of Denver v. Bills*, 148 Colo. 383, 366 P.2d 581, 584 (1961) (citing *Police Pension & Relief Board of the City and*

*County of Denver v. McPhail*, 139 Colo. 330, 338 P.2d 694, 700 (1959)). When an employee retires and begins receiving a pension, trustees may not adopt an amendment that reduces an employee's vested pension under the plan. *Walker v. Board of Trustees of Regional Transportation District Pension Plan*, 69 Fed. Appx. 953, 2003 WL 21690534 (10<sup>th</sup> Cir. Colo.) (impairment of vested pension rights is arbitrary and capricious, a breach of contract, and a breach of its fiduciary duties) (citing *Police Pension & Relief Board of City and County of Denver v. Bills*), 148 Colo. 383, 366 P.2d 581 (1961) (unpublished opinion).

In appropriate circumstances, pension rights can vest to a limited degree prior to actual retirement, and also prior to eligibility to retire. *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992). No bright line test exists to determine what constitutes a partially vested right or when that right accrues. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998). The legal conclusion that a pension right has vested partially rests upon a case by case consideration of the facts and circumstances.

The establishment and modification of an employee benefit is traditionally within the scope of legislative discretion. *Colorado Springs Fire Fighters Association v. City of Colorado Springs*, 784 P.2d 766, 773 (Colo. 1989). Although statutes are not presumed to create private contractual rights, they may constitute a contract, protected by the Contract Clause of the constitution, if the statutory language and the surrounding circumstances manifest a legislative intent to create an enforceable contractual right. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287. The courts consider whether the existence of a contractual right is supported by the reasonable expectations of the affected person, or if the lack of a contractual right surprises persons who have long relied on a contrary state of the law. *Id* at 287.

Colorado's courts have not addressed whether public employees enrolled in PERA's program have a reasonable expectation of a contractual right to accrue a certain level and amount of future pension benefits. But Colorado courts have decided that certain pension benefits are not vested contractual rights. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998) (no vested contractual right to an occupational disability pension where there was a reasonable expectation that benefits would cease upon returning to police employment); *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 352 (Colo. App. 1998) (no equal protection claim or unconstitutional impairment of an existing contract right for legislative change offsetting benefits by optional retirement plan benefits); *Colorado Springs Fire Fighters Association .v City of Colorado Springs*, 784 P. P.2d 766, 774 (Colo. 1989) (no contractual obligation was intended by offering retiree health coverage to a limited class of employees).

Even if certain pension benefits are contractual rights protected by the Colorado Constitution, and even if such pension rights are partially vested pension rights, the Colorado courts have consistently allowed changes under certain conditions. The test is that any adverse change must be balanced by a corresponding change of a beneficial nature, a change that is

actuarially necessary, or a change that strengthens or improves the pension plan. *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 352 (Colo. App. 1998); *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992); *Peterson v. Fire and Police Pension Association*, 759 P.2d 720, 725 (Colo. 1988). Should a change to a partially vested pension right fail to satisfy at least one of these three criteria, it unconstitutionally impairs existing contract rights and is ineffective. *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 352 (Colo. App. 1998).

In *Peterson v. Fire and Police Pension Association*, 759 P.2d 720 (Colo. 1988), the Colorado Supreme court found that a police officer had achieved a limited vesting of survivor pension benefits prior to his death. The Court held that those pension benefits could be changed, but that any adverse change must be balanced by a change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan. The Court concluded that, although survivor pension benefits were reduced under the statewide fire and police pension plan, the goal of ensuring that the statewide pension system is actuarially sound justifies any corresponding detriments to the group. *Id* at 726.

In *Peterson*, the record reflected that Denver's pay-as-you-go police pension plan was actuarially unsound and therefore reductions to partially vested pension benefits were justified. A pension fund is said to be actuarially sound if there are no unfunded accrued liabilities and the current cost of pension benefits attributable to active members is being paid on an annual basis. *Peterson v. Fire and Police Pension Association*, 759 P.2d 720, 726 (citing *City of Colorado Springs v. State*, 626 P.2d 1122 (Colo. 1981)). The *Peterson* case also reviewed the definition of "actuarially sound" in the statutes governing the Denver pension fund and found under either definition, the Denver pension fund was not actuarially sound, therefore, reductions to partially vested pension benefits were actuarially necessary and proper.

Applying the same test to different facts, another court found that an increase in the years of service for retirement eligibility was an adverse change to a partially vested pension benefit that was not offset by a corresponding beneficial change in a rank escalator clause that increased the rank and salary used to compute pension benefits. *City of Aurora v. Ackman*, 738 P.2d 796, 802 (Colo. App. 1987).

## **Employee Contributions**

Eligible state employees and employers make periodic contributions to PERA as a term and condition of employment. *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 350 (Colo. App. 1998). By making these contributions, employees obtain a limited vesting of pension rights that ripen into fully vested pension rights upon attainment of statutory eligibility requirements. *Colorado Springs Fire Fighters Association v. City of Colorado Springs*, 784 P.2d 766, 771 (Colo. 1989).

The employee contribution rate to PERA has been changed several times over the years. Employee contributions to PERA began in 1931 at the rate of 3.5% and were increased several times to the current 8% rate in 1982. Employee contribution rates were 3.5% from 1931 to 1949, 5% from 1949 to 1958, 6% from 1958 to 1969, 7% from 1969 to 1973, and 7.75% from 1973 to 1982. Colorado PERA, *Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2003*, page 84. Historical increases in employee contribution rates to PERA have been accompanied by corresponding improvements to PERA pension benefits. The General Assembly has expressly reserved the right to change the rate of employer and member contributions to PERA if indicated by actuarial experience. Section 24-51-211, C.R.S. (2004). Thus, employees contributing to PERA have some reasonable expectation that contribution rates to PERA may increase, because of historical increases and an express statute reserving the right to change employer and member contributions to PERA if indicated by actuarial experience. A legal conclusion whether the rate of employee contributions to PERA is or is not a protected contractual right would rest upon the specific facts of each proposed change.

Even if the rate of employee contributions to PERA is a protected contractual right, the General Assembly could increase the rate of employee contributions if the increase is balanced by a corresponding change of a beneficial nature, is a change that is actuarially necessary, or is a change that strengthens or improves the pension plan.

### ***Conclusion***

A reduction in future PERA benefit accruals may qualify as an adverse change to a partially vested protected contractual right. Adverse changes by the General Assembly to partially vested pension benefits are permissible provided that they are balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan.

Once a PERA member fulfills all the statutory requirements for a pension benefit and retires, the member's fully vested pension right cannot be reduced by the General Assembly.

The rate of employee contribution to PERA may qualify as a contractual right protected by the Constitution, but that legal conclusion is not certain. Employees have a reasonable

expectation that contribution rates to PERA may increase from time to time, based upon historical increases and a statute reserving the ability of the General Assembly to change contributions. Nevertheless, if the rate of employee contributions is in fact a protected contractual right, any increase in the rate would be an adverse change that is permitted if the change is balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan.

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