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Public Employee Pension Benefits—A Promissory Estoppel Approach—Christensen v. Minneapolis Municipal Employees' Retirement Board, 331 N.W.2d 740 (Minn. 1983)

CASE NOTE

Public Employee Pension Benefits—A PROMISSORY ESTOPPEL APPROACH—*Christensen v. Minneapolis Municipal Employees' Retirement Board,* 331 N.W.2d 740 (Minn. 1983).

Historically, courts and legislatures viewed public employee pension benefits as gratuities.[1] The gratuity approach to public pensions allowed legislative modification or elimination of retirement benefits without regard to the employee's interest in the pension.[2] Employee challenges to legislative changes in benefits rarely succeeded.[3]

As pension benefits became a more substantial part of a public em-

1. *See, e.g.,* Eddy v. Morgan, 216 Ill. 437, 449, 75 N.E. 174, 178 (1905) (Public pensions are "a bounty springing from the graciousness and appreciation of sovereignty."); Slezak v. Ousdigian, 260 Minn. 303, 309, 110 N.W.2d 1, 5-6 (1961) (statute or ordinance granting a grauity to a public employee is not intended to create private, contractual or vested right); Halek v. City of St. Paul, 227 Minn. 477, 480, 35 N.W.2d 705, 707 (1947) (statutory provisions for payment of retirement pensions create no contractual or vested rights); Hessian v. Ervin, 204 Minn. 287, 289, 283 N.W. 404, 405 (1939) (employee had no vested right in pension fund, at least until he retired); Gibbs v. Minneapolis Fire Dep't Relief Ass'n, 125 Minn. 174, 176, 145 N.W. 1075, 1076 (1914) (employee has no vested right in pension).

2. *See* Richardson v. Belcher, 404 U.S. 78 (1971); Flemming v. Nestor, 363 U.S. 603 (1960); Gibbs v. Minneapolis Fire Dep't Relief Ass'n, 125 Minn. 174, 145 N.W. 1075 (1914).

In *Gibbs*, the court held that the legislature could amend the statutory definition of "widow" to make the plaintiff, an employee's widow, ineligible for pension payments, both earned and future. *Id.* at 176, 145 N.W. at 1076.

In *Flemming*, the appellee was deported from America for having been a member of the Communist Party from 1933 to 1939. At that time, membership in the Communist Party was not a basis for deportation. After 18 years of payments to the Federal Insurance Contribution Act, Congress passed a law which cut off benefits for anyone deported from this country because of past Communist Party membership. The government deported the appellee and discontinued payments to him and his wife. The Supreme Court overturned a district court decision, and held that the law did not violate appellee's fifth amendment due process rights. 365 U.S. at 605-06.

In *Richardson*, the appellee received social security disability benefits of $388.70 for three months. The next month the federal payment was reduced to $225.30 under an "offset" provision of the Social Security Act. The "offset" provision was invoked because the appellee was receiving worker's compensation benefits from the state of West Virginia. The Supreme Court held that the statute was not so arbitrary that it violated plaintiff's fifth amendment due process rights. The "offset" provision did not apply to persons receiving private insurance coverage or separate tort recoveries in addition to social security disability payments. 404 U.S. at 78.

3. *See supra* note 1. Employees have frequently challenged legislative changes in their pension benefits. *Id.* The courts, however, have been unsympathetic to these efforts. *See generally* Pension Task Force, Subcom. on Labor Standards, House Comm. on Education and Labor, 94th Cong., 2d Sess., Interim Report on Activities I (Comm. Print 1976).

ployee's compensation package, many jurisdictions abandoned the gratuity approach.[4] The majority of jurisdictions replaced the gratuity approach with a contract theory of public employee pension rights.[5] In Minnesota, public employee pension cases followed two paths.[6] While the majority of Minnesota Supreme Court decisions continued to follow the gratuity approach, a significant number of decisions applied the contract theory analysis.[7] Although the court varied its analytical approach, the reasons for these variations remained unexplained.[8]

In the case of *Christensen v. Minneapolis Municipal Employees' Retirement Board,*[9] the Minnesota Supreme Court faced the task of reconciling these two divergent lines of case law. Plaintiff Christensen brought an action for declaratory and injunctive relief against the Minneapolis Municipal Employees' Retirement Board when his pension benefits were suspended in April 1980.[10] Christensen retired and began receiving his pension benefits in 1974, after twenty-three years of city service.[11] In 1980, the legislature enacted a statute,[12] which imposed a new minimum age re-

4. *See* Donaldson v. Mankato Policeman's Benefit Ass'n, 278 N.W.2d 533 (Minn. 1979); Fossbinder v. Minneapolis Fire Dep't Relief Ass'n, 254 N.W.2d 363 (Minn. 1977); Sandell v. Saint Paul Police Relief Ass'n, 306 Minn. 262, 236 N.W.2d 170 (1975); Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973).

5. *See, e.g.,* Smith v. City of Dothan, 279 Ala. 571, 188 So. 2d 532 (1966); Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965); Jones v. Cheney, 253 Ark. 926, 489 S.W.2d 785 (1973); Abbott v. City of San Diego, 165 Cal. App. 2d 511, 332 P.2d 324 (1959); Police Pension and Relief Bd. of Denver v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959); Hanson v. City of Idaho Falls, 92 Idaho 512, 446 P.2d 634 (1968); Singer v. Topeka, 227 Kan. 356, 607 P.2d 467 (1980); Brazelton v. Kansas Pub. Emp. Retire. Sys., 227 Kan. 443, 607 P.2d 510 (1980); State *ex. rel.* Evans v. Fire Dep't Relief Ass'n, 138 Mont. 172, 355 P.2d 670 (1960); ALASKA CONST. art. XII, § 7; ILL. CONST. art. XIII, § 5; MICH. CONST. art. 9, § 24; N.Y. CONST. art. V., § 7.

6. *Compare* Halverson v. Rolvaag, 274 Minn. 273, 143 N.W.2d 239 (1966); Slezak v. Ousdigian, 260 Minn. 303, 110 N.W.2d 1 (1961); Halek v. City of St. Paul, 227 Minn. 477, 35 N.W.2d 705 (1949); Johnson v. State Emp. Retire. Ass'n, 208 Minn. 111, 292 N.W. 767 (1940); Gibbs v. Minneapolis Fire Dep't Relief Ass'n, 125 Minn. 174, 145 N.W. 1075 (1914) (all following the gratuity approach) *with* Donaldson v. Mankato Policeman's Benefit Ass'n, 278 N.W.2d 533 (Minn. 1979); Sandell v. Saint Paul Police Relief Ass'n, 306 Minn. 262, 236 N.W.2d 170 (1975); Stevens v. City of Minneapolis Fire Dep't Relief Ass'n, 124 Minn. 381, 145 N.W. 35 (1914) (all adopting a contract form of analysis).

7. *See supra* note 6.

8. *See* Christensen v. Minneapolis Mun. Emp. Retire. Bd., 331 N.W.2d 740 (Minn. 1983). "Thus we see that our case law over the years has not remained wedded to the gratuity approach, but has at times, without always articulating the reasons therefor, used a contract analysis." *Id.* at 746.

9. 331 N.W.2d 740 (Minn. 1983).

10. *Id.* at 742.

11. *Id.* Christensen began working for the City of Minneapolis in 1951. From 1951 to 1964 he worked part-time as an election helper. In 1965, Christensen was elected to the Minneapolis City Council, where he served until 1974. In 1974, at the age of 38, Christensen resigned from city service. *Id.*

12. Act of February 7, 1980, ch. 342, § 22, 1980 Minn. Laws 6, 20 (codified at MINN. STAT. § 422A.156 (1982)). In 1978, the legislature amended section 422A.09, subdivision

quirement for elected officials' eligibility for pension benefits.[13] Because the statute had retroactive impact, Christensen's benefits were suspended until he reached the newly imposed minimum age of sixty, a twelve year wait.[14]

Christensen challenged the statute as an unconstitutional impairment of his employment contract with the city.[15] The trial court rejected this contention, characterizing Christensen's pension as a gratuity.[16] In the lower court's view, the new minimum age requirement was valid and did not violate Christensen's constitutional rights.[17]

The Minnesota Supreme Court reversed this holding.[18] The court rejected both the gratuity and the contract approaches, and instead fashioned a third and somewhat novel approach, characterizing the

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3(2) of the Minnesota Statutes to subject elected officials to the same minimum age requirement for eligibility as had always been the case for nonelected employees. Act of March 23, 1978, ch. 562, § 3, 1978 Minn. Laws 262, 266. The 1980 Legislature added section 422A.156 which gave retroactive effect to the 1978 amendment. The current version as amended reads:

> From and after February 8, 1980, nothing contained in section 422A.09, subdivision 3, clause (2) shall be construed as allowing payment of a retirement allowance or other retirement benefits other than a disability allowance pursuant to section 422A.18 if otherwise eligible to any former, present or future elective officer of the city of Minneapolis who has not attained the age of at least 60 years unless the elective officer has received credit for at least 30 years of services and retires pursuant to section 422A.15, subdivision 1.

MINN. STAT. § 422A.156 (1982).

13. MINN. STAT. § 422A.156 (1982). The new minimum age was set at 60. *Id.*

14. 331 N.W.2d at 743. Christensen began receiving monthly pension benefits of $355.19. In 1978, these benefits were raised to $369.40 per month. Christensen elected to receive a lower monthly payment so that later monthly payments could be made to his surviving spouse. At the time Christensen's benefits were suspended, he was 38 years old, meaning that he would have to wait 12 years to again become eligible for benefits. At age 60, Christensen's benefits would be $622.69 per month. *Id.* at 742-43.

15. *Id.* at 743. Christensen also alleged that the statute deprived him of property without due process of law. *Id.* The court refused to consider this theory of recovery because it involved an "extension of the somewhat dubious doctrine of 'substantive' due process." *Id.* at 748.

The property right analysis originated in Spina v. Consol. Police & Fireman's Pension Fund Comm'n, 41 N.J. 391, 197 A.2d 169 (1964), in which the court held that government employees had a property interest in the funds of the pension system. *Id.* The court in *Christensen* confined itself to an analysis of the constitutional impairment issues raised by the plaintiff. 331 N.W.2d at 749-52.

16. 331 N.W.2d at 742. The Christensen court explained the trial court's action as follows:

> The trial court, believing itself bound by earlier decisions of this court characterizing a government pension as a gratuity, held that the legislature was not prohibited by the constitution from imposing, as to employees already retired, an age requirement of 60 years before benefits could be paid where previously there had been no age requirement.

Id.

17. *Id.*

18. *Id.* at 752.

plaintiff's interest in his pension in terms of promissory estoppel.[19]

The doctrine of promissory estoppel provided the court with a flexible method for evaluating public employee pension rights.[20] The *Christensen* court considered two factors: "(1) What has been promised by the state? and (2) To what degree and to what aspects of the promise has there been reasonable reliance on the part of the employee?"[21] The court held that the state had promised Christensen a pension after a prescribed term of city service with no mention of a minimum age requirement.[22] Christensen relied on this promise when he chose to become a contributing member of the pension fund in 1966.[23] Once Christensen elected to be-

19. *Id.* at 747. "We think today a public employee's interest in a pension is best characterized in terms of promissory estoppel." *Id.* The court did not cite any authority or case law supporting this type of analytical approach. Only one other state has considered the idea of applying a promissory estoppel analysis to the area of public pension law. *See* Crumpler v. Board of Admin. Emp. Retire. Sys., 32 Cal. App. 3d 567, 108 Cal. Rptr. 293 (1973).

The elements of promissory estoppel are set forth in the *Restatement (Second) of Contracts* section 90: "(1) A promise which the promisor should reasonably expect to induce action or forebearance on the part of the promissee . . . and which does induce such action or forebearance is binding if injustice can be avoided only by the enforcement of the promisee." RESTATEMENT (SECOND) OF CONTRACTS § 90 (1981); *see also* Grouse v. Group Health Plan, 306 N.W.2d 114 (Minn. 1981) (effect of promissory estoppel is to imply contract in law where none exists in fact); Del Hayes & Sons, Inc. v. Mitchell, 304 Minn. 275, 283, 230 N.W.2d 588, 593 (1975); Constructors Supply v. Boston Sheet Metal Workers, 291 Minn. 113, 116, 190 N.W.2d 71, 74 (1971). In *Constructors Supply*, the Minnesota Supreme Court quoted the *Restatement (Second) of Contracts* section 90 to establish the elements of promissory estoppel and characterized the doctrine as "a species of or substitute for consideration." *Id.* at 116, 190 N.W.2d at 74.

20. 331 N.W.2d at 747. The court also believed promissory estoppel to be a "realistic, fair and practical" doctrine. *See also* Note, *Public Employee Pensions in Times of Fiscal Distress*, 90 HARV. L. REV. 992, 998 (1977).

21. 331 N.W.2d at 749. The court noted that "[e]stoppel applies only to avoid injustice." *Id.* In Village of Wells v. Layne-Minnesota Co., 240 Minn. 132, 60 N.W.2d 621 (1953), the Minnesota Supreme Court made it clear that the foundation of estoppel is justice. *Id.* at 141, 60 N.W.2d at 627.

The Minnesota Supreme Court has also applied equitable estoppel against the state in order to avoid injustice. *See* Mesaba Aviation Div. v. County of Itasca, 258 N.W.2d 877, 880 (Minn. 1977). The equities of the circumstances must be examined and the government estopped if justice so requires, weighing in that determination the public interest frustrated by the estoppel.

Other courts have also employed the equitable estoppel analysis against the government. *See* Crumpler v. Board of Admin. Emp. Retire. Sys., 32 Cal. App. 3d 567, 108 Cal. Rptr. 293 (1973) (equitable estoppel serves as mechanism within which courts accommodate interests of pensioners and government); City of Long Beach v. Mansell, 3 Cal. 3d 462, 91 Cal. Rptr. 23, 476 P.2d 423 (1970); Shafer v. State, 83 Wash. 2d 618, 521 P.2d 736 (1974).

22. 331 N.W.2d at 749. "At no time while he [Christensen] was in municipal service did the legislature modify its promise of a pension by attempting to impose a minimum age requirement." *Id.*

23. *Id.* Under section 422A.09 of the Minnesota Statutes, city employees are divided into two classes: contributing and exempt. MINN. STAT. § 422A.09 (1982). The contrib-

come eligible for pension benefits, the state was estopped from denying his right to those benefits.[24]

The court's decision to apply promissory estoppel analysis to public employee pension benefits found little support in prior case law, either in Minnesota or other jurisdictions.[25] Nevertheless, the court viewed the doctrine as a preferable alternative to the gratuity and contract approaches.[26]

The gratuity approach developed at a time when few government workers received pensions, and the benefits they did receive were relatively insignificant in amount.[27] Today, pension benefits comprise a substantial portion of an employee's compensation package. The court could no longer adhere to a form of analysis which defined pensions as "a bounty springing from the graciousness and appreciation of the sovereignty."[28] The abandonment of the gratuity theory was a necessary step

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uting class consists of general municipal employees who are required to contribute to the pension plan. The exempt class members are persons holding elective office, except for municipal court judges. Elected officials choose to become members of the contributing class and to be covered under the pension plan upon written application. 331 N.W.2d at 749.

Christensen worked for the city of Minneapolis part-time from 1951 to 1964. In 1965, he was elected to the Minneapolis City Council and served on the council from 1965 until 1974 when he retired. At the time of trial, Christensen worked part-time as a janitor and groundskeeper. *Id.* at 742-43.

24. *Id.* at 749.

25. *See supra* note 19.

26. 331 N.W.2d at 746-48. The gratuity approach was justified in the past when pension benefits were insignificant in amount. *See* Note, *supra* note 20, at 997. In 1942, less than 50% of the over three million state and local public employees were enrolled in some type of pension program. By 1960, over 75% of seven million public employees had retirement programs. *See* Cohn, *Public Employee Retirement Plans—The Nature of the Employee's Rights,* 1968 ILL. L.F. 32, 33 n.3 (1968). Thus, pension coverage has expanded while increasing numbers of public employees are reaching retirement age and beginning to collect benefits. Increasingly, pension funding is insufficient to cover the amount of promised benefits. *See* Fritz, *The Growing Challenges of Providing Pensions to State & Local Civil Servants in an Aging Society,* 3 INT'L J. OF PUB. ADMIN. 405 (1981).

27. In 1939, the average civil servant received $978 per year upon his retirement. For 1940 and 1941, the figures were $965 and $932, respectively. U.S. Bureau of the Census, Statistical Abstract of the United States, 1941. Currently, the average civil servant receives approximately $1,036 per month upon his retirement. U.S. Bureau of the Census, Statistical Abstract of the United States, 1982.

28. Gibbs v. Minneapolis Fire Dep't Relief Ass'n, 125 Minn. 174, 177, 145 N.W. 1075, 1077 (1914) (quoting Eddy v. Morgan, 216 Ill. 437, 449, 75 N.E. 174, 178 (1905)). Today, however:

> [T]he universally recognized primary objectives of retirement plans are to enable the employer to attract better employees, to reduce turnover, to facilitate orderly retirement of older employees, to retain valuable employees who might seek more productive employment elsewhere, and most importantly from the employee viewpoint, to assure a measure of income upon retirement adequate to allow the annuitant to live in reasonable security. These objectives, of increasing importance in private employment, are even more critical in government personnel policy as, with few exceptions, government cannot compete with private in-

toward bringing public employee pension law into conformity with present day employment practices.[29]

The court did not adopt the majority rule which analyzes public employee pension benefits in terms of a contract theory.[30] The court stated that a contract approach precluded the analytical flexibility necessary to the evaluation of public pensions.[31] Conceptual difficulties created by statutory disclaimers of contract rights further influenced the court's decision to reject the contract analysis approach.[32]

Promissory estoppel enabled the court to consider equitable factors of fairness and justice, an impossibility using a gratuity or strict contract form of analysis.[33] By using a promissory estoppel approach, the court protected the employee's pension rights, without locking either party into an agreement which might require future legislative modification.[34]

In the second portion of its analysis, the court considered the issue of whether the statutory modification of Christensen's pension benefits constituted a valid exercise of the state's police power.[35] Like a contract, a promise enforced by estoppel contains an implied condition that its terms can be modified under the state's police power.[36] The exercise of

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dustry salary levels, and must rely heavily upon the equalizing factor of an attractive and liberal retirement plan.

Cohn, *supra* note 26, at 40.

29. 331 N.W.2d at 746-47. The court expressly overruled the *Gibbs* case and all prior cases using the gratuity approach. *Id.* at 747. For previous cases using the gratuity approach, see *supra* note 6.

30. 331 N.W.2d at 746-48. The court stated that most jurisdictions using the contract approach have a constitutional provision defining the contract rights. *Id.* at 747; *see supra* note 5; *see also* Opinion of the Justices, 364 Mass. 847, 303 N.E.2d 320 (1973); Birnhaum v. New York State Teachers Retire. Sys., 5 N.Y.2d 1, 176 N.Y.S.2d 984, 152 N.E.2d 241 (1958); Note, *supra* note 20, at 998.

31. *See* 331 N.W.2d at 748. The court noted that the state has the ability to make an offer and at the same time categorically deny the existence of any contract rights. *Id.* Statutory disclaimers deprive state employees of any vested interest in their pensions. *See, e.g.,* MINN. STAT. § 353.38 (1982) ("Nothing done under the terms of this chapter and acts amendatory thereof shall create or give any contract rights to any person"); *id.* § 354.07, subd. 8 ("No provision of this chapter shall create or give any contract rights to any person."); *id.* § 352.022 ("No provision . . . shall create or give any contract rights to any person.").

Yet, under the Minneapolis Municipal Employees Retirement Plan, there is no disclaimer of contract rights. 331 N.W.2d at 748. Thus, it remains unclear why the court felt compelled to avoid the contract theory approach given the fact that contract rights did exist between the plaintiff and the Retirement Board. Disclaimer clauses have created the greatest problem for courts wishing to apply a contract analysis to similar situations. *See, e.g.,* Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965); Birnbaum v. New York State Teachers Retire. Sys., 5 N.Y.2d 1, 152 N.E.2d 241, 176 N.Y.S.2d 984 (1958).

32. 331 N.W.2d at 748.

33. *Id.*; *see* Grouse v. Group Health Plan, Inc., 306 N.W.2d 114, 116 (1981).

34. *See infra* notes 42-44.

35. 331 N.W.2d at 749.

36. *Id.*; *see* Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 184, 91 N.W.2d 642, 656 (1958). In *Zimmerman,* the court stated that: "all contracts made by the state are

the state's police power is, however, always subject to the constitutional prohibition against impairment of contracts.[37]

In evaluating the issue of contractual impairment, the court adopted a three-part test recently set forth by the United States Supreme Court:[38]

> (1) Has the state law operated as a substantial impairment of contractual obligation?[39]
>
> (2) If so, was there a significant and legitimate public purpose behind the law?[40]
>
> (3) In light of this purpose, was the adjustment of the rights and responsibilities of the parties upon reasonable conditions and of a character appropriate to the public purpose justifying the adoption of the law?[41]

The court balanced the need for public employees to reasonably rely upon the state's promise of a retirement program against the state's concern for the financial integrity of the pension fund, as well as for the financial soundness of the state as a whole.[42]

The court found that the twelve year suspension of benefits constituted a substantial impairment of Christensen's rights.[43] Because only nine

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entered into subject to the implied condition that they are ever subordinate to a reasonable and proper exercise of the state's inalienable police power." *Id.*

37. *See* U.S. CONST. art. I, § 10, cl. 1; MINN. CONST. art. I, § 11. The United States Supreme Court has construed the contracts clause to mean that the states reserved the power to modify contracts when the public interest requires. *See* Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978); United States Trust Co. v. New Jersey, 431 U.S. 1 (1977); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934); *see also* White Motor Corp. v. Malone, 599 F.2d 283 (8th Cir. 1979); Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 91 N.W.2d 642 (1958); Naftalin v. King, 252 Minn. 381, 90 N.W.2d 185 (1958).

38. Energy Reserves Group Inc. v. Kansas Power & Light Co., 103 S. Ct. 697 (1983).

39. The legislation is subjected to increased scrutiny as the severity of the impairment increases. 331 N.W.2d at 750-51.

40. *Id.* at 751.

41. *Id.*

42. *Id.* The court also noted that the entire test is applied with more scrutiny when the state tries to impair a contract to which it is a party. "Complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." United States Trust Co. v. New Jersey, 431 U.S. 1, 26 (1977), *quoted in* Christensen v. Minneapolis Mun. Emp. Retire. Bd., 331 N.W.2d 740, 751 (Minn. 1983); *see also* Energy Reserves Group Inc. v. Kansas Power & Light Co., 103 S. Ct. 697, 705-06 n.14 (1983).

The state argued that it was unreasonable for an employee to claim justified reliance on a lifelong pension prior to the age of 60. The state's interest in enacting the statute was presumably to correct past mistakes and to insure the integrity of the pension fund for disabled and aged employees. 331 N.W.2d at 751.

43. The court stated that:

> Applying the *Energy Reserves* three-part test to those claims makes it obvious that the state's concern in correcting any inequities in the city's pension plan must yield to the employee's need to be secure in his expected retirement benefits. First, the suspension of retirement benefits until age 60 is a substantial impairment of the contract terms. It may be a prudent alteration; correcting an ineq-

people were affected by the retroactive application of the statute,[44] the state could not claim that the integrity of the pension fund, or of the entire state budget, was in jeopardy.[45] As a result, the court held that the statute was invalid as an unconstitutional impairment of contract with respect to elected city officials, already retired and collecting pension benefits at the time the statute was enacted.[46]

The court based its decision to adopt promissory estoppel as its mode of analysis upon the conflicting needs of the state and its employees.[47] The state must retain the ability to modify public pension benefits when other state interests, such as a financially sound state budget, are at stake.[48] Yet, the state offers attractive pension plans in order to attract and retain qualified employees who would otherwise seek higher paying private sector jobs.[49] These employees have a legitimate interest in their pension benefits, which the court must protect from unfair or unreasonable legislative changes.

While promissory estoppel provides flexibility for evaluating public pension benefits, it also introduces an element of uncertainty into the area of public pension law. Evaluating public pension benefits in terms of "reasonable reliance," "fairness," and "manifest injustice" invites litigation by public employees claiming reliance upon the state's promises. With every statutory modification of benefits, a public employee could claim that an "injustice" occurred. The subjective standards of promissory estoppel require a case by case evaluation for virtually every individual affected by statutory changes in the pension law.

Furthermore, promissory estoppel prevents the state from accurately assessing its outstanding pension liability. In times when the state is constantly struggling to balance the budget and maintain accurate account of the state's financial status, certainty should be a paramount concern in the evaluation of public pension benefits.

The court placed little emphasis on the state's concern for the financial security of the pension fund.[50] Originally, pensions developed to provide support for those no longer able to work, as well as to allow the govern-

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uity or a fiscal misjudgment can be a significant and legitimate public purpose, as the second prong of this test requires.

331 N.W.2d at 751.

44. *Id.* at 751.

45. *Id.* The record showed that Christensen had paid $7,051.51 into the retirement fund. At the time his benefits were suspended he had already received $27,380.86 in payments. At the time of Christensen's retirement the actuarial value of his retirement allowance was $73,872.61. For all nine employees affected by the retroactive application of the statute, the unfunded liability of the pension fund was $258,655.02. *Id.*

46. *Id.* at 752.

47. *See supra* notes 38-41 and accompanying text.

48. *See supra* note 36 and accompanying text.

49. *See supra* notes 26-28 and accompanying text.

50. *See supra* note 44.

ment to attract and retain qualified employees in public service.[51] Today, cities and taxpayers cannot afford to provide a lifetime monthly allowance to every former civil servant. Pensions were never intended to allow an individual capable of earning a living to retire at the age of thirty-eight.[52] The legislative attempt to remove this financial burden from the pension fund may have been an effort to correct past inequities in the pension system and to preserve the integrity of the state pension fund for public employees who are unable to work, or who have reached the normal age for retirement.

In the future, if the court is again faced with the issue of public employee pension rights, it should reconsider its decision to adopt promissory estoppel. A contract theory approach would provide certainty for both the state and its employees, allowing for prudent long-range financial planning by each. The contract approach would also encourage careful drafting of legislation that would change or modify pension benefits.

The contract approach would provide certainty without sacrificing flexibility. As the court in *Christensen* noted, any contract binding on the state can be modified by the state's police power.[53] Minor modifications of benefits effected without reaching the level of a substantial impairment of contractural obligations preclude the employee from instituting litigation. Drastic modifications of pension benefits could be scrutinized using the three-part test delineated above.[54] This analysis could be accomplished without the need for a preliminary investigation to determine upon which benefits the employee had "reasonably relied" in the past.[55]

The court acted properly in eliminating the outdated notion of public pensions as gratuities. In its effort to provide flexibility for the state and its employees, however, the court introduced an unnecessary element of uncertainty into an area of law where certainty should be a primary concern. In the future, the court should consider adopting the contract analysis now used by the majority of jurisdictions. This approach would allow the state and its employees to plan their retirement programs, while providing the flexibility needed in this area of the law.

51. *See* Cohn, *supra* note 26, at 45.
52. *See id.*
53. *See supra* note 36.
54. *See supra* notes 38-40 and accompanying text.
55. *See supra* notes 20-21 and accompanying text.