Detroit Pension Ruling Jars Union Leaders, But Won't Shake N.Y.

By MARK TOOR | Posted: Monday, December 30, 2013 5:00 pm

New York State public-employee unions had always pointed with confidence to the provision of the State Constitution that protected pension benefits from cuts. Our members can be secure in their pensions, they said.

But a recent ruling involving bankrupt Detroit, where pensions are also protected by the State Constitution, has shaken that confidence

somewhat. U.S. Bankruptcy Court Judge Steven W. Rhodes decided last month that Federal bankruptcy law takes precedence over the State Constitution's provisions safeguarding the pensions of the city's retired workers.

'No Heightened Protection'

"Pension benefits are a contractual right and are not entitled to any heightened protection in a municipal bankruptcy," according to his decision. That places retired municipal workers in the same position as investors in municipal bonds, who in bankruptcy are generally paid only part of what they're owed. It was the first time a Bankruptcy Judge has made such a ruling.

Unions for Detroit's employees are appealing, and the city is talking with the unions and its other creditors in hope of reaching a settlement. But Judge Rhodes declined to delay his decision from taking effect, and city officials are working on a new financial plan.

Labor leaders fear that the ruling could influence decisions in cases involving several California cities that are in bankruptcy proceedings, most of which cite the cost of pensions as a major problem in addition to bond payments. Unions fear the threat of municipal bankruptcy could become a strong lever for localities to use in contract negotiations.

'A Bad Precedent'

Municipal pensions have already been cut in Central Falls, R.I., and Pritchard, Ala., where bake sales were held and collection jars placed in stores for a retired police Captain who had been shot by a robber and disabled.

"It sets a bad precedent for cities that are under economic distress to look at doing the easy thing: to attack the workers and attack the retirees," said Lee Saunders, president of the American Federation of State, County and Municipal Employees.

Detroit's fortunes rose and fell with the U.S. auto industry. In 1950, it had 1.8 million residents.

By 2010, as foreign automakers gained more U.S. customers and hard-pressed U.S. car manufacturers moved more of their operations to states where unions were weak, its population had dwindled to 714,000. Whole sections of the city were abandoned. Houses are for sale for as little as $1.

The decline in the economy and population sharply lowered city revenues. Public corruption also took its toll. Over the past 80 years, five Detroit mayors and four County Executives in Wayne County, which includes the city, have been sent to prison, were the subjects of Federal investigations, or were removed from office.

The city's pension fund was depleted further by extra checks issued to recipients beyond normal benefits, justified, the city's pension trustees believed, by high investment returns. "People were having a hard time, living hand-to-mouth, and we thought we would give them some extra," said Tina Bassett, a spokeswoman for the board.

Pensions Not Extravagant

The average pension for Detroit's 23,000 retired city workers is $19,000 a year. For police and fire retirees, it is about $30,000.

When Detroit filed for bankruptcy last summer, it said it could not meet the payments on $18 billion in debt, much of it borrowed since 2007 to meet operating costs. The city estimates it owes its pension funds $3.5 billion; the funds say that figure is really $700 million. The difference is based on varying assumptions of investment returns.

The Bankruptcy Court decision does not take effect nationwide unless it is upheld by the U.S. Supreme Court. However, unions in this state are on the alert.

"This is a ruling that should send chills through every working person in America," Stephen Madarasz, spokesman for the Civil Service Employees Association, said in an interview. "It's tantamount to saying that government doesn't have to be any more accountable than businesses for reckless actions."

He said the ruling undermines state constitutional protections. It doesn't just affect public employees, he said, but potentially could have a much broader impact.

'We're Not Detroit'

Susan Kent, president of the Public Employees Federation, said on the Capitol Pressroom radio program, "They really are not looking at what's best for the people of the City of Detroit." While Detroit was the nation's fourth-largest city in 1920, she said, it is now "a total disaster because of Wall Street schemes and bad public policy and mismanagement."

But, she noted, "we are not in the same situation at all as Detroit." First, she said, Detroit has its own pension plan, while her members are part of a state pension system that includes state, local and municipal workers. Further, she continued, New York State has strong protections in place to keep municipalities from bankruptcy, and none of the state's cities has ever gone bankrupt.

"While municipal bankruptcy has never happened in New York, it is clearly not beyond the realm of possibility," said Peter Baynes, executive director of the New York Conference of Mayors.

Stephanie Miner, Mayor of Syracuse and a spokeswoman for the state's financially-distressed municipalities, called the Detroit decision a turning point. "What has been sacred—pensions—are not sacred anymore," she said.

Sounder Footing Here

In terms of the strength of its pension system, New York is in much better shape than most states, according to the nonprofit Pew Center on the States. In 2010, the state owed $9 billion in unfunded pension obligations, compared with $112 billion for California, $76 billion for Illinois, $27 billion for Pennsylvania and Texas, and $21 billion for Virginia.

However, its unfunded obligations for retiree health care were more in line with other states: $57 billion, as opposed to $112 billion in California, $55 billion in Texas, $44 billion in Illinois, $17 billion in Pennsylvania and $5 billion in Virginia.

Unfunded public-pension obligations accounted for only 6 percent of New York State's $92 billion in debt. There are no constitutional protections for retiree health care.

'We're Not Comparable'

State Comptroller Thomas P. DiNapoli, who manages the state retirement funds, and City Comptroller John C. Liu, who oversees the city pension funds, issued statements last summer saying their funds were solid.

"The financial situations of Detroit and New York City are simply not comparable," Mr. Liu said.

"We must intensify the good efforts that are already underway in many communities to confront difficult budget choices," Mr. DiNapoli said.