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Matter of Retired Pub. Empls. Assn., Inc. v Cuomo

Supreme Court of New York, Appellate Division, Third Department

October 16, 2014, Decided; October 16, 2014, Entered

517749

Reporter

123 A.D.3d 92 *; 995 N.Y.S.2d 757 **; 2014 N.Y. App. Div. LEXIS 7030 ***; 2014 NY Slip Op 07044 ****

[****1] In the Matter of Retired Public Employees Association, Inc., et al., Appellants, v Andrew Cuomo, as Governor of the State of New York, et al., Respondents.

Prior History: Appeal from a judgment of the Supreme Court, Albany County (George B. Ceresia, Jr., J.), entered January 2, 2013 in a combined proceeding pursuant to [CPLR article 78](#) and action for declaratory judgment. The judgment partially granted respondents' motion to dismiss the petition/complaint.

[Matter of Retired Pub. Empls. Assoc., Inc. v Cuomo, 2012 NY Slip Op 32979\(U\)](#), affirmed.

[Matter of Retired Pub. Empl. Assoc., Inc. v Cuomo, 2012 N.Y. Misc. LEXIS 5714 \(N.Y. Sup. Ct., Dec. 17, 2012\)](#)

Core Terms

retiree, contribution rate, employees, collective bargaining agreement, health insurance premium, modify, employee organization, health insurance, modification, contractual, premium, vested

Case Summary

Overview

HOLDINGS: [1]-[Civil Service Law § 167\(8\)](#) provided authority for the State of New York's actions in effectuating the reduced state contribution rates to the retirees' health premium and subscription costs under the New York State Health Insurance Plan; [2]-The retirees' rights under the [Contracts Clause, U.S. Const. art. I, § 10, cl. 1](#), and the Due Process Clause, [N.Y. Const. art. I, § 1](#) were not violated as [§ 167\(1\)\(a\)](#) did not

employ terms that signalled an intent to create a contractual or vested right; [3]-[Section 167\(1\)\(a\)](#) reflected a policy determination as to the State's contribution rate towards retiree health insurance premiums that was subject to change at the will of the legislature; [4]-[Section 167\(8\)](#) was not an unconstitutional delegation of legislative authority as the standard provided in [§ 167\(8\)](#) provided adequate guidance for the state agency's exercise of its discretion.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Subjects

Governments > State & Territorial Governments > Employees & Officials

Pensions & Benefits Law > Governmental Employees > State Pensions

[HN1](#) [↓] **Collective Bargaining & Labor Relations, Bargaining Subjects**

In August 2011, to address severe fiscal challenges, the New York State legislature amended [Civil Service Law § 167](#) to permit reductions in the state's contribution towards health insurance premiums in the event that a collective bargaining agreement between the state and an employee organization so provided. [Civil Service Law § 167\(8\)](#). The amendment also expressly authorizes any such modification in contribution rates to be extended to employees and retirees not covered by a

collective bargaining agreement.

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Subjects

Pensions & Benefits Law > Governmental Employees > State Pensions

Governments > State & Territorial Governments > Employees & Officials

[HN2](#) **Collective Bargaining & Labor Relations, Bargaining Subjects**

See [Civil Service Law § 167\(8\)](#).

Governments > Legislation > Interpretation

[HN3](#) **Legislation, Interpretation**

The text of a statute is the best evidence of legislative intent and, where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used. A statute must be considered as a whole and its various sections construed with reference to one another and in a way that renders them internally compatible.

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Subjects

Governments > State & Territorial Governments > Employees & Officials

Pensions & Benefits Law > Governmental Employees > State Pensions

Governments > Legislation > Interpretation

[HN4](#) **Collective Bargaining & Labor Relations, Bargaining Subjects**

[Civil Service Law § 167\(8\)](#) plainly and unambiguously permits modification of the fixed contribution rates for retiree health insurance premiums set forth in [§ 167\(1\)\(a\)](#). [Section 167\(8\)](#) begins with the phrase "notwithstanding any inconsistent provision of law,"

which is a verbal formulation frequently employed for legislative directives intended to preempt any other potentially conflicting statute, wherever found in the state's laws. It then provides that the state and an employee organization may enter into a collective bargaining agreement to modify the state cost of premium or subscription charges for eligible employees set forth in [§ 167\(1\)\(a\)](#), and expressly grants the President of the Civil Service Commission the discretion to extend any such modification in contribution rates to employees or retirees not covered by a collective bargaining agreement. [§ 167\(8\)](#). Thus, while [§ 167\(1\)\(a\)](#) provides for a fixed percentage contribution, the explicit command of the New York State legislature in [§ 167\(8\)](#) makes clear that the former provision does not apply where it would otherwise conflict with [§ 167\(8\)](#). As the plain language renders these provisions internally compatible, there is no room for construction and the appellate court has no right to add to or take away from that meaning.

Constitutional Law > Congressional Duties & Powers > Contracts Clause > Scope

Governments > State & Territorial Governments > Claims By & Against

Evidence > Inferences & Presumptions > Presumptions > Particular Presumptions

Governments > State & Territorial Governments > Employees & Officials

[HN5](#) **Congressional Duties & Powers, Contracts Clause**

Before a law may be deemed to amount to a contract between the state and a third party, the statutory language must be examined and found to be plain and susceptible of no other reasonable construction than that a contract was intended. Indeed, certain types of legislative acts, including those fixing salaries and compensation, give rise to the presumption that the law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the New York State legislature shall ordain otherwise.

Governments > State & Territorial Governments > Employees & Officials

Pensions & Benefits Law > Governmental
Employees > State Pensions

[HN6](#) State & Territorial Governments, Employees & Officials

The appellate court finds nothing in the language of [Civil Service Law § 167\(1\)\(a\)](#) to constitute clear and irresistible evidence that the New York State legislature intended to fetter its power in the future with respect to retirees' health insurance contributions. Notably, the statute does not contain any "words of contract" or employ any terms that signal an intent to create a contractual or vested right. Under such circumstances, [§ 167\(1\)\(a\)](#) is more reasonably read as a policy determination regarding the state's contribution rate towards retiree health insurance premiums that is subject to later change at the will of the legislature.

Administrative Law > Separation of
Powers > Legislative Controls > General Overview

Governments > State & Territorial
Governments > Legislatures

Constitutional Law > State Constitutional Operation

[HN7](#) Separation of Powers, Legislative Controls

While the New York State legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the legislature, provided that power is circumscribed by reasonable safeguards and standards.

Headnotes/Syllabus

Headnotes

Civil Service — Retirement and Pension Benefits — Reduction in State's Percentage Contribution Toward Retirees' Health Insurance Premiums

1. In a hybrid [CPLR article 78](#) proceeding and declaratory judgment action by petitioners, former New York State employees receiving a fixed percentage retirement allowance from the state pursuant to [Civil Service Law § 167 \(1\) \(a\)](#), challenging the state's reduced contribution towards their health insurance benefits after the state and an employee organization

entered into a collective bargaining agreement that reduced the state's contribution to current employees' health insurance premiums, respondents' extension of the reduced contribution rates to petitioners was lawful and in compliance with [Civil Service Law § 167](#). Nothing in the language of [Civil Service Law § 167 \(1\) \(a\)](#) constituted clear and irresistible evidence that the legislature intended to create a contractual or vested right to the higher contribution rates set forth therein. In amending [section 167](#), the legislature's use of the phrase "[n]otwithstanding any inconsistent provision of law" in [subdivision \(8\)](#) expressed its intent to preempt any other potentially conflicting statute, including the fixed contribution rates set forth in [subdivision \(1\) \(a\)](#). The legislature also expressly granted the Civil Service Commission the discretion to extend modifications in contribution rates to "employees or retirees" not covered by a collective bargaining agreement. Thus, the plain and unambiguous language of [Civil Service Law § 167 \(8\)](#) permitted reductions in the state's contribution towards petitioners' health insurance premiums in the event that a collective bargaining agreement between the state and an employee organization so provided. Moreover, since the Commission's discretion was entirely dependent upon and limited by the terms of a collective bargaining agreement, reasonable safeguards and standards were in place such that the statute did not amount to an unconstitutional delegation of legislative authority.

Counsel: **[***1]** *Law Office of Robert L. Beebe*, Clifton Park (*Robert L. Beebe* of counsel), for appellants.

Eric T. Schneiderman, Attorney General, Albany (*Julie M. Sheridan* of counsel), for respondents.

Judges: Before: Peters, P.J., Stein, Garry, Egan Jr. and Clark, JJ. Stein, Garry, Egan Jr. and Clark, JJ., concur.

Opinion by: Peters

Opinion

[*92] **[**759]** Peters, P.J.

Petitioners **[*93]** are former New York State employees who are receiving a retirement allowance from the state and a lobbying association representing the interests of similarly situated individuals for whom the state pays a percentage of their health insurance cost. Prior to 2011,

the state was contributing 100% towards the health insurance premiums for retirees who retired prior to January 1, 1983 and 90% for those who retired thereafter (as well as 75% of the premiums for dependent coverage), pursuant to the fixed contribution rates set forth in [Civil Service Law § 167 \(1\) \(a\)](#). [HN1](#) [↑] In August 2011, to address severe fiscal challenges, the Legislature [***2] amended [Civil Service Law § 167](#) to permit reductions in the state's contribution towards health insurance premiums in the event that a collective bargaining agreement between the state and an employee organization so provided (see [Civil Service Law § 167 \(8\)](#)). The amendment also expressly authorized any such modification in contribution rates to be extended to employees and [****2] retirees not covered by a collective bargaining agreement. Specifically, [Civil Service Law § 167 \(8\)](#), as amended, provides:

[HN2](#) [↑] "Notwithstanding any inconsistent provision of law, where and to the extent that an agreement between [*94] the state and an employee organization entered into pursuant to article [14] of this chapter so provides, the state cost of premium or subscription charges for eligible employees covered by such agreement may be modified pursuant to the terms of such agreement. The president, with the approval of the director of the budget, may extend the modified state cost of premium or subscription charges for employees or retirees not subject to an agreement referenced above and shall promulgate the necessary rules or regulations to implement this provision."

In September 2011, after the state and an employee organization entered into a collective bargaining agreement that reduced [***3] the state's contribution to current employees' health insurance premiums by between 2% and 6% (depending upon the employee's grade), such reduction was extended to retirees, including plaintiffs, who retired on or after January 1, 1983 pursuant to [Civil Service Law § 167 \(8\)](#). The Department of Civil Service subsequently promulgated emergency regulations implementing the reduced state contribution rates effective October 1, 2011 (see [4 NYCRR 73.3 \(b\)](#)).

Petitioners commenced this combined [CPLR article 78](#) proceeding and action for declaratory judgment challenging the state's reduced percentage contribution towards their health insurance benefits, seeking, among other things, a declaration that any such reduction was null and void, an injunction barring respondents from

implementing such a reduction through regulations and an order that any increased payments by retirees be refunded. In lieu of answering, respondents moved to dismiss the petition/complaint for failure to state a cause of action. Supreme Court granted respondents' motion to dismiss the petition/complaint and declared that the administrative actions to implement the increase in [**760] retiree contributions and the corresponding regulations were valid. Petitioners appeal.

Petitioners argue that [Civil Service Law § 167](#) is [***4] internally inconsistent to the extent that it imposes a fixed contribution rate for retiree health insurance while concomitantly authorizing modification of those statutory rates, and they urge this Court to harmonize the statute's provisions by declaring that [Civil Service Law § 167 \(8\)](#) applies only prospectively. We begin our analysis with the familiar maxim that [HN3](#) [↑] the text of a statute is the best evidence of legislative intent and, "where the statutory [*95] language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used" ([Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce](#), 21 NY3d 55, 60, 990 NE2d 114, 967 NYS2d 876 [2013] [internal quotation marks, brackets and citations omitted]; see [Matter of DaimlerChrysler Corp. v Spitzer](#), 7 NY3d 653, 660, 860 NE2d 705, 827 NYS2d 88 [2006]; [Majewski v Broadalbin-Perth Cent. School Dist.](#), 91 NY2d 577, 583, 696 NE2d 978, 673 NYS2d 966 [1998]). It is also fundamental that a statute must be considered as a whole and its various sections construed with reference to one another and in a way that renders them internally compatible (see [Matter of Albany Law School v New York State Off. of Mental Retardation & Dev. Disabilities](#), 19 NY3d 106, 120, 968 NE2d 967, 945 NYS2d 613 [2012]; [Yatauro v Mangano](#), 17 NY3d 420, 426, 955 NE2d 343, 931 NYS2d 36 [2011]; [Friedman v Connecticut Gen. Life Ins. Co.](#), 9 NY3d 105, 115, 877 NE2d 281, 846 NYS2d 64 [2007]).

Applying these principles here, we conclude that [Civil Service Law § 167 \(8\)](#) [HN4](#) [↑] plainly [****3] and unambiguously permits modification of the fixed contribution rates for retiree health insurance premiums set forth in [Civil Service Law § 167 \(1\) \(a\)](#). [Civil Service Law § 167 \(8\)](#) begins with the phrase "[n]otwithstanding any inconsistent provision of law," which is a "verbal formulation frequently employed for legislative directives intended to preempt any other potentially conflicting [***5] statute, wherever found in the [s]tate's laws" ([People v Mitchell](#), 15 NY3d 93, 97, 931 NE2d 84, 905 NYS2d 115 [2010]; see [Matter of Niagara County v](#)

[Power Auth. of State of N.Y., 82 AD3d 1597, 1601, 919 NYS2d 618 \[2011\]](#), *lv dismissed and denied* 17 NY3d 838, 954 NE2d 1158, 930 NYS2d 533 [2011]). It then provides that the state and an employee organization may enter into a collective bargaining agreement to modify "the state cost of premium or subscription charges for eligible employees" set forth in [Civil Service Law § 167 \(1\) \(a\)](#), and expressly grants the President of the Civil Service Commission the discretion to extend any such modification in contribution rates to "employees or retirees" not covered by a collective bargaining agreement ([Civil Service Law § 167 \[8\]](#)). Thus, while [Civil Service Law § 167 \(1\) \(a\)](#) provides for a fixed percentage contribution, the explicit command of the Legislature in [Civil Service Law § 167 \(8\)](#) makes clear that the former provision does not apply where it would otherwise conflict with [Civil Service Law § 167 \(8\)](#). As the plain language renders these provisions internally compatible, "there is no room for construction and [we] have no right to add to or take away from that meaning" ([Majewski v Broadalbin-Perth Cent. School Dist.](#), 91 NY2d at 583 [internal quotation marks and citation omitted]; see [Matter of Jessica D. v Jeremy H.](#), 77 AD3d 87, 91, [*96] 906 NYS2d 119 [2010]; see also [People v Finnegan](#), 85 NY2d 53, 58, 647 NE2d 758, 623 NYS2d 546 [1995], *cert denied* 516 US 919, 116 S Ct 311, 133 L Ed 2d 214 [1995]). Notably, the legislative history [*761] of the 2011 amendments to [Civil Service Law § 167 \(8\)](#) confirms that the amendment was intended "to provide authority to modify the employer and employee shares of health premium and subscription costs under the New York State Health Insurance Plan" [***6] (Senate Introducer's Mem in Support, Bill Jacket, L 2011, ch 491 at 9, 2011 McKinney's Session Laws of NY at 2141). Given the Legislature's expressed intent to authorize a modification in the state's contribution rate towards retiree health insurance premiums under the circumstances present here, we conclude that respondents' actions in effectuating the reduced state contribution rates was both lawful and in compliance with the statute.

Petitioners next claim that they have a contractual and vested property right to the percentage contribution rate set forth in [Civil Service Law § 167 \(1\) \(a\)](#), and that any decrease in that contribution rate violates their rights under the [Contracts Clause of the US Constitution](#) and the Due Process Clause of the NY Constitution. In so arguing, petitioners do not allege the existence of any express contractual agreement, but instead rely solely upon [Civil Service Law § 167 \(1\) \(a\)](#) as the source of the

alleged vested rights. * [HN5](#) [↑] "[B]efore a law may be deemed to amount to a contract between the [s]tate and a third party, the statutory language must be examined and found to be 'plain and susceptible of no other reasonable construction' than that a contract was intended" ([Pennsylvania R.R. Co. v State of New York](#), 11 NY2d 504, 511, 184 NE2d 588, 230 NYS2d 1004 [1962], quoting [Stanislaus County v San Joaquin & King's River Canal & Irrigation Co.](#), 192 US 201, 208, 24 S Ct 241, 48 L Ed 406 [1904]; see [Cook v City of Binghamton](#), 48 NY2d 323, 330, 398 NE2d 525, 422 NYS2d 919 [1979]). Indeed, "certain types of legislative acts, including those fixing salaries and compensation, . . . [give rise to the presumption that the] 'law is [***7] not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise' " ([Cook v City of Binghamton](#), 48 NY2d at [***4] 330, quoting [Dodge v Board of Ed. of Chicago](#), 302 US 74, 79, 58 S Ct 98, 82 L Ed 57 [1937]).

[HN6](#) [↑] We find nothing in the language of [Civil Service Law § 167 \(1\) \(a\)](#) to constitute "clear and irresistible evidence" that the [*97] Legislature intended to "fetter[] its power in the future" with respect to retirees' health insurance contributions ([Pennsylvania R.R. Co. v State of New York](#), 11 NY2d at 511; see [Matter of Handy v County of Schoharie](#), 244 AD2d 842, 843, 665 NYS2d 708 [1997]). Notably, the statute does not contain any "words of contract" or employ any terms that signal an intent to create a contractual or vested right ([Cook v City of Binghamton](#), 48 NY2d at 330; see [Dodge v Board of Ed. of Chicago](#), 302 US at 79; compare [NY Const, art V, § 7](#) [pension benefits "shall be a contractual relationship"]). Under such circumstances, [Civil Service Law § 167 \(1\) \(a\)](#) is more reasonably read as a policy determination regarding the state's contribution rate towards retiree health insurance premiums that is subject to later change at the will of the Legislature (see [Dodge v Board of Ed. of Chicago](#), 302 US at 81; [Cook v City of Binghamton](#), 48 NY2d at [***762] 330-331; [Matter of Handy v County of Schoharie](#), 244 AD2d at 843-844; [Methodist Hosp. of Brooklyn v State Ins. Fund](#), 102 AD2d 367, 379-380, 479 NYS2d 11 [1984], *affd* 64 NY2d 365, 476 NE2d 304, 486 NYS2d 905 [1985]).

* Petitioners' reliance on [Kolbe v Tibbetts](#) (22 NY3d 344, 980 NYS2d 903, 3 NE3d 1151 [2013])—wherein the Court of Appeals concluded that a collective bargaining agreement can, under certain circumstances, give rise to a vested right to retiree health insurance at a specified level—is therefore misplaced.

Finally, we reject petitioners' contention that [Civil Service Law § 167 \(8\)](#) constitutes an unconstitutional [***8] delegation of legislative authority. [HN7](#) "[W]hile the Legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the Legislature, provided that power is circumscribed by reasonable safeguards and standards" ([Matter of Carpenter Tech. Corp. v Commissioner of Taxation & Fin.](#), 295 AD2d 830, 834, 745 NYS2d 86 [2002], lv denied 99 NY2d 501, 782 NE2d 566, 752 NYS2d 588 [2002]; see [Brightonian Nursing Home v Daines](#), 21 NY3d 570, 579, 999 NE2d 510, 977 NYS2d 147 [2013]; [Boreali v Axelrod](#), 71 NY2d 1, 10, 517 NE2d 1350, 523 NYS2d 464 [1987]). Here, the power given to the President of the Civil Service Commission, with the approval of the Budget Director, to modify health insurance contribution rates for retirees and non-represented state employees is entirely dependent upon—and limited by the terms of—a negotiated agreement between the state and an employee organization modifying the contribution rates for current represented employees (see [Civil Service Law § 167 \(8\)](#)). Contrary to petitioners' contention, the standard set forth by the Legislature—that any change in the retiree statutory contribution rate must be tied to a collectively bargained rate—provides adequate guidance for the exercise of that discretion, as "there need not be a specific and detailed legislative expression authorizing a particular executive act [where, as here,] the basic policy decisions underlying the [actions [***9] [*98] authorized] have been made and articulated by the Legislature" ([Dalton v Pataki](#), 5 NY3d 243, 262-263, 835 NE2d 1180, 802 NYS2d 72 [2005] [internal quotation marks and citation omitted]; see [Matter of Medical Socy. of State of N.Y. v Serio](#), 100 NY2d 854, 865, 800 NE2d 728, 768 NYS2d 423 [2003]).

Stein, Garry, Egan Jr. and Clark, JJ., concur.

Ordered that the judgment is affirmed, without costs.