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Equal Protection

These cases involved restrictions upon the internal affairs of the political party and, hence, violated the party's and individuals' rights to speech and association. Whereas in the case at hand, the court of appeals stated that section 2604(b)(15) "leaves political parties free to organize and participate in the election process without constraint."[504]

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Margolis v. New York City Transit Authority[505]
(decided May 15, 1991)

Petitioner, one of three New York City Transit Authority (TA) employees remaining in the position of trainmaster, was denied a wage increase granted to other supervisory personnel in the years 1985 through 1987. He claimed the denial was arbitrary and capricious,[506] and therefore constituted a violation of the equal protection clause of the federal[507] and state[508] constitutions.[509] The court stated that the petitioner had an equal protection claim and reversed the supreme court's decision that granted the defendant's motion to dismiss.[510] The court stated that "the singling out of petitioner as uniquely unqualified for general wage increases granted all other supervisory personnel is subject to equal protection scrutiny, and cannot be sustained in the absence of a rational basis."[511] The court stated further that the question of whether denial of the wage increase had the rational basis of avoiding "the evil[s] of 'salary compression'"[512] was a

504. *Golden*, 76 N.Y.2d at 629, 564 N.E.2d at 617, 563 N.Y.S.2d at 7.
505. 157 A.D.2d 238, 555 N.Y.S.2d 711 (1st Dep't 1990).
506. *Id.* at 242, 555 N.Y.S.2d at 714.
507. U.S. CONST. amend. XIV, § 1.
508. N.Y. CONST. art. I, § 11.
509. *Margolis*, 157 A.D.2d at 240, 555 N.Y.S.2d at 712.
510. *Id.* at 241-43, 555 N.Y.S.2d at 713-14.
511. *Id.* at 241, 555 N.Y.S.2d at 713.
512. *Id.* at 242, 555 N.Y.S.2d at 714.

triable issue under Civil Practice Laws and Rules 7804(h).[513]

In 1984, the TA instituted a reform program under which almost all trainmasters qualified for newly created superintendent or deputy superintendent positions.[514] Petitioner is one of only three TA employees remaining under the job title of "trainmaster."[515] The three trainmasters lacked any representation in collective bargaining and petitioner was not included in wage increases given to other supervisors in the years 1985 through 1987.[516] The trial court dismissed Margolis' petition and denied his motion for discovery.[517] On appeal, the court unanimously reversed the trial court on the law, reinstating the petition and granting Margolis' discovery application.[518]

In analyzing petitioner's constitutional claims, the court discussed the appropriate level of scrutiny to be applied to claims of denial of equal protection under the federal and state constitutions. Without explicitly stating that the federal and state standards of review were the same, the court analyzed the federal and state constitutional claims together the federal standard of review, rational basis scrutiny.[519] The appellate division in *Margolis* relied on the court of appeals decision in *Abrams v. Bronstein*,[520] which stated that "'an agency of the State denies equal protection

513. *Id.*; *see* N.Y. CIV. PRAC. L. & R. 7804(h) (McKinney 1981 & Supp. 1991).

514. *Margolis*, 157 A.D.2d at 239-40, 555 N.Y.S.2d at 712.

515. *Id.* at 239, 555 N.Y.S.2d at 712. "Petitioner has been employed by the TA for 23 years . . . ." *Id.* at 239 n.3, 555 N.Y.S.2d at 712 n.3.

516. *Id.* at 240, 555 N.Y.S.2d at 712.

517. *Id.* at 239, 243, 555 N.Y.S.2d at 712, 714.

518. *Id.* at 239, 555 N.Y.S.2d at 712.

519. "The equal protection clause of the Fourteenth Amendment of the Federal Constitution provides that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' Section 11 of article I of the New York State Constitution states that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof. The breadth of the coverage afforded by the two Constitutions has been held to be equal." Shattenkirk v. Finnerty, 97 A.D.2d 51, 55, 471 N.Y.S.2d 149, 153 (3d Dep't 1983), *aff'd*, 62 N.Y.2d 949, 468 N.E.2d 53, 479 N.Y.S.2d 215 (1984) (citing Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 87 N.E.2d 541 (1949), *cert. denied*, 339 U.S. 981 (1950)).

520. 33 N.Y.2d 488, 310 N.E.2d 528, 354 N.Y.S.2d 926 (1974).

when it treats persons similarly situated differently under the law.'"[521] The court of appeals adopted the traditional test of "'whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective.'"[522] The appellate division also relied on the United States Supreme Court decision in *Allied Stores of Ohio v. Bowers*[523] which stated that "'there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary.'"[524]

The appellate division in *Margolis* pointed to a series of cases in New York which have held that "arbitrary salary differentials for government servants cannot be maintained in the face of an equal protection challenge . . . ."[525] The court noted that the petitioner was claiming that the denial of the wage increase was arbitrary and capricious[526] and petitioner was not basing his claim on a violation of civil service law.[527]

The court addressed the TA's assertion that avoiding salary compression provided a rational basis for the denial of wage increases to trainmasters. They contended that freezing wages of lower level employees is rationally related to alleviating salary compression between the titles of trainmaster and deputy superin-

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521. *Margolis*, 157 A.D.2d at 240, 555 N.Y.S.2d at 713 (quoting *Bronstein*, 33 N.Y.2d at 492, 310 N.E.2d at 530, 354 N.Y.S.2d at 929-30).

522. *Id.* (quoting *Bronstein*, 33 N.Y.2d at 492, 310 N.E.2d at 530, 354 N.Y.S.2d at 930).

523. 358 U.S. 522 (1959).

524. *Margolis*, 157 A.D.2d at 240-41, 555 N.Y.S.2d at 713 (quoting *Allied Stores*, 358 U.S. at 527).

525. *Id.* at 241, 555 N.Y.S.2d at 713.

526. *Id.* at 242, 555 N.Y.S.2d at 714.

527. *Id.* at 240, 555 N.Y.S.2d at 712. The court noted that petitioner was not claiming "that his duties as trainmaster are the same as a deputy superintendent or superintendent." *Id.* at 242, 555 N.Y.S.2d at 714. Thus, his claim was not based on a violation of Civil Service Law that has the policy of providing "equal pay for equal work . . . ." *Id.* (quoting N.Y. CIV. SERV. LAW § 115, (McKinney 1983)). In addition, section 1210(2) of the Public Authorities Law states that all employees of the Transit Authority "shall be subject to the provisions of the civil service law." N.Y. PUB. AUTH. LAW § 1210(2) (McKinney 1982).

tendent.[528] The court stated that "[a]voidance of salary compression as a rationale for agency action in witholding salary increases has been upheld as a legitimate exercise of managerial prerogative . . . ."[529] However, the appellate division in *Margolis* viewed the issue of salary compression as a triable issue based on the "cogent" argument of petitioner that, in his case, salary compression may factually be a sham or a ploy used to force petitioner to retire early. This would afford the TA the opportunity "to implement its policy of attrition for trainmasters."[530] Thus, in addition to reversing the lower court and reinstating Margolis' petition, the appellate division also granted petitioner's application to depose the TA employees.[531]

The use of the rational basis test in the determination of an equal protection claim involving social or economic matters is the same under both the federal and state constitutions.[532]

SECOND DEPARTMENT

Long Island Lighting Co. v. Assessor of Brookhaven[533]
(decided March 2, 1990)

Long Island Lighting Company (LILCO), a private utility company, claimed that its equal protection and due process rights under the federal and state constitutions were violated by a New York State statute[534] that precluded judicial review of whether

528. *Margolis*, 157 A.D.2d at 242, 555 N.Y.S.2d at 714. "Salary compression occurs when the Legislature enacts legislation which increases lower-level employee salaries but does not concomitantly enact legislation to increase the salaries of agency heads, with the result that lower-level employees' salaries are almost equal to, or higher than, those of their supervisors." Shattenkirk v. Finnerty, 97 A.D.2d 51, 55, 471 N.Y.S.2d 149, 153 (3d Dep't 1983)).

529. *Margolis*, 157 A.D.2d at 242, 555 N.Y.S.2d at 714 (citing Shattenkirk v. Finnerty, 97 A.D.2d 51, 471 N.Y.S.2d 149 (3d Dep't 1983)).

530. 157 A.D.2d at 242-43, 555 N.Y.S.2d at 714.

531. *Id.* at 243, 555 N.Y.S.2d at 714-15.

532. For a discussion of equal protection jurisprudence under the Federal Constitution see *supra* notes 454-57 and accompanying text.

533. 154 A.D.2d 188, 552 N.Y.S.2d 336 (2d Dep't 1990).

534. N.Y. PUB. AUTH. LAW § 1020-q (McKinney Supp. 1991).