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## **Right to Retirement Benefits: Board of Education of West Islip Union Free School District v. New York State Teachers' Retirement System**

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## SUPREME COURT, APPELLATE DIVISION

## THIRD DEPARTMENT

Board of Education of West Islip Union Free School District v.  
New York State Teachers' Retirement System<sup>2174</sup>  
(decided December 16, 1993)

Petitioners sought a declaration that the enactment of Education Law section 521<sup>2175</sup> violated the Nonimpairment Clause of the New York State Constitution article V, section 7.<sup>2176</sup> The statute mandated the trustee of the New York State Teachers' Retirement System to make an investment of its funds.<sup>2177</sup> The third department held that the Retirement Board of the New York State Teachers' Retirement System [hereinafter Board] retained its "freedom to exercise its independent judgment" and hence Education Law section 521 was not violative of the State Constitution.<sup>2178</sup>

The plaintiffs, employee members of the state retirement system, argued that such a statute contravened the nonimpairment clause of the State Constitution.<sup>2179</sup> The plaintiffs alleged that the government was, in effect, mandating how its retirement benefits were to be handled when the nonimpairment clause protects against such legislative handlings.<sup>2180</sup>

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2174. \_\_\_ A.D.2d \_\_\_, 605 N.Y.S.2d 432 (3d Dep't 1993).

2175. *Id.* at \_\_\_, 605 N.Y.S.2d at 432. Section 521 of the New York State Education Law "deferred the school district's \$873,711,615 1989-1990 fiscal year contribution to [the] New York State Teachers' Retirement System . . . , which was to be paid by June 30, 1990, and . . . provided that it be paid in 15 equal installments at an 8% annual interest rate commencing October 15, 1990 . . . ." *Id.*

2176. N.Y. CONST. art. V, § 7. This section states: "After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." *Id.*

2177. *West Islip*, \_\_\_ A.D.2d at \_\_\_, 605 N.Y.S.2d at 433.

2178. *Id.* at \_\_\_, 605 N.Y.S.2d at 432.

2179. *Id.* at \_\_\_, 605 N.Y.S.2d at 432.

2180. *Id.* at \_\_\_, 605 N.Y.S.2d at 433.

The court agreed with the plaintiffs that the nonimpairment clause did not allow the legislature to mandate investment particulars for a state retirement fund.<sup>2181</sup> The court referred to *Sgaglione v. Levitt*<sup>2182</sup> and stated that the legislature could not mandate how state retirement funds were to be invested.<sup>2183</sup> In *Sgaglione*, the court noted that “under the retirement plans, an independent, or at least a separate person is vested with the discretion to make what he determines to be wise investments.”<sup>2184</sup> The *Sgaglione* court added that “[t]o strip this person . . . of his personal responsibility . . . is to remove a safeguard integral to the scheme of maintaining the security of the sources of the benefits . . . .”<sup>2185</sup> Finally, the court in *Sgaglione* stated that “the Legislature is powerless in the face of the constitutional nonimpairment clause to mandate that he mindlessly invest in whatever securities they direct, good, indifferent or bad.”<sup>2186</sup> The court then significantly pointed out that there is a “difference . . . between authority to invest and a mandatory direction to invest.”<sup>2187</sup> Here, the *West Islip* court disagreed with the plaintiffs beyond the notion that the legislature could not mandate the use of state retirement funds. They ruled that the statute in question did not, in fact, mandate the Board to do anything.<sup>2188</sup> The court reasoned that if the Board followed the legislature’s guidance they would be making a loan to the state’s school districts.<sup>2189</sup> The court, however, did not believe that “this loan was imposed upon the Board by the Legislature because the statute expressly provided that paragraph (i) of

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2181. *Id.* at \_\_\_, 605 N.Y.S.2d at 433.

2182. 37 N.Y.2d 507, 337 N.E.2d 592, 375 N.Y.S.2d 79 (1975).

2183. *West Islip*, \_\_\_ A.D.2d at \_\_\_, 605 N.Y.S.2d at 433. With New York City facing bankruptcy, the Legislature enacted a statute directing the Comptroller to use the funds of several state retirement systems to purchase bonds of the Municipal Assistance Corporation for the City of New York. *Id.*

2184. *Sgaglione*, 37 N.Y.2d at 512, 337 N.E.2d at 595, 375 N.Y.S.2d at 83 (1975).

2185. *Id.*

2186. *Id.* at 512-513, 337 N.E.2d at 595, 375 N.Y.S.2d at 83-84.

2187. *Id.* at 513, 337 N.E.2d at 595, 375 N.Y.S.2d at 84.

2188. *West Islip*, \_\_\_ A.D.2d at \_\_\_, 605 N.Y.S.2d at 433.

2189. *Id.* at \_\_\_, 605 N.Y.S.2d at 433.

Education Law section 521(2) would not take effect . . . [until] the . . . Board adopt[ed] an eight per centum valuation rate of interest” or vetoed it by refusing to do so.<sup>2190</sup> In other words, the district was under no obligation to accept the plan. The court concluded that “having preserved the Board’s freedom to exercise its independent judgment whether to make the loan to the school districts, we find that the . . . [statute] . . . is constitutional as challenged and does not violate the provisions of N[ew] Y[ork] Constitution, article V, [section] 7.”<sup>2191</sup>

Other New York case law on this matter is sparse. In *Village of Fairport v. Newman*<sup>2192</sup> the court held that benefits are not carved in stone.<sup>2193</sup> The court noted that the purpose of the nonimpairment clause “was merely to insure that pension and retirement benefits would not be subject to the whim of the Legislature . . . .”<sup>2194</sup> In *Brown v. New York State Teachers Retirement System*,<sup>2195</sup> the court held that “[t]he purpose of the [nonimpairment clause of the constitution] was to overcome the principle under which pension and retirement benefits were subject to the will of the Legislature . . . .”<sup>2196</sup> The court then went on to note that [the nonimpairment clause] “did not, nor was it the intent to, confer as a vested right or interest in the management of the fund, nor was it the intent to prevent the Legislature from determining who shall manage the funds of the system.”<sup>2197</sup>

Accordingly, the Legislature does not retain the power to mandate how a retirement fund is to be managed. The Legislature can, however, forcefully advise how a fund should be handled so

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2190. *Id.* at \_\_\_, 605 N.Y.S.2d at 433.

2191. *Id.* at \_\_\_, 605 N.Y.S.2d at 433.

2192. 90 A.D.2d 293, 457 N.Y.S.2d 145 (4th Dep’t 1982) (retirement benefits are subject to the compulsory interest arbitration provisions applicable to police and fire personnel pursuant to § 209 of the Civil Service Law).

2193. *Id.* at 295, 457 N.Y.S.2d at 148.

2194. *Id.*

2195. 48 Misc. 2d 805, 265 N.Y.S.2d 807 (Sup. Ct. Albany County 1965) (change in the number of the board of trustees of the retirement fund did not violate the nonimpairment clause).

2196. *Id.* at 806-807, 265 N.Y.S.2d at 808.

2197. *Id.* at 807, 265 N.Y.S.2d at 809.

long as the trustee reserves at least some level of discretion for final decisions of the fund.