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Touro Law Review

Volume 13 | Number 3

Article 10

1997

Court of Appeals Ballentine v. Koch (decided October 22, 1996)

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Recommended Citation

(1997) "Court of Appeals Ballentine v. Koch (decided October 22, 1996)," *Touro Law Review*. Vol. 13: No. 3, Article 10.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol13/iss3/10>

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N.Y. CONST. art. V, § 7:

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.

U.S. CONST. art. I, § 10, cl. 1:

No State shall . . . pass any . . . [l]aw impairing the Obligation of Contracts.” [hereinafter referred to as the “Contracts Clause.

COURT OF APPEALS

Ballentine v. Koch¹
(decided October 22, 1996)

Plaintiffs, former New York City police officers, commenced an action against the City of New York, challenging the statutory scheme which altered “the funding and benefit structure of the” Police Officer’s Variable Supplements Fund (hereinafter “POVSF”) from discretionary to a “schedule for defined annual payments”² The plaintiffs, “retired . . . officers who receive or are eligible to receive payments from the . . . POVSF,”³ contended that the new scheme was unconstitutional because of the diminishing and impairment of contractual benefits provided by the pension plan.⁴ The Supreme Court, New York County, granted summary judgment for New York City.⁵ The Officers appealed, and the Appellate Division, First Department, affirmed the lower court.⁶ The New York State Court of Appeals affirmed the appellate division, and held that the officers

1. 89 N.Y.2d 51, 674 N.E.2d 292, 651 N.Y.S.2d 362 (1996).

2. *Id.* at 54-55, 674 N.E.2d at 293-94, 651 N.Y.S.2d at 363.

3. *Id.* at 54-55, 674 N.E.2d at 293, 651 N.Y.S.2d at 363.

4. *Id.*

5. *Id.*

6. 224 A.D.2d 320, 320 638 N.Y.S.2d 49, 49 (1st Dep’t 1996) (holding that the statute’s alteration, from discretionary to a definite scheme, violated neither the New York State nor Federal Constitution).

could neither claim protection of the pension impairment clause of the New York State Constitution⁷ nor find a violation of the Contract Clause of the Federal Constitution.⁸

POVSF, the result of an agreement between New York City and the Police Benevolent Association (hereinafter "PBA"), is a fund designed to provide additional benefits to pension fund members.⁹ The agreement, as it was first presented, did not gain approval because "it failed to provide for sufficient State oversight"¹⁰ Consequently, the fund in question, the Variable Supplements Fund (hereinafter "VSF"), established in the New York City Administrative Code,¹¹ was modified as the "union and . . . City agreed to the implementing language that effectively took the POVSF outside the scope of article V, section 7's protections."¹² Accordingly, the Administrative Code allowed the New York legislature "to amend, modify or repeal any or all of the provisions" of the VSF.¹³ The plaintiffs

7. N.Y. CONST. art. V, § 7. This section provides: "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.*

8. *Ballentine*, 89 N.Y.2d at 51, 674 N.E.2d 292, 651 N.Y.S.2d 362. See U.S. CONST. art. I, § 10, cl. 1. This section provides in pertinent part: "No State shall . . . pass any . . . [l]aw impairing the Obligation of Contracts." [hereinafter referred to as the "Contracts Clause." *Id.*

9. *Id.* See *infra* note 11 (detailing the POVSF).

10. *Id.*

11. N.Y. COMP. CODES R. & REGS. tit. 13, § 269(b) (1988). This section provides in pertinent part:

It is hereby declared . . . that the police officer's variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or remittent allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension a supplement to benefits received by them' fund beneficiaries as a supplement to benefits received by them

Id.

12. *Ballentine*, 89 N.Y.2d at 58, 674 N.E.2d at 295, 651 N.Y.S.2d 365.

13. See N.Y. COMP. CODE R. & REGS. tit. 13, § 269(b) (1988). This section provides in pertinent part: [L]egislature reserves to the State of New York . . . the right and power to amend, modify or repeal any or all of the provisions" *Id.*

were asserted that the modification from a discretionary structure to a defined benefit structure violated the Contracts Clause.¹⁴ Further, the plaintiffs argued that the legislature's actions impaired the obligation of contracts because the terms of the contract, allowing police officers their preference for receiving benefits in variable increments to determining the amounts to be received, altering the contract.¹⁵ The plaintiffs also claimed that the violation of the Contracts Clause diminished or impaired the value of the benefits to be received in the future.¹⁶

The court began its analysis by examining the New York Constitution for any violations thereof.¹⁷ Additionally, the court analyzed the possibility that the modifications to the VSF violated the Contracts Clause of the U.S. Constitution. Section 7 of Article V of the New York Constitution protects the benefits as "a contractual relationship," of those enrolled in "a public pension or retirement system against diminishment or impairment."¹⁸ This section "prohibits unilateral action by either the employer or the Legislation that impairs or diminishes the rights established" via one's membership.¹⁹ In creating the POVSF, however, it was determined that the POVSF would neither be, in any manner whatsoever, a retirement or pension fund.²⁰ This disclaimer reserved New York State the "right and power to amend, modify or repeal any or all of the provisions"

14. *Ballentine*, 89 N.Y.2d at 55, 674 N.E.2d at 294, 651 N.Y.S.2d at 364.

15. *Id.*

16. *Id.*

17. *Ballentine*, 89 N.Y.2d at 56, 674 N.E.2d at 294, 651 N.Y.S.2d at 364.

18. *Ballentine*, 89 N.Y.2d at 56, 674 N.E.2d at 294, 651 N.Y.S.2d at 364.

19. *Id.* See *Village of Fairport v. Newman*, 90 A.D.2d 293, 295, 457 N.Y.S.2d 145, 148 (1982) (noting that where the plaintiffs' benefits are neither impaired nor diminished they cannot prevail).

20. *Ballentine*, 89 N.Y.2d at 56, 674 N.E.2d at 294, 651 N.Y.S.2d at 364. See *Poggi v. City of New York*, 109 A.D.2d 265, 270, 491 N.Y.S.2d 331, 335 (1st Dep't 1985) (stating that the VSF does not "constitute a pension or retirement allowance").

of the Code governing the POVSF.²¹ Accordingly, these actions “establishe[d] a benefit scheme expressly outside the purview of article V, § 7,” thereby constituting a waiver of those protections of the clause.²² Nonetheless, the plaintiffs contended that the legislative intent of the POVSF was not to be “restricted by those constitutional limitations . . . [and to] be within the scope of article V, § 7.”²³ The plaintiffs’ claim, however, was fruitless and without merit as there was no adequate support for their claim.²⁴ Although the waiver barred the plaintiffs’ claim, it is valid as long as it does not “violate public policy.”²⁵ The New York Court of Appeals, however, found no violation of public policy, therefore, “a waiver of article V, § 7’s protections, as to funds ordinarily included in the calculation of pension benefits, [did] not in itself violate public policy”²⁶

The plaintiffs also contended that the alterations “made by the 1988 legislation to the funding and payment structure of the POVSF” were constitutionally violative.²⁷ The plaintiffs’ contention was that the contractual rights, implemented in the original legislation, were impaired.²⁸ In its analysis, the court sought to determine ‘whether the state law . . . substantial[ly] impaire[d] . . . a contractual relationship.’²⁹ The Court of Appeals of New York stated that “where there is no existing contractual agreement regarding the terms changed by the

21. *Ballentine*, 89 N.Y.2d at 56, 674 N.E.2d at 294, 651 N.Y.S.2d at 364.

22. *Id.* n

23. *Id.* at 56, 674 N.E.2d at 295, 651 N.Y.S.2d at 365.

24. *Id.* at 57, 674 N.E.2d at 295, 651 N.Y.S.2d at 365.

25. *Id.* at 57, 674 N.E.2d at 296, 651 N.Y.S.2d at 366 (stating that protections provided by law may be waived as long as they are not against public policy).

26. *Id.* See *Rosen v. New York City Teachers’ Retirement Bd.*, 282 A.D. 216, 218, 122 N.Y.S.2d 485, 487 (1st Dep’t), *aff’d*, 306 N.Y. 625, 116 N.E.2d 239 (1953) (stating that where a waiver does not violate public policy it may be implied by a party’s conduct).

27. *Ballentine*, 89 N.Y.2d at 60, 674 N.E.2d at 297, 651 N.Y.S.2d at 367.

28. *Id.*

29. *Id.* (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, *reh’g denied*, 439 U.S. 886 (1978)).

legislation there is no need to consider whether there was . . . [a substantial] impairment.”³⁰ Plaintiffs failed to establish “that the 1988 legislation changed any terms of an existing contractual relationship,”³¹ therefore, no constitutional violation was found.³²

Moreover, the New York State Court of Appeals noted that the plaintiffs’ challenge was contradictory.³³ Although plaintiffs claim they are entitled to the benefits, they “attack as unenforceable an aspect of the legislation that was necessary to the creation of the rights they seek to enforce.”³⁴ In sum, the laws discussed, federal and state, were held to be constitutional under the New York and Federal Constitutions.³⁵ The contracts, entered into by the PBA, waived the protections of the Contracts Clause. Due to the fact that the PBA waived the protections of article V, § 7, as they agreed to the creation of the POVSF “benefits as non-pension benefits and to the Legislature’s unrestricted right to amend or repeal the statutory provisions governing the fund, plaintiffs may not claim the protection of the Pension Impairment Clause.”³⁶

30. *Id.* See *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992) (holding that changes in workers’ compensation law, regarding the refund of benefits withheld, failed to violate the Contracts Clause).

31. *Ballentine*, at 61, 674 N.E.2d at 298, 651 N.Y.S.2d at 368.

32. *Id.*

33. *Id.*

34. *Id.* at 59, 674 N.E.2d at 296, 651 N.Y.S.2d at 367.

35. *Id.* at 60, 674 N.E.2d at 297, 651 N.Y.S.2d at 367.

36. *Id.*

