



1993

## Right to Retirement Benefits

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### Recommended Citation

(1993) "Right to Retirement Benefits," *Touro Law Review*. Vol. 9: No. 3, Article 49.  
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol9/iss3/49>

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## RIGHT TO RETIREMENT BENEFITS

*N.Y. CONST. art. V, § 7:*

*After, July first, nineteen hundred forty, membership in any person 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.*

### SUPREME COURT, APPELLATE DIVISION

#### THIRD DEPARTMENT

Delaney v. Regan<sup>1395</sup>  
(decided May 7, 1992)

Petitioners claimed that their New York State constitutional right to accidental disability retirement benefits under article V, section 7 of the New York Constitution,<sup>1396</sup> was impaired when the state denied their application to receive such benefits under the Parks Commission retirement plan<sup>1397</sup> in addition to granting their application to receive benefits under the State Police retirement plan.<sup>1398</sup> The third department held that the petitioners waived their rights to any benefits under the Parks Commission retirement plan when they voluntarily accepted transfers from the Parks and Recreation Department to the Division of State Police. Thus, the state constitution was not violated because their “benefits [we]re not unilaterally diminished,” since the petitioners were entitled to receive benefits under the State Police retirement plan.<sup>1399</sup>

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1395. 183 A.D.2d 981, 583 N.Y.S.2d 592 (3d Dep’t), *appeal dismissed*, 80 N.Y.2d 923, 589 N.Y.S.2d 310, 602 N.E.2d 1126 (1992).

1396. N.Y. CONST. art. V, § 7. Article V, section 7 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.*

1397. N.Y. RETIRE. & SOC. SEC. LAW § 363 (McKinney 1987).

1398. N.Y. RETIRE. & SOC. SEC. LAW § 363-b (McKinney 1987).

1399. *Id.*

Petitioners, former Traffic and Park Police Officers for the Long Island State Park and Recreation Commission, were members of the State Policemen's and Firemen's Retirement System.<sup>1400</sup> This entitled them to receive accidental disability retirement benefits under Retirement and Social Security Law section 363<sup>1401</sup> should they become incapacitated because of a job related injury.<sup>1402</sup>

Beginning January 1, 1980, there was a transfer of power in relation to the protection of parkways from the Parks and Recreation State Office to the Division of State Police.<sup>1403</sup> Subsequently, petitioners submitted to a voluntary transfer to the State Police and thereafter worked as state troopers.<sup>1404</sup> After the transfer, petitioners were allegedly injured in work-related accidents, and their applications for benefits under section 363 were denied.<sup>1405</sup>

Petitioners alleged that they were eligible for benefits under Retirement and Social Security Law section 363 since those benefits were fixed at the time their employment with the Long Island State Park and Recreation Commission commenced.<sup>1406</sup> Petitioners also claimed that they were entitled to benefits under the State Police retirement plan since section 363-b provides retirement benefits to employees of the State Police.<sup>1407</sup> The

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1400. *Id.* at 981-82, 583 N.Y.S.2d at 592-93.

1401. N.Y. RETIRE. & SOC. SEC. LAW § 363 (McKinney 1987). This law provides in pertinent part:

A member shall be entitled to an accidental disability retirement allowance if at the time the application is therefor filed, he is :

1. Under age sixty, and
2. Physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by his own willful negligence sustained in such service and while actually a member of the policeman's and fireman's retirement system

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*Id.*

1402. *Delaney*, 183 A.D.2d at 982, 583 N.Y.S.2d at 593.

1403. *See* 1979 N.Y. Laws 276.

1404. *Delaney*, 183 A.D.2d at 982, 583 N.Y.S.2d at 593.

1405. *Id.*

1406. *Id.*

1407. *Id.* at 982-83, 583 N.Y.S.2d at 593.

main thrust of petitioners' argument was that if the state granted their application to the State Police disability fund, and not the Parks Commission fund, then their rights would be unconstitutionally impaired because they had worked over ten years in the Parks Commission and would not be able to reap the benefits of its retirement plan.<sup>1408</sup>

The court began by stating that "[r]etirement benefits are not carved in stone."<sup>1409</sup> The court relied on several New York cases to provide its reasoning. In *Village of Fairport v. Newman*,<sup>1410</sup> the court stated that the purpose of article V, section 7 is "to insure that pension and retirement benefits would not be subject to the whim of the Legislature or the caprice of the employer."<sup>1411</sup> In *Newman*, the fourth department held that compulsory arbitration for disputes concerning early retirement are not considered an impairment of police officers' rights to receive benefits under article V, section 7.<sup>1412</sup>

In its discussion of *Rosen v. New York City Teachers' Retirement Board*,<sup>1413</sup> the *Delaney* court maintained that there would be "no constitutional violation unless the contractual benefits [were] unilaterally diminished."<sup>1414</sup> Moreover, the *Delaney* court explained that there was "no unilateral legislative reduction of petitioners' retirement benefits" in the instant case.<sup>1415</sup> The court reasoned that petitioners' transfers were strictly voluntary and that they received salary increases and lump-sum payments as a result of the transfers.<sup>1416</sup> In addition, they "were allowed to carry over accrued leave and sick time and

1408. *Id.*

1409. *Id.* at 982, 583 N.Y.S.2d 593.

1410. 90 A.D.2d 293, 457 N.Y.S.2d 145 (4th Dep't 1982).

1411. *Id.* at 295, 457 N.Y.S.2d at 148.

1412. *Id.* at 293, 457 N.Y.S.2d at 147.

1413. 282 A.D.2d 216, 122 N.Y.S.2d 485 (1st Dep't), *aff'd*, 306 N.Y.2d 625, 116 N.E.2d 239 (1953).

1414. *Delaney*, 183 A.D.2d at 982, 583 N.Y.S.2d at 593. *See also Rosen*, 282 A.D.2d at 218, 122 N.Y.S.2d at 487 (holding that failure of the State to use a teacher's cost of living bonus as part of the formula in determining pension benefits was not a violation of article V, section 7).

1415. *Delaney*, 183 A.D.2d at 982, 583 N.Y.S.2d at 593.

1416. *Id.*

were given 'full credit' in the State Police Retirement System for service performed while employed as Traffic and Park Police Officers."<sup>1417</sup>

The court stated that the transfer of employment rights facilitated by Chapter 276 of the Laws of 1979<sup>1418</sup> were meant to be a complete transfer of benefits, "not a piecemeal transfer where a transferee could pick and choose which rights and benefits he or she wanted transferred."<sup>1419</sup> Therefore, the court concluded that petitioners waived their rights to receive benefits under the Parks Commission retirement plan because "[b]y accepting the financial benefits of their transfer, petitioners also accepted the State Police retirement plan, including the State Police disability retirement allowance under section 363-b."<sup>1420</sup>

In conclusion, it appears that because the officers were adequately compensated for their transfer, which was voluntary, no constitutional violation occurred.

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1417. *Id.*

1418. 1979 N.Y. Laws 276.

1419. *Delaney*, 183 A.D.2d at 582, 583 N.Y.S.2d at 593.

1420. *Id.* at 982-83, 583 N.Y.S.2d at 593. *See also* *Ellenbogen v. Levitt*, 61 A.D.2d 559, 561-62, 403 N.Y.S.2d 566, 568 (3d Dep't 1978) (when state employee elected to become member of State Legislature and accepted its Legislative and Executive Retirement Plan, he waived right to receive annual retirement allowance undiminished by any arbitrary maximum).