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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF KASLOW,

Respondent,

-against-

No. 31

CITY OF NEW YORK,

Appellant.

20 Eagle Street
Albany, New York 12207
February 11, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: So let's start with
2 number 31, Matter of Kaslow.

3 Counsel, would you like any rebuttal time?

4 MR. SNOW: Yes, Your Honor. Two minutes,
5 please.

6 CHIEF JUDGE LIPPMAN: Two minutes for
7 rebuttal. Go ahead. You're on.

8 MR. SNOW: Good afternoon. May it please
9 the court, my name is Keith Snow. I'm an assistant
10 corporation counsel with the New York City Law
11 Department, and I represent the appellants in this
12 matter, the City of New York and its retirement
13 system.

14 CHIEF JUDGE LIPPMAN: Explain what tier
15 this particular litigant is in, and what does that
16 entitle him to, particularly, what's the difference
17 between pension calculation and - - - and service
18 credit, in the context of the particular plan he's
19 in?

20 MR. SNOW: Okay. Well, this member's a
21 Tier 3 member - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. SNOW: - - - and in addition to that,
24 he is an - - -

25 CHIEF JUDGE LIPPMAN: This is the

1 mandatory?

2 MR. SNOW: This is the mandatory. These
3 are for members who joined the plan after 1990.

4 CHIEF JUDGE LIPPMAN: Right.

5 MR. SNOW: And they're mandated in. So not
6 only are they in Tier 3, they're also in this twenty-
7 year plan.

8 CHIEF JUDGE LIPPMAN: Right. And the - - -
9 and this difference between - - - how do you
10 determine the - - - the service credit vis-a-vis the
11 whole pension calculation issue?

12 MR. SNOW: The service credit within the
13 plan is solely determined based on the amount of
14 years of service in a correction force. That - - -

15 JUDGE PIGOTT: Let me ask you about that.
16 Because I know in the - - - in the - - - when the
17 bill was passed - - - I think you had it in the
18 record, that it's self-funding. When - - - when it
19 was - - - I don't want to say sold to the legislature
20 - - - but when they passed this twenty-year thing,
21 they said it'll - - - the contributions will pay for
22 itself. Right?

23 MR. SNOW: Yes. It did that - - -

24 JUDGE PIGOTT: All right. One of the
25 things I was curious about, and actuarilly, is there

1 a difference between the three years he had over at
2 DEP (sic) and the twenty years that he's looking for,
3 you know, in terms of the correction officer pension?
4 In other words, are they different pensions
5 differently calculated, or is all the money in one
6 big pot, or what?

7 MR. SNOW: It is actuarilly different. The
8 prior service that he had was in Tier 4, which has a
9 different contribution rate. Because this is Tier 3
10 and it's also a uniformed plan, where it's twenty
11 years, they have additional member contributions.
12 And that's in the statute. And so in addition to
13 what the normal rate would be, there's an additional
14 level, so that the members can retire after twenty
15 years of service.

16 CHIEF JUDGE LIPPMAN: Where does he say
17 that he can't get - - - where does it say that he
18 can't get credit for the prior service that - - -
19 that Judge Pigott was just talking about?

20 MR. SNOW: That would be the defining
21 language in 504(b)(4).

22 CHIEF JUDGE LIPPMAN: And that says - - -

23 JUDGE GRAFFEO: But it uses "credited
24 service", right?

25 MR. SNOW: It does define "credited

1 service" as it would be applied in the Tier 2
2 correction officer plan.

3 JUDGE GRAFFEO: Well, let me ask you, what
4 justifies the difference between those members that
5 opt in and those members that are mandatory? Why is
6 there a different calculation between those two
7 classes when they both end up with the same benefit,
8 correct - - -

9 MR. SNOW: Well - - -

10 JUDGE GRAFFEO: - - - the same pension
11 benefit?

12 MR. SNOW: It's possible that they could
13 end up differently. And the reason is that if you're
14 a normal Tier 3 member, and you were there before the
15 plan was enacted, you retain the rights of your tier.
16 So even if you were to elect into the plan, you
17 retain the right under 501 to have that broader
18 definition of credited service.

19 JUDGE GRAFFEO: But doesn't 504-a say that
20 people like this claimant get the benefits - - - get
21 the pension credits from Tier 2?

22 MR. SNOW: It doesn't say they get the
23 pension credits. It says that credited service shall
24 be applied to them in the same manner it would be
25 applied in the correction officer - - -

1 JUDGE GRAFFEO: And Tier 2 would include
2 non-correctional and correctional service, right?

3 MR. SNOW: It's - - - no, it does not.

4 JUDGE GRAFFEO: It doesn't.

5 MR. SNOW: The only way - - - you have to
6 understand, credited service is a term-of-art that's
7 used, and in Tier 1 and in Tier 2, for that matter,
8 it's only used in the context of uniformed correction
9 service.

10 JUDGE SMITH: Well, there is - - - there is
11 a definition of credited service in the - - - in 50 -
12 - - in was it, Article 14, right?

13 MR. SNOW: There is. But that doesn't
14 apply to this member, since - - -

15 JUDGE SMITH: If it did, you'd lose,
16 because - - -

17 MR. SNOW: Oh - - -

18 JUDGE SMITH: - - - because it includes - -
19 - it includes the previous service?

20 MR. SNOW: I would concede that fact, and
21 we wouldn't be here, if that were case.

22 JUDGE GRAFFEO: I thought the
23 Administrative Code has a definition that includes
24 non-correctional and correctional services?

25 MR. SNOW: I don't believe the

1 Administrative Code does define either credited
2 service or allowable correction service. And I think
3 that's why this requirement under 504(b)(4) says it's
4 to be applied as it would be applied, because it's
5 not defined anywhere.

6 JUDGE SMITH: There's no - - - there's not
7 actually a definition in Title 11, either, is there -
8 - - Article 11?

9 MR. SNOW: There is no definition in
10 Article 11 and there is no definition in the
11 Administrative Code.

12 JUDGE SMITH: That's - - - that's what I
13 find - - - drives me nuts, frankly, about this case.
14 You - - - you think - - - you think that Article 14
15 is saying look at Article 11 for the definition, and
16 you go look, and you can't find it.

17 MR. SNOW: Well, it's how it would be
18 applied, and that's why we are arguing that you
19 should apply deference to NYCERS's determination,
20 because NYCERS is the entity that determines how it
21 would apply.

22 JUDGE SMITH: We - - - we should apply
23 deference, because it's so impossible to figure out,
24 we might as well leave it to you?

25 MR. SNOW: Again, although the court's not

1 required to give us deference, we are requesting that
2 the court do so, because as you point out, this is a
3 complicated matter. And the term "allowable
4 correction service" and "credited service" has been
5 defined since enactment of Tier 1. So that's fifty
6 years of history that that's played out in.

7 JUDGE SMITH: Well, can't - - - is there
8 statutory language you can quote that says he doesn't
9 get the credit for the previous service?

10 MR. SNOW: I can't cite a single statute,
11 but I think when you look at it as a whole, which is
12 what the courts say you're supposed to do when you
13 analyze the pension statutes - - - when you look at
14 it as a whole, it must be considered allowable
15 correction service.

16 CHIEF JUDGE LIPPMAN: "As a whole" meaning
17 what and what? What - - - what is the whole here?
18 Which provisions - - -

19 MR. SNOW: The whole - - -

20 CHIEF JUDGE LIPPMAN: - - - is the whole?

21 MR. SNOW: - - - the whole means Tier 3,
22 the correction officer twenty-year plan in Tier 3,
23 the twenty-year plan in Tier 2, Tier 1, as well as
24 the legislation that enacted the Tier 1 - - - 2 and -
25 - -

1 CHIEF JUDGE LIPPMAN: Does it - - - does it
2 really come down to the specific talk about credited
3 service, or it's that plus everything around it?

4 MR. SNOW: In order - - -

5 CHIEF JUDGE LIPPMAN: What is credited
6 service?

7 MR. SNOW: - - - well, in order to define
8 that, you do have to look more broadly. And the way
9 I look at it, almost with any pension statute, you
10 have to almost check your math, so to speak. What
11 you have to do is figure out what you think the term
12 is, and then run it through the statute again.

13 If you were to run allowable correction
14 service into credited service, the definition in Tier
15 3, it completely makes sense. It makes sense in Tier
16 3. It makes sense when you compare it to Tier 2.

17 CHIEF JUDGE LIPPMAN: Do you - - - do you
18 agree that - - - and I'm not saying this is
19 dispositive, but do you agree that to the particular
20 individual, it seems unfair?

21 MR. SNOW: I don't - - -

22 CHIEF JUDGE LIPPMAN: I mean, that other
23 people have it; it doesn't seem so far out of the
24 realm that you would get credit for that. Don't you
25 think it - - - to the individual, it seems arbitrary

1 or unfair?

2 MR. SNOW: I don't believe so. And the
3 reason is, other Tier 3 uniformed members get the
4 same treatment. And if these members have additional
5 service at a different tier - - -

6 JUDGE GRAFFEO: What do you mean by
7 "other"? You mean police and fire - - -

8 MR. SNOW: Well, Tier 3 - - -

9 JUDGE GRAFFEO: - - - as opposed - - -

10 MR. SNOW: - - - police and fire - - -

11 JUDGE GRAFFEO: - - - to correction - - -

12 MR. SNOW: - - - have - - -

13 JUDGE GRAFFEO: - - - officers, or you mean
14 other correction officers?

15 MR. SNOW: No, Tier 3 police officers and
16 firefighters, New York City, have similar treatment.
17 And additionally, if you have credit in a different
18 tier - - -

19 JUDGE GRAFFEO: Are their - - -

20 MR. SNOW: - - - you can still - - -

21 JUDGE GRAFFEO: - - - statutes identical?

22 MR. SNOW: They're not identical, but
23 they're very similar in their application of how they
24 limit service that's counted towards their
25 retirement.

1 JUDGE SMITH: What - - - what - - - if he
2 had never be - - - if he had just been a - - - worked
3 for DEC, let's say for more than three years, he
4 worked for fifteen years, and then come to the - - -
5 then come to the corrections officer, it would be as
6 though he's never worked at DEC?

7 MR. SNOW: No, he would get a pension for
8 that fifteen years under Tier 4.

9 JUDGE SMITH: He'd get two pensions?

10 MR. SNOW: Yes.

11 JUDGE SMITH: Um-hum. And - - - and your
12 adversary's reading - - - well, maybe I should ask
13 her.

14 CHIEF JUDGE LIPPMAN: Okay.

15 MR. SNOW: Thank you.

16 CHIEF JUDGE LIPPMAN: We're going to ask
17 her.

18 MR. SNOW: Thank you.

19 CHIEF JUDGE LIPPMAN: You can - - - you can
20 be sure. Thank you.

21 MS. MALDONADO: May it please the court, my
22 name is Mercedes Maldonado, and I represent the
23 petitioner, David Kaslow.

24 CHIEF JUDGE LIPPMAN: Judge Smith has a
25 question for you.

1 MS. MALDONADO: Thank you.

2 CHIEF JUDGE LIPPMAN: Go ahead.

3 JUDGE SMITH: Yeah. Suppose somebody who
4 has already - - - has been at DEC long enough to earn
5 a pension, which I gather this guy wasn't - - - but
6 he'd been there long enough that he'd - - - he's
7 getting a pension from DEC. Now, he goes over to the
8 - - - to become a correction officer. Does he get -
9 - - are you double counting the time? Does he get
10 credit for his time at DEC to augment his correction
11 officer pension?

12 MS. MALDONADO: My understanding of the
13 City's position is that his DEP time has no value
14 whatsoever.

15 JUDGE SMITH: That's the City's position.
16 What's yours?

17 MS. MALDONADO: That he would get up to the
18 thirty-year provided under the CO-20 Plan provisions.

19 JUDGE SMITH: So - - - so if he - - - if he
20 serves fifteen years as a - - - for DEC and twenty as
21 a corrections officer, the gets a pension as a
22 fifteen-year man at DEC and as a thirty-year man at -
23 - - in corrections?

24 MS. MALDONADO: He would get his correction
25 service plus up to thirty years of - - - total. So -

1 - -

2 JUDGE GRAFFEO: So he pulls two pensions?

3 MS. MALDONADO: Yeah. Well, he would only
4 be retired - - - my understanding - - - under the
5 Tier 3 CO-20 Plan.

6 JUDGE PIGOTT: Well, the point - - - the
7 point of the CO-20 Plan, as I understood it, was that
8 they were - - - this - - - they could retire early;
9 they could retire at fifty-five, and the twenty
10 years, full pension. And when they - - - when they -
11 - - the bill went to the legislature, both the
12 governor's statement and the legislators' was, it's -
13 - - they're - - - it's self-funding. They're going
14 to take the money from the correction officers to
15 fund this thing.

16 The reason I asked your opponent about the
17 actuarial thing is that the three years that your
18 client or anyone who worked for DEC had, goes into
19 their pension. And if you don't vest, you go home.
20 I mean, you don't get your money back, it's just
21 there and it's used to pay the DEC people.

22 And your position is one where you would
23 have correction officers taking money - - - even
24 though this is self-funding over here - - - taking
25 money from the DEC personnel based - - - and their

1 actuaries who are figuring out what - - - you know,
2 what they need to withdraw to charge people for their
3 pensions, and moving it over to the correction
4 officers, when, in fact, it's already self-funding,
5 and they should - - - they should do it.

6 If he - - - just as Judge Smith and Judge
7 Graffeo said, if he qualifies for a pension under
8 DEC, fine. He gets that. That's - - - he paid for
9 it in - - - in whatever tier he was in, and that's
10 that. But over here, it's different.

11 And to say you're going to take money from
12 this pension plan over here to fund the CO one, would
13 be inappropriate, wouldn't it?

14 MS. MALDONADO: I don't think it would be
15 inappropriate.

16 JUDGE ABDUS-SALAAM: Well, wouldn't you get
17 credit for it, twice, in effect?

18 MS. MALDONADO: I'm not sure what the
19 interplay is between the Tier 4 provision and to the
20 extent this is - - - this would get credited in the
21 Tier 3 case - - -

22 CHIEF JUDGE LIPPMAN: So what's the
23 practical side of all of this? What - - - what
24 happens if you win? What does your client get?

25 MS. MALDONADO: He gets credit for three -

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CHIEF JUDGE LIPPMAN: Just those - - -
those - - - how many years was it?

MS. MALDONADO: Three years and six months
- - -

CHIEF JUDGE LIPPMAN: So those three years
and six months, go into his correction pension?

MS. MALDONADO: Correct.

CHIEF JUDGE LIPPMAN: That's the practical
benefit that he'd get?

MS. MALDONADO: Correct.

CHIEF JUDGE LIPPMAN: Regardless of the
actuarial issues, which you're not sure of, and we're
certainly not sure - - -

JUDGE RIVERA: It's counted as three-and-a-
half years of - - - as if he had been a correction
officer for those additional three-and-a-half years.
It's not treated differently, those three-and-a-half
years?

MS. MALDONADO: Well, the - - -

JUDGE RIVERA: Or in the computation it's
treated differently?

MS. MALDONADO: The computation is treated
differently.

CHIEF JUDGE LIPPMAN: So that's the long

1 and the short of it, that you get three-and-a-half
2 more years' credit?

3 MS. MALDONADO: Correct. And a - - -

4 JUDGE SMITH: But then - - -

5 JUDGE GRAFFEO: But where does the - - -

6 MS. MALDONADO: - - - different

7 computation.

8 JUDGE GRAFFEO: - - - where does the
9 pension contribution for three-and-a-half years come
10 from?

11 MS. MALDONADO: They remain - - -

12 JUDGE GRAFFEO: They move from DEP - - -

13 MS. MALDONADO: Yes.

14 JUDGE GRAFFEO: - - - to the correctional
15 service, or it stays with DEP? I mean, somehow
16 there's - - - those three years have to be paid for.

17 MS. MALDONADO: It's never come up in the
18 briefs. I don't know the logistics of that.

19 JUDGE PIGOTT: When you say the computation
20 is different, how is it different?

21 MS. MALDONADO: The Administrative Code
22 provision that we say applies, 13-15 - - -

23 JUDGE PIGOTT: No, no, how do - - - I mean,
24 just tell me. I mean he finishes twenty years as a
25 CO at fifty-five and says pay me my pension, I'm out,

1 and they pay him his pension. He says well, no, no,
2 you've got to give me three-and-a-half years' credit
3 for my DEC work. How does that compute?

4 MS. MALDONADO: It's computed according to
5 the Administrative Code provision - - -

6 JUDGE PIGOTT: Right, how?

7 MS. MALDONADO: It's - - - there's a
8 calculation set forth - - -

9 JUDGE PIGOTT: What is it? I mean, is it
10 as if you were twenty-three years as a CO, or is it
11 you were twenty years as a CO plus three years at
12 DEC, where he did not vest, but now for some reason,
13 he's going to get credit for that?

14 JUDGE SMITH: Is it different fractions of
15 this - - -

16 MS. MALDONADO: Yeah, it's a different
17 fractional - - - it's a smaller fractional value under
18 the Administrative Code for the civilian time.

19 JUDGE PIGOTT: Do you know what that is?

20 MS. MALDONADO: Yeah, it's seventy-five
21 percent of one-sixtieth - - -

22 JUDGE PIGOTT: Oh, that - - - oh, I see.
23 That's the one for the - - - for the DEC pension,
24 period? Anybody - - -

25 MS. MALDONADO: That would be - - - that

1 would be the calculation that applies to civilian
2 time.

3 JUDGE PIGOTT: Yeah. So - - - so you're -
4 - -

5 JUDGE RIVERA: So that's the credited
6 service?

7 MS. MALDONADO: That would be the credit -
8 - -

9 JUDGE RIVERA: That - - -

10 MS. MALDONADO: - - - for the civilian
11 time.

12 JUDGE SMITH: But for pur - - - but for
13 purposes of counting to twenty to see whether he's
14 been in twenty years, then you count your - - - you
15 count the City's way, right?

16 MS. MALDONADO: For the purposes of the
17 initial twenty years - - -

18 JUDGE SMITH: In other words, those - - -
19 he - - - forget about his military service - - - if
20 he serves seventeen years with - - - with the DOC,
21 you can't add the DEC time to make it twenty?

22 MS. MALDONADO: No.

23 JUDGE SMITH: Well, but his - - - he says,
24 wait a minute, use the same - - - they use the same
25 words for both, "credited service".

1 MS. MALDONADO: Well - - -

2 JUDGE SMITH: In two different subsections
3 of the same statute.

4 MS. MALDONADO: Well, the City does allow
5 military time.

6 JUDGE PIGOTT: That's different, though. I
7 mean, that - - - that - - - I mean, that's true. You
8 can't get - - - you can't avoid that.

9 JUDGE ABDUS-SALAAM: So what - - - what
10 would you do, as your adversary says, other uniformed
11 services, police and firefighters? If we find the
12 way that you wish us to rule, then that would mean
13 police and firefighters would also have the ability
14 to get the service credit from previous jobs?

15 MS. MALDONADO: No, it wouldn't. But in my
16 brief - - -

17 JUDGE ABDUS-SALAAM: Why not?

18 MS. MALDONADO: Well, in my - - - what I
19 point out in my brief is that the police and fire,
20 are under Tier 2. And the legislature, when they
21 passed this, intended to bring about parity between
22 correction officers and police and fire, and police
23 and fire - - - and I cite the provisions in my brief
24 - - - both get credit for civilian time under their
25 respective plans.

1 JUDGE ABDUS-SALAAM: Well, so do correction
2 officers under Tier 2, who decide that they want to
3 opt that way. But this is a different tier. This is
4 Tier 3. And just looking at those two tiers,
5 wouldn't you think that the legislature, if they
6 wanted Tier 3 to have that option, they would have
7 said, as they have in Tier 2, you can have the option
8 of the CO-20 or you can just do regular Tier 2?

9 MS. MALDONADO: Well, what they did in Tier
10 3, quite explicitly, in 504-a(b), was to say that the
11 term - - - that they shall have the term "credited
12 service" applied in the same manner as it applies in
13 Tier 2. And that's what the statute says. So in a
14 sense, Tier 3 is an overlay on the Tier 2 provision.

15 JUDGE PIGOTT: Were you - - - this is the -
16 - - I think you pointed - - - one of you - - - that
17 this is the first case of its type - - -

18 MS. MALDONADO: Correct.

19 JUDGE PIGOTT: - - - to come up under this
20 new statute? What's - - - what does it - - - what
21 does it mean going forward, you know, as more and
22 more correction officers retire that may have had
23 civilian service? Is it your thought that - - - that
24 each and every one of them would now be able to bring
25 their time into their correction officer time?

1 MS. MALDONADO: Yeah. I don't - - - I
2 don't know how many officers there are like that who
3 had prior time.

4 CHIEF JUDGE LIPPMAN: Even if they came in
5 in a later tier than your client?

6 MS. MALDONADO: No. It would be for
7 correction officers - - -

8 CHIEF JUDGE LIPPMAN: So you're saying - -
9 -

10 MS. MALDONADO: - - - who came into the
11 tier.

12 CHIEF JUDGE LIPPMAN: - - - within the same
13 category as - - -

14 MS. MALDONADO: Right.

15 CHIEF JUDGE LIPPMAN: - - - as your client,
16 there may be others, but you don't know how many?

17 MS. MALDONADO: Correct.

18 JUDGE SMITH: And you're - - - and you're a
19 - - - you're Tier 3 - - - 3[20], right? That is,
20 you're the - - - the mandatory - - - there's a
21 subclass of Tier 3 here that you're part of?

22 MS. MALDONADO: It's the - - - we're part
23 of the Tier 3 CO-20 Plan. And before this provision
24 was enacted, I would ask that you keep in mind, that
25 civilian time counted up-front. Civilian time was

1 good for all purposes for Tier 3.

2 JUDGE READ: Yeah, but - - - but what you
3 got in return, wasn't it the ability to retire
4 earlier?

5 MS. MALDONADO: True. But - - -

6 JUDGE READ: You don't think the
7 legislature - - -

8 MS. MALDONADO: We didn't - - -

9 JUDGE READ: - - - intended a tradeoff
10 there?

11 MS. MALDONADO: I don't think the union
12 bargained for a plan that was inferior to what police
13 and fire were getting. And the police - - -

14 JUDGE SMITH: So you say - - - but you
15 concede that the three - - - that the three years
16 with DEC does not count toward the twenty. What
17 statute - - - what statutory language says that?

18 MS. MALDONADO: The statutory language that
19 says that is 504-a(b)(4), which says that it shall
20 have the term "credited service" applied in the same
21 manner as Tier 2. And in Tier 2, that's what
22 happens.

23 JUDGE SMITH: I see. So you - - - so you
24 take that language referring only for purposes of
25 counting to twenty and not for purposes of

1 calculating the amount of the pension?

2 MS. MALDONADO: Both. Because - - -

3 JUDGE SMITH: You calculate - - - wait - -
4 - so you say - - - but how - - - so how can it - - -
5 but you get different results. You say for purposes
6 of counting years, you don't count the DEC time, but
7 for purposes of calculating the - - - the pension
8 amount you do.

9 MS. MALDONADO: Well, the 504-a(b), because
10 you have to apply the service crediting provisions of
11 Tier 2, and because Tier 2 permits service credit for
12 civilian time, that - - - that draws the service
13 crediting provision for civilian time into the Tier 3
14 plan.

15 JUDGE PIGOTT: You - - - yeah. There's
16 about three sections that you have to string together
17 on this, right?

18 MS. MALDONADO: Yes.

19 JUDGE PIGOTT: And you say that because the
20 administrative (a)(3)(c) applies to Tier 2, pursuant
21 to 445-a, therefore it applies to Kaslow, pursuant to
22 504-a(b)(4).

23 MS. MALDONADO: Right.

24 CHIEF JUDGE LIPPMAN: Okay? Thanks,
25 counselor.

1 Counselor, let me just understand your
2 position. You're not saying that - - - that is such
3 an unusual situation that you could get civilian
4 credit within the uniformed service, you're just
5 saying in this case, that's not what the legislature
6 intended?

7 MR. SNOW: Only in Tiers 1 and 2, are the -
8 - -

9 CHIEF JUDGE LIPPMAN: Yeah, I'm saying this
10 is not such an unprecedented situation. It's that,
11 your - - - your argument is basically that the
12 legislature didn't intend it for this particular
13 group?

14 MR. SNOW: Exactly. And as an example, we
15 pointed to Tier 4, which has several uniformed plans.
16 And sanitation, for example, has an additional
17 pension calculation for non-uniformed service, while
18 other ones like EMTs and deputy - - -

19 CHIEF JUDGE LIPPMAN: Right - - -

20 MR. SNOW: - - - do not.

21 CHIEF JUDGE LIPPMAN: - - - I mean, there's
22 nothing philosophically terrible, but you're just
23 saying that's the - - - in your view, that's the
24 intent of the legislature?

25 MR. SNOW: Right.

1 JUDGE GRAFFEO: So what was the purpose of
2 the reference to Tier 2, if not to embrace the non-
3 correctional service?

4 MR. SNOW: It was to limit it solely to
5 uniformed service, which is what's required in Tiers
6 1 and Tiers 2. I think it's important - - -

7 JUDGE GRAFFEO: How - - - how do we know
8 that?

9 MR. SNOW: If you look at Section 13-155,
10 that's a Tier 1 provision, that's the provision that
11 my adversary relies upon. If you look within that
12 provision, it refers to uniformed service, and it
13 says that service is credited in quote - - - that's
14 quoted.

15 When it refers to non-correction service
16 that's in the City, it's - - - there's no reference
17 to "credited". I think that makes a - - -

18 JUDGE SMITH: So really - - - really the
19 word is "allowable" in Tier 1, isn't it, rather than
20 "credited"?

21 MR. SNOW: Well, allowable is a term-of-art
22 that's developed because it also means other sorts of
23 uniformed - - -

24 JUDGE SMITH: So you take that as a synonym
25 for "credited"?

1 MR. SNOW: It means the same. It's a
2 synonym for credited service in the Tier 3 correction
3 officer twenty-year plan.

4 CHIEF JUDGE LIPPMAN: Okay, counselor.

5 MR. SNOW: Okay?

6 CHIEF JUDGE LIPPMAN: Thanks a lot.

7 MR. SNOW: Thank you very much.

8 CHIEF JUDGE LIPPMAN: Appreciate it.

9 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Kaslow v. City of New York, No. 31 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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