Nespoli v Board of Trustees of the N.Y. City Empls. Retirement Sys.
2021 NY Slip Op 31603(U)
May 11, 2021
Supreme Court, New York County
Docket Number: 159601/2016
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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HARRY NESPOLI, THE UNIFORMED SANITATIONMEN'S ASSOCIATION, LOCAL 831, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, MICHAEL BONANNO, LENNIE OWES, JOSELYN ESPINOSA, BARKIM COVINGTON, ADRIAN SMITH

Plaintiffs/Petitioners,

- v -

BOARD OF TRUSTEES OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, JOHN ADLER, DIANE D'ALESSANDRO,

Defendants/Respondents.

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INDEX NO. 159601/2016

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 were read on this motion to/for MISCELLANEOUS

In this converted Article 78 proceeding, petitioners Harry Nespoli, as President of the Uniformed Sanitationmen's Association, Local 831, International Brotherhood of Teamsters (the Union), the Union, and Michael Bonanno, Lennie Owes, Jr., Joselyn Espinosa, Barkim Covington, and Adrian Smith (Individual Petitioners), challenge the Individual Petitioners' reclassification in their retirement system from Tier 4 to revised Tier 3/Tier 6 by respondents Board of Trustees of the New York City Employees' Retirement System (NYCERS), John Adler, as Chairperson of the NYCERS's Board of Trustees, and Diane D'Alessandro, NYCERS's former Executive Director. The Individual Petitioners are active members of NYCERS, a public employee retirement system, with effective dates of membership before April 1, 2012. They each obtained membership in the public employee retirement system, either through prior public employment with the City of New York (City) and membership in

NYCERS, as is the case for Individual Petitioners Bonanno, Owes, Espinoza, and Covington, or through prior public employment with New York State or local government and membership in another state or local public employee retirement system, as is the case for Individual Petitioner Smith, whose membership in the New York State Employees' Retirement System (NYSERS) was transferred to NYCERS.

Each of the Individual Petitioners was hired as a Sanitation Worker by the City Department of Sanitation (DSNY) after April 1, 2012, the date on which the revised Tier 6 took effect, but was placed in Tier 4, based on his prior participation in the public employee retirement system. In the fall of 2016, however, NYCERS determined that it had made an error and that Sanitation Workers, like the Individual Petitioners, who entered that job title on or after April 1, 2012 were ineligible for the 20-year retirement plan provided under Tier 4 and instead must be placed in the 22-year revised retirement plan under Tier 6, despite their prior Tier 4 membership.

Petitioners claim that NYCERS' determination wrongfully deprives the Individual Petitioners, and other similarly situated members of the Union, of their right to transfer or reinstate their Tier 4 memberships, thereby diminishing their pension plan benefits. Petitioners argue that NYCERS' determination is not entitled to deference because the issue here is one of pure statutory interpretation but, even if deference were given here, NYCERS' interpretation must still be rejected because it is unreasonable and inconsistent with the governing statute. Petitioners also argue that NYCERS' action constitutes an unconstitutional impairment of the Individual Petitioners' pension rights and that NYCERS should be estopped from denying their Tier 4 status, based on promises DSNY and NYCERS made to them at the time of their hiring as Sanitation Workers. Petitioners ask that the court grant their petition, declare NYCERS' policy

invalid, and enjoin NYCERS from stripping Sanitation Workers with prior public service of the benefit of their original pension membership dates.

In opposition, NYCERS argues that its reading of the relevant statute is rational and so should be granted deference. It also contends that promissory estoppel cannot oblige it to provide benefits to which the Individual Petitioners are not entitled and that its correction of an error does not constitute an unconstitutional impairment of their pension rights.

Discussion

"Judicial review of the acts of an administrative agency under article 78 is limited to questions expressly identified by statute" (*Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000], citing CPLR 7803). "It is well settled that reviewing courts may not disturb an agency's determination unless it is arbitrary and capricious, affected by an error of law, or an abuse of discretion" (*Matter of West 58th St. Coalition, Inc. v City of New York*, 188 AD3d 1, 8 [1st Dept 2020], citing CPLR 7803 [3]; *see also Matter of Pell v Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] ["The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious'"] [citations omitted]).

"NYCERS is the expert agency vested by the legislature with the authority to manage the City's complex public employee retirement plans" (*Matter of Kaslow v City of New York*, 23 NY3d 78, 88 [2014], citing *Matter of New York State Superfund Coalition, Inc. v New York State Dept. of Envtl. Conservation*, 18 NY3d 289, 296 [2011]). "Courts regularly defer to the governmental agency charged with the responsibility for administration of [a] statute in those cases where interpretation or application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn

therefrom" (*Matter of Kaslow,* 23 NY3d at 88, quoting *Matter of New York State Superfund Coalition, Inc.*, 18 NY3d at 296 [internal quotation marks and citations omitted]).

"It is axiomatic that we defer to an agency's fact-based application of a statute in its specialized area of expertise" (*Matter of West 58th St. Coalition, Inc.*, 188 AD3d at 8-9 [1st Dept 2020] [citations omitted]). "Moreover, we may not substitute our judgment in place of the judgment of the properly delegated administrative officials" (*id. at* 9 [internal quotations marks, alteration and citation omitted]). "Accordingly, if we find that the determination is supported by a rational basis, we must sustain the agency determination even if the Court concludes that it would have reached a different result" (*id.*, citing *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; see also *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 232 [2007] ["while judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to weigh the desirability of any action or to choose among alternatives" [internal quotation marks, alterations and citations omitted]).

Section 501 of New York's Retirement and Social Security Law provides, in pertinent part:

> "25. 'New York city uniformed correction/sanitation *revised plan member*' shall mean a member who *becomes subject to the provisions of this article [14]* on or after April first, two thousand twelve, and who is a member of either the uniformed force of the New York city department of correction or the uniformed force of the New York city department of sanitation"

(emphasis added).

It is undisputed that when the Individual Petitioners first entered public employment, they joined NYCERS or NYSERS as Tier 4 members, subject to article 15 of the Retirement and Social Security Law. NYCERS asserts that the Individual Petitioners are, by definition, New York City uniformed correction/sanitation revised plan members under Tier 6 because the dates

on which they each first became Sanitation Workers, and thus subject to article 14, was after April 1, 2012. Despite the Petitioners' cogent arguments regarding the statute's legislative history and construction, NYCERS interpretation is rational and so this determination cannot be disturbed (*Matter of West 58th St. Coalition, Inc.*, 188 AD3d at 8-9).

Petitioners' other arguments are also unavailing. The Individual Petitioners cannot assert promissory estoppel against NYCERS or "claim a constitutionally protected interest in pension benefits . . ., simply because they were initially placed in such a plan in error" (*Matter of Ly v New York City Employees Retirement Sys.*, 2018 NY Slip Op 31164 [U], **5 [Sup Ct, Kings County, June 8, 2018], citing *Matter of Galanthay v New York State Teachers' Retirement Sys.*, 50 NY2d 984, 986 [1980] [considering retirement system's statutory responsibility to correct errors, "[t]he doctrine of estoppel will not reach so far as to hold an individual eligible for vested retirement [benefits] where by statute, he clearly does not qualify for such eligibility"] [internal quotation marks and citation omitted]).

Conclusion

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is dismissed.

This constitutes the decision, order and judgment of the court.

5/11/2021
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE