



The Handbook of Illinois Pension Case Law



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Forecasting and Accountability
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Illinois State Constitution of 1970

ARTICLE XIII – General Provisions

Section 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

INTRODUCTION

Section 5 of Article XIII of the Illinois Constitution states that “membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” (This clause is commonly referred to as the “pension protection clause.”) In the 1979 case *Kraus vs. Board of Trustees*, argued before the First District Appellate court, Justice John Stamos’ majority opinion traced the history of pension rights under Illinois law prior to the adoption of the 1970 Illinois Constitution.

Before the enactment of the 1970 Illinois Constitution, the legal status of pension rights depended largely on whether an employee’s participation in a pension plan was compulsory or optional. If participation was compulsory, the employee held no contractual rights to pension benefits. Justice Stamos described this viewpoint as “the somewhat archaic characterization of pension benefits in mandatory plans as mere gratuities...springing from the appreciation and graciousness of the sovereign” (72 Ill. App.3d 833, 837). Under this pre-1970 rationale, public pension benefits in Illinois could be amended, changed, diminished, or repealed altogether by the legislature.

Conversely, where participation in a public pension plan was optional, the employee’s right to receive benefits was viewed as a contractual relationship that took effect when the employee began participation in the pension fund. The 1961 Illinois Supreme Court case *Bardens vs. Board of Trustees* (22 Ill.2d 56) established the principle that a

voluntary participant in a public pension plan was entitled to receive a pension based on the laws in effect at the time he or she began participating in the system, regardless of subsequent legislative enactments that might reduce a member's pension benefits prior to retirement. In *Kraus*, Justice Stamos noted that this voluntary-compulsory distinction was consistently adhered to whenever the legality of a reduction or termination of benefits was challenged in the Illinois courts. In 1961, the Illinois Supreme Court in *Bergin vs. Board of Trustees* upheld the principle that employees in a public pension plan in which membership is compulsory retained no contractual rights "thus permitting amendment, change, or repeal as the legislature sees fit" (202 N.E.2d 489, 494).

Kraus was the first case in which the constitutionality of a reduction in benefits in a compulsory retirement system was squarely before the courts after section 5 of article XIII of the 1970 constitution took effect (other cases had arisen, but the *Kraus* court found none of them to be dispositive of this important question). *Kraus* stemmed from a legislative enactment to the Downstate Police article of the Pension Code which changed the eligibility for a retirement pension for a police officer who was receiving disability benefits. The legislative change had the effect of reducing the plaintiff's retirement pension, which the court found to be in violation of section 5 of article XIII. Justice Stamos relied heavily on the transcripts from the 1970 constitutional convention, particularly the comments of Delegate Helen C. Kinney, the sponsor of the provision that was later adopted as section 5 of article XIII. During the debate, Kinney told her colleagues that her intent was to ensure that employees would receive the benefits that were in effect at the time they entered the system, regardless of

whether or not participation in the pension system was compulsory or voluntary. Thus, the *Kraus* court held that section 5 of article XIII of the Illinois Constitution prohibits legislative enactments that diminish the benefits of employees who become members of the pension system before the legislative enactment takes effect.

This handbook summarizes the significant pension-related court rulings in which the Illinois courts have interpreted the pension protection clause of the 1970 Illinois Constitution.

Peters vs. City of Springfield, 57 Ill.2d 142 (1974).

Facts

Peters arose from an ordinance enacted by the City of Springfield which lowered the mandatory retirement age for Springfield firefighters from 63 to 60. Three Springfield firefighters, all age 60 and above, sued the city in the circuit court of Sangamon County. The plaintiffs argued that the ordinance, among other things, violated section 5 of article XIII of the Illinois Constitution since it prevented them from working long enough to earn the maximum pension benefit available under the Pension Code (65% of final salary). The circuit court held the ordinance unconstitutional and enjoined its enforcement, and the City of Springfield and its civil service commission appealed to the Illinois Supreme Court.

Ruling

The Supreme Court reversed the ruling of the circuit court and dissolved the injunction against the enforcement of the retirement age ordinance.

Holding

The Supreme Court held that municipal employment is not static and that several factors must be considered when deciding whether a job should be abolished or its functions changed. The court did not explore the full meaning of the “enforceable contractual relationship” with respect to pension benefits as spelled out in section 5 of article XIII of the Illinois Constitution; however it did conclude that the purpose and intent of the provision was to ensure that pension benefits of public employees, once earned, should not be diminished. The court held that section 5 of article

XIII did not preclude cities such as Springfield from reducing the maximum retirement age for firefighters, even though such a reduction might adversely impact their pensions.

**The People ex rel. Illinois Federation of Teachers,
AFT, AFL-CIO vs. Lindberg, 60 Ill.2d 266 (1975).**

Facts

The Illinois Federation of Teachers, along with select retired and active teachers, filed a multi-count complaint against certain state officials seeking to compel payment of specified amounts to the teacher retirement funds in order to alleviate pre-existing pension debt. The plaintiffs asserted that Governor Daniel Walker exceeded his constitutional authority when he exercised his item veto power to reduce the Fiscal Year 1974 appropriation to three teachers' pension plans, the Teachers' Retirement System, the State Universities Retirement System, and the Chicago Teachers' Pension Fund. The plaintiffs' argued that section 5 of article XIII of the 1970 Constitution creates an enforceable contractual relationship between the State and the participants in the pension systems; as a result, the Governor may not reduce or veto appropriations to the respective pension systems. The Circuit Court of Cook County dismissed the plaintiffs' complaints and the case was granted direct appeal to the Illinois Supreme Court.

Ruling

The Supreme Court affirmed the judgment of the circuit court of Cook County.

Holding

The Supreme Court examined whether or not pension fund participants and their beneficiaries enjoy a contractual right to enforce a specific level of funding to the respective pension plans. The court noted that the Illinois Constitution allows the Governor to line item reduce or veto any appropriations in a spending bill that is presented to him.

The court sustained the Governor's vetoes and held that no statutorily-mandated contractual relationship existed with regard to funding. The court also observed that the legislature could have easily enacted such a provision had it chosen to do so. Furthermore, the court recognized that the sponsors of section 5 of article XIII of the 1970 Constitution only intended to guarantee that pensioners would receive the full amount of their pensions, and that the framers never intended to place a constitutional restriction on the Governor's ability to reduce annual appropriations to the pension systems.

Felt vs. Board of Trustees, 107 Ill.2d 158 (1985).

Facts

Felt vs. Board of Trustees was a consolidated appeal concerning the constitutionality of an amendment to the Judges' Retirement article of the Pension Code which changed the salary base for calculating judicial pensions from the judge's salary on his or her final day of service to the average salary in the judge's final year of service for persons retiring on or after January 1, 1983. In enacting the amendment, the General Assembly sought to discourage judges from retiring upon obtaining a salary increase without contributing to the pension fund on the basis of the increased salary. The plaintiffs were former judges of the circuit court of Cook County, as well as the widow of a deceased judge. Each of the plaintiffs applied for a pension after the effective date of the act on the basis of the salary earned on the last day of service, however in each case the board of trustees of the Judges' Retirement System granted an annuity based on the average salary in the final year of service.

Ruling

The circuit court set aside the board's ruling, and the Supreme Court affirmed the circuit court's ruling.

Holding

Relying on the plain language of article XIII, section 5 of the Illinois Constitution and the proceedings from the 1970 constitutional convention, the court held that the legislative change in the basis of computing a retirement annuity constituted an impairment in the retirement benefits of the plaintiffs, and was therefore unconstitutional. The court

noted that even before the enactment of the 1970 constitution, the Supreme Court held in the 1961 case *Bardens vs. Board of Trustees*, 22 Ill.2d 56, that a legislative enactment that changes the salary base for computing a retirement annuity constituted a contractual impairment for members already enrolled in the Judges' Retirement System (the facts in *Bardens* were essentially the same as *Felt*). Furthermore, the court found the financial impairment to the pensions of two of the plaintiffs to be substantial and an unreasonable exercise of the state's police power.

**Schroeder vs. Morton Grove Police Pension
Board, 219 Ill.App.3d 697 (1991).**

Facts:

James Schroeder was a Morton Grove police officer who joined the force in 1973 and suffered a duty-related injury in July of 1983 that left him mentally disabled. In July of 1984, the board of trustees of the Morton Grove police pension fund granted Schroeder a duty-related disability pension. Schroeder then filed a workers' compensation claim against the Village of Morton Grove with the Illinois Industrial Commission seeking compensation for the same injury. The Industrial Commission approved a settlement between Schroeder and the village for a lump sum payment of \$89,500. The pension board then reduced Schroeder's disability pension by the amount of the Worker's Compensation settlement pursuant to the Worker's Compensation Act.

Ruling

The circuit court of Cook County granted the pension board summary judgment, and the Court of Appeals for the 1st District reversed.

Holding

The question before the appellate court was whether the police pension board's decision to reduce Schroeder's pension to reflect his Worker's Compensation award constituted a diminishment of his pension benefit in violation of section 5 of article XIII of the Illinois Constitution. The appellate court ruled that membership in a pension system of a local government is an enforceable contractual relationship, under which the benefits cannot be diminished or impaired, and an employee's rights in the

system vest either at the time he or she enters the system or in 1971, when the Illinois Constitution became effective, whichever is later. Furthermore, the “contractual relationship” between the employer and the employee is governed by the terms of the contract at the time the employee initially contributes to the system. Since Schroeder made contributions to the pension fund before, during, and after legislative changes to the Worker’s Compensation statute, the court held that his disability pension should not be reduced.

McNamee vs. State of Illinois, 173 Ill.2d 433
(1996)

Facts

McNamee arose from a 1993 amendment to the Downstate Police article of the Pension Code which changed the beginning date of the 40-year amortization period from January 1, 1980 to July 1, 1993. The amendment also changed the method for amortizing unfunded liabilities from a level-dollar amortization to an annual contribution based on a percentage of payroll. The Plaintiffs, the Illinois Police Pension Fund Association and several current and retired police officers throughout the state, filed suit in the Circuit Court of Cook County seeking summary judgment that the amendment be declared unconstitutional as it served to diminish and impair the contractual rights of pension fund participants in violation of article XIII, section 5 of the Illinois Constitution. Specifically, the plaintiffs argued that the law would allow municipalities to make lower employer contributions to their respective police pension funds in the early years of the new amortization period than would have been required under the previous law, thus placing the pension funds in a more precarious financial position and possibly jeopardizing police officer pensions.

Ruling

The Circuit Court of Cook County granted the plaintiffs summary judgment, and the Illinois Supreme Court reversed on appeal.

Holding

The question before the Supreme Court in *McNamee* was whether article XIII, section 5 of the Illinois Constitution only prevents employers from diminishing pension benefits

that have already been earned, or whether the clause also places a mandate upon employers to adhere to a certain funding schedule. The Court relied heavily on debate transcripts from the 1970 constitutional convention, in which Delegate Helen C. Kinney stated “[the clause] was not intended to require 100 percent funding or 50 percent or 30 percent funding...it is simply to give [annuitants] the basic protection against abolishing their rights completely or changing the terms of their rights after they have embarked upon employment...” (173 Ill.2d at 442). In reversing the ruling of the circuit court, the justices held that the framers of the constitution did not intend to regulate funding, and that article XIII, section 5 creates an enforceable contractual relationship that protects only the pensioner’s right to receive benefits.

**The People ex rel. Sklodowski vs. The State of
Illinois, 182 Ill.2d 220 (1998)**

Facts

Six members of various state retirement systems filed a complaint in the Circuit Court of Cook County to compel the state and its officials to appropriate monies necessary to meet statutory funding obligations contained in the Illinois Pension Code. The plaintiffs' alleged that the state failed to comply with the funding provisions contained in Public Act 86-273 (eff. Aug. 23, 1989), which required the state to contribute additional incremental amounts each year, when, combined with employee contributions and investment returns, would meet the annual normal cost for each fund in seven years, as well as amortize the unfunded liability for each pension fund over a 40-year period. The trial court determined that all the claims by the plaintiffs were insufficient because the requested relief, a judicial order requiring the state to appropriate monies, would violate the separation of powers clause of the Illinois Constitution (Ill. Const. 1970, art. II, sec. 1). The appellate court reversed, holding that the courts could issue an order compelling State officials to comply with the funding requirements contained in the Pension Code, and that article XIII, section 5 of the Illinois Constitution created a contractual relationship between pension fund members and the State allowing pension fund beneficiaries to enforce statutory funding levels.

Ruling

The judgment of the appellate court was reversed and the ruling of the circuit court was affirmed by the Illinois Supreme Court.

Holding

The Supreme Court reviewed *People ex rel. I.F.T vs. Lindberg*, 60 Ill.2d 266 (1975) and *McNamee vs. State of Illinois*, 173 Ill.2d 433 (1996). The court examined the defendants' claims that the pension protection clause creates an enforceable contractual right only to receive benefits, not to control funding. The court concluded that the plaintiffs' allegations of inadequate funding on the part of the State were insufficient to constitute an impairment of benefits in violation of article XIII, section 5 of the Illinois Constitution. The plaintiffs could not prove that the funds at issue were "on the verge of default or imminent bankruptcy" or that the benefits were in immediate danger of being diminished (182 Ill.2d at 233). While the Court recognized that article XIII, section 5 of the Illinois Constitution created an enforceable contractual right to benefits, such a right could not be divined to enforce the level of state contributions mandated by Public Act 86-273. The court found that the framers of the Illinois Constitution were careful to craft in the pension protection clause an amendment that would create a contractual right to benefits, while not freezing the politically sensitive area of pension financing. Because the court ruled that the Illinois Constitution does not create an enforceable contractual right to funding, it did not reach the question of whether a court order compelling state officials to appropriate the full statutorily-required pension contribution was barred by the separation of powers doctrine.

**Miller vs. Retirement Bd. of Policeman's Annuity
and Benefit Fund of Chicago, 329 Ill. App. 3d 589
(2002).**

Facts

The plaintiffs in *Miller* were a group of 61 retired Chicago police officers who worked past age 63 which, prior to 1983, was the mandatory retirement age for Chicago police officers. However, after a U.S. Supreme Court ruling in 1983 the mandatory retirement age rose to 70. In 1983, Congress amended the Age Discrimination in Employment Act to allow states and local governments to reinstitute mandatory retirement ages, and in 1988 the Chicago police mandatory retirement age reverted back to 63. During this five-year window when Chicago police officers were able to work past age 63, plaintiff Robert Miller reached 63 years of age and continued working as permitted by law. The Chicago Police pension board was confronted with the specter of police officers working past age 63 while the Pension Code fixed retirement benefits at age 63. The board opted to calculate benefits by fixing the officer's base monthly benefit at age 63, as was required by the Pension Code. Thus, for pension purposes, the board treated officers like Miller who worked past age 63 as if they had retired at age 63, but these officers did not collect a pension until they actually retired. (Miller and other officers similarly situated did not make pension contributions on salary earned beyond age 63).

In 1989, the General Assembly enacted P.A. 86-0272, which changed the effective date of retirement to the date the officer withdrew from service rather than age 63. Police officers would not be required to make contributions to the pension fund for service credit earned between the

time they turned 63 and January 1, 1988 (the effective date of the Act). In September of 1991, the Board notified the plaintiffs that they would be granted service credit earned between January 1, 1988 and their actual retirement date (in most cases, the forced retirement date of March 1988). The Board demanded that the officers make contributions to the fund for this period of time. Furthermore, the Board determined that the 3% automatic annual increases previously calculated from age 63 should be recalculated to reflect the new retirement date and that any 3% increases already distributed should be paid back to the fund by the officers. As a result of the new legislation and the Board's actions, Miller's pension benefits were affected as follows:

- Monthly benefit reduced by \$142 (due to cancellation of 3% increase);
- Ordered to repay \$6,180.13 (return previously paid 3% increases)
- Ordered to pay \$975.26 in additional employee contributions (from January 1, 1988 to March 27, 1988)

In 1992, Miller filed a lawsuit against the Board in the Circuit Court of Cook County. In 1998, the trial court held that the Board's interpretation of P.A. 86-0272 was unconstitutional as it applied to the plaintiffs inasmuch as it directly impacted the basis for calculating the plaintiffs' pension benefits.

Ruling

The appellate court ruled that the Board's demand that Miller repay part of his accumulated annual increases in accordance with P.A. 86-0272 constituted a diminishment of pension benefits in violation of the Illinois Constitution.

Holding

The appellate court likened *Miller* to *Kraus vs. Board of Trustees of the Police Pension Fund* and *Felt vs. Board of Trustees of the Judges' Retirement System* in that the plaintiffs stood to gain a higher benefit under the law that existed when they entered the system than under a subsequent legislative enactment. The court acknowledged that, during the five-year window when officers were allowed to work beyond age 63, the Board could have interpreted the Pension Code two different ways with respect to when annual pension increases began to accrue: either one year after the officer turned 63 or one year after the officer actually retired from service. P.A. 86-0272 ensured that the annuity no longer became "fixed" at age 63, thus leading to the board's demand that Miller and other retired officers similarly situated pay back some of their previously granted increases. The court held that this action served to directly diminish the terms of the plaintiffs' contractual rights within the pension code in violation of Article XIII, Section 5 of the Illinois Constitution.

BACKGROUND

The Commission on Government Forecasting and Accountability (CGFA), a bipartisan, joint legislative commission, provides the General Assembly with information relevant to the Illinois economy, taxes and other sources of revenue and debt obligations of the State. The Commission's specific responsibilities include:

- 1) Preparation of annual revenue estimates with periodic updates;
- 2) Analysis of the fiscal impact of revenue bills;
- 3) Preparation of "State Debt Impact Notes" on legislation which would appropriate bond funds or increase bond authorization;
- 4) Periodic assessment of capital facility plans;
- 5) Annual estimates of public pension funding requirements and preparation of pension impact notes;
- 6) Annual estimates of the liabilities of the State's group health insurance program and approval of contract renewals promulgated by the Department of Central Management Services;
- 7) Administration of the State Facility Closure Act.

The Commission also has a mandate to report to the General Assembly ". . . on economic trends in relation to long-range planning and budgeting; and to study and make such recommendations as it deems appropriate on local and regional economic and fiscal policies and on federal fiscal policy as it may affect Illinois. . . ." This results in several reports on various economic issues throughout the year.

The Commission publishes several reports each year. In addition to a Monthly Briefing, the Commission publishes the "Revenue Estimate and Economic Outlook" which describes and projects economic conditions and their impact on State revenues. The "Bonded Indebtedness Report" examines the State's debt position as well as other issues directly related to conditions in the financial markets. The "Financial Conditions of the Illinois Public Retirement Systems" provides an overview of the funding condition of the State's retirement systems. Also published are an Annual Fiscal Year Budget Summary; Report on the Liabilities of the State Employees' Group Insurance Program; and Report of the Cost and Savings of the State Employees' Early Retirement Incentive Program. The Commission also publishes each year special topic reports that have or could have an impact on the economic well being of Illinois. All reports are available on the Commission's website.

These reports are available from:

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