

Explanatory Case Brief

Bartlett v. Cameron, 2014-NMSC-002, 316 P.3d 889

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Summary

In 2013, a group of petitioners¹ brought a New Mexico Supreme Court case seeking a writ of mandamus² against the Educational Retirement Board (ERB) "to compel the ERB to pay them an annual cost-of-living adjustment (COLA) ... calculated according to the statutes '*in effect at the time of Petitioners' date of maturity of their rights*'",³ instead of the statutes that had been recently modified by the legislature at the time that the action was filed. Petitioners challenged the constitutionality of that piece of legislation, Senate Bill (SB) 115 (2013)⁴, arguing that certain provisions of SB 115 infringed upon the right guaranteed to them by "Article 20, Section 22 of the New Mexico Constitution, which provides that under certain conditions a public employee 'shall acquire a vested property right with due process protections' in a retirement *plan*"⁵. Although the statutory provisions for COLAs had been changed numerous times in the past without challenge to increase COLAs, the petitioners specifically argued that

¹ Petitioners included retired teachers, professors and other public education employees.

² A *writ of mandamus* is a court order compelling a government agency or official to properly fulfill their official duties or to correct an abuse of discretion.

³ *Bartlett v. Cameron, 2014-NMSC-002, 316 P.3d 889.*

⁴ SB 115 reduced the future amounts that educational retirees might receive as a COLA. The bill was passed and signed into law in 2013. SB 115 can be found at this link: <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=115&year=13>.

⁵ *Bartlett*, quoting N.M. Const. Art. 20, Section 22, Subsection D.

decreasing COLAs violated their constitutional rights. The court ultimately denied the writ of mandamus, concluding that the Constitution of New Mexico does not afford retirees a vested property right with due process protections in an annual COLA until it has been paid and has become part of the retirees' base benefit.

Bartlett is precedential and applicable to the COLA provided under both the Educational Retirement Act and the Public Employees Retirement Act.

Issue

The question before the court is whether the Constitution of New Mexico grants retirees a right to an annual cost-of-living adjustment to their retirement benefit, based on the COLA formula in effect on the date of their retirement, for the entirety of their retirement.

Facts

1. In 2013, the legislature passed, and the governor signed, SB 115⁶ into law to protect the fiscal stability of the ERB retirement plan. SB 115 provided retirees with a smaller COLA increase on July 1, 2013 and future years (up to 20% less) as compared with what retirees would have received under the COLA provisions in effect at the time of their retirement. Prior to the passage of this legislation, between 2001 and 2012, the funded ratio⁷ for the ERB retirement plan fell from 86.8% to 60.7%, primarily due to economic downturns during that period. The dramatic lowering of the funded ratio threatened the overall solvency of the ERB retirement plan, spurring the legislature to introduce and pass SB 115.
2. Certain retirees opposed the new law and filed suit, requesting a writ of mandamus that would require the ERB to pay them an annual COLA that was calculated using the statutes in effect at the time of their retirement. The retirees took the position that the legislature may not reduce the COLA for 2013 and subsequent years, claiming a vested property right in the COLA formula that was in effect on the date of their eligibility for retirement. This position was based on Article 20, Section 22 of the

⁶ See footnote 4.

⁷ The funded ratio is the quantitative relationship between the current assets and the accrued liabilities of the retirement fund.

Constitution of New Mexico, which provides that under certain conditions, a public employee "shall acquire a vested property right with due process protections" in a retirement plan.⁸

3. The State argued that the COLA is not part of the retirement benefit and is a separate amount that a retiree might receive, but only when there is a year-over-year increase in the consumer price index (CPI). Essentially, the state argued that the COLA is an expectation of sums that might be paid in future years and not a protected property right.

Rule

Article 20, Section 22 of the Constitution of New Mexico provides that:

[u]pon meeting the minimum service requirements of an applicable retirement plan created by law for employees of the state or any of its political subdivisions or institutions, a member of a plan shall acquire a vested property right with due process protections under the applicable provisions of the New Mexico and United States constitutions.⁹

The Constitution of New Mexico does not define an employee's vested property right in their "retirement *plan*".¹⁰ For this reason, to properly address the petitioners' question, the New Mexico Supreme Court required that the Constitution of New Mexico be read in tandem with *Pierce v. State*¹¹, which discusses an ERB member's vested property right in a retirement *benefit*.

In *Pierce*, retirees¹² challenged legislation that repealed a longstanding income tax exemption for state retirement benefits. By removing the tax exemption, in effect, the legislation raised the tax liability on state retirement benefits, thus lowering the ultimate amount received by retirees. The New Mexico Supreme Court upheld the legislation, finding that public pension

⁸ N.M. Const. Art. 20, Section 22, Subsection D.

⁹ N.M. Const. Art. 20, Section 22, Subsection D.

¹⁰ *Bartlett*, 2014-NMSC-002, 316 P.3d 889.

¹¹ *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

¹² Retirees under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the Educational Retirement Act.

plan acts do not grant contractual rights to retirees. The court also found that because the acts provided an absolute right to receive some form of pension benefits after earning five years of service credits, the acts created vested property rights, but that those rights did not include the specific right to receive pension benefits exempt from tax. Specifically, the court stated that the express language of the statutes "creates an expectancy, or property interest, in receiving benefits"¹³ that vests in employees when they have met the minimum qualifying requirements to be eligible to receive retirement benefits. The court went on further to state that the "specific amounts of benefits to be received are indeterminate at the time the property right vests"¹⁴ and that the "details of the vested rights are to be determined by the statutes in effect at the time of maturity".¹⁵

Analysis

State law is the legal authority that dictates the scope of property rights subject to due process protections, prompting the court to examine New Mexico laws and analyze its findings through the prism of the Constitution of New Mexico and *Pierce*. The Educational Retirement Act (ERA) refers to payments as either a retirement benefit or an annuity, defining "retirement benefit" as "an annuity paid monthly to members whose employment has been terminated by reason of their age".¹⁶ The ERA also provides the substantive right to a retirement benefit that an employee receives based upon the date of the employee's retirement.¹⁷ However, the statute¹⁸ that provides for an employee's substantive right to a retirement benefit does not mention a COLA, and a separate statute¹⁹ establishes a retired member's eligibility to receive a COLA.

The court in *Pierce* concluded that the repeal of a tax exemption that enhanced the value of the petitioners' retirement annuity was not a part of the retirement benefit as contemplated by

¹³ *Pierce*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

¹⁴ *Pierce*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

¹⁵ *Pierce*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

¹⁶ Section 22-11-2 NMSA 1978.

¹⁷ Section 22-11-30 NMSA 1978.

¹⁸ Section 22-11-30 NMSA 1978.

¹⁹ Section 22-11-31 NMSA 1978.

the legislature and thus was not a property right protected by the Constitution of New Mexico.²⁰ The finding in *Bartlett* provides that, similar to the tax exemption in *Pierce*, the COLA is separate from the obligation and payment of the retirement benefit.²¹ Further, the *Bartlett* court opined that the omission of a COLA provision from the statute that defines an employee's substantive right to a retirement benefit disqualifies the COLA as a property right.²² The court asserted that "the COLA is provided independently from the obligation and payment of the retirement benefit. Reducing the COLA prospectively may affect the retiree's economic purchasing power, but it does not reduce the employee's substantive retirement benefit".²³

Unless the court is certain that the legislature intended to create a property right, the court presumes that the legislature is implementing public policy when enacting statute, which the legislature is free to change, including any policy regarding a COLA. Policies are subject to revision and repeal, unlike contracts, and to imply an obligation when an obligation is not clearly expressed would limit the powers of the legislative body.

Holding

Ultimately, the court held "that in the absence of any contrary indication from our Legislature, any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not create a property right under the Constitution".²⁴ Further, the court asserted that after the COLA has been paid, "...the COLA by statute becomes part of the retirement benefit and a property right subject to those constitutional protections".²⁵

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²⁰ *Bartlett*, 2014-NMSC-002, 316 P.3d. 889.

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²³ *Bartlett*, 2014-NMSC-002, 316 P.3d. 889.

²⁴ *Bartlett*, 2014-NMSC-002, 316 P.3d. 889.

²⁵ *Bartlett*, 2014-NMSC-002, 316 P.3d. 889.