

10-1-1956

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Recommended Citation

Richard F. Griffin, *Miscellaneous—Municipal Employee's Pension Rights*, 6 Buff. L. Rev. 78 (1956).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss1/42>

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MISCELLANEOUS

Municipal Employee's Pension Rights

In *Gordon v. Monaghan*,¹ the petitioner, a member of the police pension fund with nearly twenty-seven years of active service, on April 22, 1952 filed applications for retirement from the New York City Police Force effective May 22, 1952, and for thirty days leave effective 12:01 A. M. April 23, 1952.

THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK provides: that an annual pension shall be awarded to a participant in the police pension fund, who has contributed on the basis of retirement after twenty-five years of service, upon his own application setting forth at what time—not less than thirty days subsequent to filing of the application—he desires to be retired; that the applicant shall be retired as of the date designated provided at the time specified for retirement his term or tenure shall not have terminated or been forfeited; and that upon applicant's request he shall be granted a leave of absence from the date of filing until effective date of retirement.²

Petitioner, who prior to April 22 had been on sick leave, departed from the city the next day leaving no forwarding address and without receiving permission of the police surgeon. His application for leave was approved by his immediate superiors on April 23 but denied two days later by the chief inspector and police commissioner. Because of absence after April 22 notices to appear before a special assistant attorney-general and the police surgeon were not received. On May 12 the surgeon and commissioner charged petitioner with absence without permission and failure to appear before the police surgeon and attorney-general as ordered. On May 16 a hearing was held without petitioner, he was found guilty and was dismissed from the force on May 19—thereby losing his pension rights.

In a proceeding to review the dismissal, the Appellate Division affirmed without opinion the determination of the Commissioner of Police. The Court of Appeals reversed and held that the determination should be annulled. The Court construed the Administrative Code provision for leave as mandatory and that petitioner was entitled to an immediate leave of absence effective upon request. Therefore, the Court reasoned, after April 22 petitioner was no longer subject to general administrative regulations or rules relating only to the active performance of duty. Since his dismissal was based upon a breach of duty after his leave

1. 309 N. Y. 336, 130 N. E. 2d 882 (1955).

2. THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK §B18-4.0 (1954).

of absence became effective, during which time petitioner was not under the obligations of an active policeman, the Court held the dismissal to be unwarranted.

The Court pointed out that pension rights by their nature are compensation for past services³ and ought not be withheld without legal cause, and the immediate leave of absence provision, enacted to protect policemen from last minute forfeitures, does not preclude the police department's conducting an investigation of prior misconduct during the thirty day statutory waiting period. The waiting period was enacted in 1951 to provide an opportunity to determine if there is any prior conduct which warrants the denial of a pension and to prevent retirement in the face of pending or expected charges, once possible under previous charters.⁴

THE CHARTER OF THE CITY OF BUFFALO provides that the pension board shall retire any member upon his application who has completed twenty-five years of actual service.⁵ But no pension shall be granted to a member against whom any charge of dereliction of duty has been preferred and remains undetermined, or to a member charged with the commission of a crime.⁶ There is, however, no statutory waiting period or provision for immediate leave of absence.

Unemployment Insurance

The Unemployment Insurance Law⁷ was enacted for the benefit of persons unemployed through no fault of their own, and was not intended to confer benefits on every person out of employment.⁸ Persons who do not fit within the prescribed category are not barred completely from benefits but their rights are suspended for certain periods. Thus the rights of strikers and other claimants involved in "industrial controversy" are suspended for seven weeks.⁹ If employment is terminated voluntarily and without good cause, the claimant is barred for forty-two days.¹⁰ The obvious problems involved in determining "voluntariness" and "good cause" have been recognized and are under legislative consideration, but no solution has been suggested.¹¹ The cases, however, present the attempts of the courts to discover a rational and workable view of the field.

3. *Giannettino v. McGoldrick*, 295 N. Y. 208, 66 N. E. 2d 57 (1946).

4. *Pierne v. Valentine*, 291 N. Y. 333, 52 N. E. 2d 57 (1946); *Rogalin v. New York City Teachers' Retirement Board*, 290 N. Y. 664, 49 N. E. 2d 623 (1943); *People ex rel Fitzpatrick v. Greene*, 181 N. Y. 308, 78 N. E. 1111 (1905).

5. THE CHARTER OF THE CITY OF BUFFALO §464 (1950).

6. *Id* §469.

7. N. Y. LABOR LAW §§ 500-643.

8. *In re Waterman*, 285 App. Div. 1106, 139 N.Y.S. 2d 529 (3d Dep't 1955); *Claim of Palmieri*, 276 App. Div. 417, 95 N.Y.S. 2d 716 (3d Dep't 1950).

9. N. Y. LABOR LAW §592.

10. N. Y. LABOR LAW §593.

11. *Report of Joint Legislative Committee on Unemployment Insurance*, 1955 N. Y. STATE LEGISLATIVE ANNUAL 335.