
BOND INFORMATION MEMO

Municipalities Law

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Bond Secures Major Pension Victory For Public Employers Across New York State

In *City of Yonkers v. Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, No. 48, April 2, 2013, Bond members Terry O'Neil and Chris Kurtz, prevailed at the New York State Court of Appeals in a case with Statewide applicability to public employers with unionized members of the Police and Fire Retirement System ("PFRS"). The issue was whether or not Tier V members of the PFRS (i.e., police officers and fire fighters), who are required by law to contribute 3% of their salaries towards the cost of their pension, could avoid such payment by virtue of language in a collective bargaining agreement that provides for such members to have a "non-contributory" plan. The Union representing the Yonkers Fire Fighters filed for arbitration on the issue and the City of Yonkers ("City") sought a stay of arbitration in state court.

After the City prevailed at the Appellate Division, Second Department, the Court of Appeals took the case and affirmed. The Court of Appeals rejected the Union's theory that a complex special exception in the Tier V law permitted its members to avoid the 3% employee contribution. The Court accepted, however, the City's argument that: "... the arbitration sought by the Union is barred, as an impermissible negotiation of pension benefits" The Court concluded that Section 201(4) of the Civil Service Law and Section 470 of the Retirement and Social Security Law prohibit the arbitration of this dispute. The Court held that the employees are required to make the 3% pension contributions and may not go to arbitration to avoid their obligations.

This decision could impact any public employer that employs police and/or fire members of Tier V, and who has a collective bargaining agreement that addresses non-contributory (or similarly phrased/meaning) retirement plans. Importantly, it represented the efforts of public employers to fight back against union efforts to eviscerate any form of pension relief.

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If you have any questions about this memorandum, please contact Christopher Kurtz ((516) 267-6392 or ckurtz@bsk.com) or Terry O'Neil ((516) 267-6310; toneil@bsk.com) in our Garden City office.

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