SUPREME COURT OF NORTH CAROLINA

Cabarrus County Board of Education v. Department of State Treasurer

Cabarrus County Board of Education v. Department of State Treasurer · No. No. 369PA18 · Decided April 3, 2020

SUMMARY

The case concerns whether the Teachers' and State Employees' Retirement System was required to adopt a contribution-based pension benefit cap factor through rulemaking procedures under North Carolina's Administrative Procedure Act. The Cabarrus County Board of Education challenged an assessment made on behalf of a retiring superintendent, while the Retirement Systems Division argued that the cap factor could be adopted through actuarial recommendations and a board resolution. The trial court and Court of Appeals ruled for the Board of Education, and the excerpt describes the respondents' arguments before the North Carolina Supreme Court on discretionary review.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Ervin, Justice; Newby, Justice
JURISDICTION	North Carolina
DECIDED	April 3, 2020
DOCKET	No. 369PA18
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondents sought discretionary review of a unanimous published Court of Appeals decision affirming summary judgment for the Cabarrus County Board of Education in a proceeding for judicial review of an agency denial of a declaratory ruling.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court independently construed the applicable statutes to determine whether the cap factor was implicitly exempt from the Administrative Procedure Act's rulemaking requirements.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Department of State Treasurer, Retirement Systems Division, Dale R. Folwell, State Treasurer, in his official capacity, Steven C. Toole,

Director, Retirement Systems Division, in his official capacity v. Cabarrus County Board of Education

TOPICS

administrative procedure act | rulemaking | statutory interpretation | judicial review of agency action | standard of review

PRACTICE AREAS

administrative law | public employee pensions | statutory interpretation | appellate procedure

QUESTIONS PRESENTED

1. Whether the General Assembly implicitly exempted the Retirement Systems Division's Board of Trustees from the Administrative Procedure Act's rulemaking requirements when adopting a contribution-based benefit cap factor under N.C.G.S. § 135-5(a3).
2. Whether the Board of Trustees' adoption of cap factors by resolution and entry in its meeting minutes, pursuant to N.C.G.S. § 135-6(l) and 20 N.C. Admin. Code 2B.0202, was sufficient without formal Administrative Procedure Act rulemaking.

HOLDINGS

1. The Board of Trustees was required to adopt the contribution-based benefit cap factor through the rulemaking procedures of the Administrative Procedure Act. N.C.G.S. §§ 135-5(a3) and 135-6(l) do not create an implicit exemption because they can be harmonized with the Administrative Procedure Act and do not clearly manifest legislative intent to displace it.
2. Summary judgment was proper because there was no genuine issue of material fact and the Board of Education was entitled to judgment as a matter of law.

KEY QUOTATIONS

> *"A careful analysis of our prior decisions concerning the extent to which particular agencies or decisions are deemed to be implicitly exempt from the necessity for compliance with the provisions of the Administrative Procedure Act makes it clear that such implicit exemptions are very much the exception, rather than the rule, and should only be recognized in the event that it is abundantly clear that the General Assembly intended such a result."* (-25)

> *"A presumption that the rulemaking provisions of the Administrative Procedure Act apply to the formulation of rules, as that term is defined in N.C.G.S. § 150B-2(8a), in the absence of an explicit or implicit exemption, is fully consistent with the applicable statutory provisions and represents the most logical reading of them."* (-29)

> *"A careful analysis of the relevant statutory provisions makes it clear that the adoption of a cap factor is not a ministerial act in which the Board of Trustees does nothing more than ratify the actuary's recommendation."* (-30)

> *"Thus, for all of these reasons, we agree with the Court of Appeals that the Board of Trustees was required to adopt the statutorily mandated cap factor utilizing the rulemaking procedures required by the Administrative Procedure Act and that the Retirement System erred by billing the Cabarrus County Board of Education an additional amount relating to Dr. Shepherd's pension, in light of the Board of Trustees' failure to adopt the necessary cap factor in an appropriate manner."* (-37)

FACTUAL BACKGROUND

The General Assembly enacted anti-pension-spiking legislation requiring the Teachers' and State Employees' Retirement System to use a contribution-based benefit cap for certain high-compensation retirees. The Board of Trustees adopted cap factors of 4.8 in 2014 and 4.5 in 2015 based on recommendations from its consulting actuaries and recorded the actions in board minutes, without using formal Administrative Procedure Act rulemaking. When former Cabarrus County Schools superintendent Barry Shepherd retired, the Retirement System invoiced the Board of Education $208,405.81 to restore his uncapped pension benefit, and the Board paid the amount on his behalf.

PROCEDURAL HISTORY

The Board of Education requested a declaratory ruling that the Retirement Systems Division's contribution-based benefit cap factor and resulting invoice were void because the Board of Trustees had not adopted the cap factor through Administrative Procedure Act rulemaking. The agency denied the request. The Superior Court granted summary judgment for the Board of Education and declared the cap-factor adoptions void. The Court of Appeals affirmed, and the Supreme Court of North Carolina granted discretionary review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Empire Power Co. v. North Carolina Department of Environmental, Health, and Natural Resources, 337 N.C. 569, 447 S.E.2d 768 (1994)
- Bring v. North Carolina State Bar, 348 N.C. 655, 501 S.E.2d 907 (1998)
- Vass v. Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, 324 N.C. 402, 379 S.E.2d 26 (1989)
- Lemons v. Old Hickory Council, 322 N.C. 271, 367 S.E.2d 655 (1988)
- North Buncombe Association of Concerned Citizens v. Rhodes, 100 N.C. App. 24, 394 S.E.2d 462 (1990)
- North Carolina State Bar v. Rogers, 164 N.C. App. 648, 596 S.E.2d 337 (2004)
- In re Redmond, 369 N.C. 490, 797 S.E.2d 275 (2017)
- Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980)
- In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963)
- In re Miller, 243 N.C. 509, 91 S.E.2d 241 (1956)
- Fidelity Bank v. North Carolina Department of Revenue, 370 N.C. 10, 803 S.E.2d 142 (2017)

- High Rock Lake Partners, LLC v. North Carolina Department of Transportation, 366 N.C. 315, 735 S.E.2d 300 (2012)
- Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979)
- Piedmont Publishing Co. v. City of Winston-Salem, 334 N.C. 595, 434 S.E.2d 176 (1993)
- National Food Stores v. North Carolina Board of Alcoholic Control, 268 N.C. 624, 151 S.E.2d 582 (1966)
- Wells v. Consolidated Judicial Retirement System of North Carolina, 354 N.C. 313, 553 S.E.2d 877 (2001)
- Frye Regional Medical Center v. Hunt, 350 N.C. 39, 510 S.E.2d 159 (1999)
- Wynn v. United Health Services/Two Rivers Health-Trent Campus, 214 N.C. App. 69, 716 S.E.2d 373 (2011)
- LexisNexis Risk Data Management Inc. v. North Carolina Administrative Office of the Courts, 368 N.C. 180, 775 S.E.2d 651 (2015)
- Lunsford v. Mills, 367 N.C. 618, 766 S.E.2d 297 (2014)
- Lake Carriers' Association v. EPA, 652 F.3d 1 (D.C. Cir. 2011)
- Lenox, Inc. v. Tolson, 353 N.C. 659, 548 S.E.2d 513 (2001)
- Polaroid Corp. v. Offerman, 349 N.C. 290, 507 S.E.2d 284 (1998)
- Coastal Ready-Mix Concrete Co. v. Board of Commissioners, 299 N.C. 620, 265 S.E.2d 379 (1980)