SUPREME COURT OF ALASKA

Michael P. McMullen v. Guy Bell, Administrator of the Public Employees' Retirement System

128 P.3d 186 (Alaska 2006) · No. S-11567 · Decided January 27, 2006

SUMMARY

The Alaska Supreme Court held that Michael McMullen had no constitutionally protected vested right to include cashed-in leave in calculating his Public Employees' Retirement System benefits. Although retirement benefits generally vest upon employment or enrollment, McMullen was not eligible to cash in leave before the legislature amended the compensation definition to exclude such payments, and he had no reasonable expectation that the payments would count toward retirement benefits. The court affirmed the Public Employees' Retirement Board's decision denying his request.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Chief Justice Bryner; Justice Matthews; Justice Eastaugh; Justice Carpeneti
JURISDICTION	Alaska
DECIDED	January 27, 2006
DOCKET	S-11567
DISPOSITION	affirmed
PROCEDURAL POSTURE	McMullen appealed the superior court's affirmance of the Public Employees' Retirement Board's decision denying him the right to include cashed-in leave in calculating his Public Employees' Retirement System benefits.
STANDARD OF REVIEW	The Alaska Supreme Court independently reviewed the merits of the agency decision and applied independent judgment to constitutional and non-expertise statutory questions. It reviewed the agency's factual determinations for substantial evidence, meaning relevant evidence that a reasonable mind might accept as adequate to support a conclusion.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.

PARTIES	Michael P. McMullen v. Guy Bell, Administrator of the Public Employees' Retirement System

TOPICS

employee benefits · constitutional law · administrative law · statutory interpretation · appellate procedure

PRACTICE AREAS

constitutional law · administrative law · public employee benefits · appellate procedure

QUESTIONS PRESENTED

1. Whether McMullen's unpreserved argument concerning the effect of the retirement board's tie vote should be considered on appeal.
2. Whether article XII, section 7 of the Alaska Constitution gave McMullen a vested right to have cashed-in leave included in his retirement compensation based on the law and practices in effect when he enrolled in the retirement system.
3. Whether the governing statutory definition of compensation required inclusion of cashed-in leave in calculating McMullen's retirement benefits.

HOLDINGS

1. The court declined to consider the argument because McMullen did not raise it before the board, the superior court, or in his points on appeal, and it did not qualify for an exception to the waiver rule.
2. Under article XII, section 7 of the Alaska Constitution, an employee's retirement-benefit rights vest upon employment or enrollment in the retirement system, and the employee may elect to have benefits calculated under the statutes, regulations, and agency practices in effect at enrollment.
3. McMullen had no constitutionally protected vested right to include cashed-in leave in calculating his retirement benefits because, before the 1977 amendment, he was not legally or practically eligible to cash in leave and had no reasonable expectation that cashed-in leave would be included in retirement compensation.

KEY QUOTATIONS

> *"McMullen is therefore entitled, if he chooses, to have his benefits calculated according to the system that was in effect at the time of his enrollment."* (190-191)

> *"Flisock thus stands for the proposition that, under the employer's originally established practices, the employee must actually have been entitled to the benefit that the state's subsequent action allegedly diminished."* (192)

> *"Before the legislature amended the law in 1977, neither by law nor by practice did McMullen actually acquire a right to have his cashed-in leave included as part of his compensation."* (193)

FACTUAL BACKGROUND

McMullen began state employment in 1969 and retired in 1999 under Alaska's Public Employees' Retirement System. During his final three years, he cashed in substantial accrued leave and sought to have those payments included in his average monthly compensation for retirement-benefit purposes. He was not a member of the collective bargaining units that obtained leave-cash-in rights in 1976 and 1977, and the retirement board found that he was not eligible to cash in leave before the legislature amended the compensation definition in 1977 to exclude cashed-in leave.

PROCEDURAL HISTORY

The system administrator denied McMullen's request to include cashed-in leave in his retirement compensation. The retirement board initially reversed the administrator, but after a superior-court remand for factual findings, the board split evenly; under AS 39.35.047(c), the tie vote affirmed the administrator's decision. The superior court affirmed, and the Alaska Supreme Court affirmed the superior court.

DISPOSITION

affirmed

CASES CITED

- Flisock v. State, Division of Retirement and Benefits, 818 P.2d 640 (Alaska 1991)
- Alyeska Pipeline Service Co. v. DeShong, 77 P.3d 1227, 1231 (Alaska 2003)
- Holding v. Municipality of Anchorage, 63 P.3d 248, 250 (Alaska 2003)
- Handley v. State, Department of Revenue, 838 P.2d 1231, 1233 (Alaska 1992)
- Guin v. Ha, 591 P.2d 1281, 1284 n. 6 (Alaska 1979)
- DeYonge v. NANA/Marriott, 1 P.3d 90, 94 (Alaska 2000)
- State v. Northwestern Construction, Inc., 741 P.2d 235, 239 (Alaska 1987)
- Sheffield v. Alaska Public Employees' Association, 732 P.2d 1083, 1087 (Alaska 1987)
- Hammond v. Hoffbeck, 627 P.2d 1052, 1059 (Alaska 1981)