

City of Atlanta's 2011 Pension Reform Upheld by the Georgia Supreme Court

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In a unanimous decision on November 2, 2015, the Georgia Supreme Court ruled in favor of the City of Atlanta (the "City") in a class action challenging the City's 2011 pension reforms. The Supreme Court, in *Borders v. City of Atlanta*, concluded that the City did not violate the Georgia constitution or breach the employment contracts of its employees when it amended three defined benefit pension plans to increase the required employee contributions. The case sets an important precedent for Georgia public employers, as it affirms the authority of a local government to amend a retirement plan, including by increasing prospective employee contributions, so long as the plan unambiguously provides for subsequent modification or amendment.

Background

On June 29, 2011, in an effort to address the City's unfunded pension liabilities, the City enacted Atlanta Ordinance 11-O-0672 (the "Ordinance"). The Ordinance increased prospective annual employee contributions for three of the City's defined benefit pension plans: the General Employees' Pension Plan; the Police Officers' Pension Plan; and the Firefighters' Pension Plan (collectively, the "Plans"). The amendments to the Plans took effect on November 1, 2011. Prior to that date, participants in the three Plans were required to contribute 7% of their annual salary to their pension plan if they did not have a designated eligible beneficiary, and 8% of their annual salary if they did have a designated eligible beneficiary. After November 1, 2011, the amendments increased the mandatory employee contributions by an additional 5%, such that participants were required to contribute 12% of their annual salary (or 13% with a beneficiary). The Ordinance also provided that mandatory employee contributions might be increased by an additional 5%, up to 17% or 18% of annual compensation, if the City's required contributions to the Plans exceed 35% of the City's total payroll. The Ordinance did not change a participant's benefit formula or the actual benefit amount payable at the time of the participant's retirement.

Litigation

In November of 2013, City employees who participated in the Plans prior to November 1, 2011, and who had not retired before that date (the "Plaintiffs"), brought suit against the City arguing that the City breached their employment contracts and violated the impairment clause of the Georgia Constitution by increasing the amounts that the Plaintiffs were required to contribute to the Plans, but providing Plaintiffs with the same retirement benefit to which they were already entitled prior to the passage of the Ordinance. The Superior Court of Fulton County heard the case and, in November of 2014, granted summary judgment to the City.

The Superior Court based its decision on the fact that the Plans contained enrollment provisions that stated that the receipt of an executed enrollment or application card would constitute the irrevocable consent of the applicant to participate under the provisions of the governing act, as amended, or as might thereafter be amended. The court noted, "Georgia courts have repeatedly

held that government employees and their beneficiaries have no vested right in unchanged benefits where the pension or retirement plan at issue unambiguously provides for subsequent modification or amendment.” The court found no ambiguity in the enrollment provisions at issue and determined that the provisions clearly authorized the City to amend the Plans without breaching Plaintiffs’ employment contracts or violating the Impairment Clause.

The Supreme Court agreed with the lower court’s analysis. The Court concluded, “Here, the language of the Enrollment Provisions is plain, unambiguous, and capable of only one reasonable construction in regard to the two points critical to the resolution of the challenge in this case: that the receipt of an applicant’s executed enrollment or application card evidenced the applicant’s irrevocable consent to participate in the applicable retirement plan, and that the applicant would do so under the plan’s governing laws as then amended, or as might be amended in the future. Thus, Plaintiffs did not acquire a vested contractual right in a retirement plan unaltered in the manner at issue.” The Ordinance, according to the Supreme Court, “did not alter Plaintiffs’ pension *benefits*, but rather modified their pension *obligations*, and in no manner divested Plaintiffs of their earned pension benefits, so as to implicate constitutional concerns.” (emphasis added).

Impact of *Borders*

The serious problem of unfunded pension liability is by no means a challenge unique to the City. The *Borders* decision provides legal support to local governments in Georgia to address pension reform in the same manner as the City. Following *Borders*, so long as a public pension plan clearly provides for amendment, and the changes modify prospective employee *obligations* rather than earned employee *benefits*, then a local government in Georgia may amend a public plan without violating the constitutional and contractual rights of its employees.