

18-3193-cv

Danny Donohue, et al. v. Andrew M. Cuomo, et al.

1 **UNITED STATES COURT OF APPEALS**  
2 **FOR THE SECOND CIRCUIT**

3 \_\_\_\_\_  
4  
5 August Term, 2019

6  
7 Argued: June 22, 2020 Decided: November 6, 2020

8  
9 Docket No. 18-3193-cv  
10 \_\_\_\_\_  
11

12 DANNY DONOHUE, AS PRESIDENT OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION,  
13 INC., LOCAL 1000, AFSCME, AFL-CIO, CIVIL SERVICE EMPLOYEES ASSOCIATION,  
14 INC., LOCAL 1000, AFSCME, AFL-CIO, MILO BARLOW, ON BEHALF OF HIMSELF, ON  
15 BEHALF OF RETIREES OF THE STATE OF NEW YORK FORMERLY IN THE CSEA  
16 BARGAINING UNITS, THOMAS JEFFERSON, ON BEHALF OF HIMSELF, ON BEHALF OF  
17 RETIREES OF THE STATE OF NEW YORK FORMERLY IN THE CSEA BARGAINING UNITS,  
18 CORNELIUS KENNEDY, ON BEHALF OF HIMSELF, ON BEHALF OF RETIREES OF THE STATE  
19 OF NEW YORK FORMERLY IN THE CSEA BARGAINING UNITS, JUDY RICHARDS, ON  
20 BEHALF OF HERSELF, ON BEHALF OF RETIREES OF THE STATE OF NEW YORK FORMERLY  
21 IN THE CSEA BARGAINING UNITS, HENRY WAGONER, ON BEHALF OF HIMSELF, ON  
22 BEHALF OF RETIREES OF THE STATE OF NEW YORK FORMERLY IN THE CSEA  
23 BARGAINING UNITS,

24  
25 *Plaintiffs-Appellants,*

26 — v. —  
27

28 ANDREW M. CUOMO, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NEW  
29 YORK, PATRICIA A. HITE, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS ACTING  
30 COMMISSIONER, NEW YORK STATE CIVIL SERVICE DEPARTMENT, CAROLINE W. AHL,  
31 IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE NEW YORK STATE CIVIL  
32 SERVICE COMMISSION, J. DENNIS HANRAHAN, IN HIS OFFICIAL CAPACITY AS  
33 COMMISSIONER OF THE NEW YORK STATE CIVIL SERVICE COMMISSION, ROBERT L.

1 MEGNA, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE NEW  
2 YORK STATE DIVISION OF THE BUDGET, THOMAS P. DiNAPOLI, IN HIS OFFICIAL  
3 CAPACITY AS COMPTROLLER OF THE STATE OF NEW YORK, JONATHAN LIPPMAN, IN  
4 HIS OFFICIAL CAPACITY AS CHIEF JUDGE OF THE NEW YORK STATE UNIFIED COURT  
5 SYSTEM,

6  
7 *Defendants-Appellees,*

8  
9 THE STATE OF NEW YORK, NEW YORK STATE CIVIL SERVICE DEPARTMENT, NEW  
10 YORK STATE AND LOCAL RETIREMENT SYSTEM, NEW YORK STATE UNIFIED COURT  
11 SYSTEM,

12  
13 *Defendants.*

14  
15  
16  
17 **B e f o r e:**

18  
19 NEWMAN, HALL, and LYNCH, *Circuit Judges.*

20  
21 Plaintiffs-Appellants the Civil Service Employees Association (“CSEA”) and officers and retired former members of CSEA challenge the State of New York’s 2011 reduction, through the amendment of a state statute and regulation, of its contribution rates to retired former state employees’ health insurance premiums. Plaintiffs-Appellants contend that the reduced contribution rates contravene the State’s contractual obligation, under CSEA’s collective-bargaining agreements with the State, to pay a fixed percentage of retirees’ health insurance premiums throughout their retirements. They bring claims for breach of contract under New York law and for impairing the obligations of contract in violation of the Contract Clause of the U.S. Constitution. We conclude that both of Plaintiffs’ claims raise unresolved issues of state law that are appropriate for certification. We therefore reserve decision and certify two questions to the New York Court of Appeals.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

---

ERIC E. WILKE, Of Counsel, Civil Service Employees Association, Inc., Albany, NY (Daren J. Rylewicz, Jennifer C. Zegarelli, *on the brief*), for *Plaintiffs-Appellants*.

FREDERICK A. BRODIE, Assistant Solicitor General of Counsel, Albany, NY (Letitia James, Attorney General, State of New York, Barbara D. Underwood, Solicitor General, Andrea Oser, Deputy Solicitor General *on the brief*), for *Defendants-Appellees*.

---

GERARD E. LYNCH, *Circuit Judge*:

This case arises from the State of New York’s 2011 reduction, through the amendment of a state statute and regulation, of its rate of contribution to certain retired former employees’ health insurance premiums for the first time in almost twenty-nine years, from 90% to 88% for individual coverage and from 75% to 73% for dependent coverage. The Civil Service Employees Association (“CSEA”), the union representing the largest bargaining unit of employees of New York State (“the State”), joined by certain officers and retired former members of CSEA, brought suit on behalf of themselves and retired former members of that bargaining unit. They contend that the State’s reduction of its contribution rate contravenes its contractual obligations, under CSEA’s past collective-bargaining

1 agreements (“CBAs”) with the State, to pay a fixed percentage of retirees’ health  
2 insurance premiums throughout their retirements. They seek relief for breach of  
3 contract under New York State law and for impairment of the obligations of  
4 contract in violation of the Contract Clause of the United States Constitution.

5 In order to prevail on either claim, Plaintiffs must establish that the  
6 relevant CBAs provide for a vested right to health-insurance coverage at fixed  
7 contribution rates for the life of the retiree. It is beyond dispute that the CBAs do  
8 not *expressly* provide for a vested right to coverage at fixed contribution rates. As  
9 a result, Plaintiffs’ suggested interpretation of the CBAs is tenable only if a vested  
10 right – or, at minimum, ambiguity with respect to such a right, as is necessary for  
11 the consideration of extrinsic evidence of the meaning of the CBAs – may be  
12 inferred under the circumstances. Moreover, even if Plaintiffs can establish that  
13 the State’s reduction of its contribution rates to retiree health-insurance  
14 premiums breached a contractual obligation, the resolution of both of their claims  
15 depends on whether the State, in reducing its contribution rates, merely breached  
16 its contract, permitting a remedy for breach under state law, or completely  
17 negated any such obligation so as to preclude plaintiffs from recovering damages  
18 under state law. Both of these issues depend on aspects of New York law on

1 which the State's courts have not conclusively ruled and that meet our other  
2 criteria for certification. We therefore reserve decision and certify two questions  
3 to the New York Court of Appeals.

#### 4 **BACKGROUND**

5 In 1956, the State established the New York State Health Insurance Plan  
6 ("NYSHIP"), an optional health-benefit plan for active and retired State  
7 employees. Since the inception of NYSHIP, the State has contributed to both  
8 active employees' and retirees' NYSHIP premium costs. Prior to 1983, the State,  
9 pursuant to a State statute, paid 100% of both employees' and retirees' costs for  
10 individual coverage and 75% of their costs for dependent coverage. In 1982, the  
11 State and the unions representing State employees negotiated a reduction of the  
12 State's contribution rate for individual coverage from 100% to 90%, effective  
13 January 1, 1983. Among the unions with which the State negotiated was CSEA,  
14 which represents the largest bargaining unit of State employees. Members of that  
15 bargaining unit include employees of the Administrative Services Unit,  
16 Operational Services Unit, Institutional Services Unit, Division of Military &  
17 Naval Affairs Unit, and some employees of the Unified Court System.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.