APL-2022-00016

To be argued by:
MACKENZIE FILLOW
15 minutes requested

Court of Appeals
State of New York

PATRICK J. LYNCH, as President of the Patrolmen's Benevolent Association of the City of New York, Inc., on behalf of the Tiers 3 and 3 Revised Member Police Officers Employed by the Police Department of the City of New York; THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Respondents-Appellants,

against

THE CITY OF NEW YORK; BILL DE BLASIO, Mayor of the City of New York; THE NEW YORK CITY POLICE PENSION FUND; THE BOARD OF TRUSTEES OF THE NEW YORK CITY POLICE PENSION FUND; JAMES P. O'NEILL, as Police Commissioner of the New York City Police Department and as Executive Chairman of the Board of Trustees of the New York City Police Pension Fund,

Appellants-Respondents.

BRIEF FOR APPELLANTS-RESPONDENTS

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June 6, 2022

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PRELIMINARY STATEMENT

While most public servants in New York must work into their early 60s to retire with full benefits, police officers who are Tier 3 members of the New York City Police Pension Fund may retire with full benefits after just 22 years of service, regardless of age. The question is what form that service must take. Finding for the Police Benevolent Association on most of its claims, the Appellate Division, First Department, held that basically any kind of public service counts toward the 22-year threshold. This Court should modify the order below to deny the petition in its entirety.

The State Legislature has specified that, to retire with full benefits, Tier 3 police officers must perform at least 22 years of uniformed service *as a police officer or a firefighter*. Article 14 of the Retirement and Social Security Law makes clear that this is the exclusive method of satisfying the 22-year minimum service requirement. It provides that Tier 3 police officers may count service toward their retirement eligibility "only if" that service would have counted for the same purpose for Tier 2 members in

1976. And in 1976, the only service that counted in that regard was uniformed service as a police officer or firefighter.

The Union is ultimately trying to obtain an expansive benefit for Tier 3 members that was not even available to Tier 1 members. That is not how the tier system works, and in concluding otherwise, the Appellate Division effectively re-wrote the pension law.

QUESTION PRESENTED

To retire with full benefits, do Tier 3 members of the Police Pension Fund have to complete 22 years of service as a police officer or firefighter, where (1) Article 14 of the Retirement and Social Security Law explicitly links Tier 3 police retirement eligibility to the rights of Tier 2 members in 1976; (2) Tier 2 members in 1976 could count only police and fire service for retirement eligibility; and (3) the statutes outside of Article 14 cited by the Appellate Division conflict with Article 14 and are therefore inapplicable to Tier 3 under controlling precedent of this Court?

STATEMENT OF THE CASE

A. Statutory background

Public pension members are classified into a series of "tiers," dependent on when they were hired. *Lynch v. City of New York* (*Lynch I*), 23 N.Y.3d 757, 761 (2014). In general, subsequent tiers afford somewhat less generous benefits than earlier tiers, to achieve fiscal savings through pension reform. The issue here is how long a Tier 3 member of the Police Pension Fund must work as a police officer (or firefighter) to be eligible to retire with full benefits.

1. The historic requirement that an officer perform police duty for at least 20 years to retire with full benefits

The State created the Police Pension Fund in 1878. L. 1878, ch. 389. From the beginning, the law limited retirement eligibility to those officers who had served *in the police force* for a certain time period. An officer was eligible for service retirement only after "perform[ing] police duty for a period of twenty years or upwards," with certain military service during "the war of the rebellion" counting as "service in the police department." *Id*. § 5.

The 1937 version of the law continued to require police officers to serve least 20 years of police duty to be eligible for service retirement. Admin. Code § B18-6.0 (1937) (L. 1937, ch. 929). The law at this time also allowed officers to have prior uniformed service in the fire department "counted as service in the police department" for the purposes of determining "compensation, promotion, retirement and pension." Admin. Code § 434a-11.0 (1937).

A local law provision passed in 1940, applicable to then-current members, provided that police members were eligible to retire after they "ha[d] performed service *in the force* for at least twenty years." Admin. Code § B18-4.0(e) (Local Law 2/1940) (emphasis added). A provision that applied to future hires allowed members to retire based on "city service." Admin. Code § B18-41.0 (Local Law 2/1940). To the extent that this provision may have allowed officers to retire with less than 20 years of police duty, the Legislature put an end to that a few years later by explicitly reintroducing the requirement that a police member could not retire "until he ha[d] served *in the police force* for a minimum period

of twenty or twenty-five years." Admin. Code § B18-15.0 (1963) (L. 1963, ch. 983) (emphasis added).[1]

At the same time, the Legislature amended the Administrative Code to allow police officers who had been members of the New York City Employees' Retirement System (NYCERS) before becoming police officers to buy back that time and receive some value for that prior service. Admin. Code § B18-15.0 (1963) (L. 1963, ch. 983). But any civilian time transferred from NYCERS was notably less valuable than time served in the police force. For one thing, as just mentioned, the transferred time did not allow an officer to retire before serving 20 years in the force. Transferred service beyond that minimum could increase the amount of a member's pension, but even there, police service counted for more than transferred NYCERS service. Every extra year of police service earned a member an extra "one-sixtieth of his average

[1] The "twenty or twenty-five years" is a reference to a choice officers made when they joined the Fund, with contributions depending on the choice. Admin. Code § B18-41.0. Officers also had the option to retire at age 55, Admin. Code § B18-41.1, but even that option required at least 20 years of service, due to the condition that applicants for hire in the police force had to be under 29 years old, Admin. Code § 434a-1.0.

annual earnings" plus a "take home" bonus. Admin. Code § B18-45(2) (L. 1965, ch. 1065). Transferred service from NYCERS provided only an extra "fifty-five per cent of one sixtieth" of the officer's final compensation if rendered prior to a certain date, or "seventy-five percent of one-sixtieth" for service rendered after that date. Admin. Code § B18-45(3) (L. 1965, ch. 1065).[2]

2. Tier 2 and the efforts to rein in escalating pension costs

The 1970s brought a major financial crisis to the City, prompting a search for savings. One solution was to reform the public pension system "to deal with the steeply mounting costs." *Lynch I*, 23 N.Y.3d at 762. In 1973, the State closed all existing public pension programs to new entrants and created a new system. L. 1973, ch. 382 § 440; L. 1973, ch. 383 § 4. The old programs became known collectively as Tier 1 and the new system as Tier 2. The Legislature's intent was to prevent public entities from granting more generous benefits to their employees. L. 1973, ch.

[2] These laws are now codified at Administrative Code § 13-255.

383 § 4 ("[I]t being the intent of the legislature that there shall be no improvement of such benefit or benefits after June [30, 1973]").

Tier 2 is governed by Retirement and Social Security Law Article 11, which provides limits on various subjects, like the maximum retirement benefit and death benefits. *See, e.g.*, RSSL §§ 444, 448. Other laws that did not conflict with specific provisions of Article 11 remained in effect. RSSL § 440(a).

But the Legislature was clear that Article 11 was "not [to] be construed … to provide an increase in benefits" to any pension member, except as expressly provided. RSSL § 440. Tier 2 was meant to be a stop-gap, in place only for a few years while the State crafted a more comprehensive retirement plan. L. 1973, ch. 382 § 450. The law effectively froze benefits and created a legislative committee to study public pension reform and issue a report. L. 1983, ch. 383 § 8.

3. Tier 3 and the Legislature's incorporation of the retirement eligibility standards applicable to Tier 2 members in 1976

In July 1976, based on the committee's recommendations, the Legislature created the more comprehensive reform to the pension

system, known as Tier 3. The benefits of Tier 3 members are set out in RSSL Article 14. Other laws that are not inconsistent with Article 14 may apply to Tier 3 members. *See Lynch v. City of New York (Lynch II)*, 35 N.Y.3d 517, 524 (2020). But in the event of conflict, the provisions of Article 14 "shall govern." RSSL § 500(a); *accord Lynch II*, 35 N.Y.3d at 523-24.

Under Article 14, general members must work a certain number of years and also reach a certain age—typically, 62—before being eligible to retire, and the amount of their retirement allowance is directly tied to their number of years of service.

In contrast, Tier 3 police officers are treated very differently. RSSL §§ 503(a) & 504. They are eligible for normal retirement after 22 years of service without regard to their age, and the normal retirement allowance is set at 50% of their final average salary (with certain reductions after they start receiving social security).

RSSL §§ 503(d) & 505. Consequently, as was true before, many Tier 3 police officers are eligible to retire in their 40s.[3]

RSSL § 513 contains several provisions regarding credit for service. Section 513(c), entitled "creditable service," sets out which types of employment are eligible to be credited. Tier 3 police/fire members are eligible to obtain credit for service with certain public employers "only if such service, if rendered prior to July [1, 1976] by a police/fire member who was subject to article eleven of this chapter, would have been eligible for credit in the police/fire retirement system or plan involved." RSSL § 513(c)(2). In other words, a Tier 3 police member is eligible to obtain credit for "only if" that service would have been credited to a Tier 2 member in June 1976.

To receive credit for past creditable service, officers must then also meet the terms of § 513(b), entitled "previous service." This section provides that previous service can be credited if (a) credit

[3] Police officers do get some limited benefit for working beyond 22 years. Under the "escalation" provision, an officer who works for 25 years receives an inflation-based cost-of-living adjustment. RSSL § 510. There is no benefit at all to working beyond 25 years for the purpose of the normal retirement allowance.

had previously been granted for that service or (b) credit would have been granted had the employee been a member of the retirement system and the employee has worked a certain number of years after 1976 or after last rejoining a retirement system.

4. The Legislature's extension of Tier 2 for police officers and later changes to what counted as police service

Despite the creation of Tier 3 in 1976, new police officers did not become subject to Tier 3 until much later (R92-93). RSSL § 440(c). This is because the Legislature regularly extended the application of Tier 2 to certain pension members, including police members. RSSL § 500(c); *Lynch I*, 23 N.Y.3d at 765-67.

As decades passed and police officers remained in Tier 2, the Legislature also changed what qualified as police service for the purpose of retirement eligibility. The Administrative Code continued to provide that "no member" of the Police Pension Fund could retire without 20 or 25 years "in the police force" or the achievement of age 55—which were the retirement choices

available to Tier 2 members.[4] Service in the fire department had long counted as police service. *See* Admin. Code § 14-112(a) (1937). But the Legislature amended the Administrative Code after 1976 to allow specific other types of public service to count as police work, provided that they were rendered immediately before an individual's service in the police force.

In 1980, for example, the Legislature began permitting prior service in the transit police, correction force, housing police, and sanitation department to be "deemed" service in the police force, if it was performed immediately before service in the police force. Admin. Code § B18-15.0 (1980) (L. 1980, ch. 640). In later years, the Legislature again expanded the list of prior public service jobs that could qualify as "service in the police force" to include work as an EMT, peace officer, and deputy sheriff, among other positions, if performed immediately before employment in the police force. Admin. Code § 13-143(b) (L. 2005, ch. 498; L. 2004, ch. 728).

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[4] This provision was originally set out in Administrative Code § B18-15.0. In 1985, the Administrative Code was reorganized and this section was re-numbered 13-218. L. 1985, ch. 907.

The extension of Tier 2 for police officers ended in June 2009. Faced with another massive financial crisis, then-Governor Paterson vetoed a bill to extend Tier 2 coverage to police officers for another two years. *Lynch I*, 23 N.Y.3d at 765-67. He explained that the government was "hemorrhaging revenue at an alarming rate due to the recession and financial crisis (Veto Message No. 5 of 2009). Continuing Tier 2 was "unaffordable" and the Governor was "not willing to ignore" that reality and "simply re-enact the same provisions that have contributed to New York's financial straits" (*id.*). As a result, police officers hired after June 30, 2009, became Tier 3 members, subject to provisions of Article 14.[5]

B. This litigation and the decision on appeal

The Police Benevolent Association filed a declaratory action in Supreme Court, New York County, alleging that Tier 3 members were entitled to have certain types of non-police service counted towards the 22 years they must work before being eligible to retire

[5] The Legislature has since created a Tier 3 revised plan. The differences between Tier 3 benefits and Tier 3 revised plan benefits were not litigated below and are not relevant here.

with full benefits (R88-112). Supreme Court converted the action to an article 78 proceeding and then rejected that claim (R38-41). The court found that Tier 3 members could count time towards retirement only to the extent that Tier 2 members could in June 1976 (R41). And at that time, only police and fire service counted toward retirement eligibility (R42).

As relevant here, the Appellate Division, First Department, modified Supreme Court's order, granting the Union summary judgment on its first, second, third, and fourth causes of action while affirming dismissal of the fifth cause of action and conversion to an article 78 proceeding (R1437-39).[6] The court quoted RSSL § 513(c)(2), which expressly states that Tier 3 police members may

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[6] The Fund had also filed a cross-appeal, objecting to certain language in Supreme Court's order that could be read as requiring changes to the calculation of Tier 3 pension allowances based on years of service, something the Union never even requested in its petition. The Appellate Division scuttled that problematic language, affirming only insofar as Supreme Court had converted the action to an article 78 proceeding and had rejected the Union's stand-alone claim based on a settlement agreement (R1437). Supreme Court plainly could not grant relief outside the scope of the petition. *See Darrisaw v. Strong Mem. Hosp.*, 16 N.Y.3d 729, 731 (2011) (claim not alleged in complaint is not properly before the court). Even setting that to one side, that aspect of Supreme Court's order made no sense. The normal Tier 3 pension allowance is not based on years of service but rather is "equal to fifty percent of final average salary," with certain deductions starting at age 62 based on receipt of social security benefits. RSSL § 505(a).

receive credit towards retirement eligibility only on the same terms as Tier 2 members in 1976 (R1438). But the court nonetheless found that extending additional credit rights to Tier 3 members was not inconsistent with RSSL Article 14 (R1438-39).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this appeal because this proceeding originated in Supreme Court, and the Appellate Division's May 4, 2021, order finally determined the proceeding (R1437). *See* CPLR 5602(a)(1)(i). This Court granted leave to appeal on February 10, 2022 (R1435).

ARGUMENT

THE APPELLATE DIVISION ERRED IN GRANTING BENEFITS TO TIER 3 POLICE OFFICERS THAT DIRECTLY CONFLICT WITH ARTICLE 14

Just two years ago, in *Lynch II*, this Court recognized that general pension provisions that are outside of Article 14 can apply to Tier 3 members only when they do not directly conflict with the express terms of Article 14. 35 N.Y.3d 517 (2020). While the Appellate Division paid lip service to *Lynch II*, it both misread Article 14 itself and ignored clear statutory conflicts in order to

grant Tier 3 police members benefits they are not entitled to—indeed, benefits that were not even available to Tier 1 members.

Section 513(c) of Article 14 answers the question at issue here. It explicitly defines when Tier 3 police members are eligible to obtain credit towards retirement eligibility for public service, allowing such credit only for police and fire service. Yet the Appellate Division's ruling allows Tier 3 police members to count non-police/fire service toward retirement eligibility. That holding is irreconcilable with the constraints set out in § 513(c), and drains all meaning from that provision. In giving controlling weight to provisions that directly conflict with § 513(c), the Appellate Division essentially erased that provision and nullified this Court's ruling in *Lynch II*. Moreover, the court's ruling is inconsistent with the purpose of the tier system, under which later tiers are ordinarily less generous—not dramatically more generous—than earlier tiers. This Court should reverse.

A. Article 14 allows police members to obtain credit toward retirement eligibility only for police and fire service.

The number of years Tier 3 police members must serve as a uniformed police officer or a firefighter before retiring is a question of statutory interpretation. Statutory interpretation is about "ascertain[ing] and giv[ing] effect to the intention of the Legislature." *DaimlerChrysler Corp. v. Spitzer*, 7 N.Y.3d 653, 660 (2006). The starting point is always the statutory language itself, giving effect to its plain meaning. *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 583 (1998). But courts must construe the statute as a whole, considering its various sections together and giving meaning to every word and part of the statute. *Nadkos, Inc. v. Preferred Contrs. Ins. Co.*, 34 N.Y.3d 1, 10 (2019); *Matter of N.Y. County Lawyers' Ass'n v. Bloomberg*, 19 N.Y.3d 712, 721 (2012).

Applying these principles to Article 14, it is plain that, for the purpose of retirement eligibility, Tier 3 police members are entitled to credit only for service as a police officer or firefighter—the credit that Tier 2 members could receive in 1976.

1. Section 513(c)(2) explicitly links Tier 3 police service credit to what Tier 2 police members could receive in 1976.

Under Article 14, Tier 3 police/fire members are permitted to retire with full benefits "after twenty-two years of service," regardless of their age. RSSL § 503(d). The question then becomes: what service can be credited toward those 22 years? Section 513(c)(2) provides an explicit answer:

> A police/fire member shall be eligible to obtain credit for service with a public employer described in paragraph one *only if* such service, if rendered prior to July first, nineteen hundred seventy-six by a [Tier 2 member[7]] would have been eligible for credit in the police/fire retirement system or plan involved.

RSSL § 513(c)(2) (emphasis added). Accordingly, the plain language of the statute provides that Tier 3 police members are eligible to obtain credit for service only if a Tier 2 police member would have received credit for such service in June 1976. Other kinds of service cannot be counted.

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[7] The provision refers to a "police/fire member who was subject to article 11 of this chapter." RSSL § 513(c)(2). Article 11 governs Tier 2 members.

2. Only police and fire service counted towards retirement eligibility for Tier 2 members in 1976.

In 1976, a Tier 2 police member had to work for a minimum of 20 years as a police officer or firefighter to be eligible for retirement. The Administrative Code provided that "no member of the said police pension fund shall be eligible for retirement for service until he has served *in the police force* for a minimum period of twenty or twenty-five years" (R1168). Admin. Code § B-18-15.0(d) (1976) (emphasis added).[8] The Administrative Code separately allowed officers to count prior service as a uniformed firefighter "as service in the police department." Admin. Code § 434a-11.0 (1976) (L. 1937, ch. 929, amended L. 1963, ch. 100). In other words, police officers had to meet their minimum service requirements through uniformed service as police officers or firefighters.

To be sure, Tier 2 officers in 1976 were permitted to buy back certain NYCERS credit and transfer that credit to the Fund

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[8] The law also provided an option to retire at age 55. Admin. Code § B-18-15.0(d) (1976). But since police department applicants had to be under 29 years of age, any officer choosing that option would necessarily work at least 20 years in the police force. Admin. Code § 434a-8.0 (1976).

(R1168). Admin. Code § B18-15.0(d) (1976). But that credit transfer served only to increase the *amount* of the officer's pension above and separate from the retirement allowance attributable to the required period of police service. *Id.* And even then, a year of NYCERS credit was worth less than a year of police service. Admin. Code § B18-45(2) & (3) (1976). The transferred credit had no bearing whatsoever on retirement eligibility; it did not permit a police officer to retire before serving 20 years as a police officer or a firefighter. *Id.*

And importing even those limited transfer rights to Tier 3 would not make sense anyway. Under Tier 3, years of service in excess of 22 years play no role in the calculation of a normal retirement allowance for "police/fire" members, which is fixed at 50% of the final average salary with certain adjustments for Social Security payments. RSSL § 505(a).

As this Court explained just last year, "the literal language of a statute controls, 'unless the plain intent and purpose of [the] statute would otherwise be defeated.'" *Lynch II*, 35 N.Y.3d at 523. The "literal language" of § 513(c)(2) limits credit that Tier 3 police

members can count towards retirement eligibility to that which was available to Tier 2 officers in 1976. And there is no reason to ignore the Legislature's clear directive.

3. Credit can be obtained for previous service under § 513(b) only if the service is also "creditable" under § 513(c).

The Appellate Division seemingly held that police officers are entitled to obtain credit for "previous service" under § 513(b), even for service that is not "creditable" within the meaning of § 513(c)(2). But that approach misreads § 513's plain language and misunderstands the relationship between subsections (b) and (c).

Section 513(b) describes the general circumstances in which Tier 3 members are eligible to receive credit for previous service. Section 513(c) describes certain additional requirements for any service to be "creditable." And § 513(c)(2), in particular, includes limiting language providing that service is creditable for a police or fire member "only if" the time would have been creditable in the police or fire system as of June 1976. Tier 3 police members must satisfy both § 513(b) and (c) to receive credit for prior service.

The Appellate Division instead read the general language of § 513(b) to override the express and specific limitations imposed by § 513(c)(2). That approach would render § 513(c)(2) meaningless. The employment that makes an individual a "police/fire member" in the first place is definitionally police or firefighter service per RSSL § 501(21), so the limitations in subdivision (c)(2) must apply predominantly to past service that an existing "police/fire" member might seek to purchase under § 513(b) or otherwise transfer. The Fund's reading of the law—giving credit only to service that meets the requirements of both §§ 513(b) and 513(c)—gives effect to all parts of the statute, as courts are required to do. *Nadkos, Inc.*, 34 N.Y.3d at 10.

Though the text by itself is conclusive, the plain reading also accords with good sense. The uncommonly generous option given to police members to retire after 20-odd years of service has consistently been paired with restrictions on the type of service that may count toward that threshold. Naturally, the restrictive "only if" phrasing of § 513(c)(2) harkens back to those core limitations. By contrast, the Union's position not only reads § 513(c)(2) out of the

statute, but imagines that the Legislature, in its efforts at pension reform, either deliberately or mistakenly created a new open freeway for any public service at all—for example, six years of administrative work for the City's Law Department or eight years of data entry for the City's Department of Health and Mental Hygiene—to count toward the 20-year threshold. That position is contrary to text, history, and common sense.

B. The other statutes the Appellate Division cited directly conflict with § 513(c)(2) and thus do not apply to Tier 3 police officers.

The Appellate Division also cited a number of statutes outside of Article 14 in support of its decision (R1438-39). But application of those statutes directly conflicts with the plain terms of RSSL § 513(c)(2). And as this Court recognized in *Lynch II*, in the case of such conflict, Article 14 controls. 35 N.Y.3d at 524-25, 527.

1. Post-1976 changes to what counts as police service do not apply to Tier 3 police members.

The Appellate Division wrongly looked to laws outside of Article 14 that were enacted after 1976 to determine how many

years a Tier 3 police member must work to be eligible for retirement (R1438). Article 14 could not be clearer that Tier 3 police members may obtain credit toward retirement eligibility only to the extent that Tier 2 members got such credit in 1976. RSSL § 513(c)(2). Application of later-enacted laws thus directly conflicts with Article 14. And in the event of such conflict, Article 14 "shall govern." RSSL § 500(a); *accord Lynch II*, 35 N.Y.3d at 523-24.

After 1976, the Legislature changed the law to permit Tier 2 police members to treat as police service various specific types of prior public service that in some ways resembled it—including work as a peace officer, deputy sheriff, or EMT—provided that such service was rendered immediately before the member joined the police force. Admin. Code §§ 13-143, 13-218. These amendments were made in 1980, 2004, and 2005 and were placed in the Administrative Code rather than in Article 14. *See* L. 2005, ch. 498; L. 2004, ch. 728; L. 1980, ch. 640.

As an initial matter, the careful limitations accompanying these subsequent enactments bear out our point that restrictions have always been placed on what type of public service may count

toward the minimum service retirement for city police officers. Those enactments thus further undercut the Union's lead position that Article 14 imposed no restrictions at all in that regard.

Moreover, the fact that the subsequent amendments all occurred after 1976 means that they do not govern the service creditable to Tier 3 police officers under the plain terms of RSSL § 513(c)(2). Applying those changes to Tier 3 police members effectively re-writes Article 14 to delete its express reference to pre-July 1, 1976 law. Yet the Appellate Division inexplicably found no conflict between those provisions and Article 14.

The Legislature had no shortage of options if it wished to ensure that the amendments would apply to Tier 3 officers. It could have amended Article 14 itself to override Article 14's express conflicts provision. But it did not. Nor did the Legislature insert a "notwithstanding" clause or any similar language in the subsequent enactments. There is simply no basis to conclude that those enactments overrode the express, specific provisions of RSSL § 513(c)(2).

Of course, the Legislature also could have drafted Article 14 in the first place to say that Tier 3 police members could receive credit on the same and equal terms as Tier 2 police members—full stop. If it had drafted the law that way, any changes to Tier 2 over time would have also applied to Tier 3.

But that is not what the law says. Instead, the Legislature chose to tie Tier 3 police members' receipt of retirement eligibility credit to the rules governing Tier 2 police members prior to July 1, 1976, and it has never changed that clear directive. As *Lynch II* teaches, the clear text must govern—indeed, that was the core argument on which these same petitioners prevailed in that case. *Lynch II*, 35 N.Y.3d at 523 (finding "the literal language" of the statute to be controlling). The Appellate Division was required to give meaning to the plain language of § 513(c)(2). It failed to do so.

2. RSSL § 43 does not reduce the number of years Tier 3 police members must serve in the police force.

The Appellate Division also relied on RSSL § 43, which permits members of the New York State & Local Employees' Retirement System (NYSLERS) to transfer their membership to

the Police Pension Fund and increase their retirement allowance accordingly (R1439). But the right to transfer contributions does not change the fact that Tier 3 officers still require 22 years of police or fire service to qualify for service retirement.

As an initial matter, § 43 applies only to prior NYSLERS members. RSSL § 43(a) ("Any member of the New York state and local employees' retirement system may transfer his membership to any retirement system, other than the hospital retirement system, which is operating on a sound basis …"). NYSLERS generally covers employees of the State and localities who do not wear a uniform and are not teachers. And § 43 applies only to those whose NYSLERS membership ended because they had accepted a position covered by another retirement system. § 43(a). Such public employees are allowed to "transfer" their membership, which requires the administrator of one system to send certain sums of money to the administrator of the second system.

But nothing in § 43 suggests that the Legislature intended Tier 3 police officers to be eligible to retire with less than 22 years of service. As explained above, the Legislature expressly linked

Tier 3 credit toward retirement eligibility to the state of affairs for Tier 2 members in 1976. And at that time, the Administrative Code clearly stated that "no member of the said police pension fund shall be eligible for retirement for service until he has served in the police force for a minimum period of twenty or twenty-five years" (A1168). Section 43's general discussions of transfers from NYSLERS does not override this clear and specific language or, really, bear any relevance to it. *See Matter of Perlbinder Holdings v. Srivasinan*, 27 N.Y.3d 1, 9 (2016) (specific provision controls over general).

In arguing otherwise, the Union has primarily relied on a single sentence in § 43(d), read in isolation, which provides that a member who transfers from NYSLERS to another system "shall be given such status and credited with such service in the second retirement system as he was allowed in the first retirement system" (Union's Appellate Division Brief 13-14). This language was added in 1931, and it relates to the crediting of funds transferred from one retirement system to another (L. 1931, ch. 299). It has no bearing on the number of years a police officer must serve in the force before becoming eligible to retire. Over the 90 years since this language

first appeared, the Legislature has restated it many times, while also restating the requirement that police officers serve at least 20 years of service in the police force. *See* above pages 3-5. Both provisions can and should be given meaning.

The Union has also relied on a sentence added to § 43(b) in 1959: "A person so transferring from one retirement system to another shall be deemed to have been a member of the system to which he or she has transferred during the entire period of membership service credited to him or her in the system from which he or she has transferred" (Union's Appellate Division Brief 13-14). This language was inserted in 1957 (L. 1957, ch. 903). At that time, the law allowed for the transfer of funds between certain retirement systems, but it provided that "[a]ny such transfer shall be as a new entrant." *Id.* That language was removed, and the new cited language inserted, to correct an unfairness regarding member contributions and the interest members received on those contributions (L. 1957, ch. 903 Bill Jacket).

For example, some retirement systems at that time used actuarial tables to determine member contributions (L. 1957, ch.

903 Bill Jacket). An employee who transferred at a later age could have a substantially higher contribution rate after a transfer than he did in his prior retirement system. Moreover, pension members who had joined before July 1, 1943, were entitled to four percent interest on their contributions, whereas those joining later were entitled to only three percent interest. Treating transferees as new members thus changed the interest rate they received. The Legislature believed these terms were unfair and prevented employees from transferring to jobs where their skills were more useful, and it therefore changed the law.

But this amendment was not intended to change the service requirement for police officers. Indeed, just six years later, the Legislature once again enacted legislation providing that a police officer could not retire "until he ha[d] served *in the police force* for a minimum period of twenty or twenty-five years." Admin. Code § B18-15.0 (1963) (L. 1963, ch. 983) (emphasis added).

This Court has repeatedly explained that statutes must be interpreted to give meaning to every word and part. *E.g., Nadkos, Inc.*, 34 N.Y.3d at 10. In June 1976, the law permitted Tier 2 police

members to transfer between systems, but it also required officers to meet their service requirement with police service. The Appellate Division failed to interpret the law in a way that would give meaning to both provisions.

3. RSSL § 645 is a tier reinstatement law that says nothing about how Tier 3 police members may meet their service requirement.

Finally, the Appellate Division cited RSSL § 645 (R1438). Section 645 is a tier reinstatement law (R1014, 1023, 1025, 1075). It permits a member of a tier who had previously been a member of an earlier tier to "reinstate" to that earlier tier. That is all it does, and it has no bearing on how long a Tier 3 police member must work in the police force before being eligible to retire.

As an initial matter, RSSL § 645 was originally enacted in 1998, and as explained above, Tier 3 police members may obtain service credit only to the extent that Tier 2 members were eligible for credit in 1976. So even if this statute said something about police service credit, its application to Tier 3 members would be barred by

RSSL § 513(c)(2), which unequivocally limits Tier 3 retirement eligibility credit to the rights that Tier 2 members had in 1976.

But in fact, RSSL § 645 says nothing about police service credit. It originally applied just to teachers, allowing those who had resigned and later been rehired to reinstate to their earlier tier (R1029-30). L. 1998, ch. 640. The legislative history indicates that many teachers had left public service to raise families and then had returned to teaching in a different and less generous tier (R1029-30). The Legislature found that to be unfair and enacted RSSL § 645 to allow teachers to reinstate to an earlier tier.

The following year, the Legislature decided to expand reinstatement options to all public servants for equity reasons. Lots of public servants—mostly women, but not just teachers—had left work to raise families (R1014, 1021-22, 1027, 1030). The Legislature believed these employees "should not be punished" for that choice (R1014). The law accordingly permits a public pension member who left public service while in one tier and re-entered public service in a later tier to apply for reinstatement to her earlier tier. RSSL § 645(2). Any qualifying Tier 3 police member who had

previously been a member of Tier 2 can take advantage of this law and reinstate to Tier 2.

This case is not about tier reinstatement rights, and RSSL § 645(2) has nothing to say about what counts as police service for Tier 3 members who cannot or do not reinstate to Tier 2. The Appellate Division erred in holding that this statute somehow permits Tier 3 police members to retire after less than 22 years of police or fire service, when RSSL § 513(c) provides otherwise.

CONCLUSION

This Court should modify the Appellate Division's order to deny the petition in its entirety.

Dated: New York, NY
June 6, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 6,120 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.

MACKENZIE FILLOW