



# **Legality of Benefit Structure Changes** **An EVOLVING Area of Law**

# CAN CHANGES BE MADE?

- Can member contribution levels be increased?  
Can member benefits be decreased?
- In essence what the questions both ask is:  
**Whether the State of North Dakota would have the authority/power to unilaterally change the benefit structures contained within the current law to the disadvantage of any PERS/TFFR members (i.e. What legal entitlement does a PERS/TFFR member have to the terms of his/her pension?).**

# **What do Courts look at when deciding legal entitlement to pensions?**

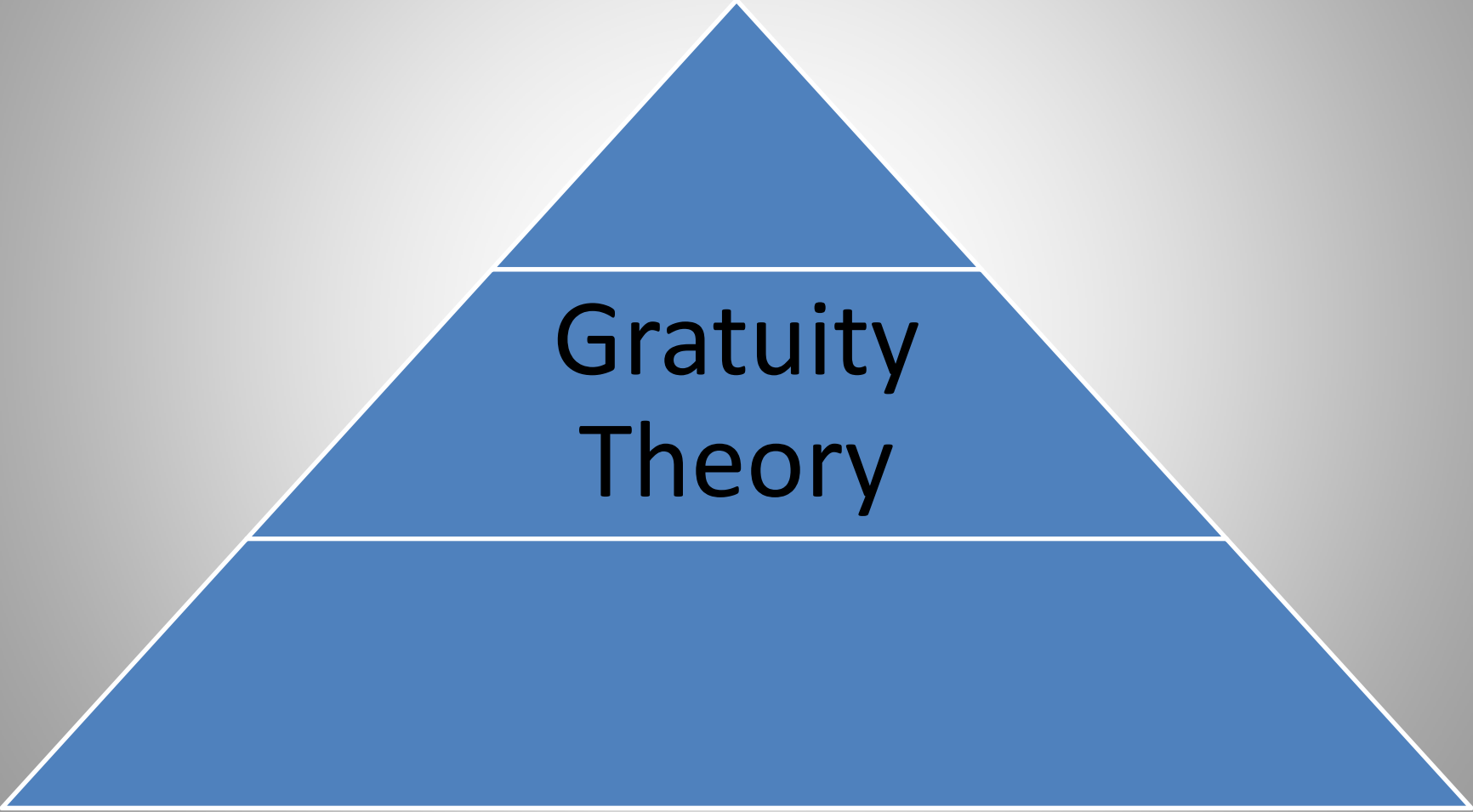
- Constitutional Provisions
  - No ...law impairing the obligations of contracts shall ever be passed. (Art. 1 § 18, of North Dakota Constitution)
- Retirement Statutes and Rules
- Prior Case Law
- Policy Grounds
- Modern Trends
- Combinations of the above

# Main Entitlement Theories

## Across The States

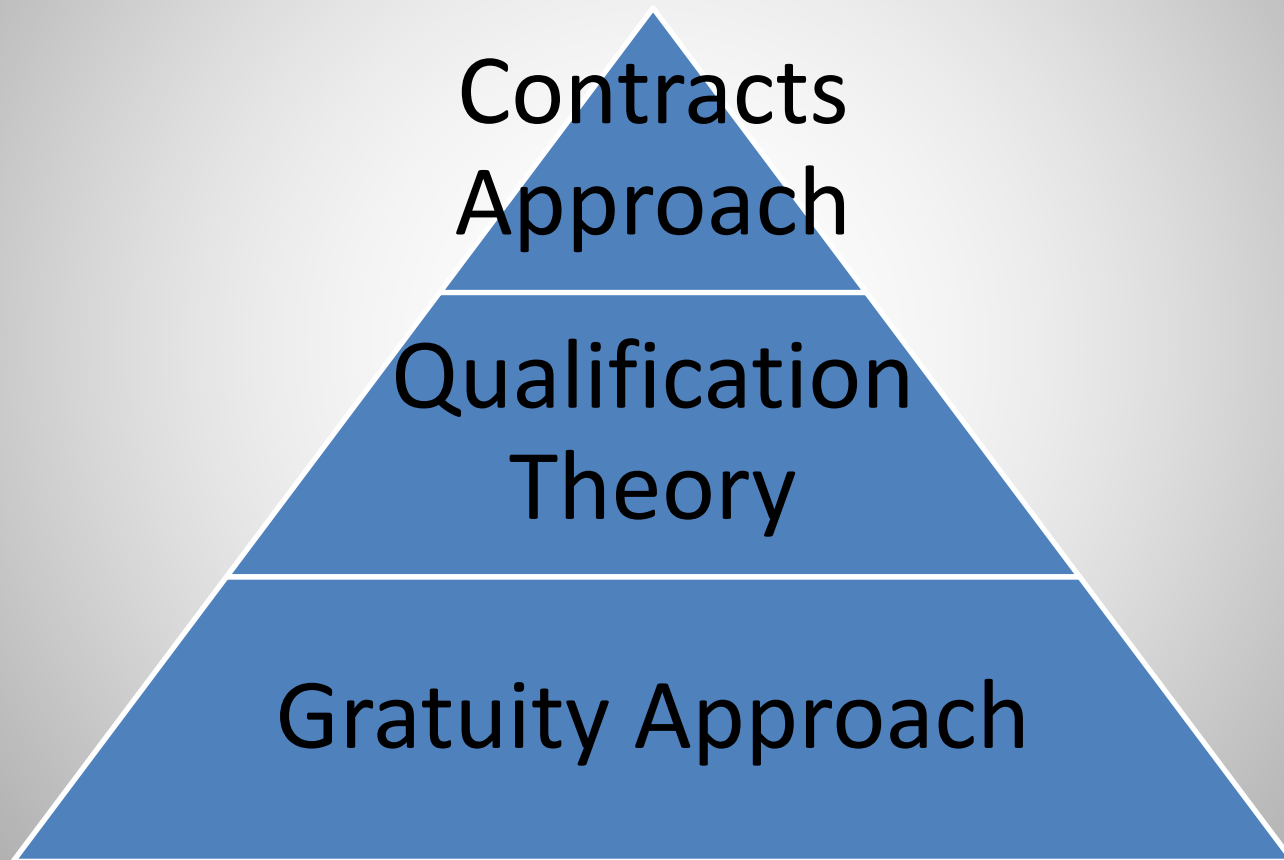
1. **Gratuity Theory** – Pensions are a gift, legislative modification or elimination of retirement benefit structures can be made without regard to the employee's interest in those benefits.
2. **Qualification Theory (Trigger Theory)** - Public employees vest for the purposes of protection under the contracts clause when specific requirements are met for that member to secure a pension benefit under the retirement statutes. Up to that point, the member has no protections. (Triggers for Constitutional protection exist at differing points)
3. **Contracts Theory** – Retirement benefits are considered earned compensation contracted for at the time of employment, the terms of which are either completely protected or only subject to modification under limited circumstances.

# Legal Landscape of the Early 20<sup>th</sup> Century (Entitlement Theories)



Gratuity  
Theory

# Legal Landscape of the 1960's (Entitlement Theories)



## **Payne v. Board of Trustees of the Teachers' Insurance & Retirement Fund (1948)**

- The relationship between a public employee and the state is “contractual in nature”
- “Pension payments are added compensation for service that has been rendered. Such compensation is earned by reason of the service performed and becomes payable upon compliance with the provisions of the law authorizing payment to be made.”
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## **LePire v. Workmen's Compensation Bureau** **(1961)**

- “In the absence of a specific provision that employees affected by such plan (OASIS) shall have a vested right in it from the beginning of its operation” the Legislative Assembly can modify the provisions of the plan as they apply to members who do not have a vested interest.
  - Under the OASIS plan, the Court held that a vested interest was attained upon becoming “fully insured” under the plan.
- In summing up Payne, the Court stated: “In the Payne case this Court held, in effect, that if a teacher's rights are ever to vest, they vest when he has completed every condition required of him to receive his pension.”
  - The Court determined that Payne became fully entitled to his pension AFTER he finished his 25 years of service and BEFORE he retired.



# **Rilling v. Workmen's Compensation Bureau**

## **(1967)**

- The Court notes “with interest” the following excerpt from an American Law Report article from 1957:

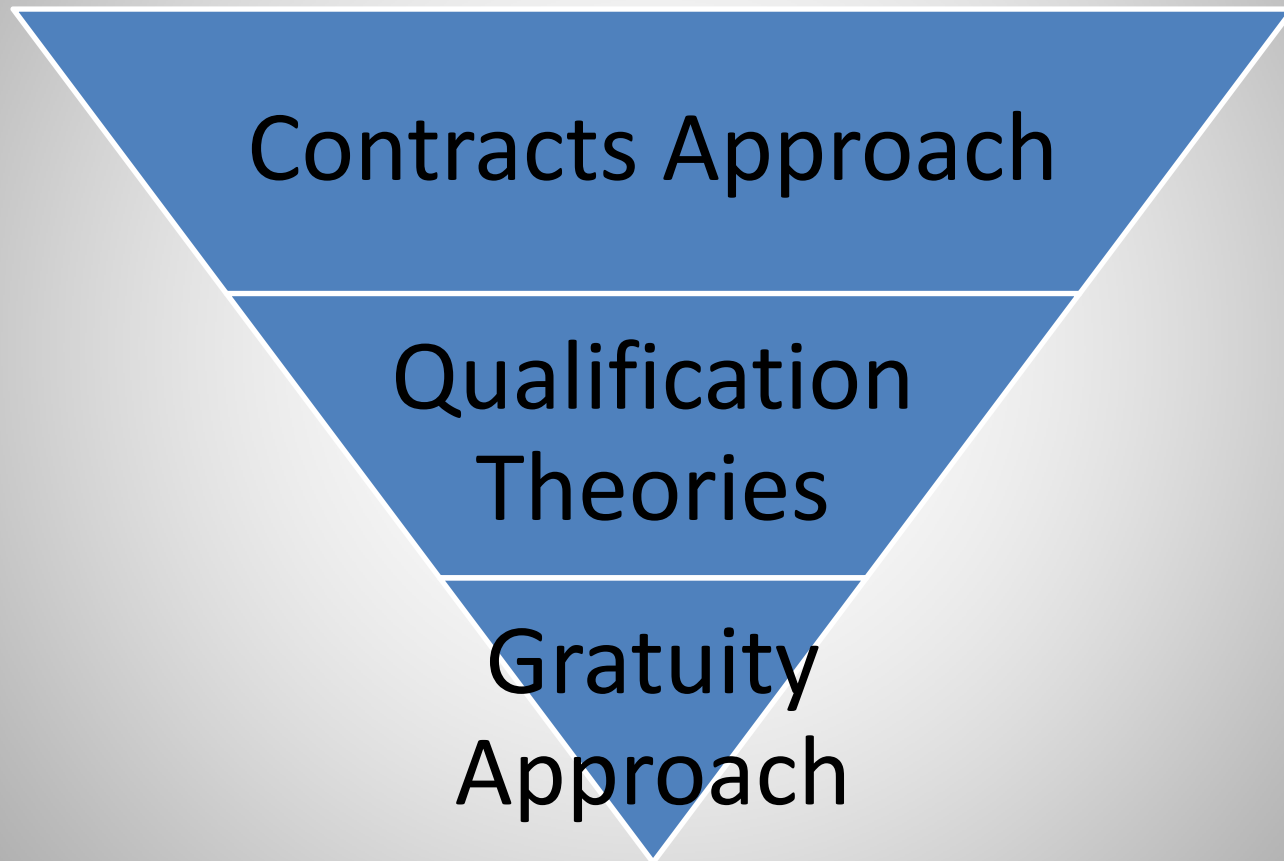
With respect to pension statutes requiring (as most modern ones do) all employees to be members of the system and to make contributions thereto, it seems that the rule in the greater number of jurisdictions is that a contributing employee has no vested pension rights either before or after the pension has been granted.

But what would appear to be a growing number of courts have viewed rights in pension systems calling for contributions on a compulsory basis as being nonvested only during the period prior to an employee's fulfillment of the requirements for grant of the pension; upon fulfillment of those conditions, the pensions rights are deemed to vest, thereafter being immune from abolition, if not from adverse change of any kind.  
(ALR annotation includes North Dakota within the second group)

# Summary of North Dakota entitlement law as of 1967

- The Supreme Court appears to have adopted a qualification type approach, with the triggering (vesting) point occurring:
  - TIRF - sometime after completion of 25 years of service and before application for retirement benefits.
  - OASIS – upon becoming “fully insured”

# Current Legal landscape (Entitlement Theories)



# **North Dakota statutory changes since the 1960's**

- Change of Teachers Insurance and Retirement Plan to the Teachers Fund for Retirement in 1971.
  - Loss of express right to reduce annuities
  - Service periods changed from 25 years, to 3-5 years. (now carry the term “vested” for employees reaching these service requirements)
- Discontinuation of the OASIS plan in 1957
  - Unique terms of retirement plan
- Introduction of N.D.C.C. § 54-52-14.3 in 1995.  
(Statutory Contract Recognition)
  - Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs.

# **What this means for the Legislature?**

## **CHOICES**

- Legislature does not make changes modifying existing benefit structures to the member's detriment (increases to the contribution levels of active members or reductions to member benefits) - No constitutional challenge (Most defensible position)
- Legislature makes a decision to modify existing benefit structures to the member's detriment, depending on the level of changes and membership subject to changes, this could trigger a constitutional challenge, whereby the Court would need to make a decision based on modern law. (Potential risk)