**Matter of DeGraw v Clyde-Savannah Cent. School Dist.**

2007 NY Slip Op 31748(U)

January 19, 2007

Supreme Court, Wayne County

Docket Number: 0059310/2006

Judge: John B. Nesbitt

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ORIGINAL

STATE OF NEW YORK
SUPREME COURT     COUNTY OF WAYNE

In the Matter of the Application of

**BONNIE DEGRAW,**

Petitioner,

For a Judgment Pursuant to Article 78 of the New York State Civil Practice Law and Rules

**Index No. 59310**

-against-

**CLYDE-SAVANNAH CENTRAL SCHOOL DISTRICT, THE BOARD OF EDUCATION OF CLYDE-SAVANNAH CENTRAL SCHOOL DISTRICT, and RICHARD DRAHMS, as Superintendent of Schools,**

Respondents.

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APPEARANCES: **NANCY E. HOFFMAN, ESQ.**
General Counsel, Civil Service Employees Assn, Inc.
(**MIQUEL G. ORTIZ, ESQ.**, of counsel)
*Attorneys for Petitioner*

**HARTER, SECREST & EMERY LLP**
(**BETHANY A. CENTRONE, ESQ.**,of counsel)
*Attorneys for Respondents*

***MEMORANDUM - DECISION***

John B. Nesbitt, J.

## I. Introduction and Summary of Disposition

Did respondents violate petitioner's contractual right to post-retirement health insurance benefits by requiring her to pay a portion of the premium attributable to those benefits? For reasons that follow, the Court holds that respondents did not, and that the benefits petitioner has and continues to receive is in accordance with the applicable collective bargaining agreement, both as written and as consistently understood and administered by the parties.

## II. Background Facts and Description of Controversy

This proceeding was originally commenced as a combined CPLR article 78 proceeding and contract/declaratory judgment action. In lieu of filing an Answer, Respondents, Clyde-Savannah Central School District, its Superintendent, and Board of Education (hereinafter collectively the "School District") moved against the petition under CPLR §7804(f) and CPLR §3211(a) seeking dismissal of the proceeding on the ground that the petitioner (hereinafter "Petitioner" or "Ms. DeGraw") failed to abide the applicable time requirements necessary to preserve her claim for judicial review whatever the procedural context. By decision dated September 11, 2006, this Court disagreed, holding that the Petitioner had followed the applicable time limitations for pursuing her claim as a contract grievance culminating in this CPLR Article 78 proceeding. The Court did, however, grant so much of Respondent's motion seeking dismissal of the petition's contract/declaratory judgment action, finding that this CPLR Article 78 proceeding was the proper avenue for judicial review following conclusion of the contract grievance procedure (*see Matter of Civil Service Employees Ass'n, Local 1000, AFSME, AFL-CIO v South Glens Falls Central School District*, 21 AD3d 1247 [3rd Dept 2005]).

The relevant facts are uncomplicated and largely undisputed. Petitioner DeGraw retired from the School District's employ effective June 22, 2005 after almost twenty-three years service as a Teacher Aide. As a Teacher Aide, Ms. DeGraw was a member of the bargaining unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO *(herinafter "CSEA")*. This representation was pursuant to union recognition under Civil Service Law §200 *et seq.*, commonly referred to as the "Taylor Law," reflected at the time of Ms. DeGraw's retirement in the recognition clause set forth in Article I, §3 of the 2001- 2004 collective bargaining agreement *(hereinafter the "CBA")* between the School District and CSEA.[1]

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[1] This section reads:
SECTION 3. The Board of Education hereby recognizes the CSEA as the official and exclusive negotiation agent for all cafeteria, clerical, custodial, teacher aides, and other CSEA employees excluding members of the Teacher's Association negotiation unit, the Administrators, and other exempt employees. Substitute employees and retirees are also excluded from CSEA representation. Upon request of the Superintendent of Schools, the CSEA shall submit to the Board of Education

As an active employee hired after July 1, 1978, Ms. DeGraw was entitled to and received health insurance benefits prior to her retirement under CBA Article 18. The first three sections of that article specify the health insurance available to active employees.

ARTICLE 18
HEALTH INSURANCE

SECTION 1. All full time employees (see ARTICLE 4 for definition) shall be entitled to enroll in the Blue Cross/Blue Shield Blue Million Plan or the Blue Point Plan or the Blue Point Select Plan as described in Section 3.

SECTION 2. All part-time employees (see ARTICLE 4 for definition) shall be entitled to Health Insurance benefits on an earned credit basis (see ARTICLE 4 for definition).

SECTION 3. Upon written request by an employee who desires insurance coverage, the Board shall make available the Blue Cross/Blue Shield Blue Million Plan or the Blue Point Plan or the Blue Point Select Plan to said employee.

A. For those employees currently enrolled in the health insurance program who began employment in the District prior to July 1, 1978, the District will contribute 100% of the full premium cost for single coverage or 90% of the full premium cost of a family coverage.

B. For those employees currently enrolled in the health insurance program who began employment on or after July 1, 1978, the District will contribute 95% of the full premium cost for a single coverage or 85% of the full premium cost for the family coverage prorated according to Article 4, Section 3. Notwithstanding the language pertaining to earned credit at Article 4, Definitions, Section 3, the District shall use a denominator of 1980 hours to calculate health care insurance premium contributions for other than full time employees.

C. For all other employees, the District will contribute 90% of the full premium cost for single coverage and 80% of the full premium cost for family coverage prorated according to Article 4, Section 3. Notwithstanding the language pertaining to earned credit at Article 4, Definitions, the District shall use a

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by December 1, of each succeeding year, a notarized list of the paid members of the association. The Board of Education agrees not to negotiate with any other organization covering the above mentioned positions for the duration of this Agreement.

The Court assumes that the CBA was extended beyond its original expiration date of June 30, 2004 by operation of law or agreement of the parties.

denominator of 1980 hours to calculate health care insurance premium contributions for other than full time employees.

Article 4 referenced above in Article 18 reads as follows:

ARTICLE 4
DEFINITIONS

SECTION 1. EMPLOYEE DEFINITIONS

A. FULL TIME EMPLOYEE: A full time employee is defined as an employee who works forty (40) hours per week for fifty two (52) weeks (2080 hours per year) including vacation.

B. REGULAR EMPLOYEE: A person, appointed by the Board of Education, who works daily up to eight (8) hours a day. The work year for regular employees, may vary depending upon their positions.

SECTION 3. (sic) EARNED CREDIT: This term refers to the amount of fringe benefit credit earned by a full time employee covered under this agreement. A full time employee receives 100% of the fringe benefits provided under this agreement or one (1) earned credit. A part-time employee receives a pro rata share of an earned credit based on the number of hours the employee works annually. Example: A teacher aide working 6 hours per day for 180 days accumulates 1080 hours for the year. Therefore, the formula for calculating the fringe benefits for the aide would be 1080/2080 = 51.9% of an earned credit. In this case the aide would receive 51.9% of the fringe benefits provided under this agreement. Any additional cost for the benefit ( in this example 48.1%) would be paid by the employee. Any employee presently earning more than the credit calculated by this formula would continue to receive credit at their present rate.

Although Petitioner alleges in her petition that she "had fully paid health insurance through the end of August 2005" (Petition ¶33), this is denied by the School District. Indeed, under Article 18, Section 3 of the CBA, the only employees entitled to fully paid health insurance are full time employees electing single coverage who began employment prior to July 1, 1978. Petitioner was neither a full time employee nor one whose employment began prior to July 1, 1978. Rather, as Petitioner states, she worked 6.75 hours per day, five days a week (DeGraw Aff. ¶3), a fact confirmed by the School District as well (Evarts Nov. 13, 2006 Aff. ¶12). As such, she was classified as a "part time employee" for purposes of Article 18, Section 3 and calculation of

"earned credit" under Article 4, Section 3.[2] At the time of Petitioner's retirement, her health insurance benefit as an active employee was premium payment by the School District at the rate of 90% (the applicable percentage were Petitioner a full time employee) adjusted by the earned credit formula reflecting the fact that Petitioner was a part time employee. This adjustment resulted in a prorated District contribution of 55.8 % (62%/ 90% of premium cost )(6.75 hours per day x 180 days per year = 1215 hours/1980 hours = 62%) (Evarts Nov 13, 2006 Aff ¶13).

Upon Petitioner's retirement, CBA Article 18, §4[A] and [B] , providing health insurance benefits for "retired employees," became operative.

> Section 4. Health Insurance for Retired Employees.
>
> A. Those employees who began employment in the District prior to June 30, 1978, will receive full health insurance benefits upon retirement. Those employees who began working on or after September 1, 1978, must work in the District for twenty years and retire from employment in our District to be eligible for this benefit.(*emphasis added*).
>
> B. Employees who began employment in the District on or after July 1, 1978, and who retire with at least ten years, but less then twenty (20) years of continuous service to the District may continue their medical coverage under the District plan provided the employee pays the full cost of the premium.

Ms. DeGraw fell in the underscored category. Upon her retirement, Ms. DeGraw took the position that the "this benefit" language in the underscored sentence refers to the "full health insurance benefits" language in the preceding sentence. Further, she claimed that "full health insurance benefits" means health insurance benefits fully paid by the School District, not the percentage rate that may have been applicable during her active employment. The School District, however, did not view its obligation as did Ms. DeGraw. The different interpretations surfaced in April and May of 2005 coincident with Ms. DeGraw submitting written notice of her

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[2] In her affidavit petitioner disputes the fact that she was a "part-time" teacher aide, alleging that she was a "regular employee" as defined under Article 4, Section 1(b). The term "regular employee" is not used in any of the contract provisions relevant to this proceeding; indeed, the Court could find it used anywhere else in the agreement. At any rate, the term "regular employee,"as defined, assuming it has any significance, encompasses both full time and part time employees. Thus, the classifications of "regular employee" and "part time employee" are not mutually exclusive; that is, one can be both a "regular employee" and a "part time employee," as was the petitioner.

forthcoming retirement in June. Ms. DeGraw contacted Ms. Patricia Evarts, the School District's Payroll Clerk, who, among other things, is responsible for processing benefits for employees and explaining to employees their present and post-retirement benefits, including discussing premiums that an employee is required to pay. Allegedly, there were at least two conversations between Ms. DeGraw and Ms. Evarts. At least initially, Ms. DeGraw voiced the belief that the School District would be paying the entire premium for her health insurance upon her retirement. Ms. Evarts informed Ms. DeGraw otherwise; that her retirement health care benefit was no different than her current health care benefit as an active employee, and that Ms. DeGraw would be required to contribute during retirement the same percentage of the health insurance premium that she was then paying as an active employee. According to Ms. Evarts, Ms. DeGraw indicated that she understood that the District would be requiring that she pay the same percentage of her health insurance premium after her retirement that she was then paying in order to continue the coverage.[3] Ms. Evarts also informed the President of the local CSEA unit of the matter and the School District's position relative thereto.

The issue did not surface again until late October 2005, after Ms. DeGraw had retired with continuing health insurance benefits. A October 25th letter from the School District Treasurer to Ms. McGraw informed her that her payroll deductions had covered her required contributions through August, and requested payment for her contributions attributable for coverage from September, 2005 to June, 2006 by one time payment by November 15, 2005, or installments commencing on the same date. Upon receiving the October 25, 2005 bill, Ms. Evarts called the School Superintendent to protest the same based upon her reading of the CBA and to initiate Stage 1 of the grievance procedure under CBA Article 7, §4. Receiving no response to her Stage 1 verbally relayed grievance, she filed a Stage 2 written grievance on November 3, 2005, again protesting the payment the School District was requiring of her for continuation of her health insurance coverage. Handling the matter at the Stage 3 level, the Superintendent of School responded by letter dated November 8, 2005, as follows:

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[3] Ms. DeGraw states that she "never accepted [Ms. Evart's] opinion as accurate, especially given" CBA Article 18, §4[A], nor does she recall "discussing health insurance costs with Ms. Evarts."

> I have reviewed the written grievance dated November 3, 2005, alleging that the Clyde-Savannah Central School District violated Article 18. Health Insurance, Section 4. Health Insurance for Retired Employees. The grievance procedure in Article 7, Section 1. PURPOSE mandates that a grievance "must be initiated within ten (10) working days when the employee knew or should have known of the alleged violation of the agreement." In this particular case, the grievant was informed about her health care insurance benefits in retirement on or about the end of May or beginning of June 2005. The next conversation occurred on October 28, 2005 when Mrs. DeGraw called the undersigned about the same. Clearly, therefore, this grievance is not timely.
>
> However, even if this grievance was timely, Mrs. DeGraw is receiving the health care insurance benefits for retirees pursuant to the terms of the collective bargaining agreement. Accordingly, the grievance is respectfully denied because it is untimely and lacking in merit.

Ms. DeGraw, through her CSEA representative appealed the Superintendent's decision to the School District's Board of Education pursuant to Stage 4 of the grievance procedure, which rendered its decision in writing on January 12, 2006. The decision of the Board of Education followed that of the Superintendent's regarding the alleged untimely filing of the grievance, and found a further ground to deny the grievance. Said the Board of Education:

> The recognition clause at Article 1 of the collective bargaining agreement at Sections 3 and 4 makes it clear that the [CSEA] Association has the jurisdictional authority to represent District bargaining unit employees only. Section 3 states "[s]ubstitute employees and retirees are also excluded from CSEA representation." In this case, Ms. DeGraw is not an employee and as such, the Association does not and may not represent her in this matter. Indeed, the Grievance Procedure itself is limited to employees. (See Article 7, Section 2B.)

The Board also amplified upon the School District's position as to the merits of Ms. DeGraw's claim:

> [T]he Board of Education maintains that Ms. DeGraw is getting the contractual health insurance benefit she is entitled to. Specifically, she is getting all of the insurance benefits and the District is making the same percentage contribution toward her premiums as if she were still employed. In no instance, whatsoever, did the District promise to provide Ms. DeGraw (or anyone else) greater insurance benefits or greater premium payments in retirement. The practice of the District has been to provide eligible retirees with the same benefits and the same percentage of premium payment consistent with their employment than when they were actively employed.

The decision of the Board of Education exhausted the administrative remedies available to Ms. DeGraw under the CBA grievance procedure, the concluding sentence of Article 7 providing that "[t]he decision of the Board of Education will be final and binding." This Article 78 proceeding was instituted by its filing on May 8, 2006. In its September 11, 2006 decision, this Court held that the grievance was timely and properly brought, and granted the School District leave to answer the petition so that the matter could be judicially addressed on the merits. The District did file an Answer with supporting affidavits and exhibits.

## III. Decision of the Court

Under CPLR §7803(3), an aggrieved party may challenge a "body or officer" regarding whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion ..." The Petitioner does so here, claiming that the District's denial was "erroneous as a matter of law," disregarding the "clear and unambiguous" language of Article 18, Section 4 of the 2001-2004 CBA. In determining whether Petitioner is correct, we start with the basic precept that "[t]he construction or interpretation of a contract is the determination of the meaning attached to the words 'written or spoken' that make the contract" (17 Am Jur 2d, Contracts §240). There is no dispute, of course, that "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]). That is the case where

> "the language [the contract] uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion. Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its reflect its own notions of fairness and equity" (Id at 569-570)(citation and internal punctuation omitted).

This strictly semantic approach to contract interpretation emphasizes the literal, logical, and relatively acontextual meaning of words and the syntactical form in which they appear. Engaging this approach, Petitioner argues:

[* 9 ]

> "The collective bargaining agreement provision relating to health insurance for retired employees is reasonably susceptible on only one meaning - that being that an employee who retires from the School District with over twenty (20) years of service 'will receive full health insurance upon retirement.' (Petition Exhibit 'A'), (Article 18,§4(a)). In looking at Section 4 as a whole, the limitation in Section B which requires employees who worked less than twenty (20) years to pay a premium, evidences that no such payment is required for employees retiring pursuant to Section A. If the drafters wanted to impose a cost on employees in Section A, they would have stated what the cost would be, as was explicitly stated in Section B. Consequently, based on this clear and unambiguous language of the agreement, Petitioner should not be required to pay any premium towards her health insurance."(Petitioner's Brief at 7)

The validity of this argument rests on two propositions. First, that "full health insurance benefits" as used in Article 18, §4(A) on its face can only mean " health insurance fully paid by the School District." Second, that any other reading would be logically inconsistent with Article 18, §4(B) requiring employees retiring with less than twenty but more than ten years of service to pay the full premium cost.

The Court respectfully disagrees. A full benefit does not perforce mean that a benefit fully paid for by the employer, nor more than an employee agreeing to work full time commits to working twenty-four hours a day, seven days a week. So too, the fact that some class of retirees must pay the full premium cost for health insurance is not perforce inconsistent with other classes of retirees receiving differing "full health insurance benefits," which may mean benefits entirely paid by the District in some cases and partially paid in others. Indeed, it is entirely reasonable to read the term "benefit" as appears in Article 18, §4(A) in conjunction with Article 18, §1, which defines what that benefit is for any particular class of employee. In that case, the term "full"as appears in Article 18, §4(A) would be synonymous with "undiminished." To be sure, this would seem the more reasonable reading, inasmuch as its both counterintuitive and contrary to common employment practice to provide employees upon retirement with greater fringe benefits than that enjoyed during active employment.

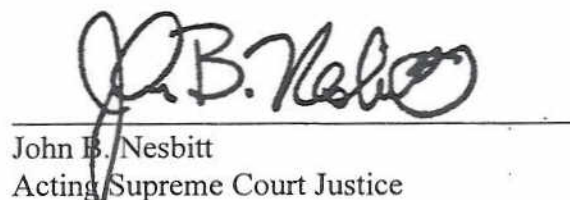
This interpretation is supported by two matters extrinsic to the contract language at issue, but relevant to its interpretation. First, regarding identical language in the identical context appearing in the collective bargaining agreement in effect in 1995, the School District and the unit

previously representing the now CSEA employees entered into a Memorandum of Agreement expressly providing that "full health insurance benefits" shall be interpreted to mean, "Insurance coverage offered to active employees as part of the most current collective bargaining agreement." Second, it is a settled principle of contract interpretation, that "[i]f the conduct of the parties subsequent to a manifestation of intention indicates that all the parties placed a particular interpretation upon [contract language], that meaning is adapted if a reasonable person could attach it to the manifestation"(Restatement [First]of Contracts §235 [e]). The District has demonstrated in their responding papers that at least since the collective bargaining agreement in effect in 1991, all such agreements have contained the same language at issue in this proceeding and that "all of the individuals who retired under these contracts are receiving a retiree health insurance benefit equal to the benefit that they were entitled to receive at the time they received from active employment." (Evarts Aff. Nov 13, 2006 ¶ 8) In a number of these instances, the retirees "receive a retiree health insurance benefit from the District that is less than 100% of the health insurance premium cost, but is equal to the benefit that they were entitled to receive as active employees"(Id at 9). By necessary implication, the Court finds that there has been no instance where the District has paid or is paying a greater percentage of the total premium cost for a retiree's health insurance benefit than that paid during the retiree's active employment.

## IV. Conclusion

For the foregoing reasons, the petition in this matter is denied and judgment directed upholding the Respondent Board of Education's decision denying Petitioner's grievance. Said judgment shall further provide and declare that the provisions of the 2001-2004 Collective Bargaining Agreement and its predecessor agreements the term "full health insurance benefits" pertaining to retirees shall mean "the insurance coverage offered to active employees as part of the most current collective bargaining agreement."

Dated: January 19, 2007
Lyons, New York



John B. Nesbitt
Acting Supreme Court Justice