May v Board of Educ., Newark Cent. School Dist.
2008 NY Slip Op 32922(U)
October 24, 2008
Supreme Court, Wayne County
Docket Number: 55881
Judge: John B. Nesbitt
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[* 1]

PROCEEDING I

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

2004

In the Matter of the Application of

STANLEY MAY, PETER ADMIRAAL, ELIZABETH BABCOCK, HOWARD BARCLAY, MARION BARCLAY, JANE BIDDLE, THOMAS BIDDLE, MARY BURKE, BEVERLY CALLAHAN, NANCY CRANE, A. JUNE CYR, MARY GRACE EBERL, ROBERT EBERL, EDNA GANSZ, MYRON GANSZ, JOHN HARRIS, JEAN HILL, RAYMOND HILL, MARY HOLLOWAY, HAROLD HOUPT, PHYLLIS JAMES, LOUISE LAWRENCE, BEATRICE LONSDALE, GEORGE LUDWIG, JEAN LUDWIG, SHIRLEY MAY, GARY MILLER, KATHLEEN NEUHARD, ORAN NEUHARD, BARBARA PECK, FRANK PULLANO, SHIRLEY PULLANO, FRANKLIN REDDOUT, CHRISTINE ROBARGE, DORLA SEELY, JAMES SEELY, JAY SHORT, BETTY STEWART, ROBERT WADSWORTH, AND RUTH WERTS,

Index No. 55881

Petitioners,

For a Judgment under Article 78 of the Civil Practice Law and Rules

-against-

BOARD OF EDUCATION, NEWARK CENTRAL SCHOOL DISTRICT,

Respondent.

PROCEEDING II

In the Matter of the Application of

PETER CHAMBERLAIN, FLOYD GREEN, WILLIAM DONALD HESS, WARREN NEELY, GEENE NEELY, RICHARD SCHMIDLE, JEANNE SCHMIDLE, WILLIAM SPRINGETT,

Index No. 56229

Petitioners,

-against-

BOARD OF EDUCATION, NEWARK CENTRAL SCHOOL DISTRICT,

For a Judgment under Article 78 of the Civil Practice Law and Rules

Respondent.

APPEARANCES: JAMES R. SANDNER, ESQ.
(James D. Bilik, Esq., of counsel)
Attorney for Petitioners in first captioned proceeding

ROBERT E. SMITH, ESQ.
Attorney for Petitioners in second captioned proceeding

HARTER, SECREST & EMERY LLP
(Robert C. Weissflach, Esq.)
Attorneys for Respondents in both captioned proceedings

MEMORANDUM - DECISION

John B. Nesbitt, J.

In these proceedings, the Court previously decided that both sets of petitioners satisfied the threshold requirement under Chapter 25 of the Laws of 2004 *(the "Moratorium")* that retiree health care insurance benefits cannot be diminished without a corresponding adjustment relative to active employees. That threshold issue, as identified by the Court in its February 2006 decision, was whether the change in the petitioners' health insurance benefits effective September 1, 2004, caused a diminishment of such benefits as enjoyed by petitioners prior thereto. In that decision, the Court found that "there clearly has been a diminution of benefits, which implicates the Moratorium regardless of whether the level of contributions made by the District on behalf of the Retired Employees has changed." Having so decided, the Court identified "the next inquiry [as] whether there has been a corresponding diminishment for active employees." The Court held that there were "issues of fact regarding the amount of diminishment of health insurance benefits experienced by active employees corresponding to the petitioners," and directed trial "on the limited issue of the amount of diminishment of health insurance benefits experienced by the active teachers in 2003 and the active administrators in 2002 as a result of the collective bargaining agreements, for the purpose of determining the difference between those amounts and that experienced by the Retired Employees in 2004."

As a result of a stipulation of facts by the respective parties, and their concurrence that such rendered the issue reserved for trial one solely of law, the matter was deemed submitted for decision after oral argument. The threshold issue identified by all parties dealt with the scope of

monetary relief that may ultimately be granted by the Court. Specifically, should the Retired Employees residing within the six county catchment area of, and hence eligible for, the Medicare Blue Choice Plan (HMO) plan, but who nevertheless elected to stay with the Blue Cross/Blue Shield indemnity plan, be entitled to any monetary remedy?[1] The District argues that they should not, because they

> "voluntarily stayed in the [indemnity] plan even though, like other petitioners, they could have switched to the HMO plan and incurred no additional expense. The District contends that this voluntary choice to remain in the more expensive plan precludes any remedy for these petitioners, as they could have avoided any expense simply by switching to the HMO plan, and in fact would have also received a health reimbursement account for their use. Thus, monetary relief should be limited to only those petitioners who had no choice but to incur additional expense to retain retiree health insurance." (Respondents' Memorandum Regarding Remedy at 8-9.)

The Petitioners in both proceedings argue to the contrary. As stated by petitioners' counsel in the May proceedings at oral argument:

> The Court will recall that those living in [the six-county catchment area] had a choice, either go to the HMO or stay in the indemnity plan and pay extra for it. Those living outside the six county area had no choice; the only health insurance they could get as retirees was in the indemnity plan. We don't think that there is any basis to make a distinction between those two categories of retirees. Since the Court decided that the switch to an HMO as the low cost or no cost plan is a diminishment in a benefit, then it follows that to deny a remedy to the people in the six county area who chose to stay in the indemnity plan would mean that they are being denied a right to remain in the better plan. That's the law of the case. As the active teachers may do, they had that option, on terms that correspond to the terms that the actives who stay in that better plan have. So we think that if those individuals who elected to stay in the plan in the six-county area, if they are barred from relief, then that would actually be inconsistent with the Court's decision, and it would be inconsistent with the moratorium. It would also be arbitrary to treat them differently. There is really no rational distinction that could be made between those two categories of people. This is our position on the issue of the six county individuals." (Transcript of Oral Argument at 5-6).

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[1] There is no dispute that those petitioners who resided outside the six-county catchment area required for HMO enrollment were perforce required to remain in the traditional indemnity-type plan and accordingly incurred additional expense to do so. In the May proceeding, these were petitioners Burke, Callahan, James, Lawrence, K. Neuhard, O. Neuhard, Peck, F. Pullano, and S. Pullano. In The Chamberlain proceeding, these were petitioners Chamberlin, Hess, W. Neeley, G. Neeley, R. Schmidle and J. Schmidle.

The Court agrees with petitioners on this issue.[2] The Court held previously that there was a diminishment of benefits for retirees without a corresponding diminishment for active employees. Implicit was the fact that the HMO even as supplemented was not equivalent to the indemnity plan as traditionally offered by the District. Thus, there was violation of the statutory moratorium that was not vitiated just because certain petitioners could have opted for the lesser HMO plan rather than paying extra for the traditional indemnity plan.

The last issue is not who is entitled to a remedy, but what that remedy should be. The parties have set before the Court the amounts involved as to costs pertaining to active and retired employees. The Court agrees with the District's approach to the issue. The health care plans available to active employees and the retirees are very different, because of the applicability of Medicare to retirees over the age of 65. Notwithstanding the availability of Medicare, the cost of the supplementary indemnity plan is greater than the cost of the indemnity plan available to active and retired employees under the age of 65. This differential may change in the future. As such, a whole dollar comparison is not appropriate, and, as the District argues:

> "[T]o take into account the differences in costs between the two plans, the calculation should focus on percentages. In other words, retirees should have to pay the same percentage of their total health insurance premium that corresponds to the additional percentage that active employees had to pay when their collective bargaining agreement changed." (Respondent's Memorandum Regarding Remedy at p.10).

Accordingly, for remedial purposes, the Court adopts "Table 2" set forth at page 11 of Respondent's Memorandum Regarding Remedy, reproduced here as follows:

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[2]The petitioners in the May proceeding residing within the HMO six-county catchment area who elected to remain in the indemnity plan at additional expense were Babcock, J. Biddle, T. Biddle, N. Crane, J. Hill, R. Hill, Houpt, Lonsdale, G. Ludwig, J. Ludwig, S. May, Reddout, Robarge, Stewart, Wadsworth, Werts, as did petitioners Greene and Springett in the Chamberlain proceeding.

TABLE 2: PERCENTAGE CALCULATION OF ACTIVE EMPLOYEE HEALTH INSURANCE CONTRIBUTION INCREASE VS. RETIREE HEALTH INSURANCE CONTRIBUTION INCREASE (TRADITIONAL BC/BS VS. BC/BS COMPLIMENTARY PLAN)

Active Employee Contribution Increase (Percentage)

	2004-2005	2005-2006	2006-2007
Total Cost of Plan	$4,324.08	$4,785.60	$5,417.28
Active Employee Increase in Contribution	$ 972.32	$1,296.00	$1,642.51
Increase as % of Total	22.5%	27.1%	30.3%

Corresponding Retiree Contribution "Allowable" Increase (Percentage)

	2004-2005	2005-2006	2006-2007
Total Cost	$5,044.80	$5,632.32	$5,814.96
Retiree Contribution (using Active Employee %)	$1,135.08	$1,526.36	$1,761.93

Retiree Actual Contribution Increase minus "Allowable" Contribution Increase (Percentage)

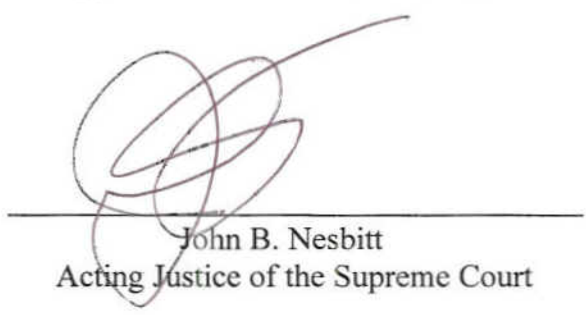
	2004-2005	2005-2006	2006-2007
Retiree Contribution Increase	$1,500.90	$2,286.72	$2,085.24
"Allowable" Contribution Increase	$1,135.08	$1,526.36	$1,761.93
Difference	$ 365.82	$ 760.36	$ 323.31

The amounts listed in Table 2 are awarded to the May petitioners who continued their enrollment in the indemnity plan. For those May petitioners who were already required to pay 5% of their health insurance, such award shall be concomitantly reduced. Prospectively, the District is directed to charge the May petitioners in the indemnity plan no more than the percentage of the total premium that active employees must pay for their health insurance above and beyond their required contribution.

The same principles apply to the petitioners in the Chamberlain proceeding, and their award shall be calculated on the same basis and similar prospective relief directed. Presumptively, the amounts set forth on pages 13 and 14 of the Respondents' Memorandum would be the precise amounts due each petitioner.

Counsel for the School District shall submit proposed Judgments in each of the above proceedings upon notice to opposing counsel or approved as to form by the same.

Dated: October 24, 2008
Lyons, New York



John B. Nesbitt
Acting Justice of the Supreme Court

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