

**Patrolmen's Benevolent Assn. of City of N.Y. v City
of New York**

2011 NY Slip Op 32996(U)

November 10, 2011

Supreme Court, New York County

Docket Number: 100561/2011

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JAFFE BARBARA JAFFE
J.S.C.

PART 5

Justice

Index Number : 100561/2011
PATROLMEN'S BENEVOLENT
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
DISM ACTION/INCONVENIENT FORUM
CAL #100

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for dismiss

PAPERS NUMBERED

12
34
5

Answering Affidavits — Exhibits _____

Answering Affidavits — Exhibits

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

NOV 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/10/11
NOV 10 2011

BARBARA JAFFE
J.S.C. J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK, *et al.*,

Index No. 100561/11

Plaintiffs,

Motion Subm.: 8/16/11
Motion Seq. No.: 001

-against-

DECISION & ORDER

CITY OF NEW YORK and NEW YORK CITY
POLICE DEPARTMENT,

FILED

Defendants.

NOV 16 2011

-----X
BARBARA JAFFE, JSC:

NEW YORK
COUNTY CLERK'S OFFICE

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By notice of motion dated March 18, 2007, defendants move pursuant to CPLR
3211(a)(7) for an order dismissing the complaint. Plaintiffs oppose.

I. BACKGROUND

Pursuant to New York City Administrative Code § 12-127, entitled "City employees
injured in course of duty":

a. Any member of the uniformed forces of the fire or police departments . . . who shall be
injured while actually employed in the discharge of police orders of his or her superior
officers in the police station, fire house or sanitation section station, as the case may be,
or as the result of illness traceable directly to the performance of police, fire or sanitation
duty, as the case may be . . . shall be received by any hospital for care and treatment when
such facts are certified to by the head of the department . . . The bill for such care and
treatment at such rates, when certified by the superintendent or other person in charge of
such hospital and approved by the head of the department concerned, shall be paid by the
city.

b. Any member of the uniformed forces of the fire or police department . . . who, while in the actual performance of duty, and by reason of the performance of such duty and without fault or misconduct on his or her part, shall receive injuries to an extent which may endanger his or her life, shall be received by any hospital for care and treatment, and shall be afforded such medical or surgical care and hospitalization as may be ordered by the chief medical officer of the respective departments in conformity with the provisions of this section. Such medical officer shall forthwith notify the comptroller of the care and hospitalization so ordered . . . Upon certification by the chief medical officer of the department concerned, the bill for such care and hospitalization, when certified by the superintendent or other person in charge of the hospital and approved by the head of the department concerned, shall be paid by the city.

Notwithstanding any provision of law to the contrary, a provider of medical treatment or hospital care furnished pursuant to the provisions of this section shall not collect or attempt to collect reimbursement for such treatment or care from any such city employee.

On or about January 14, 2011, plaintiffs commenced the instant action by serving defendants with a summons and complaint in which they allege, in pertinent part, as follows:

- (1) Defendant City administers a health insurance plan for active and retired NYPD members, as codified in the New York City Administrative Code (City plan);
- (2) While NYPD employees remain employed, the City plan pays in full for the employees' injuries and/or illnesses related to line of duty injuries, and the employees need not pay medical providers any co-payments, deductibles, or drug costs, and the payments are made directly to the providers; and
- (3) However, once an NYPD employee retires, the City plan no longer pays providers for the employee's line of duty medical care, and instead the retired member must submit claims to the City plan and is not reimbursed for co-payments or deductibles.

Plaintiffs thus seek a judgment declaring that the City plan requires defendants to pay medical costs related to line of duty injuries for retired NYPD employees. (Affirmation of Bruce Rosenbaum, ACC, dated Mar. 18, 2011 [Rosenbaum Aff.], Exh. A).

II. CONTENTIONS

Defendants contend that section 12-127 of the Administrative Code applies only to

currently employed NYPD members, as reflected by the section's title which refers to City employees and the text which refers to members of the NYPD, and does not mention retired employees or retired members. They argue that had the Legislature intended the statute to cover retired employees, it could have so provided as it did in other sections which refer to City retirees, retired members of the NYPD, and retirees of the NYPD. (Mem. of Law, dated Mar. 18, 2011).

Plaintiffs allege that the statute does not apply to current City employees or members only, and that therefore, defendants have not shown that it does not apply to retired City employees or members. Rather, other similar statutes require a municipality to pay for line of duty medical care even after the employee has retired. (Mem. of Law, dated June 29, 2011).

In reply, defendants assert that a NYPD employee who has retired is no longer an "employee" or "member," and thus the omission of the word "current" before employee or member is irrelevant, and that the statutes cited by plaintiffs contain language not found in Administrative Code § 12-127. (Reply Mem., dated July 25, 2011).

III. ANALYSIS

When interpreting a statute, courts are "obliged . . . to effectuate the intent of the Legislature, and when the statutory 'language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of [the] words' used." (*People v Finnegan*, 85 NY2d 53 [1995], *cert denied* 516 US 919, *quoting People ex rel. Harris v Sullivan*, 74 NY2d 305 [1989]). In ascertaining the legislative intent, the court must "examine the words of the statute both for their meaning as used in the specific section and in their context as part of the statutory scheme." (*Thoreson v Penthouse Intl., Ltd.*, 80 NY2d 490 [1992]).

Here, section 12-127 specifically and explicitly refers only to NYPD members and employees, and absent any dispute that a retired NYPD member or employee is not an NYPD member or employee, the statute plainly does not cover retired NYPD employees and members. (See *eg* McKinney's Cons Laws of NY, Book 1, Statutes § 94 [language cannot be imported into statute to give it meaning not found therein]; § 240 ["where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded"]; § 363 [court cannot amend statute by inserting words which are not provided therein]; see also *Granada Condominium III Assn. v Palomino*, 78 AD3d 996 [2d Dept 2010] [as County Law expressly provided that it applied to tenants in multiple dwellings, inference drawn that omission of condominium and condominium owners was intended by Legislature]).

Moreover, other Administrative Code sections which govern benefits for City employees refer explicitly to retired NYPD members or retired City employees (*e.g.* section 12-125 [referring to retired employees and retired members]; section 12-126.3 [referring to retiree of the City police department as person who retired as employee of NYPD]). In particular, section 12-126, which governs health insurance coverage for city employees and persons retired from city employment and their dependents, distinguishes between a city employee, defined as a person: (1) who is employed by a department or agency of the city; and (2) is paid out of the city treasury; and (3) is employed under terms prescribing a work week regularly consisting of 20 or more hours during the fiscal year; and (4) is not employed by the board of education, and a city retiree, defined as a person who: (1) is receiving a retirement allowance, pension or other retirement benefit from a retirement or pension system either maintained by the city or to which

the city has made contributions on behalf of such person . . . and (2) immediately prior to such person's retirement as a member of such system, was a city employee, or was an employee of the board of education employed under terms prescribing a work week regularly consisting of 20 or more hours during the fiscal year.

Thus, within the statutory scheme at issue, the Legislature created a distinction between City or NYPD employees/members and retired employees/retired members, and it is thus reasonably inferred that had the Legislature intended that section 12-127 apply to retired NYPD members or employees, it would have done so. (*See eg Sweeney v Dennison*, 52 AD3d 882 [3d Dept 2008] [as Executive Law section mentioned only parolees, it did not apply to other types of release from prison, especially as throughout Executive Law Legislature consistently distinguished between different types of release]).

That section 12-127 does not contain the word "current" before employee or member does not demonstrate that the Legislature did not intend to limit section 12-127 to current employees as nowhere in the statutory scheme does the Legislature use the word "current" to describe employees or members. Rather, the distinction made is between employees/members and retired employees/retired members. Moreover, the definition of an employee, as contained in section 12-126, is a person who is employed, whereas a retired employee is defined as someone who was employed prior to his or her retirement, and thus an employee is someone who is currently employed and not retired.

In addition, General Municipal Law § 207-c, a statute cited by plaintiffs as parallel to Administrative Code § 12-127, provides that an employee "injured in the performance of his duties . . . so as to necessitate medical or other lawful remedial treatment shall be paid by the

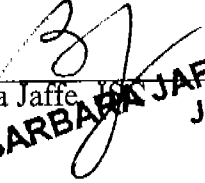
municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased, and, in addition such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness . . .” Thus, this statute expressly covers medical care provided to the employee until his or her disability has ceased, which presumably may occur after he or she has retired, and is therefore not comparable to Administrative Code § 12-127 which contains no such language. The other statutes cited by plaintiffs are also inapposite for the same reason. (General Municipal Law § 207-a; Workers’ Compensation Law § 13).

IV. CONCLUSION

While it appears somewhat harsh that the benefits accorded one injured in the line of duty significantly change upon retirement, the Legislature has made that determination and absent any persuasive reason to find otherwise, it is hereby

ORDERED, that defendants’ motion to dismiss is granted, and the complaint is dismissed in its entirety.

ENTER:


Barbara Jaffe
BARBARA JAFFE
J.S.C.

DATED: November 10, 2011
New York, New York
NOV 10 2011

FILED
NOV 16 2011
NEW YORK
COUNTY CLERK'S OFFICE