Feinman v County of Nassau
2014 NY Slip Op 33957(U)
December 8, 2014
Supreme Court, Nassau County
Docket Number: 7141-10
Judge: Vito M. DeStefano
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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 15
NASSAU COUNTY

MEREDITH A. FEINMAN, RUTH MARKOVITZ, and ESTHER D. MILLER,

Plaintiffs,

-against-

THE COUNTY OF NASSAU, JOHN CIAMPOLI, Nassau County Attorney, and GEORGE MARAGOS, Nassau County Comptroller,

Defendants.

Decision and Order

MOTION SUBMITTED:
November 21, 2012
MOTION SEQUENCE:02
INDEX NO.:7141-10

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion	1
Memorandum of Law in Support	2
Affirmation in Opposition	3
Reply Affirmation	4

In this action, *inter alia*, for "a declaratory judgment", the plaintiffs move for an order pursuant to CPLR 3212 declaring that the "defendants are not authorized to require plaintiffs to pay any portion of the health insurance coverage provided to them by Nassau County, [and] awarding plaintiffs recovery of the amounts each has paid to the date of judgment for such coverage".

For the reasons that follow, it is ordered that the motion is granted to the extent indicated herein.

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Factual and Procedural Background

In 1995, Nassau County adopted Ordinance No. 543-1995, which took effect on December 11th of that year. The purpose of the ordinance was to establish leave and employment benefit policies for officers and employees of the county who were not represented by bargaining units.

The provisions of the ordinance relevant here are as follows:

2.7 "Termination of service" means separation from employment with the County.

2.9 "Years of actual completed service" means all public service from the original date of employment with the County, the State, and/or a municipal subdivision thereof, to the date of the termination of such public service. Service interrupted for a period of one year or less shall not be deemed to be a termination; however, such interruption shall not be credited as actual service to the County, unless otherwise required by law. Officers and employees whose service shall have been less than full-time, shall have their service time prorated except for purposes of longevity payments.

4.1(a) The County shall pay the full cost of the health insurance premium of its officers and employees under the Government Employees' Health Insurance Program provided pursuant to Article XI of the Civil Service Law.

4.2 If a National Health Insurance Plan is enacted and mandated by the Federal Government to cover members of any negotiating unit, or if said plan is optional and adopted by the County legislative body, then officers and employees shall receive said benefits; however, if said benefits are less than benefits previously received the County shall furnish additional benefits comparable to those omitted in the Federal Plan that were previously provided.

4.5 All officers and employees who terminate employment for reasons other than retirement shall have health insurance benefits discontinued as of the last day of the month following the month of such termination.

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Thereafter, in 2002, the ordinance was amended in the following ways relevant here:

2.7 **"Termination of service"** means separation from employment with the County.

4.1(a)(I) For all employees hired prior to January 1, 2002, and for any member of the Police Force in the titles of Deputy Commissioner, Chief of Department, Chief of Patrol, Chief of Detectives and Chief of Support, the County shall pay the full cost of the health insurance premium of its officers and employees under the Government Employees' Health Insurance Program provided pursuant to Article XI of the Civil Service Law. Notwithstanding this provision, members of the Police Force in such titles shall be required to contribute to the costs of health insurance to the same extent as members of the Superior Officers' Association.

4.1(a)(ii) For all employees hired on or after January 1, 2002 and earning a salary greater than thirty thousand ($30,000.00) dollars the employee shall contribute the five (5%) percent of the cost of the health insurance premium for single coverage and ten (10%) percent of the cost of the health insurance premium for family coverage and the County shall pay the balance of the health insurance premium of its officers and employees under the Government Employees' Health Insurance Program provided pursuant to Article XI of the Civil Service Law.

4.4(b) All officers and employees hired on or after July 1, 1988 shall have the health insurance benefits as provided above, effective after six months of actual completed service with the County.

4.4© All officers and employees hired on or after January 1, 2002 shall have the health insurance benefits as provided above, effective on the first day of the first month following either the effective date of such employment, or the date an application for such benefits is executed, whichever is later.

5.2 **Prior Public Service**

Any officer or employee who transferred or transfers *from* the State and/or a municipal subdivision thereof to the County shall receive credit for any vacation or sick leave such officer or employee may have accrued while in the employ of said State and/or municipal subdivision upon proper verification of the personnel officer thereof and such public service rendered to the State and/or a municipal subdivision thereof, shall be deemed as service to the County *for* purposes *of* the benefits provided in this Ordinance. Such officer and employee shall be deemed to have an initial employment date with the County as of the original employment with the State

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and/or municipal subdivision thereof. An officer or employee who has had a break in service *of* less than one year between public employment and employment with the County shall be deemed to have an initial employment date as *of* the date of such officer's or employee's original employment date but such interruption in service shall not be credited as actual service to the County where there has been a break in service in other public employment or between other public employment and the County of more than one (1) year. All such prior public service to the State and/or a municipal subdivision thereof shall be considered as actual completed service to the County *for* purposes of this Ordinance and such officer and employee shall be deemed to have a initial employment date that reflects all prior public service *form* [sic] which appropriate benefits otherwise provided in this Ordinance shall be computed.

Notwithstanding the foregoing, an officer or employee who, on or after February 14, 1994, transfers *from* the State and/or a municipal subdivision thereof, shall receive no credit for accumulated vacation or sick leave such officer or employee may have received while in the employee of the State and/or municipal subdivision thereof. All other provisions of this subsection are otherwise applicable to any officer or employee who transfers from the State and/or a municipal subdivision thereof, on or after February 14, 1994.

5.6 **Deferred Compensation Program**

All officers and employees are eligible to participate in any such Deferred Compensation Program as the County may provide pursuant to §5 of the New York State Finance Law.

Also relevant is 4 NYCRR 73.1(g):

The term vested employee means a person who (1) while enrolled in the plan as an employee discontinues from the service of an employer, other than by death or retirement, on or after October 1, 1966, (2) is and remains entitled to receive at a future time a retirement allowance or pension from a retirement or pension plan or system administered and operated by the State of New York or a civil division thereof, including the New York State Teachers' Retirement System, the State University Optional Retirement Program established under article 8-B of the Education Law and the Education Department Optional Retirement Program established under article 3, part V, of the Education Law in which latter two cases

such person must have had at least 10 years of State service, and (3) at the time of such discontinuance of service meets all conditions, including length of service with the employer and length of coverage under the plan, necessary under these regulations for the continuance of coverage after retirement, and (4) in the case of an employee who discontinues from the service of a participating employer, the participating employer may establish an additional requirement that the employee's discontinuance be within five years of their entitlement to receive such retirement allowance or pension. Such person shall remain a vested employee until his entitlement to such future retirement allowance or pension is terminated or until he commences to receive such retirement allowance or pension, in which latter case he shall become a post retiree.

According to plaintiff Meredith Feinman, she began working for the County on January 14, 2002 and continued in such employment through December 31, 2009 earning a salary that exceeded $30,000 annually. Feinman was previously employed in the: New York City Law Department from January 1990 through December 2001; the New York County District Attorney's office from January 1978 through April 1983, and; New York State Commission of Investigation from December 1975 through December 1977.

Feinman asserts that the county deemed her initial employment date to be August 10, 1986 and that she became eligible for health insurance coverage on February 1, 2002, which she obtained. Notwithstanding, she was improperly compelled to pay 10% of the cost of coverage in the total amount of $13,590.69. Feinman claims that having reached the age of 55 and after 15 years in public service, she became a vested employee entitled to health insurance for the balance of her life. Alternatively, she claims to be entitled to lifetime coverage as a result of retirement from county service, which she did in 2009 at the age of 61.

Plaintiff Ruth Markovitz asserts that she was an employee of the County from March 1, 2002 through December 31, 2009. Throughout that time, her annual salary exceeded $30,000. Prior to her employment with the county, Markovitz was employed by the City of New York: in the Department of Mental Health, Mental Retardation and Alcoholism Services from April 1999 through February 2002, and; in the Office of the New York City Law Department from September 1990 through April 1999.

Markovitz states that the county deemed her initial employment date to be

September 4, 1990 and that she became eligible and applied for individual health insurance coverage in 2004, which she obtained. In 2008, she applied for and obtained family coverage. According to Markovitz, she contributed 10% of the cost of coverage from 2004, first through automatic payroll deductions, and later, upon her retirement in July 2012, through direct payment. Markovitz claims that she became a vested employee of the County, upon reaching the age of 55 and having provided nearly eight years of service to the County and more than 11 years to the City of New York. As such, Markovitz asserts that she is entitled to lifetime insurance coverage. Alternatively, she claims entitlement to such coverage as a result of her retirement in 2009 at the age of 73.

Plaintiff Esther Miller asserts that she was an employee of the County for a period exceeding six years from October 17, 2003 through December 31, 2009, and that her annual salary during that time exceeded $30,000.

Prior to being employed by the county, Miller was employed by the New York City Board of Education from September 1963 through September 1967 and then from September 1973 through September 1981. Miller states that the County deemed her initial employment date to be October 20, 1991 and that she became eligible and applied for health insurance coverage from 2003, which she received. Her initial contribution was 5%, later raised to 10% of the cost of premiums, when she converted her individual coverage to family coverage. Miller's contribution was initially paid by automatic payroll deduction, however, payments have been made since her retirement in 2009 through direct payment.

Miller claims that upon reaching the age of 55, and having provided more than six years of service to the County and 12 years to the Board of Education of the City of New York, she became a vested employee entitled to lifetime health insurance coverage. Alternatively, Miller asserts that she became entitled to such coverage upon her retirement from County service in 2009 at the age of 67.

The plaintiffs claim that they were not and are not required to make any contributions for health insurance coverage, and now seek summary judgment on their claims for, *inter alia*, reimbursement of sums contributed.

The Court's Determination

Initially, the court notes that inasmuch as the parties have not advanced any arguments concerning the form of the proceedings or any potential ramifications of bringing a declaratory judgment action rather than a proceeding pursuant CPLR Article 78, the court shall ignore any issues in this regard (CPLR 103). Significantly, in a prior

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order denying, in part, a motion to dismiss, the court (Warshawsky, J.) considered the branch of the motion seeking relief under CPLR 3211(a)(7) pursuant to the standard governing review of agency's determinations (*Feinman v County of Nassau*, 2011 NY Slip Op 31384(U)). No appeal was taken from that order and the answer served after issuance of the order contained a single affirmative defense unrelated to any "conversion" issue.

Having reviewed the submissions of the parties and the relevant statute, the court concludes that the movants are not required to make contributions for health care and are entitled to reimbursement of the amounts demanded by them, subject to the limitations discussed in the prior order of Justice Warshawsky. In this regard, under the plain language of the statute, in light of their prior public service, the movants were initially hired prior to the amendment to the amendment of Ordinance 543-1995 in 2002 based on their prior public service. Significantly, section 5.2 specifically states that "[a]ny officer or employee who transferred or transfers from the State and/or a municipal subdivision thereof to the County shall receive credit for any vacation or sick leave such officer or employee may have accrued while in the employ of said State and/or municipal subdivision upon proper verification of the personnel officer thereof ***and*** such public service rendered to the State and/or a municipal subdivision thereof, shall be deemed as service to the County for purposes of the benefits provided in this Ordinance" (emphasis added).

As plainly seen, the phrase beginning with the conjunctive "and" refers to "such public service rendered to the State ..." and is not limited in scope to credit for vacation and sick leave but rather applies to "the benefits provided in this Ordinance." It is axiomatic that in interpreting a statute, "[a]ll parts * * * must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every word thereof" (Statutes §98). The next phrase in section 5.2 establishes that "[s]uch officer and employee shall be deemed to have an initial employment date with the County as of the original employment with the State and/or municipal subdivision."

The effect of this language is to give the movants an initial employment date prior to the date they actually commenced working for the County–which is prior to January 1, 2002. In view of the length of their service and initial employment dates, the movants are granted summary judgment on their claims to the extent that: they are entitled to reimbursement of sums contributed by them for health insurance, subject to the limitations set forth in Justice Warshawsky's prior order; the comptroller's determination requiring movants to contribute to the cost of health insurance is erroneous.

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The court has considered the arguments raised by the defendants concerning their suggested interpretation of the statute and rejects them.

This constitutes the decision and order of the court.

Dated: December 8, 2014

Hon. Vito M. DeStefano, J.S.C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE