

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 SONOMA COUNTY ASS'N OF RETIRED
5 EMPLOYEES,

6 Plaintiff,

7 v.

8 SONOMA COUNTY,

9 Defendant.

No. C 09-4432 CW

ORDER GRANTING
MOTION FOR
RECONSIDERATION
AND CLARIFYING
RULING

(Docket No. 142)

10 /

11 Plaintiff Sonoma County Association of Retired Employees
12 (SCARE) seeks reconsideration of this Court's January 10, 2014
13 Order Granting in Part Defendant's Motion to Dismiss (Docket No.
14 96). Defendant Sonoma County opposes the motion. Having
15 considered the papers submitted, the Court GRANTS the motion.

16 BACKGROUND

17 SCARE is a nonprofit mutual benefit corporation that
18 "promotes and protects the welfare and interests of the retired
19 employees of Sonoma County." Docket No. 75, SCARE's Second
20 Amended Complaint (2AC) ¶ 11. Roughly fourteen hundred Sonoma
21 County retirees currently claim membership in the organization.
22 Id. ¶ 12.

23 The County has subsidized its retirees' healthcare benefits
24 since at least 1964. Id. ¶ 14. In August 2008, the County's
25 Board of Supervisors enacted a resolution capping its healthcare
26 benefit contributions at the flat amount of \$500 per month for all
27 retirees as well as for certain active employees. Id. ¶ 32. The
28 County planned to phase in this new cap over a five-year period

1 beginning in June 2009. Id. To assist active employees adversely
2 affected by the new cap, the County enacted a resolution in
3 September 2008 providing active employees with an additional \$600
4 monthly cash allowance for healthcare costs. Id. ¶¶ 33-34.
5 Retirees were not provided the same benefit. Thus, at the
6 conclusion of the five-year phase-in period, active employees
7 would be receiving \$1,100 per month from the County in healthcare
8 benefits while retirees would be receiving only \$500 per month.

9 SCARE brought this action in September 2009, alleging that
10 the County's new cap on healthcare benefit contributions would
11 harm many retirees by forcing them to pay significantly higher
12 healthcare premiums while living on a fixed income. In its
13 complaint, SCARE asserted that the new cap constituted a breach of
14 the County's longstanding agreement to pay for its retirees'
15 healthcare benefits costs in perpetuity. SCARE offered two
16 alternative theories to explain how and when the County entered
17 into such an agreement. First, it alleged that the County made a
18 series of promises, dating back to at least 1964, to pay "all or
19 substantially all" of the costs of healthcare benefits for its
20 retirees and their dependents. Second, SCARE alleged that the
21 County entered into a "tie agreement" in or around 1985 under
22 which it promised to provide its retirees and their dependents
23 with the same level of healthcare benefits that it provided to
24 active management employees. SCARE contends that the County
25 subsequently entered into contracts in which the tie agreement was
26 an explicit or implied term. The County denied that it had made a
27 binding promise to provide post-retirement healthcare benefits in
28 perpetuity under either theory of contract formation.

1 In May 2010, this Court granted, with leave to amend, the
2 County's motion to dismiss SCARE's complaint. Docket No. 34
3 (Sonoma I). The Court explained that, under California law,
4 municipal governments could only create express contracts for
5 public employment by means of an ordinance or resolution and SCARE
6 had failed to identify in its complaint any such ordinances or
7 resolutions promising lifetime healthcare benefits to retirees.

8 In July 2010, SCARE filed an amended complaint in which it
9 sought to cure this deficiency by adding new factual allegations
10 to support its claims. Docket No. 35. SCARE attached to its
11 amended complaint sixty-eight exhibits which consisted of various
12 resolutions, ordinances, and memoranda of understanding (MOUs)
13 signed by County representatives. According to SCARE, these
14 documents, taken together, established a binding promise by the
15 County to provide healthcare benefits to all retirees in
16 perpetuity.

17 In November 2010, this Court once again dismissed SCARE's
18 complaint, this time without leave to amend. Docket No. 51
19 (Sonoma II). After reviewing the amended complaint, the Court
20 found that none of the new factual allegations or various
21 resolutions, ordinances, and MOUs attached to the complaint
22 supported SCARE's claim that the County entered into a binding
23 contract to provide post-retirement healthcare benefits in
24 perpetuity. The Court explained that, while the resolutions and
25 ordinances evidenced the County's longstanding practice of paying
26 all or substantially all of the costs of retirees' healthcare
27 benefits, they did not contain an express promise that the County
28 would continue to do so in perpetuity. Furthermore, the Court

1 noted, none of the attached resolutions or ordinances explicitly
2 adopted the alleged 1985 tie agreement and none of the MOUs
3 contained durational language suggesting that they were meant to
4 confer rights in perpetuity. Thus, because SCARE had failed to
5 identify a binding promise on which its contract claims were based
6 despite a second opportunity to do so, the Court dismissed its
7 complaint with prejudice. SCARE filed an appeal the following
8 month.

9 While that appeal was pending, the California Supreme Court
10 issued its opinion in Retired Employees Association of Orange
11 County, Inc. v. County of Orange, 52 Cal. 4th 1171 (2011) (REAOC
12 II). That opinion addressed “[w]hether, as a matter of California
13 law, a California county and its employees can form an implied
14 contract that confers vested rights to health benefits on retired
15 county employees.” Id. at 1176. The Ninth Circuit had certified
16 this question to the California Supreme Court in a case where a
17 county government sought to reduce its contributions to its
18 retired employees’ healthcare benefit plans. See Retired Emps.
19 Ass’n of Orange Cnty. Inc. v. County of Orange, 610 F.3d 1099 (9th
20 Cir. 2010). In REAOC II, the California Supreme Court answered
21 the certified question by holding that “a vested right to health
22 benefits for retired county employees can be implied under certain
23 circumstances from a county ordinance or resolution.” 52 Cal. 4th
24 at 1194.

25 In February 2013, the Ninth Circuit vacated this Court’s
26 November 2010 order of dismissal. SCARE v. Sonoma County, 708
27 F.3d 1109, 1119 (9th Cir. 2013) (Sonoma III). Although the court
28 of appeals agreed that SCARE’s first amended complaint failed to

1 state a claim, it held that SCARE should be granted leave to amend
2 in order to plead that, under REAOC II, the County made an implied
3 promise to provide post-retirement healthcare benefits. Id. The
4 Ninth Circuit explained, "The district court did not have the
5 benefit of REAOC II, but in light of its clarification that a
6 public entity in California can be bound by an implied term in a
7 written contract under specified circumstances, we cannot say that
8 the Association's amendment of its complaint a second time would
9 be futile." Id. It therefore remanded the action "for
10 proceedings consistent with REAOC II." Id.

11 The Ninth Circuit noted that under REAOC II in order to
12 survive a motion to dismiss, SCARE's complaint would have to
13 "allege that the County: (1) entered into a contract that included
14 implied terms providing healthcare benefits to retirees that
15 vested for perpetuity; and (2) created that contract by ordinance
16 or resolution." Id. at 1115-16 (citing REAOC II, 52 Cal. 4th at
17 1176). The Court found that SCARE's amended complaint and the
18 attached MOUs met the first requirement, but that SCARE must also
19 identify a resolution or ordinance that plausibly ratified the
20 MOUs to fulfill the second prong of the REAOC II test. Id. This
21 would be accomplished if the text of the resolutions or ordinances
22 and the circumstances surrounding their passage "clearly evince"
23 an intent to grant vested benefits or "contain [] an unambiguous
24 element of exchange of consideration by a private party for
25 consideration offered by the state." Id.

26 SCARE filed its Second Amended Complaint (2AC) in May 2013.
27 It attached twenty-six new resolutions and asserted that these
28 resolutions -- along with the sixty-eight resolutions, ordinances,

1 and MOUs attached to its previous complaint -- evinced the
2 "County's clear intent to bind itself to contracts with the
3 Retirees to provide post-retirement healthcare benefits." 2AC
4 ¶ 19. The County once again filed a motion to dismiss for failure
5 to state a claim and lack of subject matter jurisdiction. The
6 County argued, among other things, that because the newly added
7 resolutions only adopted MOUs beginning in 1990, they could not
8 support a contract claim for pre-1990 retirees or a tie agreement
9 argument based on a 1985 agreement. On January 10, 2014, the
10 Court granted the motion in part, dismissing all claims on behalf
11 of non-union retirees and those hired before 1990. Docket No. 96.
12 The Court found that while the newly added resolutions contain
13 language expressly adopting the MOUs highlighted in the Ninth
14 Circuit's opinion, they only govern agreements between the County
15 and local unions and only with respect to employees hired after
16 1990. Id. In addition, the Court precluded Plaintiff from
17 proceeding on any claims based on the alleged 1985 tie agreement,
18 reasoning that SCARE had failed to identify a specific ordinance
19 or resolution creating that contract. Id.

20 Plaintiff now moves for reconsideration of the dismissal of
21 claims on behalf of retirees hired before 1990 who worked under
22 post-1989 MOUs. SCARE also requests that the Court clarify the
23 scope of its ruling dismissing all claims based on the 1985 tie
24 agreement.

25 LEGAL STANDARD

26 Where a court's ruling has not resulted in a final judgment
27 or order, reconsideration of the ruling may be sought under Rule
28 54(b) of the Federal Rules of Civil Procedure. Courts have

1 typically considered motions for reconsideration under Rule 54(b)
2 in light of the standards for reconsideration under Rules 59(3)
3 and 60(b). See, e.g., Awala v. Roberts, 2007 WL 1655823, at *1
4 (N.D. Cal.). "Reconsideration is appropriate if the district
5 court (1) is presented with newly discovered evidence,
6 (2) committed clear error or the initial decision was manifestly
7 unjust, or (3) if there is an intervening change in controlling
8 law." Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5
9 F.3d 1255, 1263 (9th Cir. 1993). Motions for reconsideration
10 should only be granted in extraordinary circumstances. See,
11 Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341
12 (9th Cir. 1981).

13 DISCUSSION

14 SCARE's motion addresses two aspects of this Court's January
15 10 order. First, SCARE seeks reconsideration of the dismissal of
16 claims brought on behalf of retirees hired before 1990 who worked
17 under post-1989 MOUs. SCARE argues that reconsideration is
18 warranted because (1) the Court incorrectly interpreted Sonoma III
19 and the text of the MOUs in determining which retirees had a right
20 to healthcare benefits, and (2) new evidence supports SCARE's
21 contention that the MOUs apply to retirees hired before 1990 who
22 worked under post-1989 MOUs. Second, SCARE seeks clarification of
23 the portion of the order dismissing claims based on an alleged
24 1985 tie agreement. If the order prohibits the argument that
25 retiree benefits are tied to the benefits of active employees,
26 then SCARE seeks leave to move for reconsideration of that point.

1 I. Dismissal of Claims Pertaining to Pre-1990 Hires

2 SCARE first asks the Court to reconsider the dismissal of its
3 claims brought on behalf of retirees hired before 1990 who worked
4 under post-1989 MOUs. The earliest MOUs enacted by resolution
5 were agreed upon in 1989 and went into effect in 1990. See 2AC,
6 Ex. 38, Docket No. 76. In 1990, the County imposed new
7 restrictions on retiree healthcare benefits for employees hired
8 from that day forth. The issue upon reconsideration is whether
9 the MOUs impose a promise to pay retiree healthcare benefits only
10 for post-1990 hires or for pre-1990 hires as well. Pursuant to
11 the Sonoma III test, the MOUs only need to include "plausibly"
12 implied terms providing healthcare benefits to retirees hired
13 before 1990.

14 SCARE contends that the Court incorrectly relied on the Ninth
15 Circuit's decision in Sonoma III in making its determination. The
16 January 10 order found that the Ninth Circuit "expressly
17 recognized" that only employees hired after 1990 plausibly have a
18 contractual right to retiree healthcare benefits. Docket No. 96
19 at 18. However, SCARE maintains that Sonoma III only referred to
20 retirees hired after 1990 as an example of how the MOUs submitted
21 supported the Association's allegation that the MOUs promised
22 healthcare benefits. In applying the first prong of the REAOC II
23 test, the Ninth Circuit noted that the MOUs attached to the 2AC
24 "state, among other things, that the County will make
25 contributions toward a health plan premium for retirees hired
26 after 1990 who had worked for the county. . . ." Sonoma III, 708
27 F.3d at 1116. The January 10 order interpreted this language to
28 mean that the MOUs only covered retirees hired after 1990;

1 however, the inclusion of the phrase "among other things" suggests
2 that the Ninth Circuit did not intend to provide a comprehensive
3 account of all retirees guaranteed healthcare benefits under the
4 MOUs. Id.

5 SCARE notes that there is no other point in Sonoma III where
6 the Ninth Circuit stated that SCARE had not set forth a claim on
7 behalf of pre-1990 hires. In fact, the Ninth Circuit cited MOU
8 language later in the opinion that suggests that pre-1990 hires
9 are entitled to the same retiree medical benefits as post-1990
10 hires. See id. at 1116 n.3 (citing MOU language providing that
11 the County will provide post-1990 hires with benefits "in the same
12 manner and on the same basis as is done at the time for other
13 retirees who were hired or rehired before July 1, 1990."). SCARE
14 also notes that neither party distinguished between pre- and post-
15 1990 hires in their briefs. After reviewing the Ninth Circuit
16 opinion, this Court agrees that Sonoma III does not foreclose a
17 plausible claim for pre-1990 hires who worked under the 1989 MOUs.

18 SCARE provides further support for its contention that the
19 MOUs govern the rights of employees hired before and after 1990.
20 SCARE explains that the distinction between pre- and post-1990
21 hires found in the MOUs is only for the purpose of setting new
22 restrictions on eligibility for post-1990 hires. SCARE has also
23 submitted new testimony and documentary evidence to support this
24 point. Since the Court's January 10 order, the County has
25 produced over 500,000 pages of discovery documents, which, SCARE
26 contends, demonstrate the bargaining parties' intent to provide
27 pre-1990 hires, after retirement, with medical benefits at least
28 as favorable as post-1990 hires. In addition, the parties have

1 taken the depositions of fifteen witnesses since the January 10
2 order, in which witnesses testified that the MOUs were not
3 intended to preclude pre-1990 hires from retiree medical benefits.
4 In fact, multiple witnesses stated that the intent was to make
5 eligibility requirements more stringent for post-1990 hires. The
6 new evidence submitted in SCARE's motion for reconsideration sheds
7 further light on the MOUs and resolutions attached to the 2AC.

8 There are two ways in which the MOUs and resolutions attached
9 to the 2AC discuss retirees hired before 1990. In the first
10 subset, MOUs refer to the County's current practice of providing
11 retiree healthcare benefits for pre-1990 hires. For example, the
12 Sonoma County Law Enforcement Managers Association 2003-09 MOU
13 provides, "Currently, the County contributes to the cost of a
14 health plan for its retirees and their dependents." Ex. 29 at 33.
15 The MOU discusses the 1990 hire date only as a point when new
16 eligibility restrictions were put in place. Id.

17 The second way in which pre-1990 hires are addressed in the
18 MOUs and resolutions is in reference to the coverage of post-1990
19 hires. For example, one MOU provides, "In no event shall
20 employees hired or rehired after January 1, 1990 be entitled to
21 receive greater contributions from the County for a health plan
22 upon retirement than the County pays for employees hired or
23 rehired before January 1, 1990 upon their retirement." See, e.g.,
24 2AC Ex. 38 at 65, Docket No. 76. SCARE contends that this
25 language reflects an intent to limit the benefits of post-1990
26 hires, not to grant them greater benefits than those hired before
27 that date. Furthermore, SCARE argues that these MOUs explicitly
28 link benefits for post-1990 hires to those of pre-1990 hires

1 suggesting that both types of retirees are entitled to the same
2 benefits. See 1AC Ex. 4 Salary Ordinance No. 1905, ¶ 15.4 ("For
3 any employee newly hired or rehired by the County . . . the County
4 shall contribute for the retiree only the same amount towards a
5 health plan premium as it contributes to an active single employee
6 in the same manner and on the same basis as is done at the time
7 for other retirees who were hired or rehired before January 1,
8 1990.")(emphasis omitted). While none of the MOUs include
9 explicit mandatory language committing the County to provide
10 healthcare benefits for retirees hired before 1990, the decision
11 to include the practice in MOUs ratified by resolution and to link
12 the benefits of retirees hired post-1990 to those of retirees
13 hired before 1990 supports that SCARE sufficiently alleges that
14 the County intended to promise healthcare benefits for retirees
15 hired before 1990.

16 The new evidence further supports SCARE's contention that the
17 MOUs created a promise on behalf of the County to continue its
18 practice of paying retiree healthcare benefits for pre-1990 hires.
19 For example, Ray Myers, who was employee relations manager for the
20 County, testified that the 1989 MOU with the Service Employees
21 International Union represented "a commitment forward by the
22 county with regard to current employees and retirees." Ray Myers
23 Dep. 103:1-6. Mr. Myers also testified that the County only made
24 changes to retiree healthcare benefits for new hires because it
25 considered benefits to have vested from day one of employment.
26 Id. at 289:22-25, 290:5-22. This deposition testimony suggests
27 that the County did intend for the 1989 MOUs to confer rights to
28 healthcare benefits on current employees and supports SCARE's

1 contention that it has stated a plausible claim with respect to
2 pre-1990 hires.

3 Taking into account the MOUs attached to the 2AC and the new
4 evidence attached to SCARE's motion for reconsideration, the Court
5 finds that SCARE has plausibly stated a claim with respect to pre-
6 1990 hires who worked under post-1989 MOUs. Accordingly, SCARE's
7 motion for reconsideration is GRANTED. The January 10 order is
8 hereby vacated and the Court will enter an amended order
9 permitting SCARE to proceed with its claims on behalf of pre-1990
10 hires who worked under post-1989 MOUs.

11 II. Clarification Regarding the Tie Agreement

12 SCARE also requests clarification on the scope of the January
13 10 order with respect to the alleged 1985 tie agreement.
14 Specifically, SCARE questions whether the order precludes claims
15 demonstrating any tie agreement or only the 1985 tie agreement.
16 If the order precludes SCARE from arguing the existence of any tie
17 agreement, it requests leave to file a motion for reconsideration
18 on that point.

19 The 2AC alleges that in or around 1985 the County agreed to
20 link retirees to the active administration management employee
21 group for the purposes of health benefits. SCARE refers to this
22 agreement as the "tie agreement" because it ties retiree
23 healthcare benefits to those of active employees. The 2AC cites a
24 number of resolutions and MOUs in which the text explicitly ties
25 retiree healthcare benefits to those of active employees. See,
26 e.g., Salary Resolution No. 95-0926, 2AC, Ex. 7 (" . . . the
27 County shall contribute for the retiree only the same amount
28 towards a health plan premium as it contributes to an active

1 single employee in the same manner and on the same basis as is
2 done at the time for other retirees who were hired or rehired
3 before January 1, 1990.").

4 In seeking to proceed with its tie agreement claim, SCARE now
5 clarifies that its claim is not based solely on the 1985
6 agreement, for which there is no specific corresponding MOU.
7 Rather, its claim relies on the subsequent MOUs ratified by
8 resolutions that explicitly refer to the tying of retiree
9 healthcare benefits to those of active employees.

10 The January 10 order dismissed SCARE's theory of contract
11 formation based on an "alleged 1985 tie agreement," because SCARE
12 failed to attach to its 2AC a resolution enacted prior to 1990.
13 Docket No. 19. This limitation does not preclude SCARE from
14 proceeding on a tie agreement claim that is based on promises
15 implied in the post-1989 MOUs enacted by resolution.

16 The County argues that SCARE is judicially estopped from
17 claiming that post-1989 MOUs and resolutions adopting them
18 constitute the source of the alleged tie agreement. However, a
19 close reading of the 2AC makes clear that SCARE did not base its
20 tie agreement claim solely on the alleged 1985 agreement. The 2AC
21 states that the "promise to pay Retirees' health care benefits
22 under the tie agreement was an explicit term of some of the
23 contracts . . . and an implied term of the remainder." 2AC ¶ 30.
24 Insofar as those terms are alleged to be part of a contract
25 enacted by resolution, SCARE may proceed with its tie agreement
26 claims.

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CONCLUSION

For the reasons set forth above, the Court GRANTS Plaintiff's motion for reconsideration and clarification (Docket No. 142). The Court hereby vacates its January 10 order (Docket No. 96) and will enter an amended order. Pursuant to the amended order, SCARE may proceed with its claims on behalf of pre-1990 retirees who worked under the post-1989 MOUs. The Court also clarifies that it has not dismissed SCARE's tie agreement theory except insofar as it relies only on an alleged 1985 agreement.

IT IS SO ORDERED.

Dated: 04/22/2015



CLAUDIA WILKEN
United States District Judge