

<p>SUPREME COURT : STATE OF NEW YORK IAS PART WESTCHESTER COUNTY PRESENT : HON. JOAN B. LEFKOWITZ, J.S.C.</p> <p>-----X</p> <p>DENNIS MURRAY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>TOWN OF NORTH CASTLE, NEW YORK</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>DECISION AND ORDER</p> <p style="text-align: center;">Index No. 68175/2017</p> <p>Motion Return Date: November 8, 2019 Motion Seq. #2</p>
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The following papers (e-file documents 64- 97; 137-177; 182) were read on plaintiff's motion for an order granting summary judgment.

- Notice of Motion, Affirmation (Exhibits 1-31)
- Memorandum of Law
- Affirmation in Opposition (Exhibits A-V)¹
- Affirmation in Opposition (Exhibits A-B)
- Affidavit in Opposition (A-M)
- Reply Memorandum of Law

Upon reading the foregoing papers it is

ORDERED ADJUDGED AND DECREED that plaintiff separated from employment with defendant by reason of his retirement effective October 4, 2016, and his last date of employment with the defendant was October 3, 2016; and it is further

ORDERED ADJUDGED AND DECREED that defendant had no power, authority or jurisdiction to file disciplinary charges against plaintiff after his last day of employment (October 3, 2016) and any charges filed thereafter are null and void; and it is further

ORDERED that the disciplinary charges filed against plaintiff after his retirement, but not the material obtained during the underlying investigation, shall be expunged from plaintiff's personnel file with defendant; and it is further

ORDERED defendant is enjoined from pursuing or prosecuting disciplinary charges against the plaintiff which were filed after the last date of plaintiff's employment (October 3, 2016); and it is further

¹ This affirmation was also submitted in support of defendant's motion for an order granting summary judgment dismissing the complaint.

ORDERED defendant shall mark its records to reflect, and notify all relevant and inquiring parties, that plaintiff's last day of employment was October 3, 2016, and that he separated from service by his retirement effective October 4, 2016; and it is further

ORDERED that defendant is directed to provide plaintiff and his family with all benefits, and enroll them in all health, medical and dental plans to which they are entitled pursuant to the collective bargaining agreement between the Town of North Castle and the Police Benevolent Association of the Town of North Castle upon plaintiff's retirement effective October 4, 2016; and it is further

ORDERED the branch of the motion which seeks an order paying damages including any accruals to which plaintiff is entitled upon his retirement effective October 4, 2016, is denied; and it is further

ORDERED the matter is referred to the Settlement Conference Part. Due to the coronavirus health emergency the Clerk of the Settlement Conference Part shall notify the parties of the date, time and method of the settlement conference.

Plaintiff began his 25-year career as a police officer with the Town of North Castle in 1991.

By letter dated September 16, 2016, plaintiff was notified that he was suspended with pay.

On September 19, 2016, plaintiff filed for retirement.

By letter dated September 20, 2016, the New York State Retirement System advised the defendant that plaintiff had applied for retirement effective October 4, 2016.

By letter dated October 4, 2016, the New York Retirement System notified defendant that plaintiff was retired effective October 4, 2016.

On October 11, 2016, the defendant notified plaintiff that he was suspended with pay pending the outcome of disciplinary charges.

On October 30, 2017, plaintiff commenced this action seeking (1) a judgment declaring that plaintiff separated from employment with the defendant on October 4, 2016, the effective date of his retirement; (2) a judgment declaring that defendant lacked jurisdiction and authority to file disciplinary charges against plaintiff after his date of retirement; (3) an order dismissing the underlying disciplinary charges and expunging them from plaintiff's personnel file; (4) an order enjoining defendant from further pursuing disciplinary charges; (5) an order compelling defendant to mark its records to reflect that plaintiff's last date of employment with defendant was October 3, 2016; (6) an order compelling defendant to notify relevant parties that plaintiff's employment ended by his retirement effective October 4, 2016; (7) an order directing defendant to enroll plaintiff and his family in health, medical and dental plans to which he and his family would be entitled to by reason of his retirement effective October 4, 2016; (8) an order awarding

plaintiff consequential damages; and (9) an order directing defendant to pay all accruals for sick leave, vacation leave and compensatory time to which plaintiff is entitled pursuant to the collective bargaining agreement between the Town of North Castle and the Police Benevolent Association of the Town of North Castle upon his retirement effective October 4, 2016.

On June 15, 2018, defendant served amended disciplinary charges, and scheduled a hearing date for August 14, 2018.

On August 6, 2018, plaintiff moved for an order granting a preliminary injunction enjoining defendant from continuing disciplinary proceedings or conducting any hearing thereon. By order dated October 12, 2018, the court (Ruderman, J.) granted the motion and enjoined any proceedings on the disciplinary charges pending the final outcome of the action.

Following the completion of discovery plaintiff moves for an order granting summary judgment for the relief demanded in his complaint.

Plaintiff established as a matter of law that he lawfully retired from service with defendant effective October 4, 2016, and thus is entitled to all retirement benefits under New York State law and the collective bargaining agreement between the Town of North Castle and the Police Benevolent Association of the Town of North Castle.

In opposition, defendant failed to raise a triable issue of fact.

Defendant argues that it was not required to accept the fact the plaintiff retired because he did not provide defendant with notice of his retirement. However, there is no requirement under state or county law that plaintiff provide defendant with notice of his retirement. State law has no requirement that plaintiff must notify defendant of his retirement. Defendant concedes that the notice of retirement comes from the New York State Retirement System after plaintiff files his application to retire, and that the New York State Retirement System sent such notice to defendant.

But defendant argues that county law mandates that plaintiff give defendant notice of his retirement. Rule 17 of the Westchester County Civil Service Rules entitled "Resignation" requires that a resignation must be in writing and delivered or filed with the office of the appointing agency. Defendant argues that since it received no such notice of filing it need not recognize plaintiff's retirement. However, defendant ignores the plain fact that resignation is not retirement. Resignation and retirement are two different and distinct methods of separating from service. Plaintiff did not resign, he retired. And plaintiff's retirement is exclusively governed by state law (*see*, Retirement and Social Security Law 374[a] and 2 NYCRR 341.1).

Since plaintiff retired he is not bound by Westchester Civil Service Rules regarding resignation, including the rule providing that the appointing authority may elect to disregard a resignation in the event that "charges of . . . misconduct have or are about to be filed against an employee" (*see also*, 4 NYCRR 5.3[b]). County law is not superior to state law. Thus, the county law provisions concerning resignation cannot change state law governing retirement.

Moreover, Rule 17 of the Westchester County Civil Service Rules, by its very title, covers resignation, not retirement.

Plaintiff retired before disciplinary charges were filed, not after. Once plaintiff retired he was no longer a member of the defendant's police department. As a result, defendant no longer had authority to commence disciplinary proceedings against him (*Borges v McGuire*, 107 AD2d 492 [1st Dept 1985]; see also, *People ex rel. Fitzpatrick v Greene*, 181 NY 308 [1905]).

Since plaintiff lawfully retired effective October 4, 2016, he is entitled to the benefits of that retirement conveyed by New York State law and by the collective bargaining agreement between the Town of North Castle and the Police Benevolent Association of the Town of North Castle.

While the court can declare that plaintiff retired from service as of October 4, 2016, and the court can declare that no disciplinary charges may be filed and prosecuted after plaintiff's retirement, and the court can declare that plaintiff is entitled to benefits which flow from his retirement on October 4, 2016, the court cannot, on the present record, determine the specific benefits and accruals to which plaintiff and his family are entitled pursuant to the collective bargaining agreement between the Town of North Castle and the Police Benevolent Association of the Town of North Castle, and the court cannot determine the amount of damages plaintiff suffered as a result of defendant's refusal to acknowledge and honor plaintiff's retirement effective October 4, 2016. Thus, a trial is required on these issues.

E N T E R,

Dated: White Plains New York
May 12, 2020

HON. JOAN B. LEFKOWITZ, J.S.C.