IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Eugene L. Orlandi, Petitioner	:	
v.	:	No. 2355 C.D. 2011
	:	Argued: September 10, 2012
Pennsylvania Municipal Retirement Board, Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE LEADBETTER **FILED: October 11, 2012**

Eugene L. Orlandi petitions for review of an order of the Pennsylvania Municipal Retirement Board (Board) that granted the motion for summary judgment filed by the Pennsylvania Municipal Retirement System (PMRS) and denied Orlandi's request to rescind the refund of his pension contributions and to receive a retirement benefit. We affirm.

The following facts are undisputed.[1] In 1978, Orlandi's former employer, the Tri-County Joint Municipal Authority (the Authority), became a member municipality of PMRS under Article IV of the Pennsylvania Municipal

[1] Orlandi did not deny the facts that PMRS set forth in its motion for summary judgment.

Retirement Law (Retirement Law).[2] In March 1978, Orlandi became a member of PMRS by virtue of his employment with the Authority. In 1992, Orlandi suffered a work injury and the Social Security Administration subsequently determined that he was disabled. In response to Orlandi's 1995 request for a retirement estimate, PMRS in three separate letters provided him with a disability retirement estimate, an early retirement estimate and a vested retirement estimate. These 1995 estimates were provided pursuant to the 1978 pension plan and based on a termination date of July 13, 1993, and an effective retirement date of October 1, 1995. Pursuant to the benefit structure of the 1978 pension plan, the normal superannuation retirement benefit equals 1/80 times final average salary times years of service. Orlandi formally terminated his employment with the Authority in August 1999.

In March 2000, PMRS received Orlandi's application for return of contributions. At that time, Orlandi had accumulated approximately 15.28767 years of credited service and was entitled to the total sum of $55,390.06, which represented his accumulated payroll deductions plus interest. Orlandi requested that $41,116.06 be rolled over into a qualified plan and that $14,274 be refunded to him, both of which occurred. In an April 2000 letter to Orlandi, PMRS stated that, "[t]hese monies [$55,390.06] are being returned to you in lieu of any benefit" and that "[w]ith the separation of employment from your employer your eligibility to participate in the [PMRS] as an active employee is no longer permitted." Certified Record (C.R.), Item No. 8; R.R. at 85.

In November 2006, a federal arbitrator issued an opinion and award involving a dispute between the Authority and United Steel, Paper and Forestry,

[2] Act of February 1, 1974, P.L. 34, *as amended*, 53 P.S. §§ 881.101-881.501.

Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International (the union) concerning whether the Authority had agreed in a 1982 collective bargaining agreement (CBA) to increase the pension benefit accrual rate from 1/80 to 1/30. Because the 1978 pension plan was never amended to reflect the higher benefit accrual rate from the 1982 CBA and PMRS was never advised to initiate amendment of the plan to incorporate that higher rate, "[t]he arbitrator ordered the Authority to amend the 1978 Pension Plan to include 'a 1/30th multiplier for all bargaining unit employees retiring after June 1, 1985' and to 'compensate retired bargaining unit workers for the difference between the pensions they have received using the 1/80th multiplier and the 1/30th multiplier required by the [CBA] from September 1, 2004." Board's Finding of Fact No. 17.

In September 2007, the Authority and the union entered into a settlement agreement whereby they agreed to certain amendments to the 2006 arbitration award. Paragraph 4 of the agreement provided that no active collective bargaining unit members or employees hired prior to June 30, 2012, shall be entitled to pension benefits using a 1/30th multiplier for service prior to June 30, 2012. Paragraph 10 provided that, "[n]o other claims/disputes/causes of action and/or demands shall be raised by any other party regarding the pension calculation formula and/or Grievance No. 11-23-01." Board's Finding of Fact No. 20. In July 2008, the Authority, by resolution and agreement, amended the 1978 pension plan to include a supplemental annuity for the then current retirees of the Authority.[3] The other provisions of the plan remained the same.

[3] In pertinent part, Section 5 of the amended 2008 pension plan provides as follows:

> 5. Supplemental Annuity: Every member who is in receipt of a retirement allowance because of meeting the superannuation

(Footnote continued on next page…)

In a July 2009 letter to PMRS, counsel for Orlandi asserted that his client should have been credited with $147,706.82 instead of $55,390.06, based on the arbitration award. Counsel, therefore, requested that PMRS pay Orlandi $92,316.76 plus 6% interest from September 1, 2004, to be rolled over into an IRA. In January 2010, PMRS determined that Orlandi was not entitled to receive the supplemental annuity in that he was "not a retiree of the Authority's pension plan because he did not file an application for retirement at the time he terminated service; rather, he requested a refund of his contributions and interest." C.R., Item No. 8; R.R. at 130. Orlandi appealed, requesting an administrative hearing. He also sought to rescind his 2000 application for return of contributions and permission to file for either an early retirement or a disability retirement.[4] The Authority intervened and PMRS filed a motion for summary judgment, which the Board granted. In doing so, the Board denied Orlandi's request to rescind his application and receive a retirement benefit, specifically rejecting his arguments that PMRS made a mistake in calculating his benefits because it used the wrong

---

(continued…)

> retirement requirements found in Section 2 of the [1978 pension plan] or the disability retirement requirements found in Section 7 of the [1978 pension plan] shall continue to receive such annuity and beginning August 31, 2008, any such retired member who is retired as of the effective date of this agreement, known for purposes of this section as "eligible benefit recipient," shall receive an additional monthly supplemental annuity. Such supplemental annuity shall be payable under the same terms and conditions as provided under the agreement in effect as of the date of the eligible benefit recipient's retirement.

Board's Finding of Fact No. 22.

[4] PMRS's 1995 disability retirement estimate was based on a percentage of Orlandi's final average salary, not a benefit accrual rate. C.R., Item No. 8; R.R. at 73. That methodology remained unchanged in the amended 2008 plan. Board's Finding of Fact No. 23.

benefit accrual rate, that the mistake entitled him to rescind his application, and, that PMRS's determination that he was not entitled to a benefit violated his right to equal protection. Orlandi's timely appeal to this Court followed.

I

Orlandi argues that the Board erred in not permitting him to rescind his application pursuant to contract law because PMRS provided him with incorrect information. In support, he cites the basic tenet of contract law that a material misrepresentation of an existing fact confers a right of rescission upon the party who relied upon it. *See generally La Course v. Kiesel*, 366 Pa. 385, 390, 77 A.2d 877, 880 (1951). Orlandi's contract argument is without merit.

As the parties acknowledged at oral argument, this is essentially a contract dispute. Contrary to Orlandi's assertion, however, the applicable contract is the 1978 pension plan between the Authority and the Board. Under the Retirement Law, Orlandi's contractual right to receive retirement benefits derived solely from that contract and the accrual rate set forth therein was controlling at the time he made his 2000 request for a return of contributions. Section 402 of the Retirement Law, 53 P.S. § 881.402, provides, in pertinent part, that, "[i]f a municipality elects to join the system under the provisions of this Article IV, it shall first negotiate a contract with the board, acceptable to both the municipality and the board, which shall set forth all the specific details of municipal and member contribution rates and benefits." Section 403(7) of the Retirement Law, 53 P.S. § 881.403(7), provides in turn that, "[t]he contract shall specifically state the following terms and conditions: . . . 7) The formula used to determine the amount of normal retirement benefits, including an explanation of the salary or

compensation to be used in the computations, and a statement concerning any social security offset provisions included in the contract."

Further, because the Board's relationship with a member municipality arises and flows from the Retirement Law, the Board has no independent authority to change benefits or to provide additional benefits. Section 413 of the Retirement Law, 53 P.S. § 881.413, contains the formal, multi-step process for amending contracts:

> Any municipality which has joined the system under the provisions of this Article IV may, with the approval of the board, amend the contract with the board to increase any of the benefits enumerated in Article IV to its members. The board shall not enter into any amended contract with the municipality which decreases benefits, nor shall it enter into any amended contract with a municipality which provides for benefits in excess of or minimum member's contribution rates less than those available to it under any other existing law pertaining to the establishment of retirement systems for that class of municipality except to the extent that excess investment earnings are allocated to provide for additional pension benefits or members accruals as otherwise provided in this law. Before the board approves any such amended contract it shall first determine through its actuary, that the plan outlined is actuarially sound. Any member municipality which elects to enter into an amended contract for increased benefits which would result in an increase in its employes contribution rates shall first obtain the written consent of at least seventy-five per cent of its then member employes. Additional costs for increases in benefits shall become the responsibility of the municipality and/or the member as specified in the contract.

In addition, the municipality is required to enact an ordinance incorporating any amendment. Section 402 of the Retirement Law, 53 P.S. § 881.402.

Moreover, the Authority's failure to start the process of timely amending the 1978 pension plan to reflect the terms of the 1982 CBA did not create a correctable mistake in the plan. As the Board maintains, its retirement estimates were accurate when Orlandi made his 2000 decision to receive a payout of his pension contributions because the municipality, with approval from the Board, had not yet amended the 1978 pension plan. As evident from Section 413, amendment is a somewhat complex process such that institution of the terms of the CBA and/or the settlement agreement was certainly not guaranteed. In any event, the 1978 pension plan was not amended until 2008, well after Orlandi terminated his employment and withdrew his contributions.

Further, the Board is not permitted under the Retirement Law to look outside the pension plan then in effect to a CBA, for example, and use a higher benefit accrual rate. Here, because the Board was not a party to either the CBA or the settlement agreement, it was not bound by them. *Watrel v. Dep't of Educ*., 488 A.2d 378, 380 (Pa.Cmwlth. 1985), *aff'd*, 513 Pa. 61, 518 A.2d 1158 (1986) (settlement agreement between former college president and Department of Education requiring Commonwealth to agree to accept contributions for retirement vesting purposes not binding on non-party State Employees' Retirement Board). Additionally, as creature of statute, the Board can exercise only those duties given to it by the legislature. *Marinucci v. State Employees' Ret. Sys*., 863 A.2d 43, 47 (Pa. Cmwlth. 2004). Section 104 of the Retirement Law, 53 P.S. § 881.104, enumerates the general powers of the Board in thirteen specific paragraphs. Enforcement of a CBA is not one of them. It was simply not within the Board's power to make a decision regarding a benefit accrual rate outside of the four corners of the pension plan then in effect. *See Forman v. Pub. Sch. Employees'*

Ret. Bd., 778 A.2d 778 (Pa. Cmwlth. 2001) (retirement board not authorized to exercise judicial powers of equity).

Orlandi additionally maintains that pursuant to the correction of errors provision in the 2008 pension plan, the Board was obligated to correct the alleged mistake in calculating his retirement benefit. That provision provides as follows:

> Should any *mistake in records* result in any member, beneficiary or survivor annuitant receiving from the System more or less than the individual would have been entitled to had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the Board will correct the error and so far as practicable adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which the individual was correctly entitled shall be paid.

C.R., Item No. 8; R.R. at 123 (emphasis added).

The correction of errors provision in the 2008 pension plan is irrelevant and does not afford Orlandi any relief. The Board acknowledges that, despite the absence of such a provision in the 1978 pension plan, it had and continues to have a general fiduciary duty to correct errors in *its* records that would cause a member to receive more or less than he or she is entitled to receive had the record been correct.[5] Notwithstanding that duty, however, the correction of errors provision applies to a mistake in records, not in a negotiated pension plan between two parties. In other words, the Board has a duty to correct errors in its own

[5] The correction of errors provision in Section 8534 of the Public School Employees' Retirement Code, 24 Pa. C.S. § 8534, is virtually identical to the one in the 2008 pension plan. This Court has noted the Public School Employees' Retirement Board's statutory duty to correct errors in its records. *E.g., Hughes v. Pub. Sch. Employes' Ret. Bd.*, 662 A.2d 701, 707 (Pa. Cmwlth. 1995).

records, but no authority to unilaterally correct or change a contractual term in a pension plan based on a CBA or a settlement agreement to which it was not even a party.[6] Accordingly, we agree with the Board that PMRS did not provide Orlandi with incorrect information warranting a right of rescission. Rather, PMRS provided him with the accrual rate from the 1978 pension plan, which was the contract that it was legally obligated to follow.

II

Orlandi next argues that the Board violated his right to equal protection under the law by erroneously classifying him in a group that was not eligible to receive a greater retirement allowance. Noting the Board's holding that only persons currently receiving a retirement allowance were eligible to receive the supplemental annuity, he maintains that the only reason he was ineligible was due to the Board's improper refusal to order rescission of his application. He contends, therefore, that the Board's misapplication of the law improperly trapped him in an incorrect classification thereby violating his right to equal protection under the law. We disagree.

Our Supreme Court has held that the "essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly." *Kelley v. State Employees' Ret. Bd.*, 593 Pa. 487, 497, 932 A.2d 61, 67 (2007). However, the "prohibition against treating people differently under the law does not preclude the Commonwealth from resorting to classifications, provided that those classifications are reasonable rather

[6] As the Board noted in its decision, if it had unilaterally changed the 1978 pension plan, without an ordinance or contractual agreement from the Authority, the Board and PMRS could have been subject "to liability for benefits offered without requiring or providing any liability on the part of the Authority to finance those benefits." Board's Decision at 10.

than arbitrary and bear a reasonable relationship to the object of the legislation." *Id*.

As a consequence of Orlandi's decision in 2000 to receive a payout of his pension contributions, he is not in the same circumstances or classification as those individuals who are receiving a retirement allowance and, therefore, eligible for the supplemental annuity.[7] When he received those contributions, Orlandi acknowledged that his accumulated payroll deductions were being returned to him *in lieu of any benefit* and that his eligibility to participate in PMRS as an active employee ended with the termination of his employment from the Authority.

Moreover, there is no indication that the classification is unreasonable or arbitrary, especially in light of PMRS's full disclosure of the practical effect of a decision to accept a payout of one's pension contributions. Further, the classification bears a reasonable relationship to the object of the legislation, which, in pertinent part, was to create a Pennsylvania Municipal Retirement System for the payment of retirement allowances to employees of municipal authorities and to provide for administration of that system by the Board in accordance with certain

[7] Under Section 5 of the 2008 pension plan, only persons receiving a retirement allowance are eligible to receive the supplemental annuity. A "retirement allowance" is "the sum of the municipal annuity and the member's annuity . . . ." Section 102 of the Retirement Law, 53 P.S. § 881.102. A "municipal annuity" is "that portion or component of the retirement allowance computed in accordance with the formula applicable to each municipality." *Id*. A "member's annuity" is "that portion or component of the retirement allowance which is of equivalent actuarial value, at date of retirement, to the accumulated deductions of the member." *Id*.

In the present case, Orlandi chose to receive a payout of his pension contributions when he was forty years of age. Because he chose to do so before reaching the superannuation retirement age of sixty, the Board paid him "the full amount of the accumulated deductions standing to his credit in [his] member's account" in accordance with Section 207(a) of the Retirement Law, 53 P.S. § 881.207(a). A "member's account" is "the account to which shall be credited the payroll deductions and other contributions, plus interest, if any, of the members." Section 102 of the Retirement Law. Due to his decision, Orlandi did not receive the municipal annuity.

statutory duties. Section 101 of the Retirement Law, 53 P.S. § 881.101, Historical and Statutory Notes. In conclusion, there is simply no basis to sustain an equal protection challenge.

For the above reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Eugene L. Orlandi, Petitioner	:	
v.	:	No. 2355 C.D. 2011
Pennsylvania Municipal Retirement Board, Respondent	:	

O R D E R

AND NOW, this 11th day of October, 2012, the order of the Pennsylvania Municipal Retirement Board is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge