THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC **SUPERIOR COURT**

(FILED: DECEMBER 15, 2011)

BERNARD BEAUCHEMIN, ROBERT GREGORY, RICHARD GUDZ, MILTON CAREY, LUCIEN OUELLETTE, DONALD GOSSELIN, PHILIP DUARTE, GERRY MENARD, RAYMOND MERCIER, DOUGLAS CONNELL, NORMAND GAMACHE, CHARLES ALLARD, MICHAEL SWEENEY, ROGER FREDETTE, J., KEVIN MCKENNA, RONALD PENNINGTON, R. BRUCE MACULAN, EDMUND HARPIN, OSCAR SEVIGNY, OMER FRAPPIER, HAROLD MARZINI, DONALD BEAUREGARD, GERARD BRULE, RAYMOND LEMOINE, WILLIAM MACK, RODNEY REMBLAD, RICHARD DEZIEL, PAUL SAN SOUCI, MICHAEL RICHARDSON, DIANE BROWN, BRIAN KANE, MICHAEL HOULE, DAVID CREPEAU, RICHARD FLOOD and JOHN DOES, Alias, (unknown retirees)	:	
V.	:	**C.A. No. PC 10-2066**
CITY OF WOONSOCKET, SUE ELLEN BEALS, in her capacity as Treasurer of The City of Woonsocket, and LEO T. FONTAINE, in his capacity as mayor of the City of Woonsocket,	:	

DECISION

GALLO, J. The Plaintiffs in this case are members of the Woonsocket Police Department having retired on or after July 1, 1981, all over the age of 65. Plaintiffs seek a permanent injunction ordering the Defendant City of Woonsocket (the City) to provide

them with dental insurance coverage. Plaintiffs rely on several collective bargaining agreements and the facts and circumstances surrounding their relationship with the City in support of their argument. The Court has jurisdiction pursuant to R.I. Gen. Laws 1956 §§ 8-2-13 and 9-30-1, 2.

I.

Facts and Travel

The facts in this case span more than twenty years of relations between Plaintiffs and the City, and several collective bargaining agreements; however, the actual starting point here is the parties' July 1, 2002 collective bargaining agreement (2002 CBA), currently in force between the parties regarding healthcare benefits. (Agreed-Upon Statement of Facts, ¶ 8.) Section IV of the 2002 CBA defines their healthcare benefits as follows:

> "4.1 The City shall pay the entire cost, including family coverage, applicable where an employee has a family within the Blue Cross definition, for its employees on active service in City employment, in the comprehensive semi-private plan of the Rhode Island Hospital Service Corporation (Blue Cross) with 365 days coverage; full semi-private maternity and out-patient medical emergency coverage; and the Rhode Island Blue Shield Physician's Service, Plan 100 comprehensive, including 365 days in hospital visits, full obstetrical diagnostic out-patient x-ray and laboratory coverage (J.U. #2), a $1,000,000 major medical police coverage with a $75.00 annual deductible per member . . . *The City shall also pay for Delta Dental levels I, II, III, IV Family plan.*
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> 4.2 The City shall pay the entire cost of Major Medical, plus student rider coverage, and $2 co-pay drug program, for all members of the IBPO Local 404 on active service in city employment and including those members placed on *disability or retirement pension after July 1, 1990.*
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> 4.3 If an active member of the Police Department with at least one (1) year of service dies, his immediate family at the time of his death shall continue to receive Blue Cross and Physician's Service at the expense of the City until the spouse remarries and/or the children reach age nineteen (19) if not attending college or twenty-three (23) if attending college; provided however, that said coverage may be temporarily suspended by

> the City in avoidance of dual coverage if equal or greater benefits are provided by any employer of said widow and/or child(ren).
>
> 4.5 The City shall pay the entire cost, including family coverage, applicable where an employee has a family within the Blue Cross definition, for an employee, covered by this agreement, placed on disability or retirement pension list after July 1, 1981, and the semi-private plan of the Rhode Island Hospital Service Corporation (Blue Cross) and also the Rhode Island Medical Society Physician's Service Plan 100 in accordance with the rules and regulations of such corporation. The City shall pay the cost of Major medical for said retirees . . . ." (Exhibit 11, Agreement between City of Woonsocket and IBPO Local 404, July 1, 2002.) (Emphasis added).

The language contained in the 2002 CBA is virtually identical, except for changes in co-pay amounts, to the language contained in the parties' July 1, 1990 collective bargaining agreement (1990 CBA). Both agreements state the City will provide Delta Dental coverage for its employees. Compare id., and (Exhibit 1, Agreement Between City of Woonsocket and Fraternal Order of Police, Lodge #9, July 1, 1990.)

It is undisputed that the City provided dental coverage to all members of the Woonsocket Police Department, who retired after July 1, 1981 regardless of age up until June 30, 2009. A review of collective bargaining agreements between the City and Plaintiffs prior to the 1990 CBA shows that the first time language regarding dental coverage was included in an agreement was in 1981. (Exhibit 4, Agreement Between City of Woonsocket and Fraternal Order of Police, Lodge #9, July 1, 1981.) This language was then included in every agreement between the City and Plaintiffs' authorized bargaining agent[1] from 1981 through the 2002 CBA. See (exhibit 4, Portions of Relevant Collective Bargaining Agreements.)

[1] The Court notes that the Fraternal Order of Police, Lodge #9 represented the Plaintiffs throughout the 1970's and 80's and through the 1990 CBA. However, the International

A dispute over several issues arose between Plaintiffs' authorized bargaining agent and the City during the negotiation of the collective bargaining agreement for the contract term beginning July 1, 1995 and ending June 30, 1996. (Exhibit 6, Arbitration Decision at 2.) This dispute forced the City and the Plaintiffs' bargaining agent to resort to arbitration. Among the sticking points that led to the arbitration were proposed changes to the provisions contained in the 1990 CBA regarding healthcare. Id. at 24-28. The City's proposed changes would have added the following language to sections 4.1 and 4.5 of the 1990 CBA: "Effective July 1, 1995, the City shall supplement medical entitlement to Retirees and Spouses by Blue Cross Plan 65 *and Dental Coverage will be eliminated*." Id. at 25 (emphasis added).

The arbitration panel rejected the City's proposed language stating, "[t]he majority of the panel cannot, in good conscience, alter or amend [these] 'expectation' privileges and benefits." Id. at 28. As a result of the arbitration panel decision, the 1990 version of sections 4.1 and 4.5 was retained and the City continued to provide dental coverage to retirees regardless of age until June 2009. On June 5, 2009, the City notified Plaintiffs that the City would no longer provide Delta Dental coverage to retirees over the age of sixty-five, effective July 1, 2009. (Agreed-Upon Statement of Facts, ¶ 10.) The parties then instituted a class action grievance co-signed by Lieutenant Adam Remick, Vice President of the IBPO on July 6, 2009. Id. at ¶ 11.

The Chief of Police did not respond to the grievance within the allotted time, and it was submitted to the City's personnel board. Id. at ¶ 13. On August 24, 2009, the Plaintiffs notified the city solicitor that the grievance would proceed to arbitration

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Brotherhood of Police Officers, Local 404 became their recognized bargaining agent in 1996. (Agreed-Upon Statement of Facts, ¶¶ 4-5.)

because the personnel board had not scheduled a hearing in accordance with the grievance procedure. Id. ¶ 17. However, the arbitration never occurred because it was placed in abeyance at the request of the IBPO on November 20, 2009. This lawsuit followed on April 6, 2010. Id. at ¶ 18-19.

A preliminary injunction was entered in favor of the Plaintiffs by the Superior Court, Lanphear, J., in July 2010. Justice Lanphear found that Plaintiffs left city service with the expectation that they would continue to receive dental benefits and that their right to the dental benefits vested upon their retirement. The Justice Lanphear concluded that the Plaintiffs had shown a likelihood of success on the merits.

II.

Arguments of the Parties

The Plaintiffs seek a permanent injunction enjoining the City from depriving them of their "vested rights to receive dental benefits." Plaintiffs also request that this Court enter a declaratory judgment that "the City acted unlawfully and in derogation of [Plaintiff's] constitutional rights when it ceased to provide dental benefits . . . . " (Pl.'s Mem. of Law in Resp'n to Def.'s Mem. of Law in Opp'n to Pl.'s Prayer for Decl. & Inj. Relief, at 1-2.)

The Plaintiffs explain that the 1990 CBA is the pivotal agreement in this case, and that it clearly provides dental benefits to all individuals who retired from the Woonsocket Police Department on or after July 1, 1981 regardless of age. Id. at 2. Plaintiffs contend that the plain language of Section IV of the agreement (quoted in the previous section) supports this argument because it refers to active and retired employees interchangeably. Id. Relying on Webster v. Perrotta, 774 A.2d 68, 87-88 (R.I. 2001), Plaintiffs correctly

assert that when interpreting the terms of a collective bargaining agreement, courts must follow the general principles of contract law. Under the principles of contract law, the language in a contract is considered the best indication of the parties' intent. Furthermore, the Plaintiffs, relying on Colonial Penn Insur. Co. v. Mendozzi, 488 A.2d 734, 736 (R.I. 1985), argue that the instrument must be considered as a whole. Id. at 3. Therefore, they submit that when considered as a whole, the language of the 1990 CBA clearly and unambiguously provides them with dental benefits. Id. Alternatively, Plaintiffs contend that if the contract language is found ambiguous, the circumstances surrounding the agreement demonstrate the intent of the parties to require the City to provide them with dental benefits. Id.

The City responds by arguing that the language of the provisions cited by Plaintiffs clearly and unambiguously demonstrates that retirees are not entitled to dental benefits. (Def.'s Mem. of Law in Opp'n to Pl.'s Prayer for Declaratory & Injunctive Relief, at 3.) More specifically, the City points out that the language of Section 4.1, which contains the only reference to dental coverage, refers only to active employees. Id. The City argues that Sections 4.2 and 4.5 are the sole provisions extending healthcare coverage to retirees, and that these provisions do not provide for dental coverage. Id.

The City contends that Plaintiffs' request for a declaratory judgment must fail because they do not have a vested property right to dental benefits under the agreement. Id. at 4-5. The City also notes that Plaintiffs raised an argument that a municipality cannot repeal a provision in a collective bargaining agreement by ordinance. Id. at 5. The City contends that the Plaintiffs' argument – that a municipality cannot repeal a

provision in a collective bargaining agreement by ordinance – fails because it is applying the clear and unambiguous language of the 1990 and 2002 CBA. Id.

Plaintiffs contend that the law of the case doctrine applies here because the issue at the preliminary injunction stage before Justice Lanphear is the same as the issue now before this Court. (Pl.'s Mem. of Law in Resp'n to Def.'s Mem. of Law in Opp'n to Pl.'s Prayer for Decl. & Inj. Relief, at 5.) More specifically, they contend that Justice Lanphear addressed the issue of whether the 1990 and 2002 CBA provided dental benefits to retirees, which they assert is the primary issue here. Id. The City contends the law of the case doctrine is inapplicable, because Justice Lanphear did not consider whether a municipality's correct application of a collective bargaining agreement creates a property right in individuals who previously benefited from an incorrect application of the agreement, an issue they assert is now in dispute. (Def.'s Mem. of Law in Opp'n to Pl.'s Prayer for Declaratory & Injunctive Relief, at 6.) The Court does not believe the law of the case doctrine applies here. However, it is unnecessary to discuss this issue further given the view taken by the Court on the underlying contractual issue.

III.

Analysis

The Rhode Island Uniform Declaratory Judgments Act authorizes this Court to interpret the meaning of a contract and enter a declaration regarding the "rights, status or other legal relations thereunder" at the request of a party to an agreement. G.L. 1956 § 9-30-2. A declaration entered by this Court will have the effect of a final judgment. Sec. 9-30-1. Granting injunctive relief in addition to a declaratory judgment is generally not permissible. Travelers Ins. Co. v. Nastari, 94 R.I. 55, 64, 177 A.2d 778, 783 (R.I. 1962). However, a claim for injunctive relief may properly be joined with a claim for

declaratory relief under Super R. Civ. P. 18 & 20. Parente v. Southworth, 448 A.2d 769, 772 (R.I. 1982).

Plaintiffs have properly joined their claim for injunctive relief with their claim for a declaratory judgment. Therefore, this Court will now determine the rights of the parties. The language of the 2002 and 1990 CBAs provides little guidance on the issue of dental benefits. In this case, a review of all the facts and circumstances surrounding the formation of the 1990 and 2002 CBAs as well as the ongoing relationship between Plaintiffs and the City is warranted. After a thorough review of the evidence, the Court finds that the facts and circumstances surrounding the relationship between Plaintiffs and the City, and the formation of the CBAs supports the formation of an implied in fact contract.

An implied in fact contract arises when the parties to an agreement have not expressed their intent, but an agreement creating an obligation may nonetheless be inferred from their actions. Bailey v. West, 105 R.I. 61, 64, 249 A.2d 414, 416 (1969). All the elements of an express contract are required to create an implied in fact contract. Id. The "essential elements of contracts implied in fact are mutual agreement [between the parties], and intent to promise, but the agreement and the promise [are not] made in words and are implied from the facts." Id. Furthermore,

> "Such a contract does not arise out of an implied legal duty or obligation, but out of facts from which consent may be inferred; there must be a manifestation of assent arising wholly or in part from acts other than words, and a contract cannot be implied in fact where the facts are inconsistent with its existence." Id.

The Supreme Court of Rhode Island first considered the creation of an implied in fact contract in Bailey. In that case, the defendant horse owner purchased a race horse

that was found to be lame. Id. at 415. The defendant ordered the horse returned to the seller who refused delivery. Id. The animal was then brought to the plaintiff's farm and plaintiff cared for the horse for several years. Id. He then sued to recover the cost of caring for the horse. Id. The plaintiff knew there was a dispute over the horse's ownership, and he did not know with whom he had a contract. Furthermore, the defendant had not given instructions to have the horse brought to plaintiff's farm and had never had a business transaction with the plaintiff. Id. at 416. On these facts, the Supreme Court found a lack of intent to contract and held that an implied in fact contract was not created.

Similarly in Kenny Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203, 209 (R.I. 1994), the court found an implied in fact contract was not created due to a lack of mutual intent to contract. In Kenny, the plaintiff telephoned his insurance broker to inquire about obtaining an insurance policy rider for an offshore sailing race. Id. at 205. The only communication between the parties in that case was a telephone message in which the plaintiff informed the defendant he wished to discuss obtaining the insurance policy. The court reasoned that no inference of intent to contract could possibly be drawn from the facts before it. Id. at 209.

The Court finds that the facts in the present dispute support an inference of a mutual intent to contract on the part of Plaintiffs and the City. The various CBAs were negotiated and agreed to by the City and the Plaintiffs' authorized bargaining agents, showing a meeting of the minds. See Opella v. Opella, 896 A.2d 714, 719-20 (R.I. 2006) (finding a contract was not formed where the parties negotiated, but never reached a final agreement). The record establishes that prior to the negotiation of these agreements, the

City had an ongoing practice of providing dental benefits to members of the police department that retired after July 1, 1981 regardless of age. Cf. Landmark Med. Ctr. v. Gauthier, 645 A.2d 1145, 1148 (R.I. 1994) (holding that providing medical services can create an implied in law or quasi contract). Perhaps most important, is the fact that the dental benefits were provided through the negotiation of the 1990 CBA until June, 2009.

The City's attempt to add language expressly revoking dental benefits for retirees to Paragraphs 4.1 and 4.5 of Section IV of the 1990 CBA in 1995, and the successful challenge mounted by the Fraternal Order of Police Lodge #9 (the FOP) is strong evidence that the City had agreed to provide dental benefits to retirees. See Bailey, 249 A.2d at 416 (holding an implied in fact contract did not exist absent evidence of an intent to contract). Notably, the arbitrator expressly acknowledged that a bargained for exchange had occurred when he said "[t]he majority of the panel cannot, in good conscience, alter or amend [these] 'expectation privileges and benefits." (Exhibit 6, Arbitration Decision at 28.)

Although the Court has no information concerning the actual negotiations between the FOP and later the International Brotherhood of Police Officers (IBPO) on behalf of the Plaintiffs, the circumstantial evidence in this case establishes a mutual agreement between the parties. See Kenny, 643 A.2d at 209 (holding an implied in fact contract was not created when one party expressed an intent to contract, and the other party never responded). Therefore, the Court holds that the essential elements of an implied in fact contract are present in this case. This implied contract imposes a duty on the City to provide dental benefits to the Plaintiffs. The City breached this agreement by unilaterally ceasing payment to retirees over the age of 65 in June 2009.

IV.

Conclusion

After reviewing the contractual language contained in the CBAs between the City and Plaintiffs and the circumstances surrounding the agreements, the Court declares that the City has an implied obligation to provide Plaintiffs with dental benefits regardless of age. Furthermore, the Plaintiffs' requested permanent injunction ordering the City to provide them with dental benefits is granted. Counsel shall submit an appropriate judgment for entry.