

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 18, 2018)

TOWN OF WARREN
Plaintiff

v.

MICHAEL J. CLANCY
Defendant

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C.A. No. PC-2015-4826

DECISION

LICHT, J. Plaintiff—the Town of Warren (Town or Plaintiff)—seeks declaratory relief from providing Injured on Duty (IOD) benefits to the Defendant—Detective Michael J. Clancy (Detective Clancy or Defendant). Plaintiff requests declaratory judgments that (1) the Defendant is improperly receiving IOD benefits instead of retirement benefits; (2) the Town is not obligated to continue paying these benefits to Defendant; and (3) in the alternative, if this Court finds that Defendant is entitled to IOD benefits, Defendant is eligible to be moved to a retirement plan.¹ In essence, the Plaintiff wants the Court to declare that the Town can terminate Detective Clancy’s IOD benefits. Jurisdiction is pursuant to G.L. 1956 § 9-30-1, the Uniform Declaratory Judgments Act.

¹ The Town raised two additional claims in its Complaint that are not addressed in either its memorandum or reply memorandum. These claims are deemed waived because “without a meaningful discussion thereof or legal briefing of the issues” there is no means to focus the Court on the legal questions raised. *Wilkinson v. State Crime Lab. Comm’n*, 788 A.2d 1129, 1131 n.1 (R.I. 2002).

I

Facts and Travel

First, the Court adopts and incorporates in its entirety the Stipulated Facts submitted by the parties.

The salient facts are as follows:

Detective Clancy has been employed as a permanent, full-time police officer for the Warren Police Department since December 16, 1986. Stipulated Facts at ¶¶ 2-3. The Plaintiff is a participating municipality and the Defendant is an active member in the police officer and firefighter's retirement plan of the Municipal Employees Retirement System (MERS) administered by the Employees' Retirement System of Rhode Island (ERSRI). *Id.* at ¶ 4.

On January 29, 1998, while at work, the Defendant experienced pain in his back and legs and was sent home. *Id.* at ¶ 5. Shortly after that date, Defendant was admitted to Roger Williams Hospital and diagnosed with a spinal epidural abscess stemming from a staphylococcal infection, which rendered the Defendant unable to perform his duties as a police officer. *Id.* at ¶¶ 6-7. Following this diagnosis, Defendant has been permanently disabled and unable to perform his duties as a police officer. *Id.* at ¶ 11. Nonetheless, the Plaintiff continues to pay the Defendant IOD benefits pursuant to the injured on duty statute under G.L. 1956 § 45-19-1. *Id.* at ¶ 10.

On October 23, 1998, Defendant applied for an accidental disability pension with the ERSRI pursuant to § 45-21.2-9.² *Id.* at ¶ 12. On December 1, 2000, while the Defendant's

² The forms of retirement that the State Retirement Board which governs MERS can grant are (1) a retirement on service allowance (for when the member has worked for a specified number of years or attained a given age); (2) a retirement on accidental disability (for when the member has become disabled due to an on-the-job injury in which case the retiree receives 2/3 of his/her pay; or (3) a retirement on ordinary disability (for when the member has become disabled, but the State Retirement Board does not find that the injury was suffered on-the-job) in which case the retiree receives 1/2 of his/her pay.

application was pending with the ERSRI, the Plaintiff informed the Defendant that it would be terminating his IOD benefits. *Id.* at ¶ 13. In response, Defendant filed an action to enjoin the Town’s purported obligation to continue paying his IOD benefits under § 45-19-1 and sought a temporary restraining order. *Id.* at ¶ 14. On December 21, 2000, following the hearing, the Court granted Defendant’s motion for a temporary restraining order enjoining the Town from the cessation of salary and benefits payable to the Defendant pursuant to the IOD statute. *Id.* at ¶ 15. A hearing on preliminary or permanent injunction was never held. *Id.* at ¶ 16.

On February 22, 2001, the Town filed a third party complaint and petition for a writ of mandamus against the ERSRI and requested that the Court direct ERSRI to grant the Defendant an accidental disability retirement. *Id.* at ¶ 17. On June 6, 2002, the Court denied the Plaintiff’s petition for a writ of mandamus. *Id.* at ¶ 20. On January 3, 2012, the Court dismissed Plaintiff’s petition for a writ of mandamus. *Id.* at ¶ 23.

On April 11, 2001, ERSRI denied Defendant’s application for an accidental disability pension and found that Defendant’s disability was not work-related under G.L. 1956 § 36-10-14(a). *Id.* at ¶ 18. The standards for work-related injuries under the IOD statute and the accidental disability pension statute are different.³ On May 25, 2001, the Defendant appealed ERSRI’s decision, and the Plaintiff joined the Defendant as a co-appellant. *Id.* at ¶ 19. On June 5, 2003, the Superior Court affirmed ERSRI’s decision to deny Defendant’s application based on

³ For IOD benefits, an infection that “develops or manifests itself as a result of the exposure during a period while . . . [a] police officer [was] in the service of the department . . .” is presumed to be work related and thus entitles an officer to IOD benefits. G.L. 1956 § 23-28.36-4. In contrast, there is no such presumption for infections under the accidental disability pension statute. In order to qualify for an accidental disability pension, a police officer must show that he or she is (1) physically or mentally incapacitated for the performance of service and (2) that the incapacity is the “natural and proximate result of an accident while in the performance of duty.” Sec. 36-10-14(a). In addition, the officer is required to “certify the definite time, place, and conditions of the duty performed. . . [that] result[ed] in the alleged disability. . . .” *Id.*

the same conclusion: Defendant's disability was not work-related for accidental disability pension purposes under § 36-10-14(a). *Id.* at ¶ 22.

On July 28, 2008, the Town entered into a Collective Bargaining Agreement (CBA) with the International Brotherhood of Police Officers Local #470 (the Union). Pl.'s Mem., Ex. A at 1. The Town and IBPO added a provision to the CBA that requires an officer to apply for disability pension with the State Retirement Board if he or she (1) collects IOD benefits for more than 365 days and (2) receives a medical opinion that he or she is unlikely to return to work within 180 days of the first 365 days.⁴ *Id.* at Art. X, § 10.01(L). In addition, the Town and IBPO entered into a Memorandum of Understanding (MOU), which stated that new legislation would be necessary to address situations when IOD status police officers are denied a disability pension. Pl.'s Mem., Ex. B.

On January 3, 2012, Defendant's action to enjoin the Town from terminating his IOD benefits was dismissed. Stipulated Facts at ¶ 23. Defendant continues to receive IOD benefits. *Id.* at ¶ 24.

II

Standard of Review

“It is well established in this state that a necessary predicate to a court's exercise of its jurisdiction under the Uniform Declaratory Judgments Act is an actual justiciable controversy. A declaratory-judgment action may not be used ‘for the determination of abstract questions or the rendering of advisory opinions,’ *Lamb v. Perry*, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967), nor does it ‘license litigants to fish in judicial ponds for legal advice.’” *Sullivan v. Chafee*, 703

⁴ The ERSRI provides two types of disability pensions. Accidental disability pension provides benefits to police officers injured “while in the performance of duty.” Sec. 45-21.2-9. Ordinary disability pension provides benefits to police officers with injuries that did not occur in the line of duty. Sec. 45-21.2-8.

A.2d 748, 751 (R.I. 1997) (quoting *Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)).

The decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary. *Sullivan*, 703 A.2d at 751 (citing *Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm.*, 694 A.2d 727, 729 (R.I. 1997); *Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I. 1998)). A party may be entitled to declaratory relief even though alternative methods of relief are available. *Taylor v. Marshall*, 119 R.I. 171, 180, 376 A.2d 712, 717 (1977).

III

The Court must wrestle with the questions of whether this case presents a justiciable controversy between the Town and Detective Clancy and whether it should exercise its discretion.

A

The 2008-2011 CBA

While employed and on duty as a full-time police officer for Warren, Defendant experienced pains in his back and legs and was deemed unable to perform his duties as a police officer. Defendant then applied for and was denied an accidental disability pension in 1998. Subsequently, the Town and the Union entered into a CBA for the years 2008-2011 (the 2008-2011 CBA). Article X, § 10.01 titled "Sick Leave," paragraph L reads:

"Any Officer who is on IOD for a period of time exceeding three hundred sixty five (365) days, and receives a medical opinion that it is unlikely that he or she will be able to return to work within one hundred eighty (180) days from the expiration of the initial three hundred sixty five (365) day IOD period, shall apply for a disability pension with the Employee Retirement System for the State of Rhode Island. Local 470 and the Town of Warren will enter into a Memorandum of Understanding regarding police

officers denied a disability pension by the Employee Retirement System for the State of Rhode Island.” Pl.’s Mem., Ex. A at Art. X, § 10.01(L).

The Plaintiff argues Defendant was required to apply for an ordinary disability pension under the 2008-2011 CBA terms, notwithstanding the decision that denied his accidental disability pension. In response, Defendant argues he complied with the applicable terms of the 2008-2011 CBA by applying for an accidental disability pension and is not also required to apply for an ordinary disability pension.

Shortly after the 2008-2011 CBA was formulated, the Town and the Union executed an MOU that agreed to the following:

“Both the Union and the Town understand and acknowledge that a serious problem has arisen when police officers who are on injured on duty (IOD) status apply for a disability pension with the Employee Retirement System of Rhode Island and are denied such a pension. Both the Union and the Town agree that the most effective way of dealing with this problem is by the enactment of legislation by the Rhode Island General Assembly that would cover this issue statewide. In light of this both the Union and the Town agree that they will work diligently to draft proposed legislation addressing this issue and make all reasonable efforts to amend the laws of the State of Rhode Island to specifically address the situation where a police officer on IOD status applies and is denied a disability pension.” Pl.’s Mem., Ex. B.

The Court must first interpret this provision of the 2008-2011 CBA. “The determination of whether a contract’s terms are ambiguous is a question of law” *High Steel Structures, Inc. v. Cardi Corp.*, 152 A.3d 429, 433-34 (R.I. 2017) (quoting *JPL Livery Servs., Inc. v. R.I. Dep’t of Admin.*, 88 A.3d 1134, 1142 (R.I. 2014)). “When there is only one reasonable interpretation of a contract, the contract is deemed unambiguous.” *Roadepot, LLC v. Home Depot, U.S.A., Inc.*, 163 A.3d 513, 519 (R.I. 2017) (citing *Botelho v. City of Pawtucket Sch. Dep’t*, 130 A.3d 172, 176 (R.I. 2016)). “The court should consider ‘whether the language has

only one reasonable meaning when construed . . . *in an ordinary, common sense manner.*” *Id.* (quoting *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 63 (R.I. 2005)). Furthermore, ““in situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.”” *Botelho*, 130 A.3d at 176-77 (quoting *JPL Livery Servs.*, 88 A.3d at 1142).

There is definitely an ambiguity in both the 2008-2011 CBA and the MOU. Section 45-21.2-7 is entitled “Retirement for Ordinary Disability.” Section 45-21.2-10 refers to “retirement allowance for accidental disability.” The Court could not find, nor did the parties identify, any provision of the Rhode Island General Laws that mentions “disability pension.” This Court can construe the 2008-2011 CBA provision to have more than one reasonable meaning. It could mean that an officer on IOD only has to apply for either an accidental disability or an ordinary disability allowance. Alternatively, it is not unreasonable to argue as the Town does that it means that a police officer on IOD must pursue both.

In order to resolve what was intended by the term “a disability pension,” the Court would need extrinsic evidence, which was not provided. Moreover, the Town has pointed out that Detective Clancy can retire on service allowance, thereby requiring compliance with the 2008-2011 CBA moot. For those reasons, the Court declines to exercise its discretion to declare that Detective Clancy failed to comply with the 2008-2011 CBA and that such failure affords the Town the right to terminate his retirement benefits.

B

Can the Town Mandate Retirement?

Although not able to perform his police officer duties for the Town since 1998, the Defendant has received IOD payments, which equals a full employment salary. The Town argues the Defendant should no longer receive IOD benefits because the IOD statute is not a retirement

statute, and the Defendant is eligible for retirement. In response, Defendant argues that he continues to be a member of the police department and therefore remains eligible for the benefits under the IOD statute. Further, the Town and Defendant also disagree as to whether Defendant has attained the maximum benefits available for his retirement.

Detective Clancy contends that the case of *Brissette v. Potter*, 560 A.2d 324 (R.I. 1989) supports his contention that the Town cannot terminate his IOD benefits. The Town contends that *Brissette* was “seriously called into question by . . . *Webster v. Perotta*, 774 A.2d 68 (R.I. 2001)” and “effectively overruled by the case of *Elliott v. Town of Warren*, 818 A.2d 652 (R.I. 2003).” (Pl.’s Reply Mem. at 2).

In *Brissette*, the Burrillville Town Council terminated the employment of a police officer receiving IOD benefits and expressed a willingness to place the officer on a disability insurance program that provided for payment to the officer of two-thirds of his salary. The Court found § 45-19-1 to be clear and unambiguous and held that the officer was entitled to his salary. This Court’s reading of *Webster* does not comport with that of the Town. In *Webster*, the police officers seeking IOD benefits had been retired for a number of years and were collecting retirement benefits. The Supreme Court distinguished *Brissette* and emphasized with italics the words “terminated” and “voluntary.” *Webster*, 774 A.2d at 81. Similarly, *Elliott* offers no guidance for this case. Officer Elliott was terminated and he accepted a disability pension for nearly ten years. The Supreme Court reaffirmed its contention that § 45-19-1 is not a retirement statute and therefore denied IOD benefits to a former officer who was collecting retirement benefits. The Supreme Court while citing numerous cases never refers to *Brissette* so this Court cannot conclude that it has been “effectively overruled.”

Detective Clancy has neither been terminated nor has he retired. As such, this Court does not believe there is a justiciable controversy. The Town is asking this Court if they can terminate him. This Court believes that to answer that question would be to render an advisory opinion. If the Town were to terminate Detective Clancy, he might (although the Court is not deciding whether he is) be entitled to have an arbitrator rather than a judge decide the legitimacy of that action.

In the absence of a justiciable controversy, the Court will not declare that the Town can or cannot terminate Detective Clancy or his IOD benefits.

C

Sec. 45-19-19

While musing during oral argument, the Court raised the issue whether § 45-19-19 provided a solution to the Town's concerns. That statute provides as follows:

“The city or town councils of the various cities and towns may provide, by ordinance or through collective bargaining, for the retirement of the personnel of their police and fire departments who have been on leave of absence from their employment due to sickness contracted or injuries sustained in the performance of their duties; provided, that no ordinance is contrary to any pension cost of living increase or escalator clause in a collective bargaining agreement, and provided, further, that no ordinance provides for a disability retirement allowance of less than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of a retiree's annual salary at the time of retirement nor more than one hundred percent (100%) of a retiree's annual salary.”

After oral argument, the parties provided memoranda on this question. Not unexpectedly, they responded differently. In sum, the Town contends that it can pass such an ordinance and then involuntarily retire an officer on IOD. The Defendant contends that this statute only applies to those towns not in the MERS system and, since the Town participates in MERS, the statute is not applicable.

Since the Town has not enacted such an ordinance, the Court would be rendering an

advisory opinion on whether it can do so. Therefore, the Court will not exercise its discretion to decide whether § 45-19-19 is a vehicle for the Town to terminate Detective Clancy.

IV

Conclusion

For the reasons stated above, this Court denies the Town's requests for declaratory judgment. Counsel shall prepare the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Town of Warren v. Michael J. Clancy

CASE NO: PC-2015-4826

COURT: Providence County Superior Court

DATE DECISION FILED: April 18, 2018

JUSTICE/MAGISTRATE: Licht, J.

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