

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR H. BUCHHOLZ,
Plaintiff-Appellee,

UNPUBLISHED
October 13, 2005

v

CITY OF LIVONIA,

Defendant,

No. 262171
Wayne Circuit Court
LC No. 04-405168-CZ

and

LIVONIA EMPLOYEES' RETIREMENT
SYSTEM,

Defendant-Appellant.

Before: Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's grant of plaintiff's motion for summary disposition. We reverse. This declaratory action arose over defendant's¹ decision to offset from plaintiff's retirement pension \$46,000 in medical benefits it paid on plaintiff's behalf. Defendant claimed that plaintiff erroneously received medical insurance free of charge, contrary to his collective bargaining agreement with the City of Livonia.

Plaintiff was born on January 22, 1938, and began working with the city's fire department on February 2, 1959. Plaintiff voluntarily resigned from duty on July 10, 1978, but he had worked there long enough to receive vested pension benefits from the city when he reached age fifty-five. MCL 38.556(1)(d).² As plaintiff approached fifty-five years of age, he

¹ For the sake of simplicity, the term "defendant" refers only to defendant-appellant Livonia Employees' Retirement System, and the City of Livonia is referred to by name.

² The record reflects that the city credited plaintiff with nineteen years and five months of service when his date of hire and date of resignation only reflect nineteen years of service. This raises the question of plaintiff's status at the time he left the department and his last official date of
(continued...)

sent a letter to defendant requesting disclosure of his benefits and offering to fill out any necessary paperwork. The return correspondence explained that plaintiff could obtain group medical insurance, but that he must pay the premiums for the coverage because he was under the age of sixty-five. The letter was signed by defendant's secretary and personnel director. The secretary also filled out a form for the calculation of plaintiff's pension that listed his retirement date as February 1, 1993.

In late December 1995, plaintiff called defendant to inquire about the cost of enrolling in defendant's medical insurance program. Plaintiff contacted defendant again in January 1996, and was told that he had been enrolled in the program at no cost to him. Defendant paid plaintiff's premiums for six years before it investigated and determined that it had been paying them erroneously. Defendant then demanded repayment of \$46,000 in paid benefits, and when plaintiff failed to pay them, amortized the debt over plaintiff's life expectancy and reduced his pension benefits accordingly. Plaintiff sued to force defendant to pay him the full amount of his pension benefits.

The trial court applied language it found in a 1993 bargaining agreement that expressly governed firefighters who retired that year. That contract required defendant to incur the cost of plaintiff's medical insurance if he retired between December 1987 and November 1995. The trial court found that plaintiff's official retirement date was the date that he first became eligible for retirement benefits, February 1, 1993.³ Accordingly, the trial court held that defendant was responsible for the cost of providing plaintiff with health insurance. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff's pension and retirement benefits are controlled by the contract that was in effect at the time he left his employment with the city. Later changes to retirement benefits did not alter defendant's duties to him under the 1978 contract. See *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 69; 214 NW2d 803 (1974). Contractual changes to retiree benefits were not mandatory bargaining issues because they did not affect current employees, *West Ottawa Ed Ass'n v West Ottawa Bd of Ed*, 126 Mich App 306, 311-312; 337 NW2d 533 (1983), and plaintiff was only privy to the contract in effect on his last day of work, not the contract in effect fifteen years later. *Allied Chemical & Alkali Workers of America, Local Union No 1 v Pittsburgh Plate Glass Co*, 404 US 157, 181-183; 92 S Ct 383; 30 L Ed 2d 341 (1971). Therefore, the trial court erred when it looked to the 1993 contract to determine plaintiff's health insurance benefits.

Nevertheless, mending this error does not automatically lead to a contrary result. The 1978 contract states, "Employees who retire on or after December 1, 1978, below the age of 65, shall be eligible to participate in the hospitalization-medical programs This coverage shall

(...continued)

service. If plaintiff can demonstrate that defendant negotiated a severance agreement in which he qualified as an employee who retired after December 1, 1978, then the entire complexion of this case would change. We leave the trial court to resolve this and all other factual issues.

³ We note that the date plaintiff became eligible for retirement benefits is set by statute and has no bearing on when plaintiff actually "retired" for the purposes of the contract or any other practical purpose. MCL 38.556(1)(d).

include the retiree, spouse, and dependent children The entire cost of these programs will be borne by the City.” The trial court based its holding on remarkably similar language in the 1993 contract, basing its decision on plaintiff’s official retirement date of February 1, 1993. This language differs, however, with immediately preceding language that states, “Retirees below the age of 65 may participate in the hospitalization-medical programs . . . at reduced group rates, the entire cost of which will be borne by said retirees.”

Without more facts, we must conclude that the trial court erred when it granted plaintiff summary disposition. Plaintiff was not an “employee” who retired after December 1, 1978. Based on the current record, he was not an employee at all on December 1, 1978. The 1978 and 1993 contracts apparently draw a distinction between simple retirees and employees who retire, i.e. from service with the fire department. This is likely due to the fact that MCL 38.556 requires municipalities to provide vested retirement benefits for firefighters and police officers who have served ten years regardless of the reason they left the municipalities’ employ or how far they are from actual retirement. The statute also requires municipalities to begin benefits from the age of fifty-five, or after the individual would have served twenty-five years. These individuals, like plaintiff, become “retirees,” without retiring from service, as soon as they reach the age where they can collect benefits. However, logging several years in the private sector does not make them “employees who retire” after a given eligibility date. Rather, they are merely “retirees” and are responsible for paying their own medical insurance premiums until they (and, to a lesser extent, their spouses) reach age 65.

Because the trial court applied language from a later contract and failed to appreciate the full import of the word “employee” in the correct contract, we reverse its grant of plaintiff’s summary disposition motion. Without passing on any factually sensitive issues that may evolve with supplementation of this meager record, we note that a pensioner’s right to receive regular and unreduced pension benefits is constitutionally guaranteed, so defendant’s proposed methods of recoupment are facially dubious. Const 1963, art 9, § 24. We also note that, before defendant erroneously enrolled plaintiff in its insurance plan at no cost, he was provided an option to pay premiums of roughly \$430 per month. This option comported with the 1978 contract. Nevertheless, defendant claims damages exceeding \$46,000 for the six years plaintiff was erroneously enrolled. We urge the trial court to consider limiting any damages award to the loss of premiums paid rather than actual benefits paid and closely review defendant’s calculations.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen Fort Hood
/s/ Peter D. O’Connell