

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR H. BUCHHOLZ,
Plaintiff-Appellee,

UNPUBLISHED
October 13, 2005

v

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

CITY OF LIVONIA,
Defendant,
and

LIVONIA EMPLOYEES' RETIREMENT
SYSTEM,
Defendant-Appellant

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

WHITE, J. (*concurring in part and dissenting in part*).

I agree that on the record presented plaintiff was not entitled to summary disposition. I conclude, however, that neither was defendant entitled to judgment in its favor. Because the contractual language is ambiguous, I would remand for proofs regarding the intent of, and interpretation given the contract by, the parties.

Under the city ordinance, while plaintiff resigned his employment with defendant in 1978, his retirement date was February 1, 1993, and he retired as of that date. Defendant admitted this below.

While the contract in effect when plaintiff left defendant's employment (the December 1, 1976 to November 30, 1979 contract) would ordinarily govern, the later contract (December 1, 1993 to November 30, 1996 contract), by its explicit terms, also purports to set forth and incorporate the medical benefit rights of employees who retired well before the effective date of that contract.

Both contracts use the term "employees who retire on or after" or "employees who retired on or after." The majority concludes that plaintiff is not described by this phrase because he was

not an employee at the time of his retirement. However, this interpretation is inconsistent with the use of the phrase in the contract.

When setting forth the various classes of “retirees,” the 1993-1996 contract sets forth the medical coverage rights of different categories of retirees, depending on when they retired. The contract sets forth the categories by referring to “[e]mployees who retired on or after” various dates preceding the date of the contract. This is the only formulation employed, and indisputably was intended to include all retirees. Under the majority’s analysis, plaintiff would fall in no category, because he was not an “employee” when he retired.

Further, under the 1975-1979 contract, plaintiff was an employee at the time the contract was formed. The reference to “employees who retire on or after December 1, 1978,” is not, in that context, clearly inapplicable, where plaintiff resigned his employment within the life of the contract, but did not retire until 1993.

On the other hand, the city (through the Retirement System) and the Fire Fighters Association may have had a course of dealing and understanding of the agreement that is consistent with defendant’s and the majority’s interpretation of the contract. I would remand for further proceedings.

/s/ Helene N. White