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Labor, Employment & Benefits



Looking to Contain Benefit Cost Increases? The Connecticut Supreme Court Offers Guidance to Public Entities on Changing Vested Retiree Health Benefits

If your municipality, like most, is struggling with huge increases or expected jumps in health care costs, the following court decision may be of great interest to you.

Despite language in municipal collective bargaining agreements that vests health benefits in retirees, a recent Connecticut Supreme Court decision may let municipal employers change their health plans, which could help municipalities save on costly retiree health care expenses. As explained by the court, ERISA does not apply to municipalities and, therefore, the case was decided under Connecticut law. Before this ruling, municipalities were very cautious about changing retiree benefits. Now there may be opportunities.

THE SUPREME COURT CASE

In *Poole v. City of Waterbury* (9/30/03), the Connecticut Supreme Court ruled that a group of 114 retired firefighters for the City of Waterbury or their widows had vested rights to medical benefits under the collective bargaining agreements in effect at the time the firefighters retired, but those rights did not entitle them to the exact same health plans.

THE CITY'S NEED TO REDUCE RETIREE HEALTH COSTS

As found by the court, the city and the firefighters' union had negotiated a series of collective bargaining agreements in 1986, 1989, 1992, and 1999, each of which provided for health benefits for retirees. When they retired, the firefighters received benefits under the health care plans in effect at that time and the city paid the benefits out of its general fund. The city also had underfunded its pensions for years and was paying its pension liabilities out of the city's general fund. Health care costs were rising rapidly, and the city's bond rating suffered. Eventually, the city's fiscal crises threatened the State of Connecticut.

Through special legislation, the state created the Waterbury Financial Planning and Assistance Board - known as the Oversight Board - a state entity authorized to oversee the city's finances, impose management controls, and approve major city decisions, including those pertaining to labor relations, contracting, and budgets. The case arose when the Oversight Board ordered the financially troubled city to convert all retirees from the plans under which they had been covered to a less costly and more efficiently-managed health care plan.

The Oversight Board determined that it could save \$2 million the first year, and greater amounts in future years, by converting the retirees from the older indemnity-style health plans to modern preferred provider health plans. The Oversight Board orchestrated the conversion and ordered the city to implement the change. With the Oversight Board's guidance and assistance, the city notified retirees of the gains to them and the savings to the city and held informational sessions to answer questions about the conversion or the new plans. Some of the retirees accepted the new plans; others, like the retired firefighters, filed lawsuits contesting the conversion.

THE SUPREME COURT'S RULING

In construing the bargaining agreements, the court determined that the agreements used by the city and the firefighters' union contained language providing for health benefits for retirees that survived the expiration of the bargaining agreements. Although the bargaining agreements did not use any language expressly providing for "vested" health benefits, the court found that the agreements provided for continuation of those benefits after the expiration of the agreements and that their continuation equaled a vested right.

However, the court also determined that the language showed that the health benefits could be modified over time. The bargaining agreements contained temporal language that suggested the city could adjust the major medical program, the home and office medical rider, and levels of copays for prescription drugs.

To guide municipalities in determining whether a change may be made to vested health benefits, the court created a new test: retirees must demonstrate that, when viewing the group of retirees as a whole, their benefits are "not substantially commensurate" with the benefits provided under the bargaining agreements in effect at the time of their retirement. The court determined that the benefit change imposed by the Oversight Board did not alter the benefits significantly and, therefore, the plans provided "substantially commensurate" benefits to the retirees. As a result, the court ruled that the city and Oversight Board properly converted the retirees from indemnity-type plans to preferred provider plans.

LESSONS FOR MUNICIPALITIES

Considering Changing Health Plans

In light of the *Poole* ruling, municipalities considering changes to their retiree health plans should carefully review their collective bargaining agreements with their labor counsel to determine whether the language describing the benefits provides that they are vested. Generally, a vested benefit cannot be modified unilaterally by the municipality and changes might require the agreement of all parties. In the case of retirees, changes might require that every retiree agree with the municipality's change. If the benefits are not vested, the municipality may be free to modify those benefits.

The significance of the *Poole* ruling is that even if retirees are entitled to vested health care benefits, they may not necessarily be entitled to vested rights in the specific plan they held when they retired. In *Poole*, the city, the firefighters union, and the retirees themselves knew that the plans could eventually change and perhaps cease to be offered. As explained by the court, had the health benefit administrator or insurers discontinued the particular plans, the city would have been released from providing those health benefits and the retirees would have been left with no health insurance.

Drafting Bargaining Agreements

Although the court decision gives municipalities guidance on how they may alter retiree health benefits in the face of language that allows vesting, municipalities choosing to offer lifetime health benefits should review with their labor counsel whether to use language that reserves the right to change those benefits. Municipalities may also wish to consider with their labor counsel proposing retiree health language that fixes the cost to the municipality of providing the benefits by, for example, requiring retirees to bear all or part of the benefit costs over a fixed dollar amount that the municipality is willing to pay. By passing the cost of such benefits on to retirees, municipalities might align their interests with those of the retirees and might encourage retirees to accept changes in health benefits that will contain their costs.

Questions

For more information on retiree health benefits, please contact [Rick Vitarelli](#), (860-275-8287) or [Stephen Aronson](#), (860-275-8281) who represented the Oversight Board in the *Poole* case. For more information on our labor practice, please visit us at www.rc.com. For a copy of the *Poole* decision, please [click here](#).

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