252 A.D.2d 82, 683 N.Y.S.2d 622, 1998 N.Y. Slip Op. 11623, 160 L.R.R.M. (BNA) 2246

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Supreme Court, Appellate Division, Third Department, New York.

Michael DELLA ROCCO Jr., on Behalf of Himself and all other Retired Schenectady Firefighters Similarly Situated, Respondents,

v.

CITY OF SCHENECTADY, Appellant. (Action No. 1.)

Michael T. Andriano, on Behalf of Himself and All Other Retired Schenectady Police Officers Similarly Situated, Respondents,

v.

City of Schenectady, Appellant. (Action No. 2.)

Dec. 30, 1998.

Retired firefighters and retired police officers brought separate class actions, seeking declaration that city breached collective bargaining agreement by failing to provide them with health insurance coverage to which they were entitled. The Supreme Court, Schenectady County, Lynch, J., granted summary judgment against city, and city appealed. The Supreme Court, Appellate Division, White, J., held that retired firefighters and retired police officers were entitled under collective bargaining agreements to the same or equivalent health insurance coverage during their retirement as the coverage in effect at time they retired.

Affirmed.

Carpinello, J., dissented with opinion.

West Headnotes

[1] KeyCite Notes

231H Labor and Employment
231HXII Labor Relations
231HXII(E) Labor Contracts
231Hk1268 Construction
231Hk1280 k. Benefits. Most Cited Cases
(Formerly 232Ak257.1 Labor Relations)

Retired city firefighters and retired city police officers were entitled, under collective bargaining agreements, to the same or equivalent health insurance coverage during their retirement as the coverage in effect at time they retired, where agreements stated that city would provide insurance coverage "equivalent to the plan presently in effect for each member of the Department and his family and for retired members and their families," and union counsel stated that parties intended retiree's benefit level to remained unchanged for duration of retiree's life after retirement.

[2] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(19) k. Contract Cases in General. Most Cited Cases

On a motion for summary judgment involving a written contract, the court must determine the rights of the parties in accordance with the unambiguous provisions of the contract and give the words employed their plain meaning.

****622** ***83** Roemer, Wallens & Mineaux L.L.P. (James W. Roemer, Jr. of counsel), Albany, for appellant.
Grasso & Grasso (Jane K. Finin of counsel), Schenectady, for respondents.

Before: CARDONA, P.J., MERCURE, WHITE, SPAIN and CARPINELLO, JJ.

****623** WHITE, J.
Appeals (1) from an order of the Supreme Court (Robert E. Lynch, J.), entered September 2, 1997 in Schenectady County, which, *inter alia,* granted plaintiffs' motion for summary judgment, and (2) from the judgment entered thereon.
These appeals arise from the commencement of two class actions; in the first, plaintiff and the class of retired City of Schenectady firefighters and, in the second, plaintiffs and the class of retired City of Schenectady police officers. In both actions plaintiffs seek a declaration that defendant breached the terms of a collective bargaining agreement by its failure to provide members of the class with health insurance coverage to which they were entitled. This dispute has its origins in 1969 when the Schenectady Patrolmen's Benevolent Association (hereinafter PBA) and the City Firefighters Union (hereinafter CFU) each entered into labor relations contracts with defendant governing the terms and conditions of employment from January 1, 1969 to December 31, 1970. Each contract contained identical clauses which provided, *inter alia,* as follows:
[Defendant] at its own expense shall provide hospitalization and major medical insurance with coverage equivalent to the plan presently in effect for each member of the Department and his family, and for retired members and their families.
Successive contracts were entered into by these parties from 1969 to 1989 containing similar language regarding health and hospitalization insurance.
In 1990 the coverage was changed to a plan which required increased copayments and it was this change which precipitated the present actions. Plaintiffs contend that defendant breached the collective bargaining agreement by altering the terms of the insurance under which members of the class had been covered, maintaining that when a member of the class retired the coverage to which that individual was entitled remained fixed in time and could not be changed. Plaintiffs moved for summary judgment and defendant opposed said motion and cross-moved for similar relief. Supreme Court dismissed defendant's affirmative defense, denied defendant's cross motion and granted plaintiffs' motion for summary judgment, relying on the plain language of the insurance clause, along with extrinsic evidence in the form of an affidavit by the attorney who represented the PBA and CFU in the original negotiations, ***84** and a 1970 arbitration decision which interpreted the insurance clause. Defendant appeals.

[1] [2] The issue we must resolve is whether, when defendant changed the health insurance coverage provided to current employees, it was contractually permitted to pass on such negotiated change to retirees. The key portion of the contract states that defendant would provide insurance coverage "equivalent to the plan presently in effect for each member of the Department and his family and for retired members and their families". It is clear that on a motion for summary judgment involving a written contract, the court must determine the rights of the parties in accordance with the unambiguous provisions of the contract and give the words employed their plain meaning (*see,* *Sanabria v. American Home Assur. Co.,* 68 N.Y.2d 866, 868, 508 N.Y.S.2d 416, 501 N.E.2d 24; *Estate of Hatch by Ruzow v. NYCO Mins.,* 245 A.D.2d 746, 747, 666 N.Y.S.2d 296). We find that the phrase in question means that the retiree is entitled to the same or equivalent coverage during his retirement as the coverage in effect at the time he retired. Further, there is extrinsic evidence to support this conclusion.
We first note that the contracts at issue had a duration of approximately one to two years and it is clear that once employees retire, they are no longer represented by the union and would not possess collective bargaining rights on their own (*see,* *Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.,* 404 U.S. 157, 172, 92 S.Ct. 383, 30 L.Ed.2d 341; *Myers v. City of Schenectady,* 244 A.D.2d 845, 665 N.Y.S.2d 716, *lv. denied* 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717). Thus, since the retirees are not involved in subsequent negotiations, it is logical to assume that the bargaining unit intended to insulate retirees from losing important

insurance rights during subsequent ****624** negotiations by using language in each and every contract which fixed their rights to coverage as of the time they retired. In addition, plaintiffs offer the affidavit of Frank Grasso, the longtime counsel for PBA and CFU, who was involved in negotiating the initial agreement where the language in question was first used. Grasso stated that it was the intent of the parties that the benefit level in effect at the time of the retirement of the members was to remain unchanged for the duration of the retiree's life after retirement.

In the recent case of *Matter of Aeneas McDonald Police Benev. Assoc., Inc. v. City of Geneva*, 92 N.Y.2d 326, 680 N.Y.S.2d 887, 703 N.E.2d 745, the Court of Appeals held that the City of Geneva had a right to reduce the level of health insurance benefits it had provided over a number of years to retired members of its police department. However, although the labor relationship between the City and the police ***85** department had been governed by collective bargaining agreements for many years, none of the agreements addressed the issue of health benefits for retirees, since these benefits were provided by a resolution of the City Council and not through the collective bargaining process. The instant case is readily distinguishable since here there is a continuum of collective bargaining contracts between defendant and plaintiffs dating from 1969, each containing identical clauses which provided for hospitalization and major medical coverage for retired members and their families. For these reasons, we affirm Supreme Court's order and judgment.

ORDERED that the order and judgment are affirmed, with costs.

CARDONA, P.J., MERCURE and SPAIN, JJ., concur.

CARPINELLO, J. (dissenting).

In my view, there is no contractual impediment to defendant changing the health insurance plan for retired police officers and firefighters as long as all retirees receive the same coverage as active employees. The clause at issue provides:

[Defendant] at its own expense shall provide hospitalization and major medical insurance with coverage equivalent to the plan presently in effect for each member of the Department and his family, and for retired members and their families.

Notably, defendant has not terminated health insurance benefits to its retired employees nor discontinued paying the premiums for said coverage. Rather, the plans through which defendant currently provides health insurance for its active and retired employees now require increased deductibles and copayments to which plaintiffs object.

Contrary to the majority's interpretation of the contract provision at issue, I do not read it as evincing an intent to guarantee retired members' health benefits at the same level as those in effect at the time of retirement. Had the parties intended to fix the right to health coverage as of the retirees' respective retirement dates such that these rights would remain unchanged for the duration of their lives, they could have clearly stated such intention in the agreement. Rather, in my view, this provision requires defendant to provide retirees with health insurance coverage equivalent to that currently being provided to active employees.

The provision at issue in this case has been contained in collective bargaining agreements between the parties since 1969. In 1970, the interpretation of this provision was the subject of arbitration; the issue at that time was whether retirees should share in the cost of health insurance premiums, as they had prior to collective bargaining, or whether defendant was obligated to pay the full cost of such coverage. Interpreting the ***86** phrase "[defendant] at its own expense", the arbitrator determined that defendant must bear the entire premium expense. Significantly, in its July 6, 1972 order confirming the award, Supreme Court (Aulisi, J.) required defendant to provide retired employees "health and hospital insurance of the same value and with the same coverage as [it] is presently providing to the active employees" (*Schenectady Patrolmen's Benevolent Assn. v. City of Schenectady*, Sup.Ct., Schenectady County, July 6, 1972, Aulisi, J.). The court did *not* order the same coverage as was in effect as ****625** of the date of each employee's retirement. As did Supreme Court in 1972, I read this provision as merely requiring defendant to provide the same health insurance coverage as it presently provides to its active employees.

I acknowledge that the provision clearly reflects an intent that retired employees continue to be provided with health insurance coverage during the entire term of their retirement. Nevertheless, at the very least, the provision at issue is ambiguous as to the level of benefits and a factual issue exists

as to the parties' intent with respect to that issue; to wit, did the parties intend to set the benefit level at the time an employee retired such that it could never be modified and a retiree might indeed be conferred with benefits in excess of the those enjoyed by current employees or did the parties intend that a retiree's benefit level could fluctuate commensurate with those enjoyed by active employees? The former interpretation may require defendant to obtain an innumerable number of different health insurance plans to accommodate different classes of retirees.

On a motion for summary judgment based upon a written contract, the construction of an unambiguous provision is for the court to rule on and circumstances extrinsic to the agreement will not be considered (*see, W.W.W. Assocs. v. Giancontieri*, 77 N.Y.2d 157, 162-163, 565 N.Y.S.2d 440, 566 N.E.2d 639; *West, Weir & Bartel v. Mary Carter Paint Co.*, 25 N.Y.2d 535, 540, 307 N.Y.S.2d 449, 255 N.E.2d 709). Where, however, interpretation of a contract provision is susceptible to at least two reasonable interpretations and the intent of the parties therefore must be gleaned from disputed evidence or inferences outside the written document, an issue of fact is presented (*see, Amusement Bus. Underwriters v. American Intl. Group*, 66 N.Y.2d 878, 880-881, 498 N.Y.S.2d 760, 489 N.E.2d 729; *Mallad Constr. Corp. v. County Fed. Sav. & Loan Assn.*, 32 N.Y.2d 285, 291, 344 N.Y.S.2d 925, 298 N.E.2d 96). I believe that, on this record, summary judgment in favor of plaintiffs was inappropriate and I would therefore reverse Supreme Court's order and judgment.

***87** As a final point, I am also unconvinced that our decision in *Myers v. City of Schenectady*, 244 A.D.2d 845, 665 N.Y.S.2d 716, *lv. denied* 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717, mandates a contrary result. In that case, the collective bargaining agreement specifically identified the health insurance plan to be provided to retirees.

Della Rocco v. City of Schenectady
252 A.D.2d 82, 683 N.Y.S.2d 622, 1998 N.Y. Slip Op. 11623, 160 L.R.R.M. (BNA) 2246

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John Black

Supreme Court - Appellate Division
Third Department

Decided and Entered: December 30, 1998 82298

MICHAEL DELLA ROCCO JR.,
on Behalf of Himself and
all other Retired Schenectady
Firefighters Similarly
Situated,
Respondents,

v

CITY OF SCHENECTADY,
Appellant.
(Action No. 1.) OPINION AND ORDER

MICHAEL T. ANDRIANO,
on Behalf of Himself and
All Other Retired
Schenectady Police Officers
Similarly Situated,
Respondents,

v

CITY OF SCHENECTADY,
Appellant.
(Action No. 2.)

Calendar Date: October 16, 1998

Before: Cardona, P.J., Mercure, White, Spain and Carpinello, JJ.

Roemer, Wallens & Mineaux LLP (James W. Roemer Jr. of counsel), Albany, for appellant.

Grasso & Grasso (Jane K. Finin of counsel), Schenectady, for respondents.

White, J.

Appeals (1) from an order of the Supreme Court (Lynch, J.), entered September 2, 1997 in Schenectady County, which, inter alia, granted plaintiffs' motion for summary judgment, and (2) from the judgment entered thereon.

These appeals arise from the commencement of two class actions; in the first, plaintiff and the class of retired City of Schenectady firefighters and, in the second, plaintiffs and the class of retired City of Schenectady police officers. In both actions plaintiffs seek a declaration that defendant breached the terms of a collective bargaining agreement by its failure to provide members of the class with health insurance coverage to which they were entitled. This dispute has its origins in 1969 when the Schenectady Patrolmen's Benevolent Association (hereinafter PBA) and the City Firefighters Union (hereinafter CFU) each entered into labor relations contracts with defendant governing the terms and conditions of employment from January 1, 1969 to December 31, 1970. Each contract contained identical clauses which provided, inter alia, as follows:

> [Defendant] at its own expense shall provide hospitalization and major medical insurance with coverage equilavent to the plan presently in effect for each member of the Department and his family, and for retired members and their families.

Successive contracts were entered into by these parties from 1969 to 1989 containing similar language regarding health and hospitalization insurance.

In 1990 the coverage was changed to a plan which required increased copayments and it was this change which precipitated the present actions. Plaintiffs contend that defendant breached the collective bargaining agreement by altering the terms of the insurance under which members of the class had been covered, maintaining that when a member of the class retired the coverage

to which that individual was entitled remained fixed in time and could not be changed. Plaintiffs moved for summary judgment and defendant opposed said motion and cross-moved for similar relief. Supreme Court dismissed defendant's affirmative defense, denied defendant's cross motion and granted plaintiffs' motion for summary judgment, relying on the plain language of the insurance clause, along with extrinsic evidence in the form of an affidavit by the attorney who represented the PBA and CFU in the original negotiations, and a 1970 arbitration decision which interpreted the insurance clause. Defendant appeals.

The issue we must resolve is whether, when defendant changed the health insurance coverage provided to current employees, it was contractully permitted to pass on such negotiated change to retirees. The key portion of the contract states that defendant would provide insurance coverage "equivalent to the plan presently in effect for each member of the Department and his family and for retired members and their families". It is clear that on a motion for summary judgment involving a written contract, the court must determine the rights of the parties in accordance with the unambiguous provisions of the contract and give the words employed their plain meaning (see, Sanabria v American Home Assur. Co., 68 NY2d 866, 868; Estate of Hatch by Ruzow v NYCO Mins., 245 AD2d 746, 747). We find that the phrase in question means that the retiree is entitled to the same or equivalent coverage during his retirement as the coverage in effect at the time he retired. Further, there is extrinsic evidence to support this conclusion.

We first note that the contracts at issue had a duration of approximately one to two years and it is clear that once employees retire, they are no longer represented by the union and would not possess collective bargaining rights on their own (see, Allied Chem. & Alkali Workers of Am., Local Union No. 1 v Pittsburgh Plate Glass Co., Chem. Div., 404 US 157, 172; Meyers v City of Schenectady, ___ AD2d ___, 665 NYS2d 716, lv denied 91 NY2d 812). Thus, since the retirees are not involved in subsequent negotiations, it is logical to assume that the bargaining unit intended to insulate retirees from losing important insurance rights during subsequent negotiations by

using language in each and every contract which fixed their rights to coverage as of the time they retired. In addition, plaintiffs offer the affidavit of Frank Grasso, the longtime counsel for PBA and CFU, who was involved in negotiating the initial agreement where the language in question was first used. Grasso stated that it was the intent of the parties that the benefit level in effect at the time of the retirement of the members was to remain unchanged for the duration of the retiree's life after retirement.

In the recent case of Matter of McDonald v City of Geneva (92 NY2d 326) the Court of Appeals held that the City of Geneva had a right to reduce the level of health insurance benefits it had provided over a number of years to retired members of its police department. However, although the labor relationship between the City and the police department had been governed by collective bargaining agreements for many years, none of the agreements addressed the issue of health benefits for retirees, since these benefits were provided by a resolution of the City Council and not through the collective bargaining process. The instant case is readily distinguishable since here there is a continuum of collective bargaining contracts between defendant and plaintiffs dating from 1969, each containing identical clauses which provided for hospitalization and major medical coverage for retired members and their families. For these reasons, we affirm Supreme Court's order and judgment.

Cardona, P.J., Mercure and Spain, JJ., concur.

Carpinello, J. (dissenting).

In my view, there is no contractual impediment to defendant changing the health insurance plan for retired police officers and firefighters as long as all retirees receive the same coverage as active employees. The clause at issue provides:

> [Defendant] at its own expense shall provide hospitalization and major medical insurance with coverage equivalent to the

> plan presently in effect for each member of the Department and his family, and for retired members and their families.

Notably, defendant has not terminated health insurance benefits to its retired employees nor discontinued paying the premiums for said coverage. Rather, the plans through which defendant currently provides health insurance for its active and retired employees now require increased deductibles and copayments to which plaintiffs object.

Contrary to the majority's interpretation of the contract provision at issue, I do not read it as evincing an intent to guarantee retired members' health benefits at the same level as those in effect at the time of retirement. Had the parties intended to fix the right to health coverage as of the retirees' respective retirement dates such that these rights would remain unchanged for the duration of their lives, they could have clearly stated such intention in the agreement. Rather, in my view, this provision requires defendant to provide retirees with health insurance coverage equivalent to that currently being provided to active employees.

The provision at issue in this case has been contained in collective bargaining agreements between the parties since 1969. In 1970, the interpretation of this provision was the subject of arbitration; the issue at that time was whether retirees should share in the cost of health insurance premiums, as they had prior to collective bargaining, or whether defendant was obligated to pay the full cost of such coverage. Interpreting the phrase "[defendant] at its own expense", the arbitrator determined that defendant must bear the entire premium expense. Significantly, in its July 6, 1972 order confirming the award, Supreme Court (Aulisi, J.) required defendant to provide retired employees "health and hospital insurance of the same value and with the same coverage as [it] is presently providing to the active employees" (Schenectady Patrolmen's Benevolent Assn. v City of Schenectady, Sup Ct, Schenectady County, July 6, 1972, Aulisi, J.). The court did not order the same coverage as was in effect as of the date of each employee's retirement. As did Supreme

plan to be provided to retirees.

ORDERED that the order and judgment are affirmed, with costs.

ENTER:

/s/ Michael J. Novack

Michael J. Novack
Clerk of the Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

MICHAEL DELLA ROCCO, JR.
on behalf of himself and all other RETIRED
FIREFIGHTERS similarly situated,

Plaintiffs,

- against -

THE CITY OF SCHENECTADY,

Defendant.

DECISION/ORDER

Index No. 90-2518

Court Control No.
46-1-90-0145

MICHAEL T. ANDRIANO, on behalf of himself
and all other RETIRED SCHENECTADY
POLICE OFFICERS similarly situated,

Plaintiffs,

- against -

THE CITY OF SCHENECTADY,

Defendant.

APPEARANCES:

✓ Grasso & Grasso
Attorneys for Plaintiffs
124 Clinton Street
Schenectady, NY 12305

to 1996, provides:

> The City at its own expense shall provide hospitalization and major medical insurance with coverage equivalent to the plan presently in effect for each member of the Department and his family, and for retired members and their families. (Article XIV, Section 2 - Exhibits 1-B1 and 3-B1). [emphasis added]

There can be no doubt that the Plaintiffs in these consolidated proceedings have standing as retirees to seek the fulfillment of contract benefits which were in effect at the time of their respective retirements and can sue the employer directly for breach of contract to provide continuing benefits even though the stated term of such contract has technically expired (see, Allied Chemical and Alkali Workers of America Local Union No. 1 v. Pittsburgh Plate Glass Co. Chem. Div., 404 US 157, 181 n 20; Smith v. Evening News Assn., 371 US 195, 200-201; Remar v. Smith, 555 F2d 1362, 1370 n6 [9th Cir., 1976]; International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) and Local 134, UAW v. Yard-Man, Inc., 716 F2d 1476 (USCA, 6th Cir. 1983) cert dend 104 S.Ct. 1002).[1]

Based upon such caselaw, the Court hereby determines, as a matter of law, that the Affirmative Defenses raised in the Defendants Answers in these actions are without merit. Such Affirmative Defenses state, in substance, that (1) the Plaintiffs are not parties to any contract with the Defendants; (2) the unions (Local 28 IAFF AFL-CIO and PBA) are precluded from negotiating or otherwise representing Plaintiffs and Plaintiffs are not parties to any contract

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[1]While the Court is aware that pursuant to Civil Service Law 209-a Federal or state law applicable to private employment is not binding or controlling when interpreting public employment issues, these decisions and similar decisions cited below are found by this Court to be persuasive unless otherwise noted.

Roemer, Wallens & Mineaux
Attorneys for Defendant
99 Pine Street
Albany, NY 12207

LYNCH, J.

Papers considered:

1). Notice of Motion for Summary Judgment dated December 31, 1996; Affidavie (Jane K. Finin) in Support dated December 30, 1996 with Exhibits "A" and "B"; Affidavit (Frank N. Grasso) in Support dated December 30, 1996 with Exhibits "A" through "H" and "2" through "10";; Affidavit (Alexander Grasso) in Support dated March 3, 1995 with "11" attached; Affidavit (Michael DellaRocco, Jr.) dated December 31, 1996 with "12" and "13" attached;

2). Defendants' Cross-motion for Summary Judgment dated April 3, 1997; Affidavit (Albert P. Jurczynski) in Opposition to Plaintiff's Motion and in Support of Defendant's Cross-motion dated April 3, 1997;

3). Affidavit (Jane K. Finin, Esq.) in Opposition to Cross-motion dated April 11, 1997 with Exhibits "10" through "12".

The matter before the Court is a consolidated (dual captioned) proceeding involving two class actions each seeking a declaratory judgment of contract rights. The firefighter action was granted Class Action status by Order dated February 13, 1991. The police officer action was given Class Action status by Order dated April 19, 1991 which also consolidated the two actions.

The undisputed facts of the cases set forth in abbreviated form are as follows:

Plaintiffs are former City of Schenectady police officers and firefighters who retired after 1959, during which time there were labor relations contracts in effect between their employer, the City of Schenectady and certain labor unions to which these public employees then belonged.

The Patrolmen's (now Police) Benevolent Association (PBA) is and was the bargaining

between Defendants and the Unions and have no enforcement rights in that regard; and (3) all contracts entered into between Defendants and the unions have, by their terms, expired. Defendants also alleged in the Third Affirmative Defense with regard to the firefighter action that Plaintiffs failed to exhaust their administrative remedies under the grievance resolution procedure provided for in the respective contracts for disputes arising thereunder.

With regard to this last issue, it is equally clear that where retirees commence an action seeking benefits alleged to be due under a collective bargaining agreement, they are not required to pursue grievance and arbitration procedures (see, Anderson v. Alpha Portland Industries, 752 F2d 1293 [8th Cir, 1985] cert den'd 471 US 1102).

Defendants Affirmative Defenses are, therefore, devoid of merit and are hereby dismissed.

The Court must now consider the merits of Plaintiffs argument. In support of this motion, Plaintiffs have offered the Affidavit of Frank N. Grasso who alleges therein that he was counsel to both the Schenectady Patrolmen's (now Police) Benevolent Association (PBA) and City Firemen's (now Firefighters) Union, Local 28, I.A.F.F., AFL-CIO at the time the first subject contract was negotiated in 1968 -1969 on behalf of the active membership of these two unions and on behalf of those unions' members who retired on or after the effective dates of such contracts.

Mr. Grasso alleges in such Affidavit that "the parties all clearly intended that the City was obligated to pay the full cost of health insurance for retirees and their families..." He further alleges "the benefits were intended to vest at the level in effect upon the retirement of the members and to remain unchanged for the duration of the retiree's life, after retirement..."

In opposition to the motion and in support of its cross-motion, the Defendant City offered

the municipal employer which, in instance, must pass on such cost to the taxpayers. Like any other vested negotiated item in a collective bargaining agreement, it remains viable unless or until it is bargained away by the parties. It continues, however, for those persons who are no longer subject to the negotiating process (i.e., retirees). It is not subject to unilateral modification by Defendant based on budgetary constraints, loss of tax base, reductions in State aid to municipalities or other similar well-intentioned reasons.

This Court hereby determines and declares that Plaintiff retirees were entitled to fully paid health insurance comparable to that in effect at the time each retiree's retirement regardless of whether or not the subject contract has since expired; that each of the collective bargaining agreements between the Plaintiff class and the Defendant constitute a binding and enforceable agreement so far as such class members' right to fully paid health insurance is concerned; that the Defendant City has breached its binding contract with each retiree; that the Defendant City is obligated to maintain health insurance coverage equivalent to that in effect at the time of each Plaintiff's retirement; that the City is estopped from changing the cost to the retiree or coverage provided; that the Defendant shall account and pay to each Plaintiff retiree reimbursement for additional outlays and expenditures necessitated by the City's unilateral changes in health insurance coverage instituted by the City; that the City shall pay attorneys fees, costs and disbursements in this action in such sum as this Court shall determine to be reasonable upon presentation of an Affidavit of legal services to the Court on notice to Defendant.

The amounts and manner of payments due pursuant to this Decision/Interim Order shall be determined at a conference to be held on September 29, 1997 at 10:00 a.m. and such additional dates as may be necessary to settle the judgment amount. Said sum shall then be reduced to

judgment.

THIS DECISION SHALL CONSTITUTE THE ORDER OF THE COURT.

THE ATTORNEY FOR THE PLAINTIFF SHALL ENTER THIS ORIGINAL DECISION/ORDER ALONG WITH THE ACCOMPANYING MOTION PAPERS AND PROVIDE A COPY WITH PROOF OF ITS ENTRY ON THE OPPOSING ATTORNEY(S).

ENTER.

Dated at Schenectady, New York, this 28th day of August, 1997.

Robert E Lynch

HON. ROBERT E. LYNCH
Supreme Court Justice