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| THOMAS A. CONNORS, WILLIAM MORTON, DENIS BARRY, SALVATORE TOLENO, ROBERT MORRIS, TIMOTHY LATOUR, WAYNE FORSYTHE, AND ALL SIMILARLY SITUATED INDIVIDUALS;<br><br>Plaintiffs,<br><br>v.<br><br>VILLAGE OF RIDGEFIELD PARK;<br><br>Defendants. | **SUPERIOR COURT OF NEW JERSEY**<br>LAW DIVISION – BERGEN COUNTY<br><br>DOCKET NO. **BER-L-7742-20**<br><br>Civil Action<br><br>**OPINION** |

**Argued:** **August 26, 2022**
**Decided:** **August 31, 2022**

**HONORABLE ROBERT C. WILSON, J.S.C.**

Marcia J. Mitolo, Esq. appearing on behalf of Plaintiffs Thomas A. Connors, William Morton, Denis Barry, Salvatore Toleno, Robert Morris, Timothy LaTour, Wayne Forsythe, and all similarly situated individuals (from Limsky Mitolo)

Kenneth A. Rosenberg, Esq. appearing on behalf of Defendant Village of Ridgefield Park (from Fox Rothschild LLP)

## FACTUAL BACKGROUND

**THIS MATTER** arises out of a dispute between the Plaintiffs Thomas A. Connors, William Morton, Denis Barry, Salvatore Toleno, Robert Morris, Timothy LaTour, and Wayne Forsythe (hereinafter "Plaintiffs") and Village of Ridgefield Police Department (hereinafter "Defendant") as to whether Defendant is required to reimburse Plaintiffs' spouses for eligible Medicare Part B premiums. Plaintiffs are retired employees of Defendant. Each Plaintiff is currently over the age of sixty-five (65) and retired with at least twenty-five (25) years of service for Defendant. Each Plaintiff is currently eligible for Medicare.

Defendant and Police Benevolent Association Local No. 86 (hereinafter the "PBA") have been parties to a series of collective negotiated agreements (hereinafter the "Agreements") since at least the early 1980's. The retiree medical health benefits did not become a negotiated benefit included in the collective negotiations agreement until 1984. A certain provision which was first included in the 1984 Agreement contained language stating that pensioners and their dependents would receive health coverage as provided under Chapter 88 P.L. 1974, N.J. State Health Benefits Program Act (hereinafter "SHBP"). However, Defendant never elected to participate in the SHBP.

In 2009, several of the Plaintiffs' spouses became eligible to enroll in Medicare Part B. In 2015, Plaintiff Connors began applying for Medicare Part B reimbursement for his spouse. These requests were denied by Defendant. He raised this issue with the PBA while the PBA was negotiating the 2019-2024 collective negotiations agreement. The PBA then filed a grievance on behalf of Plaintiff Connors regarding Defendant's refusal to cover Plaintiff Connors' reimbursement request. However, the PBA withdrew the grievance shortly thereafter in an effort to settle the 2018-2024 Agreement, without waiving any other rights of the Plaintiffs. On December 11, 2020, Plaintiffs filed the Complaint, claiming Breach of Contract and seeking a Declaratory Judgment.

For the reasons set forth herein, Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiffs' Complaint is **DISMISSED**.

## SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that

the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

## RULE OF LAW AND DECISION

### Defendant Was Not Required to Reimburse Plaintiffs for Medicare Part B Premiums

The SHBP permits, but does not require, public employers to participate in the SHBP and reimburse retirees and their spouses for Medicare Part B premiums. N.J.S.A. 52:14-17.38(b)(1). Set forth in N.J.S.A. 52:14-17.38(b)(1) are the requirements for a non-state public employer to participate in the SHBP. It states, in relevant part:

> From funds allocated therefor, ***the employer*** other than the State, upon the ***adoption and submission*** to the division of an appropriate resolution prescribed by the commission, ***may*** pay the premium or periodic charges for the benefits provided to a retired employee and the employee's dependents covered under the program, if the employee retired from a State or locally-administered retirement system, excepting the employee who elected deferred retirement, and ***may*** also reimburse the retired employee for the employee's premium charges under Part B of Medicare covering the retired employee and the employee's spouse.

Id. (Emphasis added). The language in Article XIX(C) of the Agreements does not contain language which states that the Defendant has elected to participate in the SHBP. Moreover, the undisputed record shows that the Defendant never filed a resolution with the State Health Benefit

Commission (hereinafter "SHBC") adopting the language that referenced the SHBP. As such, the language included in the Agreements referencing the SHBP had no effect.

Plaintiffs point to Resolution No. 3 as evidence that the Defendant intended to provide SHBP benefits; this resolution states that it "shall provide for an effective date not earlier than the first day of the month at least 90 days following the receipt of such resolution by the by the Health Benefits Bureau in the State Division of Pensions." Resolution No. 3 was never filed with the SHBC, and the Defendant took no further action to effectuate enrolling in the SHBP. It is clear that the Defendant did not intend for the language in the Agreements to be effective unless and until the necessary condition precedent occurred.

Plaintiff further argues that the language referencing the SHBP remained in the Agreements for 34 years, proving that both parties intended to provide the same benefits as afforded under Chapter 88 P.L. 1974. This argument ultimately fails for several reasons. At no point over the past 40 years did the Defendant provide health insurance benefits to active or retired employees through the SHBP or adopt any scheme which mirrored the SHBP's benefit schedule. Additionally, the Defendant has always provided health insurance benefits for active and retired employees through either a self-funded plan and/or the Bergen Municipal Employees Benefits Fund, not the SHBP. Further, none of the Plaintiffs (aside from Connors, who himself waited six years after his wife became eligible), sought reimbursement from the Defendant until Connors told them to do so; thus proving that the Plaintiffs did not believe they had the right to reimbursement. Lastly, neither the PBA nor the Plaintiffs grieved or complained about same prior to the instant action.

## Plaintiffs' Claim for Equitable Estoppel Fails

Equitable estoppel prohibits a person from taking a course of action that would harm "one who with good reason and in good faith has relied upon such conduct." Summer Cottagers' Ass'n of Cape May v. City of Cape May, 19 N.J. 493, 503 (1955). A complaining party must show (1) a representation was made "intentionally or under such circumstances that it was both natural and probable that it would induce such action," (2) the claiming party relied on the representation and, as a result, (3) changed their position to his or her detriment. Miller v. Miller, 97 N.J. 154, 163 (1984). "The doctrine of equitable estoppel is applied against a municipality only in very compelling circumstances, where the interest of justice, morality, and common fairness dictate that course." Maltese v. Township of North Brunswick, 535 N.J. Super. 226, 244-45 (App. Div. 2022). Plaintiffs' argument for the applicability of equitable estoppel fails as set forth herein.

### I. Defendant Never Represented That It Would Reimburse Plaintiffs For Medicate Part B Premiums

Plaintiffs cite to Middletown Tp. Policemen's Benev. Ass'n Local No. 124 v. Township of Middletown (hereinafter "Middletown") and Wood v. Borough of Wildwood Crest in support of its argument that equitable estoppel applies against the Defendant. 162 N.J. 361 (2000). These cases, however, do not support Plaintiffs' claim.

In Middletown, a police officer was assured by town officials that he would receive certain benefits upon retirement. Id. at 364. Such assurances were consistent with the collective bargaining agreement between the Township and PBA, and the plaintiff received the promised benefits for ten years after his retirement. Id. The benefits were terminated by the Township after it was determined that the plaintiff received the aforementioned benefits in spite of being statutorily ineligible. Id. at 365-66. The court there determined that the Township was estopped

from terminating the benefits where it had given assurances to the plaintiff and provided the promised benefits for ten years. Id. at 372.

Further, in Wood v. Borough of Wildwood Crest, the court estopped the Borough of Wildwood from terminating the issuance of healthcare benefits to the plaintiff. 319 N.J. Super. 650, 661 (App. Div. 1999). In Wood, the plaintiff was a police officer for the Borough for twenty-two and one-half years before retiring. Id. at 652. "[P]laintiff…was allowed to 'buy back' the equivalent of two and one-half years to qualify for a full pension under the Police and Fireman's Retirement System," which conditioned the pension on 25 years of service. Id. The plaintiff was concerned about "buying back" the years and rendering himself ineligible for benefits, but the chief of police and several other Borough representatives assured the plaintiff that his health benefits would continue after retirement. Id. at 654. The plaintiff received the benefits for three years after retirement until the Borough learned Plaintiff was ineligible. The court estopped the Borough from terminating the benefits on the grounds that the Borough provided repeated assurances of the safety of the plaintiff's benefits. Id. at 661.

Middletown and Wood are easily distinguishable from the instant matter. Here, Defendant has made no assurances or given any indication that the Plaintiffs were entitled to reimbursement for their spouses' Medicare Part B premiums before or after they retired from employment with Defendant. Further, the Agreements in the instant matter do not provide for the alleged benefit. Moreover, unlike in Middletown and Wood where the plaintiffs received their benefits for ten years and three years, respectively, Plaintiffs have never received Medicare Part B premium reimbursements for their spouses at any time. Middletown, 162 N.J. at 365; Wood, 319 N.J. Super. At 654-55. Plaintiffs' only reason for believing they may be entitled to Medicare Part B premium reimbursement for their spouses was Plaintiff Connors telling them as much.

Connors himself based this assertion not on representations made by Defendant, but upon the conduct of other municipalities. The only representation by any party affiliated with Defendant which Plaintiffs have presented was made by Commissioner Poli regarding the retirees themselves, not their spouses, being eligible for Medicare Part B premium reimbursement. Thus, Plaintiffs are unable to claim equitable estoppel applies because Defendant made no representations regarding the benefit.

## II. Plaintiffs Did Not Detrimentally Rely Upon The Alleged Representations Made By The Defendant Concerning Medicare Part B Premium Reimbursement.

To establish a claim for equitable estoppel, it is not sufficient that a plaintiff relies on representations made, he or she must change their position to his or her detriment. Miller, 97 N.J. at 163. In Middletown, the plaintiff retired early under the belief that he would receive lifetime health benefits for his family. 16 N.J. at 372. This decision resulted in the plaintiff losing his benefits after ten years and being "foreclosed from alternative employment opportunities that would offer him free health benefits for his family." Id. Similarly, in Wood, the plaintiff suffered a detriment when he elected to pay over $32,000 to buy back two and a half years of employment as opposed to working the full 25-year term based on the expectation that his benefits would continue. 319 N.J. Super. At 654.

The type of detriment which is present in cases such as Middletown and Wood is not present in the instant matter. Plaintiffs claim that they detrimentally relied on the terms of the Agreements and assurances made by Defendant. However, Plaintiffs did not retire early like the plaintiff in Middletown, nor did the Plaintiffs expend tens of thousands of dollars as did the plaintiff in Wood. Middletown, 163 N.J. at 372; Wood, 319 N.J. Super. at 654. In the instant matter, Plaintiffs have not shown that they or their spouses detrimentally relied on any

representations or actions taken by the Village that caused them harm. As such, the Plaintiffs' equitable estoppel claim must fail.

**The Current Agreement Provides That Defendant Need Not Reimburse Retirees For Their Spouses' Medicare Part B Premiums**

Well settled law dictates that retiree health benefits are not vested for life unless the collective bargaining agreements expressly state so. The United States Supreme Court in M&G Polymers USA, LLC v. Tackett held that retiree health benefits are only deemed vested if the collective bargaining agreement so provides, as these obligations ordinarily cease with the termination of the agreement. 574 U.S. 427, 442 (2015). The Court found that requiring "a specific durational clause for retiree health care benefits…distort[s] the text of the agreement and conflict[s] with the principle of contract law that the written agreement is presumed to encompass the whole agreement of the parties." Id.

A review of the Agreements in effect at the time of each Plaintiffs' retirement show that none contain any language stating that retiree medical benefits are vested or are for the life of the retiree. As such, Plaintiffs' health benefits could be changed after they retired; Article VII of the Agreements provides that the term of the agreement is for a fixed period of time. Article VII states in pertinent part: "If, upon expiration of this Agreement at midnight" of the respective Agreements' expiration date, "a new Agreement has not been entered into between the parties, this Agreement shall continue in full force and effect until a new Agreement shall be executed between the parties."

It is clear from this provision that the terms of the Agreements only last until either its expiration date or upon a successor Agreement being reached, whichever is later. It is evident that the terms of the Agreement including, but not limited to, the retirees' health benefits under Article XIX, only exist for a finite period of time and were subject to change in the future. Thus, Defendant and the PBA were free to clarify the terms of the Agreement to expressly provide that

the Village was not required to reimburse retirees, including Plaintiffs, for their spousal Medicare Part B payments.

Considering that none of the Agreements that Plaintiffs retired under provided that their retiree health benefits were vested for life, any claim they arguably had to be reimbursed for their spouses' Medicare Part B premiums terminated as of January 1, 2019, when the language referencing Chapter 88 P.L. 1974 was removed.

**Plaintiff's Rights Flowed From A PBA Contract That Was Adjudicated Against Plaintiffs**

Well settled law dictates there is a strong public policy favoring settlement of litigation. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (*citing* Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), *certif. denied*, 35 N.J. 61 (1961)). Absent compelling circumstances, settlement agreements are enforced by our courts. Id. In Pascarella v. Bruck, 190 N.J. Super. 118. 124 (App. Div.), *certif. denied*, 94 N.J. 600 (1983)), the court noted that "an agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and by which a court, absent a demonstration of fraud or other compelling circumstances, should honor and enforce as it does other contracts." Id. at 124-25. Before vacating a settlement agreement, our courts require "clear and convincing proof" that the agreement should be vacated. DeCaro v. DeCaro, 13 N.J. 36, 42 (1953).

Additionally, "[T]he importance of representative standing as an efficient procedural vehicle for addressing the common rights and grievances of association members is well-recognized in New Jersey." Twp. Of Voorhees v. Voorhees Police Officers Ass'n, 2012 WL 3656316, *2 (App. Div. Aug. 28, 2012.) A union can "enforce a contract on behalf of retired employees because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored." Twp. of Voorhees v. Voorhees Police Officers Ass'n,

P.E.R.C. No. 2021-13 (Sept. 22, 2011), *aff'd*, 2012 WL 3656316 (App. Div. Aug. 28, 2012). The court in Twp. of Voorhees, further contrasted the distinction between negotiating on behalf of retired members and simply seeking to enforce what it asserts are their rights under contracts negotiated and agreed to when the retirees were active members. Id. Further, the United States Supreme Court made clear that nothing precludes a union from "permissive bargaining over the benefits of already retired employees" "if the employer agrees." Allied Chemical & Alkali Wokers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 171 n. 11, 182 n. 20 (1971).

In the instant matter, the PBA filed a formal Grievance on behalf of the Plaintiffs pursuant to the Agreements' grievance procedure. The Grievance alleged that the retirees, Plaintiffs included, should be reimbursed for their spouses' Medicare Part B premiums. The Defendant rejected the Grievance at each level of the grievance procedure, upon which the PBA filed a request for arbitration at the Public Employment Relations Committee (hereinafter "PERC"). The parties had selected an arbitrator and scheduled a hearing date of February 2020. At all relevant times, the PBA represented to the Defendant that it was representing Plaintiffs in connection with their claim that they were entitled to reimbursement for their spouses' Medicare Part B premiums.

Prior to the arbitration hearing date, the parties agreed to adjourn the arbitration as they were engaging in negotiations to extend the contract that expired on December 31, 2018. Thereafter, the parties entered into a Memorandum of Agreement (hereinafter "MOA"), dated March 19, 2020, whereby the PBA agreed to dismiss the grievances regarding the Medicare Part B premiums and not to bring a similar grievance in the future.

This MOA was a binding contract whereby each party had equal bargaining power. Plaintiffs, through the PBA, consented to the dismissal of the Grievance and agreed not to bring any similar grievance regarding reimbursement for their spouses' Medicare Part B premiums.

Thus, this matter has been expressly resolved by the MOA and Plaintiffs are contractually barred from bringing such a suit.

## CONCLUSION

For the aforementioned reasons, Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiffs' Motion for Summary Judgment is hereby **DENIED**.