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LOCAL 589, AMALGAMATED TRANSIT UNION, et al. v. COMMONWEALTH OF MASSACHUSETTS, et al.
Suffolk Superior Court Civil No. 09-3954-B

Ruling on Plaintiffs' Motion for Preliminary Injunction

This case presents a challenge to implementation of Section 140 of Chapter 25 of the Acts of 2009, which adds a new section to G.L. c. 161A. The provision is part of a comprehensive measure enacted this summer by the state legislature to address the fiscal crisis faced by the Massachusetts Bay Transportation Authority (defendant MBTA), as well as to reform the Commonwealth's transportation systems. An undisputed intent and effect of challenged Section 140 is to reduce the institutional cost of providing health care benefits to MBTA employees (active and retired), both by modifying the available plans and their administration, and by shifting certain costs to the employees themselves by requiring – with respect to most employees for the first time – an employee contribution to premiums.¹

The legislation on its face distinguishes among categories of employees, and staggers implementation by effective date.² The Motion before the court involves approximately five hundred sixty-two (562) “active and retired executive” employees,³ (approximately three hundred of whom are active, and the remainder retired), for whom implementation is to become effective January 1, 2010. Plaintiffs' basic argument is that non-contributory health care benefits during retirement are genuine deferred compensation, which qualify for constitutional protection when premised on a contract with the Commonwealth.

Defendants do not disagree with the general proposition of constitutional law. They are prepared to assume, for purposes of argument, that a binding contractual obligation to provide benefits might well trigger constitutional protections. They simply dispute the bases Plaintiffs allege here for a contractual obligation.

¹ The pertinent text of the challenged provision is as follows:

“Notwithstanding the provisions of any general or special law to the contrary, an employee, retiree, surviving spouse or dependent of the [MBTA] who becomes or who is eligible for group insurance coverage under plans offered by the authority or who is insured under such a plan, shall have his eligibility and coverage transferred to the jurisdiction of the group insurance commission and such person shall cease to be eligible or insured under plans previously offered by the [MBTA]. . . .

Upon transfer: . . . [such categories of persons] shall receive group insurance benefits determined exclusively by the commission, the coverage shall not be subject to collective bargaining, and no other reimbursements or other contractual obligations shall be paid by the [MBTA] for health care benefits not provided through the group insurance commission.”

² Presumably at least in part in reliance on and recognition of Local 589 Amalgamated Transit Union v.s MBTA, 414 Mass. 323 (1993).

³ “Executive employee” is a statutory term of art. The parties agree the court need not address for purposes of this Motion where all of the individual plaintiffs stand vis-à-vis this classification. It is undisputed that the movants are not currently members of one of the bargaining groups for whom Section 140 implementation is delayed.

Following a non-evidentiary hearing and argument on December 22, 2009, all parties present, and review of all file materials, including the voluminous affidavits submitted by both sides – and supplemented by Plaintiffs at the hearing -- Plaintiffs’ Motion for a Preliminary Injunction is **DENIED**, for the following reasons:

Likelihood of Success

The court finds Plaintiffs have failed to demonstrate a reasonable likelihood of success on the merits of their Complaint. The record before the court at this time suggests the legislative enactment at issue will pass constitutional muster. Plaintiffs acknowledge, as they must, the heavy burden they bear in seeking to strike down legislation. Dupont v. Chief of Police of Pepperell, 57 Mass. App. Ct. 690, 693 (2003). They also concede the analytical framework required to assess whether an unconstitutional impairment of contract exists. Campbell v. Boston Housing Authority, 443 Mass. 574, 581 (2005). The court has carefully considered each of Plaintiffs’ theories of enforceable contractual obligation, the first prong of the constitutional test. As briefly outlined here, I find these theories unpersuasive.

a. Personal oral representations: The court accepts as true, for purposes of this Motion only, that at least some of the Plaintiffs were personally assured by agents of their employer, whom they might reasonably have believed to have been authorized and reliable, that they would receive contribution-free healthcare for life.⁴ However, as a matter of law it is not likely such representations could ever be successfully construed as binding contracts, for two simple but related reasons: it is black letter law there can be no estoppel against a government agency of the Commonwealth for acts of agents without express (as distinct from applied) authority, Higginson v. Fall River, 226 Mass. 423, 425 (1917); Dagastino v. Comm’r of Correction, 52 Mass. App. Ct. 456, 458, 460 (2001); and the statutory framework at issue here expressly defines that only the MBTA Board is authorized to make binding commitments to executive-level employees. G.L. c. 161A, section 3 (“powers, in each case to be exercised by the board ... (d) to appoint and employ officers, including a general manager, agents, and employees to serve at the pleasure of the directors ... and to fix their compensation and conditions of employment”).

Thus these proffers of personal understandings cannot constitute a basis for likelihood of success on the merits.

b. “Accrued service” terms of past collective bargaining: Although it is undisputed that these Plaintiffs are no longer members of bargaining units, they argued at hearing that they once were, and while they were, they bargained for certain benefits, including health care. Plaintiffs thus argue they somehow should be able to continue to rely on promises made in those past (and expired) contracts, to protect the status quo of

⁴ The court has not relied on any of the disputed affidavits in making this assumption. Defendants’ objections to the admissibility of much of the material contained in and with those affidavits is well taken. However, the court chooses to address the argument for the sake of completeness, and given the court’s ruling Defendants are not prejudiced. Defendants’ Motion to Strike preserves their objections.

their health benefits today and going forward. Not surprisingly, Plaintiffs offered no legal authority for this argument, and the court is aware of none.

There is no live dispute on this record with respect to any putative Plaintiffs (active or retired) who may currently be covered by outstanding collective bargaining agreements, whether or not those agreements contain “rollover” or “evergreen” clauses, because the legislative provision, as well as its executive implementation, respect those agreements as a matter of Massachusetts law. Local 589, 414 Mass. at 325-328. Defendants concede such commitments remain intact at this time. Thus I find no basis on this record for injunctive relief to protect a binding contractual obligation to the Plaintiffs before me based in collective bargaining.

c. Health care benefits as pension benefits: Plaintiffs next argue that health care benefits are in reality deferred pension compensation, and thus protected from modification.⁵ They cite as authority for this proposition Opinion of the Justices, 364 Mass. 847 (1973). However, as Defendants point out, that advisory opinion to the House of Representatives mid-legislation interpreted an entirely different (proposed) statute, which explicitly made membership in a retirement system “a contractual relationship” to which “no amendments or alterations shall be made.” G.L. c. 32, section 25 (5). No comparable statutory provision exists here, and no Massachusetts case law has been cited by Plaintiffs to support this analytical leap from pension contributions to fringe benefits such as health care. A close reading of the Opinion raises more questions than it answers, reminding as it does, that “the State reserves police powers that may in a particular predicament enable it to alter or abrogate even conventional contractual rights.” Id., at 863. And Defendants point out that economic disaster may well be an occasion for use of such police powers.

In short, with this theory Plaintiffs are in fact arguing what they believe would be good public policy, a question not for the judicial branch. Because nothing in the current state of Massachusetts decisional law supports this argument, it cannot be a basis for injunctive relief.

d. Federal law: Plaintiffs also argue, albeit less vehemently, that by accessing federal grant money for transit projects, and making certain assertions required in that process, the Commonwealth has bound itself to “employee protective arrangements,” which somehow should be deemed to include contribution-free, health care-for-life agreements with MBTA unions, citing 49 U.S.C. section 5333, also known as Section 13(c)(colloquially known as 13(c) certification). The record is devoid of both factual support and legal authority for this proposition. Ironically both sides seek support in then-Judge Breyer’s decision for the federal Court of Appeals for First Circuit, in Local Division 589 v. Comm. Of Mass. 666 F.2d 618 (1st cir. 1981), on this question. Suffice to say the First Circuit recognized explicitly in that case both that state law

⁵ In a somewhat related argument, Plaintiffs plead in their Complaint that particular MBTA written pension agreements include promises about health care coverage. Defendants point out that the agreements themselves contain no evidence whatsoever of such a promise, and the court would need to reform them to so find. Plaintiffs appear to have abandoned this theory of argument.

controls these labor relationships, and the possibility that subsequent state legislation could be inconsistent with some of the foundational documents providing 13(c) certification, that is, that these federal understandings were “made subject to possible state enactment of a conflicting statute.” 666 F.2d 627-28, 646. The historical 13(c) process cannot support injunctive relief here.

Irreparable Harm

The court respects the concerns of MBTA employees – both active and retired – that their expectations about health care coverage, and related projected living expenses, have been dashed by the July, 2009 enactment of this legislation. The court also appreciates that certain individuals may experience personal difficulties coping with the administrative changes required to maintain effective coverage (which will not occur automatically), and receiving appropriate care, regardless of cost. But just as that human reality, in and of itself, cannot provide a successful claim on the merits, it also does not establish substantial risk of irreparable harm as a matter of law.

Financial losses can obviously be accounted for and remediated, should the court’s current understanding of the merits prove wrong. And the personal administrative burdens raised by Plaintiffs’ pleadings, however sincere, are purely speculative at this time. The court finds Plaintiffs have not met their burden to demonstrate the required level of imminent, non-speculative, substantial, and irreparable harm to them that may not be readily remediable by money damages or other final judgment in equity. Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 643-45 (1987).


This heated dispute about how to pay for health care has been brewing both nationally and locally for many years. Specifically with respect to MBTA employees, I find abundant evidence in this record of the employer’s intention and determination to revise health care coverage, and specifically to require employee contributions to same, over the period 1985 through the so-called “Peace Award” of July, 2008. While the court appreciates the parties may have been avoiding, denying, or seeking out-of-court alternatives to the legislative reality, Plaintiffs have waited until the very eleventh hour to seek to disrupt the new status quo by means of injunction. Given the heavy burden placed on Plaintiffs by the law, they may not do so here. Alexander & Alexander, Inc. v. Danahy, 21 Mass. App. Ct. 488, 494-495 (1986)(unexplained delay in seeking relief undermines harm element).

I thus find and rule that Plaintiffs have failed to carry their burden with respect to the elements for injunctive relief, and no injunction may properly issue. Student No. 9 v. Bd. of Educ., 440 Mass. 752, 762 (2004); Tri-Nel Mgmt., Inc. v. Bd of Health of Barnstable, 433 Mass. 217, 227-228 (2001)(failure to establish likelihood of success on merits sufficient to deny relief); John T. Callahan & Sons, Inc. v. City of Malden, 430 Mass. 124, 130-31 (1999); Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980). I need not reach the more complicated question of sorting out the balance of

harms when "public interest" issues are presented by each side. Commonwealth v. Mass CRINC, 392 Mass. 79, 89-90 (1984).

This matter shall be returned to the "B" session for such other and further proceedings as the parties and the session judge deem appropriate.

DATED: December 24, 2009

A handwritten signature in black ink, appearing to read 'C. Roach', written over a horizontal line.

Christine M. Roach
Associate Justice