At a term of the Supreme Court of the State of New York, held in and for the County of Oneida at Lowville, New York, on April 29, 2008.

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ONEIDA**

DANIEL CHIRILLO, LYNN CROSS, GARY MADIA, and JOHN RUSSO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE CITY OF UTICA,

Defendant.

DECISION/ORDER
Index: 05-2561

RJI 32-06-0673

APPEARANCES: HINMAN STRAUB P.C.
Attorneys for Plaintiffs.
(David W. Novak, Esq., of counsel)

ROEMER WALLENS & MINEAUX, LLP.
Attorneys for Defendant.
(James W. Roemer, Jr., Esq., of counsel)

Merrell, C. C., J.S.C.

Before the Court is Plaintiffs' motion for summary judgment and Defendant's cross-motion for summary judgment. The Court previously issued a Decision/Order in this matter granting the Plaintiffs' motion for class action certification.

The Class of Plaintiffs is certified as firefighters formerly employed by the Defendant City of Utica who retired after April 1, 1984 and before November 15, 2005, and who had not yet reached the age of 65 years as of October 1, 2005, and any spouses of those same retirees who had not attained the age of 65 years as of October 1, 2005.

The relevant facts are undisputed and are recited herein:

On May 8, 1984, the Defendant City entered into a collective bargaining agreement (CBA) with Local 32 International Association of Fire Fighters A.F.L. - C.I.O. - C.L.C. Utica Professional Fire Fighters Association (hereinafter referred to as the Union). The 1984 CBA provided in relevant part:

"Any member of this Association who retires after April 1, 1984 shall receive a fully paid hospitalization plan equivalent to the plan described in paragraph "a" and said plan shall provide coverage to the dependants (*sic*) of a member who has retired after April 1, 1984. Said plan shall continue until the plan's recipients attain the age of sixty-five(65)."

In paragraph A. referenced in the quote as paragraph "a", the 1984 CBA stated that the "fully paid hospitalization plan" is "equivalent to the Blue Cross Blue Shield UB17 X." The 1984 CBA covered the period from April 1, 1984 to March 31, 1986.

In 1986 the Defendant City and the Union entered into a collective bargaining agreement covering the period from April 1, 1986 to March 31, 1989. This 1986 CBA repeated verbatim the language of the 1984 Agreement regarding health insurance for retirees.

The Court has not been provided with a copy of the collective bargaining agreement covering the period from April 1, 1989 to March 31, 1992. The Court has been provided with the affidavit of Daniel Donaldson, the Union President from 1982 to 1992. His undisputed testimony is that the 1989 contract covering the period from April 1, 1989 to March 31, 1992 repeated verbatim the health insurance language from the 1984 and 1986 contracts.

The next collective bargaining agreement between the Defendant City and the Union covered the time period from April 1, 1992 to March 31, 1996. The agreement

followed a binding arbitration award. Effective April 1, 1995, the agreement changed the health insurance to the New York State Government Health Insurance Program and provided that all members contribute 10% of the cost of their health insurance coverage. The agreement also stated:

"Members of the Fire Fighters unit who retire on or after March 16, 1995 shall be bound by the health insurance provisions herein, and shall, effective April 1, 1995, contribute 10% towards the cost of their health insurance coverage, individual or family coverage as selected."

The 1992-1996 agreement also provided:

"Any Member of this Association who retires after March 16, 1995 shall receive a fully paid hospitalization plan equivalent to the plan described in paragraph "a" and said plan shall provide coverage to the dependants of a member who has retired after March 16, 1995. Said plan shall continue until the plan's recipients attain the age of sixty-five (65)."

Neither side presents any proof of the existence or non-existence of a collective bargaining agreement covering the period from April 1, 1996 through March 31, 1998. The 1992-1996 contract does provide that the terms of 1992-1996 agreement shall remain in effect until a new agreement is executed.

The next collective bargaining agreement covered the time period from April 1, 1998 through March 31, 2001. This CBA repeated the language concerning health insurance from the 1992-1996 CBA.

Thereafter, the Defendant City and the Union entered into a CBA for the period from April 1, 2001 through March 31, 2004. The following language regarding retirees and health insurance is contained in this CBA:

"Any member who retires after March 16, 1995, through either a normal service retirement or a disability incurred as a result of the performance of duty shall receive a hospitalization plan equivalent to the plan(s) offered to the members of the bargaining unit.

Coverage shall continue until the member has attained the age of 65. In addition, coverage will also be provided to the spouse and minor children (if any) of the retired member. Coverage to the spouse will remain in effect until the spouse has attained the age of 65 years. If the member dies, and the spouse remarries before age 65, coverage will terminate."

Finally, the Defendant City and the Union entered into a CBA covering the period from April 1, 2004 through March 31, 2007. Union members were offered a choice of three health insurance options, i.e. Capital District Physician's Health Plan (CDPHP) with no premium co-pay; or MVP Co-Plan 20 with a 10% premium co-pay; or UB17X health insurance plan with a 25% premium co-pay. In this CBA, the language regarding health insurance for the retirees was changed to the following:

"The City agrees that it shall permit current members of the bargaining unit and their spouses or family, if any, who retire from City of Utica Fire Department to continue coverage under the City's medical plan. The City will contribute 100% of the cost of coverage under the City's (CDPHP) plan and the member and/or spouse will contribute either 10% or 25% of (either the MVP plan or the UB17X plan). The coverage shall continue until the member has attained the age of 65 years. If the member dies and the spouse remarries before age 65, coverage will terminate. Spousal independent coverage will be available utilizing the same formula for contributions that would have been in effect for the retired member had they not attained age 65 or were deceased."

It is not disputed that prior to August 12, 2005, Union members who retired prior to March 16, 1995 contributed nothing to their health insurance and Union members who retired after March 16, 1995 contributed 10% of their health insurance premiums.

On August 12, 2005, the City's Board of Estimate and Apportionment passed a resolution requiring all Union members who had retired prior to April 1, 2004 to pay 25% of their health insurance premiums. The regulation was effective October 1, 2005.

On December 9, 2005, the Plaintiffs commenced the pending action against the Defendant City. The first two causes of action allege that the City breached its contract

with the Plaintiffs by unilaterally changing the health insurance contribution requirement. The third and fourth causes of action seek money damages resulting from the alleged breach of contract. The complaint also requests a declaration that the August 12, 2005 resolution of the Defendant's Board of Estimate and Apportionment is null and void. Finally, the Complaint seeks attorneys' fees.

As noted above, the Court previously certified the Plaintiffs' class pursuant to CPLR Article 9.

The Plaintiffs have moved for summary judgment and for attorneys' fees. The Defendant has cross-moved for summary judgment dismissing the complaint and has opposed the Plaintiffs motion.

The Court considered the following submissions pursuant to CPLR 2219: Plaintiffs Notice of Motion dated September 27, 2007; Affidavit of David W. Novak, Esq. dated September 27, 2007 with Exhibits A through H; Affidavit of Daniel Donaldson dated September 20, 2007 with Exhibit A; Affidavit of John Russo dated September 21, 2007; Affidavit of Daniel Chirillo dated September 21, 2007; Affidavit of Gaetano "Gary" Madia dated September 20, 2007; Affidavit of Lynn F. Cross dated September 24, 2007; Notice of Cross-Motion dated September 27, 2007; Affidavit of James W. Roemer, Jr., Esq. dated September 27, 2007 with Exhibits A through H; Affidavits of Anthony Arcuri dated September 26, 2007 with Exhibits A through C and dated October 18, 2007; Plaintiffs' Memoranda of Law dated September 27, 2007 and November 1, 2007; and Defendant's Memoranda of Law dated September 27, 2007 and October 19, 2007.

Arguments

Plaintiffs' Position

Plaintiffs argue that the collective bargaining agreements between the Plaintiffs and the Defendant unambiguously recite the obligations of the Plaintiffs and Defendant with respect to providing health insurance coverage for Plaintiffs. Plaintiffs assert that the various CBAs must be enforced as written.

Plaintiffs assert that the August 12, 2005 Resolution of the Defendant's Board of Estimate and Apportionment was a unilateral attempt to change the terms of binding CBAs. They claim that the Resolution is a breach of contract. They seek damages in the amount they had to pay for health insurance over and above their contractual obligation.

Defendant's Positions

The Defendant argues first that the Plaintiffs have no legal standing to seek to enforce the collective bargaining agreement.

Article 14 of the Civil Service Law, commonly known as the Tayler Law, permits "public employees" to collectively bargain with municipalities. The definition of "public employee" is "any person holding a position by appointment or employment in the service of a public employee" (Civil Service Law Section 201.7(a)). The Public Employment Relations Board ("PERB") has interpreted this definition to exclude retirees (See, e.g. Village of Mamaroneck, 22 PERB 3029 [1989]). According to Defendant, because the Plaintiffs are retirees they are not public employees and thus they cannot sue to enforce the collective bargaining agreement.

In support of this argument, the Defendant points out that New York State annually adopts a moratorium on preventing school districts from amending health insurance

benefits for retired educators (See, Chapter 43 of the Laws of 2008 for the most recent version).

The Defendant also points out that the New York State Legislature has passed bills to extend this moratorium to public sector employees, but the bills have been vetoed. The most recent veto was in 2006. The Defendant points to language in the Governor's veto memorandum in which he states that "This bill intends to protect public employee retirees from unilateral changes in health insurance benefits or premium contributed by employer." The Defendant argues that because the moratorium did not become law, the Defendant is permitted to change unilaterally health insurance premium contributions for retirees.

The Defendant's second argument relies on the principle that a governing board operating in its governmental capacity generally may not bind a successor board (See People ex rel Devery v. Coler, 173 NY 103.110 [1903]) This "term limits" rule prohibits one municipal body from binding its successors in areas relating to governance.

The Defendant notes that many collective bargaining agreements cover periods of time which span more than one legislative term, and Courts have enforced such agreements (See, e.g. Matter of Susquehanna Valley Central School District v. Susquehanna Valley Teachers Assn. 37 NY 2d 614 [1975]).

However, the Defendant argues that there are two limitations on the enforceability of such contracts. First the duration of the contract must be reasonable, and second, the contract may not become a "suicide pact" driving the municipality into financial oblivion (citing Matter of Board of Education of Yonkers City School District v. Yonkers Federation of Teachers, 40 NY 2d 268, 276 [1976]). The Defendant argues that the Plaintiffs are

seeking to enforce collective bargaining agreements that are too old, and that the agreements amount to financial "suicide pacts".

Discussion

Summary Judgment

A party seeking summary judgment must make a *prima facia* showing of entitlement to judgment as a matter of law, presenting sufficient evidence to demonstrate the absence of any material issues of fact (Zuckerman v. City of New York, 49 NY 2d 557). If the movant meets its burden, it shifts to the opponent to establish the existence of material issue of fact which requires trial of the action (Zuckerman v. City of New York, supra at p.562).

When the issue before the Court is one of contractual interpretation, the Court must determine as a matter of law the threshold question of whether the agreement is ambiguous (see, Hudock v. Village of Endicott, 28 AD 3d 923 [2000]; W.W.W. Assoc. v. Giancontieri, 77 NY 2d 157, 162 [1996]; CV Holdings v. Artisan Advisors, 9 AD 3d 654, 656 [2004]). The agreement that is clear and unambiguous, will be enforced as written (W.W.W. Assoc. v. Giancontieri, supra at 162; Della Rocco v. City of Schenectady, 252 AD 82, 84 lus. dismissed 93 NY 2d 999, 1000 [1998]) An agreement that is unclear and ambiguous necessitates consideration of extrinsic evidence to determine the parties' intent, an inherently factual exploration (see, CV Holdings v. Artisan Advisors, supra at 656.; Besicorp Group v. Enowitz, 235 AD 2d 761, 763 [1997]).

The Court finds that the terms of the various CBAs between the parties from April 1, 1984 to October 1, 2005 regarding health insurance coverage and responsibility for

payments for health insurance premiums are clear and unambiguous. There is no need to resort to extrinsic evidence. This case is ripe for summary judgment.

"TERM LIMITS" DOCTRINE

"The term limits rule prohibits one municipal body from contractually binding its successors in areas relating to governance unless specifically authorized by statute or charter provisions to do so" (Karedes v. Colella, 100 NY 2d 45, 50 [2003] citing Morin v. Foster, 45 NY 2d 287, 293 [1978]; [emphasis added]). The Defendant's governing board was statutorily authorized to negotiate retiree health benefits (Civil Service Law Sections 201(4), 203 and 204; In re City of Ithaca, 29 AD 3d 1129). Therefore, the "term limits doctrine" does not apply.

The Defendant has not cited any case law supporting its argument that the "term limits doctrine" applies to the subject collective bargaining argument. In fact, the only case on point specifically holds the opposite (See, Myers v. City of Schenetady. 244 AD 2d 845, 847 [1997]). Most cases on point do not even consider the issue directly (See, e.g. Aeneas McDonald Police Benevolent Association v. City of Geneva, 92 NY 2d 326 [1998]; Della Rocco v. City of Schenectady, supra).

DEFENDANT'S TAYLOR LAW ARGUMENT

Defendant argues that the Plaintiffs, as retirees, have no right to sue "to enforce the provisions of a collective bargaining agreement which has expired." (Defendant's First Memorandum of Law p. 5).

Defendant asserts that Plaintiffs are in a "legal hole" that prevents them from enforcing the contract. Under the Civil Service law, collective bargaining is permitted only by public sector unions on behalf of active employees (Civil Service Law Section 207).

Retirees are, thus, not represented by public sector unions. Consequently, according to the Defendant, public sector employees are entitled to negotiated CBA benefits only so long as they remain active employees and only for the duration of the CBA that existed at the time they retired.

The Defendant offers no case law support for this position. Instead, the Defendant points to proposed legislation which would impose a moratorium on unilateral changes in health insurance benefits or premium increase for public sector retirees. The legislative memorandum in support of the legislation states that public sector retirees "are powerless to stop unilateral depreciation or even elimination of health insurance benefits once the contract under which they retired expires" (Assembly Memorandum in Support of Bill No. A 5426 of 2005).

This Court disagrees. Plaintiffs may sue to enforce this clear and unambiguous terms of a collective bargaining agreement (Della Rocco v. City of Schenectady, supra).

Conclusion

Having found the Plaintiffs have standing and that the terms of the various CBAs are clear and unambiguous, the Court concludes that the Plaintiffs are entitled to summary judgment on the first cause of action that any member of the Plaintiffs class, employed as a firefighter by the Defendants, who retired prior to March 16, 1995, and their dependents are entitled to continue receiving health care benefits under the Blue Cross Plan fully paid by the Defendant until the plan recipient reaches the age of 65.

With respect to the Second Cause of Action, the Court concludes that any member of the Plaintiffs' class, employed as a firefighter by the Defendant, who retired on or after March 16, 1995, and their dependents, are entitled to continue receiving health care

benefits under the Blue Cross Plan, under the same terms of existed as the time of retirement, 90% of which shall be paid by the City of Utica, until the plan recipient attains the age of 65.

With respect to the Third and Fourth Causes of Action, the Court concludes that the Defendant as breached its contract with the Plaintiffs and that the Plaintiffs are entitled to money damages. The parties are directed to submit proposals to this Court for a fair and efficient calculation of the money damages including potentially (1) submission of stipulated written evidence; (2) appointment of a referee under CPLR 3412; or (3) an inquest before the Court. Such proposals are to be submitted by January 16, 2009.

The foregoing shall constitute the Judgment and Order of this Court.

ENTER.

Dated: December 3, 2008

HON. CHARLES C. MERRELL
Acting Justice of the Supreme Court