Employment: Pleading Which Refers to Longevity Payments Listed as "Benefits" in Employee Handbook Alleges Written Contract, Defeats Governmental Immunity Defense

Brett Davis v. City of Greensboro, No. 13-1820 (4th Cir. Oct. 22, 2014)

The Fourth Circuit has upheld a lower court's dismissal of Greensboro's governmental immunity defense in a case brought firemen and police officers, finding that plaintiffs sufficiently alleged the existence of a written contract.

Greensboro, North Carolina firefighters and police officers have been, for some years, entitled to a "longevity payment program." Under this program the city provides lump-sum payments to officers and firefighters based on the number of years they have served with the city. There are two classes of beneficiaries – those hired before July 1, 1994, who get grandfathered into an older program after twenty years of service, and all other employees, who get vested after five years of service and whose benefits increase in five-year increments. The officers and firefighters alleged that the longevity payments were "integral" to their employment contracts and listed as 'benefits' in their employee handbook. When the city thus began modifying the payments in 2010, the officers and firefighters argue the city began improperly augmenting their wages and benefits. Plaintiffs alleged that the city was capping payments at a lower percentage of their annual salary than agreed to and inappropriately converting the program into a discretionary bonus program. Based on these changes, and the accompanying impacts to wages and benefits because of them, the officers and firefighters alleged a variety of causes of action, including 1) the city breached a contractual commitment to provide longevity pay and 2) the officers and firefighters were entitled to these payments under various estoppel theories.

The District Court held the officers and firefighters' arguments on these two issues survived the city's motion for summary judgment because they "sufficiently alleged a contractual longevity payment obligation." The city appealed.

HELD: The Fourth Circuit held Greensboro's motion for summary judgment was properly denied by the lower court because the officers and firefighters alleged sufficient facts to state a claim that they have valid contracts with the city.

DISCUSSION: The city's threshold argument was that it was immune from plaintiffs' claims. Governmental immunity law in North Carolina has been interpreted by the state's high court as providing a complete defense for government, shielding it entirely from having to "answer for its conduct at all in a civil suit for damages." Although the state waives that immunity when it enters into a binding contract, Greensboro alleged the officers and firefighters had not adequately pled the existence of valid contracts for longevity pay because they failed to allege the existence of required preaudit certificates and failed to allege their contracts were written.

The Circuit Court first determined that it had jurisdiction over the appeal because the district court's denial of governmental immunity was a "final determination" under 28 U.S.C § 1291. Examining the merits, the Fourth Circuit agreed North Carolina government contracts are only valid if they include a preaudit certificate under § 159-28(a) of the state code. However, the officers and firefighters answered that they never alleged the existence of such certificates because their contracts are not governed by §159-28(a). The officers and firefighters relied on

Myers v. Town of Plymouth, 522 S.E.2d 122, (N.C. Ct. App. 1999), wherein the North Carolina Supreme Court held §159-28(a) only need be complied with when the financial obligation entered into will come due in the year the municipality incurs the debt. Since under the alleged longevity contract, the city's payment obligations did not come due for a minimum five years, this rule did not govern their case. The city responded by arguing that *Myers* should not be followed since it conflicted with an earlier North Carolina Supreme Court case, but the Circuit Court agreed with the plaintiffs.

The court also rejected the city's argument that the officers and firefighters failed to allege the contract for longevity pay was written. While it agreed with the city that the Greensboro Charter states "all contracts . . . shall be written . . .," it noted the city cited absolutely no authority for the proposition that a plaintiff must allege a contract was written in order to state a claim for a breach of contract. Taking the facts in a light most favorable to the plaintiffs, the Court noted the officers and firefighters did state the employee handbook listed longevity pay as a benefit and, moreover, it was warranted to infer that the officers and firefighters contracts probably were written, even though the plaintiffs had not actually produced them at this early stage of litigation. As a result, the Court affirmed the lower court's holding that the officers and firefighters had sufficiently alleged valid contracts with the city.

http://www.ca4.uscourts.gov/Opinions/Published/131820.P.pdf (last accessed Nov. 4, 2014)