

## How Long Does Your CBA Obligate You to Pay for Retiree Health Insurance Coverage?

If you are a municipal employer in New York State struggling to find the answer to that question, you are not alone. In the absence of express language in your collective bargaining agreement, a definitive response is elusive. So elusive that the Second Circuit Court of Appeals has reached out to New York's Court of Appeals for guidance. Whatever answer the Court of Appeals returns, if any, the value of a carefully negotiated and precisely drafted collective bargaining agreement cannot be overstated.

In *Donohue v. Cuomo*<sup>1</sup>, the State of New York decreased the percentage of its contribution to retired employees' health insurance premiums. In response, the CSEA and various retired state employees alleged that past collective bargaining agreements (CBAs) obligated the state to pay a fixed percentage of retiree health insurance premiums, and that payment of a reduced percentage constituted a breach. Though the CBAs at issue did "not expressly provide for a vested right to coverage at fixed contribution rates," i.e., they did not specify the duration of the state's obligation, the plaintiffs argued that such vested rights were created by inference, or by judicial resolution of otherwise ambiguous language.

In considering these arguments, the Second Circuit noted that two recent Supreme Court decisions<sup>2</sup> interpreting private sector agreements vis-à-vis the vesting of retiree health benefits rejected pro-vesting inferences. However, the Second Circuit noted that New York's Court of Appeals has not addressed what impact, if any, those private-sector precedents have "on the circumstances in which New York law recognizes vested retiree health benefits under public-sector CBAs."

The Second Circuit also addressed the current status of New York law, starting with the Court of Appeals 2015 decision in *Kolbe v. Tibbetts*<sup>3</sup>. In *Kolbe*, the Court held that the contract language before it unambiguously established a vested right to retiree coverage until age 70, despite the absence of express durational language. However, the Court declined "to rule on whether New York applies an inference of vesting for retiree health insurance rights." *Kolbe*, according to the Second Circuit, is "at least arguably in tension with [subsequently decided] Supreme Court precedents."

The Second Circuit went on to discuss the split in New York authority post-*Kolbe*, specifically the conflict between *Village of Old Brookville v. Village of Muttontown*<sup>4</sup>, where the Second Department applied the Supreme Court's rationale in *Tackett* to support its conclusion that "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life," and *Evans v. Deposit Central School District*<sup>5</sup>, where the Third Department considered extrinsic evidence to resolve a "textual ambiguity in favor of a vested right."

Given the unsettled status of New York law, the Second Circuit has asked New York's highest Court to answer the following question: "under what circumstances, if any, New York law permits an inference of vested post-retirement

<sup>1</sup> 2020 U.S. App. LEXIS 35111 (2d Cir. November 6, 2020).

<sup>2</sup> See *M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427 (2015) (rejecting the pro-vesting "Yard-Man" inferences); *CNH Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018) (holding that where an agreement is silent on vesting, the conclusion should be that "it does not vest benefits for life").

<sup>3</sup> 22 N.Y.3d 344 (2013).

<sup>4</sup> 179 A.D.3d 972 (2d Dep't 2020).

<sup>5</sup> 183 A.D.3d 1081 (3d Dep't 2020).

benefits under a state-law CBA, notwithstanding the absence of any express specification that those benefits extend beyond the term of the CBA?”

Given the present uncertainty and the significant financial implications attendant to this issue's resolution, Bond's labor attorneys will be tracking this critical litigation for you and will report back with whatever guidance the Court of Appeals provides.

If you have any questions about this information memo, please contact [Richard Finkel](#) or the attorney at the firm with whom you are regularly in contact.



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