

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
GENERAL DIVISION

FRATERNAL ORDER OF POLICE)	
LODGE NO. 67, et al.,)	
)	
Plaintiffs)	Case No. 420422
)	
v.)	Judge Robert T. Glickman
)	
VILLAGE OF NEWBURGH HTS., et al.)	
)	
Defendants.)	<u>JOURNAL ENTRY</u>
)	<u>& OPINION</u>

This case is before this court due to the August 17, 199 enactment of Ordinance 1999-22 by the Defendant. That Ordinance is entitled "An Ordinance Establishing The Benefit Package Offered to All Full-Time and Part-Time Employees of the Village of Newburgh Hts., Ohio, and Repealing All Conflicting Ordinances in Connection Therewith." The part of the Ordinance that is of particular interest to the parties is:

Section 1. That Ordinance No. 1995-27, enacted December 28, 1995, Ordinance No. 1996-22, enacted August 20, 1996, and all other Ordinances in conflict herewith are hereby expressly declared to be repealed...

Section 2.1 HEALTH CARE COVERAGE

The Village of Newburgh Hts., Ohio will pay the total amount of premiums due and owing to the hospitalization plan for each full-time employee who joins and is a member of the Hospitalization Plan, provided that such employees have served a minimum of thirty (30) days as a full-time employee...

The Village of Newburgh Hts. will pay the premiums of newly hired full-time employees in the amounts equal to 100% of individual coverage and 80% of the premiums for family coverage, after said newly hired employees have served a minimum of 30 days employment.

Both Plaintiff Doan and Lewis were each full-time employees for more than 30 days prior to the enactment of the Ordinance, and the Defendant refuses to pay the total amount of their health care premiums for their family coverage.

The Defendant asserts that the Plaintiffs' reading of the Ordinance would create two classes of employees, those hired prior to its enactment and those hired after its enactment. In application, this would mean that employees performing the same job would receive disparate health care benefits based solely upon their date of hire. The Defendant argues that the intent of the Ordinance was to define the Defendant's obligation to pay health care premiums for all full-time employees. In its brief, the Defendant asks the court to "read into Ordinance 1999-22 that which is not present." The Defendant asks the court to do this in order to prevent the creation of disparate unjust sets of benefits that would apply to full-time members of the Village Police Dept. The problem facing the Defendant is that it drafted the Ordinance in question.

The court agrees that the Plaintiffs are asking for the creation of two disparate classes of full-time employees. The court further agrees that this was probably not the intent of the drafters of Ordinance 1999-22. However, the court is bound by the plain unambiguous language of the Ordinance. Symmes Twp. Bd. of Trustees v. Smyth (2000), 87 Ohio St.3d 549 at 553. The language of this Ordinance is unambiguous, and in fact does create two classes of employees. The Ordinance provides a different health care package for present full-time employees and newly hired full-time employees. The Defendant seems to see that, and cites absolutely no supporting authority to the contrary.

Both parties agree that Plaintiff Doan and Lewis were full-time employees who had served at least thirty (30) days of full-time service at the time the Ordinance was

enacted. Therefore, per the express unambiguous language of the Ordinance, each is entitled to payment by the Defendant of their entire hospitalization plan premiums.

The court declares that both Plaintiff Doan and Lewis are declared part of the "full-time employee" class as defined by Section 2.1 of Ordinance 1999-22. As such, the Defendant is ordered to provide reimbursement of past hospitalization premiums paid by each of them after the enactment of Section 2.1 of Ordinance 1999-22 and the Defendant is ordered to pay 100% of all future hospitalization plan premiums for all members of the full-time employee class created by the Ordinance. The court further finds that Section 2.1 of Ordinance 1999-22 created two classes of full-time employees for the purpose of payment of health care premiums. Therefore, all members of the class of full-time employees who had served a minimum of thirty (30) days at the time Section 2.1 of Ordinance 1999-22 became effective are entitled to have the Defendant pay 100% of the premiums of their health care coverage.

The Defendant is ordered to pay the costs of this action.

IT IS SO ORDERED.

Date

Judge, Court of Common
Pleas