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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARION EVERSON, JAMES	)	CIVIL NO. 07-1-1872
DANNENBERG, BILLY SOUTHWOOD,	)	(Agency Appeal)
VALERIE YAMADA SOUTHWOOD,	)	
DUANE PREBLE, SARAH PREBLE,	)	DECISION AND ORDER REVERSING
	)	DECISION OF BOARD OF TRUSTEES
Appellants,	)	OF THE HAWAII EMPLOYER-UNION
	)	HEALTH BENEFITS TRUST FUND
vs.	)	
	)	
BOARD OF TRUSTEES OF THE	)	
HAWAII EMPLOYER-UNION HEALTH	)	
BENEFITS TRUST FUND, STATE OF	)	
HAWAII, JAMES WILLIAMS, as the	)	
Administrator of the Hawaii Employer-	)	
Union Health Benefits Trust Fund,	)	
	)	
Appellees.	)	
	)	

DECISION AND ORDER REVERSING DECISION OF BOARD OF  
TRUSTEES OF THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

The Court, having considered the arguments of counsel, briefs, supplemental briefs and record on appeal pursuant to HRS Section 91-14(g) determines as follows:

1. It was error for the Appellee Board of Trustees of the Hawaii Employer-Union Health Benefits Trust Fund ("Board") to allow its administrator to intervene, particularly when the Board was a party in the class action which gave rise to the circuit court order interpreting primary jurisdiction to require the Defendant Board to determine at the agency level by

declaration and contested case hearing the same issues it was defending against in the circuit court. The fact that the same attorney representing the Board in the class action also represented the intervenor in this action only compounded the due process violation. Sussel v. City & County of Honolulu Civil Service Commission, 71 Hawai'i 101 (1989); White v. Board of Education, 54 Haw. 10, 16 & n.7 (1972); cf. RGIS Inventory Specialist v. Hawai'i Civil Rights Commission, 104 Hawai'i 158 (2004) (no standing for HCRC Executive Director to file a petition with HCRC for declaratory judgment action pursuant to HRS Section 91-8).

2. The Court should consider statutory violations before reaching constitutional issues, and statutes should be construed in a manner that makes them constitutional. Thus, the analysis begins with HRS Section 87A and where necessary continues in the context of Article XVI of the Hawaii Constitution, ratified in 1959. Article XVI, Section 2 reads as follows: "Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired."

3. Applicability of the Article XVI non-impairment clause to medical/health benefits as opposed to pension payments is the constitutional issue. The parties disagree whether interpretation of the Hawaii provision should be guided by New York or Alaska interpretations of their respective similar provisions. The Hawaii Supreme Court in Kaho'ohanohano v. State, 114 Hawai'i 312, 342-45 (2007) noted the New York provision was the basis for Hawaii's provision, but the majority also found Alaska's law instructive in interpreting our non-impairment clause, id. at 348 n.32. That is because Alaska's provision also was patterned after New York. Those states have reached different results when deciding whether their non-

impairment clause applied to medical/health benefits. Lippman v. Board of Education, 66 N.Y.2d 313 (N.Y. 1985) held it did not, influenced by the fact that the health benefits were governed by a separate statute from the retirement/pension benefits. Duncan v. Retired Public Employees, 71 P.3d 882 (AK 2003) relied in part on the integration of health and pension benefits under the same retirement chapter.

Appellants correctly point out that by 1959, when the Hawaii Constitution was ratified including the non-impairment clause, every recipient of a government pension “who is actually and solely dependent upon his pension for his maintenance and support . . . shall be entitled to free medical treatment . . . and free hospitalization” from any government physician or hospital, RLH Section 6-4 (1945). At the time of ratification this benefit was codified in the same chapter governing the retirement system, Chapter 6 “Pension and Retirement Systems” (1955 RLH). (The first government health benefits plan was enacted in 1961 including active employees and retirees. Medicare began in 1966, and thereafter legislation made Medicare primary for those eligible but required the retirees benefits be essentially equivalent to those for active workers and their dependents.) Appellees counter that the same free aid provision remains in the ERS chapter 88 today, distinct from chapter 87A health benefits at issue here, and thus it is of no consequence.

Appellants further note the non-impairment clause in both Hawaii and Alaska Constitutions use the term “accrued benefits” without limitation and do not confine them to financial benefits; i.e. pension payments as in Michigan, Studier v. MPSERB, 698 N.W.2d 350 (Mich. 2005). Moreover the Appellants cited numerous examples of government publications identifying health benefits as retirement benefits, ROA 240, 243, 248, 256, and such publications

are entitled to consideration, see Chun v. Employees' Retirement System, 61 Haw. 596, 601-02 (1980). This Court is persuaded that the analysis of the Alaska Supreme Court in Duncan is closer to the plain language, intent and correct interpretation of our non-impairment clause. By interpreting "accrued benefits" to include health benefits which had been part of the employees' total compensation package and viewing them as deferred compensation to be provided in retirement the Duncan court determined retirees' health benefits were contractual rights which once accrued could not be impaired. Hawaii's non-impairment provision similarly protects the accrued benefits but by so doing does not and has not prohibited the State legislature from changing the benefits for prospective employees. Hence, retirement benefits including those health benefits that became established by enactment of Chapters 87 and 87A and amendments thereto are protected or vested once accrued.

4. Turning to the statute, the Court finds that "similarly situated beneficiary" in section 87A-23 of Hawaii Revised Statutes invokes comparison between retirees and active employees, not Medicare eligible retirees and early retirees who by age do not yet qualify for Medicare. Appellants appear to concede however that the plans need not be identical, so long as they are reasonably approximate; i.e. near or close. (Opening Brief at 33) The plans also must be affordable and within the limits of the retirees' health benefits contribution cap. Because the Board's interpretation of HRS Section 87A-23 permitted substantially different benefits, the issue of affordability in the context of reasonably approximate benefits was primarily addressed in testimony that rating active workers and retirees would eliminate the foreseeable discrepancy and had been done in connection with Kaiser as the provider since the health plan's inception.

5. Having rejected the Board's legal analysis, this Court is left to consider

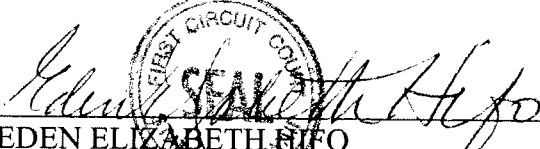
whether the differences in retiree benefits nonetheless reasonably approximate those of active workers. The following exemplify benefits that are not reasonably approximate in violation of state law:

- \$2,000 maximum dental benefit versus \$1,000
- 80% versus 60% coverage for endodontic treatment
- 90% radiation therapy coverage versus 80% outpatient radiation therapy after paying annual deductible

6. The Court notes Appellants' request for attorneys fees and costs but is not aware of any underlying authority to make such an award, and none is cited by Appellants. The request is denied.

For the aforesaid reasons, this Court reverses the Board's decision. Ms. Calvert to prepare the judgment.

DATED: Honolulu, Hawaii, July 23, 2008.

  
EDEN ELIZABETH NIFO  
Judge of the Above-Entitled Court

Transmitted on 07/23/2008,  
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