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Summary of Public Employees' Benefits Prog. v. LVMPD, 124 Nev. Adv. Op. No. 14

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Recommended Citation

Holmes, Meredith, "Summary of Public Employees' Benefits Prog. v. LVMPD, 124 Nev. Adv. Op. No. 14" (2008). *Nevada Supreme Court Summaries*. 451.

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***Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. No. 14 (Mar. 20, 2008)¹**

EMPLOYMENT LAW – EMPLOYEE BENEFITS, STATUTORY INTERPRETATION

Summary

Appeal from a district court order granting declaratory relief to Las Vegas Metro Police Department (Metro) and Clark County, regarding whether the local government employers were required to subsidize their retirees' Public Employees' Benefits Program (PEBP) premiums.

Disposition/Outcome

The Court reversed the district court's order granting declaratory relief to the government employers. The district court misinterpreted the subsidy requirement in NRS 287.023(4) and, therefore, improperly granted relief.

Factual and Procedural History

Metro and Clark County have collectively bargained-for health trusts that provide health care to their employees. Several Metro and Clark County employees decided to join Public Employees' Benefits Program (PEBP) when they retired. Because of increasing costs to retirees for PEBP premiums, the Legislature enacted a provision, NRS 287.023, which provided for the local government employers to subsidize the PEBP premiums.

When the subsidy provision became effective on October 1, 2003, appellant PEBP began billing Metro, which had retirees participating in the PEBP program. Metro refused to pay the subsidy, and was referred to collection by PEBP, which caused the state controller to offset Metro's state funding to pay the claims.

Metro filed a district court action, requesting declaratory and injunctive relief. Clark County was allowed to intervene and filed a complaint for declaratory relief. All parties filed for summary judgment and the district court granted declaratory relief in favor of Metro and Clark County. PEBP appealed and the case was heard en banc by the Nevada Supreme Court.

Discussion

The case turned on the interpretations of the various statutes involved, and the Court used the established methods of statutory interpretation² to overcome the ambiguities of the statutes. In order to decide this case, the Court had to determine whether the collectively bargained for

¹ By Meredith Holmes.

² The Court first looked at the plain language of the statutes, followed by "examining the background and spirit in which the law was enacted," the subject matter, public policy, and construing the statute as whole so as not to render any part meaningless. *Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 13 (Mar. 20, 2008) (en banc).

health trusts were subject to the NRS 287.023(4) subsidy and, if so, whether the subsidy applied to retirees who joined PEBP before the statute's October 1, 2003 effective date.

The health trusts fall under NRS Chapter 287 and the subsidy is required for any PEBP-participating employee who was previously covered under such program

Under NRS 287.023(4) local government employers must subsidize the PEBP premiums of retirees who previously were covered by one of the four types of NRS Chapter 287 health programs.³ The issue in this case was whether Metro's and Clark County's health trusts arose under NRS 287.010, and considered "010" programs. Neither party argued that Metro's and Clark County's health trusts arose under NRS 287.015, the NRS provision governing certain health trusts, and the parties agreed that the other two types of health plans were not applicable.

Respondents Metro and Clark County argued that the health trusts were not "010" programs, but were implicitly authorized under the collective bargaining requirements of NRS Chapter 288.

PEBP argued that the health trusts at issue were authorized under NRS 287.010(1)(a). The Court agreed with PEBP and held that the health trusts are, as a matter of law, "010" programs arising under NRS 287.010(1)(a) which provides:

The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada may:

(a) Adopt and carry into effect a system of group life, accident or health insurance, or any combination thereof, for the benefit of its officers and employees, and the dependents of officers and employees who elect to accept the insurance and who, where necessary, have authorized the governing body to make deductions from their compensation for the payment of premiums on the insurance.

The Court analyzed the phrase "adopt and carry into effect" a group insurance system because of its ambiguity. Metro and Clark County argued that it should be read as narrowly applying to those health plans established by the employer, while PEBP argued that it should be read as broadly applying to any action a local government employer takes to provide health care for its employees.⁴

The Court determined that a broad reading of the statute was appropriate by looking to reason and public policy.⁵ It appeared to the Court that the intent behind NRS 287.010(1)(a) was to "generally authorize local government employers to provide, for their employees' purchase, some general form of group health insurance."⁶ As a result of this broad reading, Metro and Clark County adopted and carried into effect a group health insurance system by "agreeing to and ensuring that their employees have health care coverage options under the collective

³ See NEV. REV. STAT. § 287.010 governs systems of group health insurance, NEV. REV. STAT. § 287.015 applies to health care trust funds, NEV. REV. STAT. § 287.020 governs systems of medical or hospital service through nonprofit membership corporations, and NEV. REV. STAT. § 287.025 governs participation in another entity's health care program. *Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 6.

⁴ *Id.* at 16.

⁵ There was no legislative history available from the original statute, which was enacted in 1947, so the express legislative intent could not be analyzed. *Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 19.

⁶ *Id.* at 20.

bargaining agreements.”⁷ Therefore, Metro’s and Clark County’s health trusts fell under the Chapter 287 provisions and their employees were entitled to join PEBP upon retirement as set forth in NRS 287.023(1).

Metro and Clark County employees who were covered by health trusts, and who participate in PEBP, are entitled to the NRS 287.023(4) subsidy, including those who joined before October 1, 2003

The employees who joined PEBP did so pursuant to NRS 287.023(1),⁸ and are therefore entitled to the subsidy provided by NRS 287.023(4). The 2003 version⁹ of NRS 287 read:

The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of this state:

....

(b) Shall pay the same portion of the cost of coverage under the Public Employees’ Benefits Program for persons who join the [PEBP] upon retirement pursuant to subsection 1 as the State pays pursuant to subsection 2 of NRS 287.046 for persons retired from state service who have continued to participate in the Program.

Because the Metro and Clark County health trusts fall under Chapter 287 types of health care, the retirees of those employers who were covered by the trusts and decided to join PEBP are entitled to the subsidy provided for in NRS 287.023(4).

Metro and Clark County also argued that the subsidy requirement does not apply to employees before the October 1, 2003 effective date, because it would be a retroactive application of the statute. PEBP argued that this “conclusion misconstrues NRS 287.023(4) and misapplies the term ‘retroactive.’”¹⁰ The Court agreed with PEBP.

In interpreting the statute, the Court decided that the Legislature’s use of the present tense term “join” as opposed to the past tense “joined” was neutral and did not express intent to prevent employees who retired before October 1, 2003 from receiving the subsidy. The Court went on to hold that providing the subsidy to persons who retired before October 1, 2003 would not be a retroactive application because there would be no charges relating to pre-October 2003 premiums.

The Court pointed out that a statute is retroactive if it impairs “vested rights and past transactions.”¹¹ In this case, the Court held that because the employers cannot claim a statutory right to refuse to pay the subsidy, the requirement “neither takes away nor impairs any vested legal right.”¹² Additionally, the obligation to pay the subsidy is not imposed on past

⁷ *Id.* at 21.

⁸ NEV. REV. STAT. § 287.023(1) provides that employees may join the Public Employees’ Benefits Program if they or their dependents were covered by one of four NRS Chapter 287-defined health care programs.

⁹ NEV. REV. STAT. § 287.023(4) was amended in 2007 to change the word “join” to “participate”, in order to resolve a controversial issue over who was entitled to subsidization. *See Public Employees’ Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 22, n. 39.

¹⁰ *Public Employees’ Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 24.

¹¹ *See Public Employees’ Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14, p. 26 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 268-69 (1994)).

¹² *Public Employees’ Benefits Prog. v. LVMPD*, 124 Nev. Adv. Op. 14 at 27.

transactions. Therefore, the subsidy is not retroactively imposed when paid to retirees who joined PEBP before October 1, 2003.

The Court went on to state two other sources that the Legislature intended to include pre-October 2003 retirees in the subsidy provision. First, the legislative history shows that the subsidy requirement was enacted in response to concerns that PEBP premiums' costs were increasing rapidly.¹³ Because of this, the legislative intent could not be achieved unless pre-October 2003 retirees were included in the subsidy. Second, the 2007 amendment to NRS 287.023(4) changed the controversial "join" language to "participate".¹⁴ The Legislature clarified the statute in order to specifically include any eligible retirees participating in PEBP on and after October 1, 2003.

Conclusion

The Metro and Clark County health trusts are part of NRS Chapter 287 "010" programs, and those retirees who were covered by the trusts and are now participating in PEBP are entitled to the subsidy provided by NRS 287.023(4). Additionally, pre-October 2003 retirees are entitled to the subsidy because this does not constitute a retroactive application, legislative history indicates that the Legislature intended pre-October 2003 retirees to be included in the subsidy provision, and through the 2007 amendment to NRS 287.023(4) the Legislature clarified its intent to include pre-October 2003 retirees.

¹³ *See Id.* at 28; Hearing on A.B. 286 before the Assembly Government Affairs Comm., 72d Leg. (Nev., Mar. 19, 2003).

¹⁴ *See Id.* at 29, n. 55 (discussing Metro's and Clark County's interpretation of NRS 287.023(4) and testimony before the Legislature).