

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Diane Clapp

v.

The Goffstown School District

No. 07-E-0249

ORDER

Petitioner Diane Clapp ("Clapp") seeks a declaration that Respondent, the Goffstown School District ("GSD"), improperly failed to inform the New Hampshire Retirement System and its predecessor ("NHRS") of GSD's 1950 vote to enroll GSD's support staff into the NHRS. The Court held a bench trial on the matter on June 18, 2008, and finds and rules as follows.

The parties agree on all relevant facts, except whether GSD is at fault for the NHRS having no record of the GSD's 1950 vote to include all GSD employees, including support staff, in the NHRS. The NHRS has no record of that vote. Clapp began working for GSD in July of 1971. In March of 2001, GSD again voted to have GSD support staff become eligible for the NHRS. The NHRS set July of 2001 as the effective date of participation for the GSD support staff. In October 2001, Clapp's union, the Goffstown Education Support Staff, NEA-New Hampshire ("the union") asked whether the support staff could receive credit for services rendered before July 1, 2001, citing GSD's 1950 vote. A NHRS benefit administrator denied this request because the NHRS had no record of GSD's 1950 vote. The union appealed this determination. The New

Hampshire Supreme Court (Broderick, C.J.) affirmed the NHRS decision, noting that "the support staff may purchase prior service credits themselves ... or ask the school district to purchase them," and that "the support staff ... may have equitable remedies against [GSD] for failing to notify the NHRS of the 1950 vote." (In Re Goffstown Educ. Support Staff, NEA-N.H., 150 N.H. 795, 803 (2004).

Subsequent to the Supreme Court's decision, Clapp went before the GSD on June 21, 2004, seeking reimbursement of the employer's share of the twenty-eight years of buy back credits Clapp had purchased to receive credit in the NHRS for her work at GSD prior to July of 2001. GSD refused. On June 21, 2007, Clapp filed this petition. In addition to seeking a declaratory judgment that GSD had a legal duty to inform NHRS of the 1950 vote, Clapp petitions this Court to require GSD to pay both the employer and employee contributions Clapp paid to the NHRS, and seeks an award of attorney's fees related to this action. Respondent objects, asserting that Clapp's claim is untimely and that there is insufficient evidence to support a finding in her favor. The Court will first address GSD's timeliness claim, and will then address Clapp's theories of relief.

Statute of Limitations

GSD asserts that Clapp's claim is untimely because Clapp knew of the 1950 vote by December of 1999. The applicable statute of limitations for this "personal action" is three years. RSA 508:4. However,

[W]hen the injury and its causal omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

Id. Clapp's injury stems from several events, including GSD's refusal to pay for any part of Clapp's buy back credits. Clapp was not officially advised that GSD was unwilling to contribute to her buy back credits until she went before the GSD on June 21, 2004. Therefore, the statute of limitations did not begin to run until that date. Clapp's petition was received in this Court on June 15, 2007, and her claim is therefore not barred by the applicable statute of limitations.

Declaratory Judgment

The Court declines to address whether GSD had a duty to notify the NHRS about the 1950 vote to include GSD support staff. While it is clear the NHRS (or its predecessor) did not establish a date of eligibility based on GSD's 1950 vote, the parties did not present sufficient evidence demonstrating why an eligibility date was not established. Because the Court would be unable to determine whether GSD breached any duty it may have had to report the 1950 vote to the NHRS, the Court declines to assess whether GSD actually had such a duty. Accordingly, Clapp's request for a declaratory judgment is DENIED.

Negligence

To sustain a claim of negligence, Clapp must show that GSD breached a legal duty. See Black's Law Dictionary 28 (fifth ed. 1979) ("actionable negligence"). Because there is insufficient evidence to find a breach of any duty, Clapp's request for relief based on her negligence claim is DENIED.

Unjust Enrichment

Clapp argues that GSD was unjustly enriched because it never paid out the funds it had agreed to pay for the support staff's pension, pursuant to the

1950 vote. "The propriety of affording equitable relief in a particular case rests in the sound discretion of the trial court to be exercised according to the circumstances and exigencies of the case." Decker v. Decker, 139 N.H. 588, 590 (1995) (citation omitted). The Court may find unjust enrichment where "an individual receives a benefit as a result of his wrongful acts" or where an individual "innocently receives a benefit and passively accepts it." Petrie-Clemons v. Butterfield, 122 N.H. 120, 127 (1982) (citations omitted). If the Court determines that equitable relief is proper because a party has been unjustly enriched, "[t]he correct measure of restitution ... is the value of the benefit received by the unjustly enriched party." Id.

GSD was unjustly enriched in this case, because, at least, it passively accepted the benefit of retaining funds it voted in 1950 to spend on behalf of the support staff. It is unclear from the evidence before the Court why the 1950 vote was not effected. Whatever the cause, it resulted in GSD retaining money it voted to spend in order to provide its employees with a pension. In order for those employees to obtain the pension GSD voted to give them, the employees are being required to cover the employee share of the buy back credits, as well as the employer portion. GSD has been unjustly enriched because it has kept the money it agreed to pay to the NHRS on behalf of the support staff. The Court need not find fault with GSD to find unjust enrichment: even if GSD is not at fault for the failure to enroll and pay for employees like Clapp in the NHRS, GSD has at least passively accepted this benefit and been unjustly enriched by it.

The Court finds that the proper measure for restitution in this case is the amount GSD would have had to pay for Clapp's pension in light of the 1950 vote, i.e., the employer portion of the buy back credits. The Court defers to the NHRS's determination of the proper allocation of the burden for buy back credits between employer and employee. The Court assumes that this allocation is a fair valuation based on what the employer and employee would have paid into the retirement system if the employee had been a part of the NHRS during the period covered by the buy back credits. Therefore, Clapp's request that GSD pay the employer portion of her buy back credits is GRANTED.

Attorney's Fees

In her petition, Clapp seeks attorney's fees because GSD forced her to "seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention." Pl.'s Pet. at 26 and 27 (citing Harkeem v. Adams, 117 N.H. 687 (1977)). In Harkeem, the Court affirmed an award of attorney's fees when, after the plaintiff's right to benefits had been unequivocally established by the Court, the defendant continued to challenge it. Id. at 691-693. The Court found that the defendant "had no valid reason to deny the plaintiff benefits ... [the defendant's] obdurate pursuit of further fruitless litigation showed a callous disregard for the rights of the plaintiff, and resulted in a needless drain upon the resources of the judicial system ... [and] [t]he award of attorney's fees ... was proper." Id. at 692-693.

In this case, Clapp's right to repayment of the employer portion of her buy back credits was not clearly defined. In the Supreme Court's order on the


Union's appeal, the Court found only that "the support staff ... may have equitable remedies against the school district for failing to notify the NHRS of the 1950 vote." In re Goffstown Educ. Support Staff, 150 N.H. at 803 (emphasis added, internal citations omitted). Furthermore, the Supreme Court did not conclusively determine that GSD was at fault for the failure of the 1950 vote to take effect: the issue was not essential to the Supreme Court's ruling, and this Court is therefore not estopped from reconsidering it. See Day v. N.H. Retirement Sys., 138 N.H. 120, 122 (1993) (holding that for collateral estoppel to apply, the issue "must have been essential to the first judgment."). As previously stated, there are insufficient facts before the Court to make a finding of fault on the part of GSD. The Supreme Court's use of the word "may" in reference to the availability of equitable relief, coupled with the lack of evidence available on the issue of fault, supports a finding that Clapp's rights in this case were not clearly defined. Because the Court finds that Clapp's right to payment by GSD of the employer portion of her buy back credits was not clearly defined, an award of attorney's fees in this case would be inappropriate, and Clapp's request for attorney's fees and costs is therefore DENIED.

For all of the above reasons, the petitioner's Petition for Equitable and Legal Relief is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

Date

9/2/08


Gillian L. Abramson,
Presiding Justice