In the
Circuit Court for the Seventh Judicial Circuit
Sangamon County, Springfield, Illinois

GORDON E. MAAG, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. PAT QUINN, in his official capacity as governor of Illinois, et al., Defendants.	)	Case No. 2012 L 162, consolidated with Case No. 2012 MR 582
ROGER KANERVA, et al., on behalf of a Class of Persons Similarly Situated, Plaintiffs, v. MALCOLM WEEMS, director of the Illinois Department of Central Management Services, et al., Defendants.	)	Case No. 2012 MR 582
GARY McDONAL, et al., and all other persons similarly situated, Plaintiffs, v. PATRICK J. QUINN, III, in his official capacity as Governor of Illinois, et al., Defendants.	)	Formerly Madison County Case No. 2012 L 987
DEBRA BAUER, et al., Plaintiffs, v. MALCOLM WEEMS, Director of the Illinois Department of Central Management Services, et al.,	)	Formerly Randolph County Case No. 2012 L 35

Order

The State Employee Group Insurance Act, 5 ILCS 375/1, (2012) ("SEIGA") allows the Director of the Department of Central Management Services ("CMS") to allocate the cost of health insurance premiums between the State and retired public employees. (Public Act 97-695, effective July 1, 2012.) The stated legislative purpose is to "... facilitate the maintenance of the

program of group health benefits provided to annuitants, survivors and retired employees" by altering the allocation of premiums between the State and retirees. 5 ILCS 375/15 (a) (2012).

Public Act 97-695 delegates to the Director of CMS the authority to determine, on an annual basis, the amount that the State shall contribute to the basic cost of group health insurance benefits on behalf of retirees. To calculate the amount, the Director may rely upon the actual cost of medical services adjusted for age, sex or geographic or other demographic characteristics which affect the costs of such programs. 5 ILCS 375/10(a) (2012). Among retirees, premium payments will be determined by the Director of CMS. The Director may consider whether an employee is eligible for Medicare.

Complaints

All Plaintiffs assert that the 2012 amendments to the SEIGA are an unconstitutional violation of the Illinois Constitution Pension Protection Clause, Illinois Constitution Article XIII Section 5.

The *Bauer* and *Kanerva* Plaintiffs assert that the amendments to the SEIGA violate the Illinois Constitution Impairment of Contracts Clause, Illinois Constitution Article 1 Section 16. They further allege that the Board of Trustees of the State Employee Retirement System ("SERS") and CMS have breached their contract regarding health insurance for retirees.

The *Kanerva* complaint asserts that the SEIGA constitutes an unconstitutional delegation of authority from the Legislature to the Director of Central Management Services because the delegation does not provide sufficient legislative direction.

The *McDonal* complaint seeks money damages from various State officials.

The *Maag, McDonal* and *Kanerva* complaints seek to enjoin the Governor, Treasurer and Comptroller from implementing the 2012 amendments to the SEIGA.

The Defendants have moved to dismiss each of the complaints pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(1).

Both Plaintiffs and Defendants have referenced a variety of unsworn "facts," asking the court to take judicial notice of those "facts." The court has reviewed the various propounded "facts", such as a study by the Henry Kaiser Foundation, an audit promulgated by the Auditor General, and a CD of a discussion of a retirement benefits at a State University Retirement System forum. The court determines that in the context of the pleadings before the court, and for purposes of these 2-615 and 2-619 (a)(1) motions, the facts propounded are not within the purview of this court to take judicial notice.

After oral argument, this court requested that each of the parties present questions which may be certified in the event a particular claim or defense is not successful. The articulation of those questions has been of significant assistance to the court in formulating the issues to be addressed.

Discussion

The purpose of the State Employee Group Insurance Act ("SEIGA") is to provide a "…program of group life and group health insurance for person in the service of the State of Illinois and certain of their dependents." In actuality, the SEIGA covers many persons who are not State employees. Employees of local governments, rehabilitation facilities, domestic violence shelters, child advocacy centers, employees of universities and community colleges, and spouses and children are eligible for coverage. The SEIGA also covers former employees including retired judges, legislators, university employees, other State employees covered by certain of the State pension systems, and teachers, along with their survivors.

Originally, the SEIGA paid the entire cost of each eligible employee and annuitant's group health insurance. In 1991, the SEIGA was amended to provide that each employee was to contribute to the cost of health insurance premiums, subject to a defined limitation. In 1995, the General Assembly eliminated the cap on employee contributions to health insurance premiums.

In 1997, the General Assembly amended the SEIGA with regard to retired state employees, providing for a graduated premium payment based upon years of service. Under the formula, the State was responsible for the entire premium for those retirees with 20 or more years of service. CMS retained the authority to set contributions for current employees. 5 ILCS 375/10 (a-1) to (a-7) (1998).

Challenging the constitutionality of a statute on its face is the most difficult constitutional challenge because it can succeed only if no set of circumstances exist under which the statute would be valid. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008). Statutes carry a strong presumption of constitutionality, and the party challenging the statute has the burden of rebutting the presumption. *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315 (2005).

Pension Protection Clause

The State's Motion to Dismiss is premised upon arguments that the Pension Protection Clause only protects pensions as opposed to other employment benefits, such as health insurance.

The Pension Protection Clause provides "Membership in any pension or retirement system of the State, and unit of local government or school district, or any agency thereof, shall be an enforceable contract relationship, the benefits of which shall not be diminished or impaired." Ill. Const. Art. XIII Section 5.

Pension benefits are in the nature of annuities. The payments are fixed sums, and the amount of the payments are paid from protected funds, are fixed at the time of retirement based upon a formula that considers years of service, final pay, and other criteria as defined by the pension plan. Pension benefits are defined by the Illinois Pension Code. *People ex. rel. Illinois Federation of Teachers v. Lindberg,* 60 Ill. 2d 266 (1975).

The terms of the Illinois Pension Code, 40 ILCS 5/1 et. seq., do not provide for health insurance subsidies, particularly when one considers that the health insurance benefits change from year to year. The terms of the benefit are a defined by a contract periodically negotiated between the State and insurance providers, or if the State were to choose to act as its own insurance provider, are defined by the terms of the plan of self-insurance.

The cost of health insurance premiums are not fixed at the time of retirement, and are paid from the General Revenue Fund, as opposed to fixed benefits paid from a protected fund. The fact that there is an indirect or incidental impact on pensions because of the enactment and amendment of the SEIGA does not make the benefits under the SEIGA pensions in nature.

The Plaintiffs do not argue that the State cannot provide coverage which results in retirees paying high deductibles, high co-pays, or which provides severely limited coverage. In effect, the Plaintiffs argue that the premiums are required to be free, but that any level of payment can be imposed upon the use of the health insurance.

The Pension Code and the SEIGA are structurally separate and substantially different. They are separately administered and separately funded. They provide benefits that are fundamentally different. The Pension Code defines benefits by actuarial means, while health insurance benefits under the SEIGA are defined by the cost of medical care, changes in medical technology, and increases in costs of treatment that are independent of actuarial analysis.

Plaintiffs rely upon *Duncan v. Retired Public Employees of Alaska Inc,* 71 P. 3d 882 (Alaska, 2003) and *Everson v. State of Hawaii,* 122 Haw. 402, 228 P. 3d 282 (Ha. 2010), both of which held that medical insurance benefits are a "benefit" protected by their respective constitutions.

Defendants rely upon *Lippman v. Board of Education of Sweanhaka Central High School Dist.,* 66 N.Y. 2d 313 (N.Y., 1985). In *Lippman,* New York's high court concluded that "… health insurance benefits are not within the protection of the constitutional provision and that there is no contractual impediment to reduction of the Board's contribution to health insurance premiums." Id. at 316-17. The New York court concluded that a health insurance premium subsidy for retirees was not a benefit of membership in the retirement system, but rather was a "benefit that comes to a retired employee … because he or she was an employee of the State of New York."

Both the Alaska and Hawaii cases address the assertion that medical benefits are not actuarially predictable and conclude that the fact that such benefits cannot be predicted does not prevent them from being included as a vested retirement benefit. This court rejects that conclusion and agrees with the reasoning of the New York court that pensions and benefits that may accrue to a retired employee are separable one from the other.

If one were to accept the premise that health insurance benefits are vested rights that accrue upon retirement, one must accept the premise that those benefits cannot be reduced, regardless of changing medical technology or the willingness of insurance providers to make a particular policy of health insurance available. The fact that medical technology and contracts

offered by insurance companies change, as opposed to the actuarial certainty of a pension payment, lead this court to the conclusion that health insurance benefits are not the same as a pension protected by the Pension Protection Clause.

Contracts Impairment Clause – *Kanerva* and *Bauer* Plaintiffs

The Contracts Impairment Clause provides, in pertinent part, "No … law impairing the obligations of contracts … shall be passed." Ill. Const. Art. I Sec. 16.

The inquiry into whether a law has substantially impaired contract rights has three parts: (1) whether there is a contractual relationship; (2) whether a change in the law impairs that contractual relationship; and (3) whether the impairment is substantial. *General Motors v. Romein*, 503 U.S. 181 (1992); *Sanelli v. Glenview State Bank*, 108 Ill. 2d 1 (1985).

The Plaintiffs claim that the premium schedule in the 2012 version of the SEIGA, 5 ILCS 375/10 (2010), was part of an employment contract, and that the 2012 amendments contained in PA 97-695 substantially impair that contract.

There is a presumption that a law does not create private contractual or vested rights, but merely declares a policy to be pursued until the legislature ordains otherwise. *People ex. rel. Sklowdoski v. State of Illinois*, 182 Ill. 2d 220 (1998). There is no vested right in the continuation of a law. The Legislature may amend a statute at any time.

The burden on a party claiming that a statute created a contractual right is a substantial one, because a law that confers vested rights on private parties interferes with the Legislature's constitutional authority to change the law to reflect the evolving needs and wishes of the people. *ABATE v. Quinn*, 2011 IL 110611. Because statutory contracts interfere with the General Assembly's authority to make law, the Legislature must speak with unmistakable clarity to create contractual rights. *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682 (1st Dist., 2010).

This legal standard applies to statutes that govern the terms and conditions of public employment. *Gaiser v. Village of Skokie*, 271 Ill. App. 3d 85 (1st Dist., 1995). Employees cannot turn employment benefits conferred by statute into enforceable contract rights by continuing their employment, nor can implementing agencies convert statutes into contracts.

Put another way, it was foreseeable that the terms and conditions of the group insurance plans would change on a regular basis, and that charging retirees for premiums or the benefits pursuant to the policies of health insurance is consistent with the authority the State has exercised over the provision of health insurance plans for retirees. This conclusion is the antithesis of the conclusion that the statute created enforceable contractual rights for retirees.

Because this court has concluded that 5 ILCS 375/10 did not create a vested or contractual right, it is not necessary to address the question of whether the change in the law impairs a contractual relationship or whether the impairment was substantial.

This conclusion as applied to the *Kanerva* Plaintiffs requires special mention. The *Kanerva* Plaintiffs are all former Merit Compensation employees of the State, many of whom elected to take early retirement, allegedly in reliance upon promises made by the State that their medical benefits would be "sacrosanct" in retirement. Even accepting the allegation that promises by SERS and CMS were made to the effect that those retirees would not be charged premiums for health insurance, those representations cannot create a contract between the *Kanerva* Plaintiffs and the State.

The *Kanerva* Plaintiffs claim that the Contract Impairment Clause prohibits the State from amending the SEGIA, based upon promises made to retirees at the time of their retirement, also fails as the promises made were quasi-contractual in nature and were not made by either the General Assembly or by a State officer with the express authority to make such a promise.

For similar reasons, the claim that the amendments to SEIGA impair a non-contractual equitable obligation also fails. Representatives of CMS and SERS cannot bind the General Assembly. Only the Legislature has the authority to bind the State to a perpetual application of a particular statute to a select group of retirees. *ABATE v. Quinn,* 2011 IL 110611.

The *Bauer* Plaintiffs claim that the statute unconstitutionally impairs different collective bargaining agreements fails to state a claim as the statute did not impact rights arising from any source other than the SEIGA. This court agrees with Defendant's assertion that the amendments to the SEIGA had no impact on any rights arising from any source other than the SEIGA. Collective bargaining rights were not impaired because they were not affected in any way by the amendments to the SEIGA.

To the extent that the *Bauer* Plaintiffs claim a breach, as opposed to an impairment, that claim cannot proceed in this court, as it may only be brought in the Court of Claims, which has exclusive jurisdiction over "… all claims against the State founded upon any contract entered into with the State of Illinois." 705 ILCS 505/8 (b). Further, the *Bauer* Plaintiffs cannot claim the narrow exception to the Court of Claims Act which allows the parties to a collective bargaining agreement to sue in Circuit Court after they have exhausted their contractual grievance procedures, as these Plaintiffs are not parties to the collective bargaining agreements that they claim have been breached, nor have they alleged that they have attempted to arbitrate their grievances.

Separation of Powers – Unlawful Delegation

The *Kanerva* complaint alleges that the statute unconstitutionally delegates power to CMS because the delegation is without sufficient legislative direction.

Administrative agencies have broad authority to promulgate rules to fulfill their enforcement responsibilities. *Stofer v. Motor Vehicle Casualty Co.,* 68 Ill. 2d 361 (1977). Three factors determine whether a legislative delegation is proper. The General Assembly must identify "(1) the persons and activities potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm." *Stofer,* 68 Ill. 2d at 372-73.

In the opinion of the court, the statute which delegates the authority to CMS has a clear legislative purpose, identifies the persons covered by the statute, provides the means available to the agency to meet the purpose of the statute, and appropriately limits the agency's discretion.

State Lawsuit Immunity Act

Finally, pursuant to 5/2-619 (a)(1), Defendants move to dismiss each of the actions which seek money damages because they are precluded by the State Lawsuit Immunity Act, 745 ILCS 5/1, which prohibits suits against the State, its departments, and, subject to inapplicable exceptions, its officials in the Circuit Court.

The "officer-suit" exception to the Immunity Act, while it may permit an action against a State officer or the head of a department of the State and seek to restrain that officer from engaging in a constitutional or statutory violation, claims for damages do not fit within the "officer-suit" exception because they are not brought to restrain an unlawful action. *PHL Inc. v. Pullman Bank and Trust Co.*, 216 Ill. 2d 250 (2005).

An action seeking money damages against the State must be brought in the Court of Claims. *McFatridge v. Madigan*, 2011 IL App (4th) 100936. For this reason the claims brought by the *McDonal* Plaintiffs must be dismissed.

Conclusion

1) Health insurance benefits are not guaranteed pension benefits protected by the Pension Protection Clause;
2) Plaintiffs do not have a vested contractual interest in free health insurance;
3) This court does not need to determine whether the SEIGA violated the Contract Impairment Clause as no contract existed;
4) The SEIGA does not impair a non-contractual equitable obligation or collective bargaining agreements;
5) Breach of contract claims and claims seeking money damages must be brought in the Court of Claims; and
6) The SEIGA does not violate the Separation of Powers Clause.

For the foregoing reasons, the Motions of the Defendants in each of the cases consolidated before this court to dismiss the Complaints pursuant to the provisions of 735 ILCS 5/2-615 for failure to state a claim and 735 ILCS 5/2-619(a)(1) for lack of jurisdiction are allowed.

Enter: March 19, 2013

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Associate Judge of the Circuit Court