

IN THE MATTER OF
BRANDT BRADFORD
2148 VALLEY ROAD
GLEN ROCK, PA 17327

RE: ERS Denial of service retirement

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case no. CBA-12-060

* * * * *

OPINION

This matter comes before the Board of Appeals (Board) as a de novo appeal of the October 11, 2011 notification from Keith Dorsey, Director of Budget and Finance for Baltimore County of the decision of the Baltimore County Employee Retirement System's (ERS) decision to deny Appellant's application for retirement benefits pursuant to a Baltimore County retirement option known as "Option 7" for his service with the Baltimore County Police Department (BCPD) based its determination that his retirement option selection was preempted by an earlier retirement option selection made at the first of his two (2) retirements from the BCPD.

BACKGROUND

The Appellant, Brandt Bradford, was hired as a police officer by the BCPD on December 16, 1974. He served in that capacity with the BCPD until his retirement on June 16, 1998. As a part of his retirement package the Appellant chose a retirement option identified as Option 4. The Appellant began receiving his designated retirement benefits until he was rehired by the BCPD on December 1, 1999. Thereafter the Appellant served as an officer for the next 13 years. It appears that all of the Appellant's service during his tenure with the BCPD consisted of good and faithful service to the County.

In June of 2012 the Appellant sought to retire from the BCPD. He presented himself to the Baltimore County Retirement Office and requested that he be allowed to retire under a retirement provision known as "Option 7". The foregoing retirement option did not exist at the time of the Appellant's 1998 retirement.

A legal opinion was issued by the Baltimore County Office of Law which concluded that the Appellant was preempted from retiring with Option 7 as one of his retirement benefits. The conclusion of the legal opinion was that the Appellant as a retiree could not change his retirement option based upon Section 5-1-231(a) of the Baltimore County Code which reads in pertinent part, "a member who has selected an optional benefit may not change the election after the first payment of the member's allowance become normally due except as provided below..."

ISSUE PRESENTED

Do the provisions of the Baltimore County Code act to bar the Appellant's retirement request?

DISCUSSION

The facts of this matter appear not to be in dispute. Instead the Board is presented with a case of statutory interpretation. The statute presented to the Board for its review is Section 5-1-231 of the Baltimore County Code titled "Optional Allowances" Subsection (a) of the statute reads as follows:

"a) In lieu of the disability or service allowances payable under the provisions of this subtitle, any member may, prior to the first receipt of allowance payments normally due, elect a retirement allowance of equivalent actuarial value in one (1) of the optional forms set out below. The election of the option shall be made on a form provided for that purpose and shall be filed with the Board of Trustees. The options provide either a lump sum payment or continued payments to a beneficiary nominated by written designation duly acknowledged and filed with the Board of Trustees. Should a member die prior to the expiration of thirty

(30) days after the date of filing such election or prior to thirty (30) days after retirement. The Board of Trustees shall determine whether or not such election shall be void and of no effect, and the benefits payable on the member's account shall be the same as though the member's election had not been filed and the member died in active service. A member who has elected an optional benefit may not change such election after the first payment of the member's allowance normally due, except as provided below."

The disputed Option 7 states:

Option (7) Subject to subsection (d) of this section, an employee who has completed at least twenty-five (25) years of actual service as a sworn Baltimore County police officer, at least twenty-five (25) years of actual service as a sworn Baltimore County firefighter, or any combination of actual service as a sworn Baltimore county police office and Baltimore county firefighter equaling twenty-five (25) years of actual service may retire with the option of having fifty (50) percent of the retired member's retirement allowance continued throughout the life of and paid to the original beneficiary upon the retired member's death. This option shall be provided at no cost to the employee."

The retirement known as Option 7 did not exist at the time of Appellant's 1998 retirement.

The evidence presented to the Board indicated that the Appellant was rehired by the BCPD pursuant Section 4-8-102 of the Baltimore County Code titled SPECIAL PERSONNEL RULES FOR POLICE AND FIRE DEPARTMENTS.

The applicable rule in the in this case is Special Rule No. 2.14 which states:

Special Rule 2.14. Former sworn employees.

A. Notwithstanding any other provision of these rules and subject to the conditions of the Director of Human Resources, upon written from the Chief of Police, may hire former employees of the Police Department who have previously been separated from employment from any sworn position in the Department into the position of police officer within twenty-four (24) months of the effective date of their separation from employment if:

1. The separation from employment is without prejudice; and
2. The employee has previously certified as eligible for rehire.

B. The former sworn employee may be considered without further competition for the class of police officer, if a vacant position exists, subject to reasonable inquiries into the background and physical status of the employee between the time of separation from employment and application for rehire as may be deemed appropriate by the Chief of Police. The rehired employee's anniversary date shall be the date of rehire. Time away shall be considered as leave without pay for the purposes of calculating service and longevity credit. The rehired employee's sick leave balance at the time of resignation shall be restored unless it was used to determine the creditable service requirement, and other leave accruals shall be based on the adjusted service time. Benefits may not be earned for the time away from county service.

The Appellant contends that his "rehire" in 1999 effectively rendered his retirement in 1998 a nullity. Appellant's argument is based upon the provisions of Special Rule 2.14, supra. The argument is that upon his return to service the Appellant was no longer retired and therefore not covered by the benefits or restrictions of the retirement. While clearly the Appellant could no longer receive the monthly benefits of his retirement the question remains as to whether he was forever barred from selecting a retirement option upon his second retirement which did not exist at the time of his first retirement. The County Code does not specifically address this situation.

In opposition to the foregoing the County Office of Law argues that a "plain reading" of Code section 5-231(a) establishes that a retiree's receipt of a retirement allowance forecloses any future benefit option selection. The Office of Law contends the Baltimore County Employee Retirement System (ERS) is an administrative agency and therefore deference should be given to the ERS with respect to its own regulations and orders. It is noteworthy that the retirement decision in this matter was made by the Baltimore County Board of Trustee which was established pursuant to Article 3, Title 3, Subtitle 9 of the Baltimore County Code for the purpose of administering the Baltimore County Retirement System.

Irrespective of which of the two foregoing County entities is considered as an agency, the courts have recognized that that the expertise of an agency in its own field should be respected. *Salerian v. Md State Board of Physicians*, 176 Md. App. 231, (2007). However, agency decisions receive no special deference on questions of law, which we review de novo. *Talbot County v. Miles Point Property, LLC*, 415 Md. 372, 384 (2010).

The essential first inquiry in matter of statutory interpretation is the plain meaning of the language of the statute.

Section 5-1-231 is silent as to effect of a rehire of a sworn police officer pursuant to Special Rule 2.14 (supra). Likewise Special Rule 2.14 is silent as to the intended effect of an employee's rehire upon past and future retirement option selection. A plain reading of Section 5-1-231 clearly bars a retiree from making certain option selections after the first receipt of retirement allowances absent a finding by this Board that the language of Section 5-1-231 creates an ambiguity as to the intended effect of the law as drafted by the Baltimore County Council.

In this case it appears that there is an ambiguity in the law. A rehired employee pursuant to Special Rule 2.14 is clearly no longer retired. As such, is an employee considered a retiree at all? The provisions of Special Rule 2.14 (b) create a situation in which the period of retirement is specifically treated as "leave without pay for the purposes of calculating service and longevity credit." The net effect of the provision would appear to be that the Appellant and other sworn officers similarly situated have an opportunity to change the nature and value of their retirement conditions based upon the continuation of their employment after the period of leave without pay.

The reasoning of the ERS as contained in the June 11, 2012 legal opinion from the County Office of Law is as follows as it concerns the effect of Special Rule 2.14 and the provisions 5-1-231 of the County Code:

“It may be argued that later enacted law should be read as affording Group 4 retirees the right to change options. Courts also hold that statutes should not be read in a vacuum and that we should consider the larger statutory scheme when considering a statute that otherwise appears to be clear and unambiguous. (citations omitted)”

The Maryland Court of Appeals has made it clear that when a body is engaged in statutory interpretation, its goal is to effectuate the intent of the Legislature. *Mayor and Town of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301, 316 896 A. 2d 1036, 1045 (2006). Where, as in the instant case, a perceived ambiguity in the law exists, a reviewing court then turns its attention to other tools of statutory interpretation including: the construction of the statute, the relation of the statute to other laws in a legislative scheme; the legislative history and the general purpose and intent of the statute. *Lewis v. State*, 348 Md. 648, 653 (1998).

The operative law before this Board is Special Rule 2.14. It was enacted after Section 5-1-231 of the Code. With the enactment of Special Rule 2.14 there was no accompanying language concerning the effect of a retired police officer returning to duty beyond those provisions above cited.

It appears to this Board that the underlying “legislative scheme” was to encourage retired officers to return to duty in exchange for their reinstatement as sworn officers with their prior retirement being treated as leave without pay. Clearly if one has received monetary retirement benefits which are no longer considered retirement benefits it can be interpreted as the legislative body’s intent to render the prior retirement a nullity. Based upon this reasoning the Board concludes that the provisions of 5-1-231 of the County Code are not applicable to the instant

situation where a sworn police officer returns to active service with the Police Department pursuant to Special Rule 2.14.

ORDER

IT IS THEREFORE this 18th day of October, 2013, by the Board of Appeals of Baltimore County

ORDERED, that the decision of the Board of Trustees of the Employees' Retirement System dated October 11, 2011, be and the same is hereby REVERSED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*

**BOARD OF APPEALS
FOR BALTIMORE COUNTY**


Andrew M. Belt, Chairman


Wendell H. Grier


Wendy A. Zerwitz

At the original hearing on April 4, 2013 the Board Panel consisted of Lawrence S. Wescott, Wendell H. Grier and Wendy A. Zerwitz. Mr. Wescott was not reappointed to the Board and his term expired on April 30, 2013. Chairman Andrew M. Belt, Esquire was assigned the case, reviewed the transcript, exhibits, and Briefs of Counsel.