The Honorable Frank M. Ciuffani, P.J. Ch.
Middlesex County Courthouse
56 Paterson Street
P.O. Box 964
New Brunswick, New Jersey 08903

FILED

OCT 29 2014

Frank M. Ciuffani, P.J., Ch.

ALFRED J. PETIT-CLAIR, JR., Plaintiff, v. CITY OF PERTH AMBOY, Defendants	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-MIDDLESEX DOCKET NO.: MID-L-3703-13 CIVIL ACTION **ORDER**

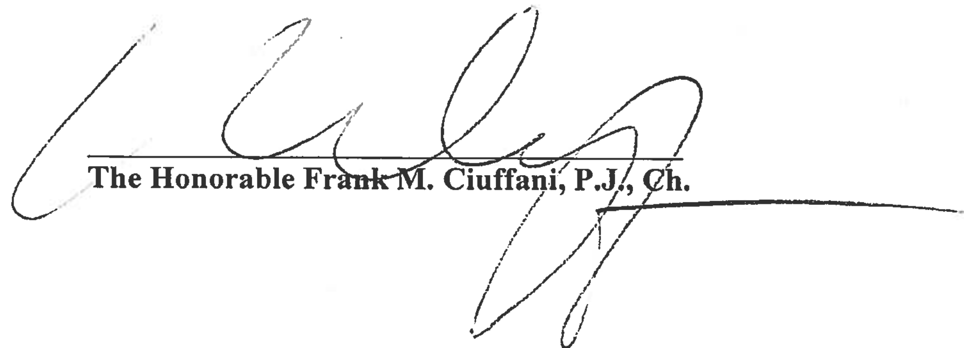
THIS MATTER having been brought before the Court on a Motion for Summary Judgment by the Defendant, City of Perth Amboy, and Cross Motion for Summary Judgment by Plaintiff, Alfred J. Petit-Clair, Jr., and the Court having heard the argument of counsel and reviewing all papers submitted herewith, and for good cause shown;

IT IS on this **29th** day of **October, 2014;**

ORDERED that Plaintiff's Cross Motion for Summary Judgment is hereby **DENIED**; and it is further

ORDERED that the Summary Judgment Motion filed by Defendants is hereby **GRANTED**; and it is further

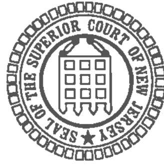
ORDERED, that a copy of the Order shall be served upon all counsel or parties within seven (7) days of receipt.



The Honorable Frank M. Ciuffani, P.J., Ch.

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
FRANK M. CIUFFANI
PRESIDING JUDGE
CHANCERY



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903 - 0964
732-519-3609

October 29, 2014

Douglas V. Sanchez, Esq.
Cruser, Mitchell & Sanchez, LLC
50 Tice Boulevard, Suite 363
Woodcliff Lake, New Jersey 07677

Gerald J. Resnick
Resnick Law Group
5 Becker Farm Road, 4th Floor
Roseland, New Jersey 07068

Re: <u>Alfred J. Petit Clair, Jr. v. City of Perth Amboy</u>
Docket No. MID-L-3703-13

Alfred J. Petit-Clair, Jr. ("Plaintiff"), an attorney for Perth Amboy's Zoning Board of Adjustment (a part-time position), seeks to have this Court enforce an oral promise made by a former Perth Amboy mayor in 1990. This promise was that Perth Amboy would provide Plaintiff with retirement health benefits in fifteen to twenty years' time irrespective of the changes in the law, government, or the budgetary or political climate over that stretch of time (currently Perth Amboy only provides such benefits to full-time employees who satisfy certain enumerated length of service requirements). In his complaint, Plaintiff seeks to invalidate a 2009 Perth Amboy Ordinance that limited the provision of retiree health benefits to full-time employees on the grounds that Perth Amboy lacks the authority to regulate employee benefits. The parties have stipulated to the following facts and have both moved for summary judgment.

Plaintiff, Alfred J. Petit Clair, Jr., Esq., ("Petit Clair") is the City of Perth Amboy's ("PA") Zoning Board of Adjustment attorney, and has worked continuously in that position since July of

If you require any accommodations as a result of a disability, please call 732-519-3638

1990. Prior to being appointed to the position of Zoning Board of Adjustment Attorney, Plaintiff operated his own law practice.

In 1986, Mayor Otlowski of the City of PA offered Plaintiff the position of Zoning Board of Adjustment attorney. Plaintiff met with Mayor Otlowski in his office and he explained that he would be receiving approximately $6,000.00 a year salary, plus full health benefits, including prescription coverage. As an employee of PA he would also be enrolled in the Public Employee Retirement System (PERS). Plaintiff was also advised at that meeting that if he stayed on the job until retirement he would have paid health insurance benefits for life. Plaintiff's belief that he would receive paid health insurance benefits for life in his position with PA was reinforced by the fact that he had been a State of New Jersey employee and was afforded the same benefits.

Plaintiff accepted the position so that he could receive retirement health benefits, and understood that the benefits were conditioned upon him serving as the Board of Adjustment for the next fifteen years when he could retire with full paid health benefits. As a result Plaintiff was forced to give up a portion of his private practice, which included worker's compensation cases for teachers and policemen from PA, some transactional real estate matters, PA Local PBA cases, and other types of negligence and labor matters.

Pursuant to the Municipal Land Use Law statute, Plaintiff's position as Board attorney is renewed annually; this decision is subject to the Zoning Board of Adjustment's approval at its annual reorganization meeting. Plaintiff conceded that the Zoning Board of Adjustment could have replaced him as its attorney or altered the conditions of his employment at any time over the last twenty-four years.

At the time that he was hired in 1986, Plaintiff was covered by his wife's insurance policy from her employer. However, a couple of months after serving as the Zoning Board's attorney,

Plaintiff realized he could not afford to give up so much of his practice, and was forced to resign, especially since he was receiving medical benefits for him and his son through his wife's employer. However, by early 1990, when Plaintiff realized his marriage was not working out, he spoke again with Mayor Otlowski about returning to the Board, since he was aware that he and his son would soon need the health insurance. Plaintiff made his decision to return to the City after he priced out medical benefits for himself and his son, which amounted to about $16,000.00. Plaintiff believed that economically it was better to give up his PA affiliated work in order to obtain the paid medical and retirement benefits because of his upcoming divorce.

Upon discussing his return to the City, Mayor Otlowski was emphatic that Petit-Clair would again be a member of the PERS, and would be receiving the paid health insurance during his employment and after his retirement. He was also told that he would receive pharmaceutical benefits and his dependents would be covered. Plaintiff had no doubt, based on his discussions with Mayor Otlowski, that he would be a City employee, entitled to all the benefits under PERS, which was corroborated by the documents he received from the New Jersey Pension Board, the annual PERS statements he received outlining his benefits, and the certification that he received from the City of Perth Amboy updating and computing his pension and retirement benefits.

When Plaintiff returned to his job at the City on 7/26/90 he was earning $6,420.00 per year, and named as a "permanent part time employee". On or about January 18, 1994 the City of Perth Amboy passed a resolution ("1994 Resolution") that codified the policy of paying for health and hospital benefits for certain long term employees that provided in pertinent part:

> "health and hospital benefit coverage shall, upon adoption of this resolution, be provided, *at City expense, as set forth in the City's health benefits plan for retirees, to employees and their dependents who retire* on a disability pension, to employees and their dependents, who retire after 25 years' or more of service with the City of Perth Amboy and employees, and their dependents, who have retired and

> reached the age of 62 or older with at least 15 years of service with the City of Perth Amboy. (Emphasis added)

The resolution provided paid health care retirement benefits to both full-time and part-time employees. Plaintiff does not recall when he learned of the 1994 resolution, but he was aware from speaking with Mayor Otlowski that PA had a policy of paying for health benefits.

It was common knowledge in the City of PA that at retirement, the employee would receive paid health benefits in retirement. Plaintiff knew of other part-time employees receiving paid health benefits in retirement; such as Alan Papp, Astrubel Pagan, Robert Levine and Alex Eger. When Plaintiff had a conversation with Mayor Vas in the 1990's discussing that the reason he took the job with the Zoning Board was for the paid health insurance continuing through retirement, the Mayor stated he could understand why.

In 2008 and 2009 Perth Amboy was exploring ways to stave off filing for bankruptcy as the City had a fiscal deficit in 2008 and was scheduled to undergo a structural deficit in the 2009 budget. Without particular notice to Plaintiff, on or about May 27, 2009 PA passed an ordinance stating that paid retirement benefits would now only be extended to full time employees. Prior to the 2009 ordinance, Plaintiff already had twenty one (21) years of service with the City, and was over the age of 62. Therefore he satisfied the length of service requirements under the 1994 Resolution needed to qualify for paid health insurance upon retirement.

Believing he would receive paid retirement benefits and all of his earned entitlements under the PERS, Plaintiff scheduled his retirement for June 1, 2011. Readying for his retirement, Plaintiff received a certification from the City Comptroller, certifying his time with the PERS, and a letter directly from PERS telling him his pension had been approved, and the amount he was to receive each month. Approximately two weeks after his retirement had been approved, Plaintiff received

a notice from ADP, COBRA Services advising him of his COBRA rights. Thinking this was a mistake due to the paid health benefits he was expected to receive, Plaintiff contacted the payroll office, who advised him that the City Administrator, Gregory Fehrenbach ("Fehrenbach") had directed that Petit-Clair was not entitled to paid health benefits upon his retirement. Based on this information, Plaintiff advised the Division of Pensions that he was cancelling his retirement.

Shortly thereafter when Plaintiff met the Mayor at PA's offices, Petit Clair was told "not to worry" since the issue would be worked out. On August 14, 2012, Fehrenbach notified Plaintiff by letter that based upon a report the City had received from the State Comptroller, Petit Clair was being removed from the PERS retroactive to January 2008, and was now considered to be an independent contractor. The City subsequently retained the law firm of Javerbaum Wurguft to issue a report, which stated that based upon *N.J.S.A.* 43:15A-7.2(b), Plaintiff was an independent contractor, which precluded him from continuing in the PERS.

The report admitted that Plaintiff was not the subject of a Professional Service Contract under *N.J.S.A.* 43:15A-7.2 and that Petit-Clair's determination as an "employee" was required to be based under the IRS, twenty (20) factor test. However, the report also agreed that some of the IRS factors as they relate to Petit Clair pointed to *employee* status, such as the payment of a fixed salary for so many years by W-2. The report also stated that they have considered whether *N.J.S.A.* 40A:10-16 *et seq.* prohibits the City from limiting such coverage to part-time employees as they did.

Throughout his employment, Plaintiff was paid as an employee, with ordinary deductions, such as withholdings for taxes, social security payments, and pension contributions to the PERS. When Plaintiff performed other services for the PA, not related to his work for the Board, he billed the City separately, and was issued a 1099 at the end of the year for these services. This was

opposed to the W-2 he received for the services he provided to PA as the Board of Adjustment attorney.

By correspondence dated September 5, 2012, Fehrenbach advised Plaintiff that the Division of Pensions had adopted the Javerbaum opinion, and that Petit-Clair was now considered an independent contractor and excluded from PERS. On September 24, 2012 Plaintiff filed an Order to Show Cause with Verified Complaint, seeking to enjoin the City from discontinuing his health insurance, and claiming he had been incorrectly classified as an independent contractor. On September 25, 2012, the parties entered into a Consent Order dismissing the complaint without prejudice, pending Plaintiff's appeal to the Division of Pensions challenging the discontinuation of Plaintiff's pension benefits after January 1, 2008.

On or about November 15, 2012 Plaintiff filed a Notice of Tort Claim against the City of PA. On October 26, 2012 Plaintiff filed an appeal with the Division of Pensions. On June 5, 2013, the present action was filed contesting the City's denial of paid health benefits upon retirement to the Plaintiff.

On January 15, 2014 Petit-Clair appeared before the Division of Pensions on his appeal. The Division rendered a decision on January 24, 2014 denying Plaintiff's appeal. The matter of Plaintiff's entitlement to participate in PERS is to be heard before an Administrative Law Judge on November 21, 2014 and December 5, 2014.

Plaintiff is entitled to coverage under Medicare while his son is likewise entitled to receive Social Security Disability benefits. As such, any health benefits that Plaintiff or his dependent son would receive from Perth Amboy would be supplemental to their federally provided health benefits.

CONCLUSIONS OF LAW

Plaintiff's claims against Perth Amboy and the individually-named Defendants are time barred because they fall well outside of the 45-day period for instituting an action in lieu of prerogative writ. Rule 4:69 governs actions in lieu of prerogative writs challenging municipal actions and provides that "[n]o action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed. . ." R. 4:69-6.

In this case, taking at face value Plaintiff's claim that he did not learn about the 2009 Ordinance until long after it was promulgated, at the very latest, Plaintiff learned that he was not entitled to receive retirement health benefits by June 1, 2011 when he advised Perth Amboy of his intent to retire. Plaintiff waited until September 24, 2012 to file a verified complaint before the Chancery Division and waited until June 5, 2013, to file a renewed verified complaint in the instant matter. Plaintiff has waited almost two years to file an action in lieu of prerogative writs. His claims are untimely.

Plaintiff asserts that the 2009 Ordinance is void as arbitrary and capricious. The 2009 Ordinance made explicit that retiree health benefits should only be available to full time employees that satisfy the Ordinance's length of service requirements.

Plaintiff asserts that the 2009 Ordinance is void as *ultra vires*. Municipal ordinances enjoy a presumption of validity; to challenge the validity of a municipal ordinance, a challenger must demonstrate that the ordinance is arbitrary, capricious, or unreasonable. See In re Stallworth, 208 N.J. 182, 194 (2011); cf. Riya Finnegan LLC v. Twp. Council of Twp. of S. Brunswick, 197 N.J. 184, 204 (2008) (noting that an ordinance's "presumption of validity can be overcome only by a showing that the ordinance is clearly arbitrary, capricious[,] or unreasonable, or plainly contrary to fundamental principles of zoning or the [zoning] statute." (internal quotation marks omitted));

Sogliuzzo v. Hoboken, 62 N.J. Super. 243, 249–50 (App. Div. 1960) (applying the "arbitrary, capricious[,] or unreasonable" standard to a case involving a police promotion from a list of Civil Service policemen eligible for promotion).

In this case, the 2009 Ordinance was promulgated pursuant to N.J.S.A. 40A:10-23 which provides in pertinent part that a municipal employer:

> may, in its discretion, assume the entire cost or a portion of the cost of such coverage and pay all or a portion of the premiums for employees a. who have retired on a disability pension, or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or c. who have retired and reached the age of 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe. The period of time a county law enforcement officer has been employed by any county or municipal police department, sheriff's department or county prosecutor's office, may be counted cumulatively as "service with the employer" for the purpose of qualifying for payment of health insurance premiums by the county pursuant to this section.
>
> N.J.S.A. 40A:10-23.

Notably, the statutory language uses the word "may," a term that is ordinarily given a permissive or directory construction as opposed to the words "must" and "shall" which are generally construed as being mandatory. Harvey v. Bd. of Chosen Freeholders of Essex Cnty., 30 N.J. 381, 391-92 (1959). Based on this statutory language, the Legislature has accorded municipalities broad discretion as to whether to provide retirement health benefits to their employees. Consistent therewith, in Fair Lawn Retired Policemen v. Borough of Fair Lawn, an association of retired policemen challenged a municipal ordinance that established a multi-tiered

plan for sharing medical benefits costs. While they successfully asserted that the ordinance's twenty year service requirement was inconsistent with N.J.S.A. 40A:10-23's twenty-five year floor, the Appellate Division upheld the municipality's decision to have retirees share in the costs of providing health insurance holding that "we find no logical reason to hold that the legislature intended to restrict municipalities to an all or nothing election respecting employees with twenty-five years or more of service. If a municipality may freely decide under the statute to 'assume the entire cost of such coverage' or not to do so, we see no reason why it cannot elect (or agree) to assume a portion of such cost." Fair Lawn Retired Policemen v. Borough of Fair Lawn, 299 N.J. Super. 600, 606 (App. Div. 1997).

Based on the Appellate Division's decision in Fair Lawn, it is clear that municipalities have broad discretion under N.J.S.A. 40A:10-23 to provide, or not to provide, retirement health benefits. Like Fair Lawn, where the Appellate Division held that a municipality may elect to share in the costs of providing retirement health benefits rather than to take an all or nothing approach, a municipality might naturally also decide to limit the provision of such benefits to full time employees. The statute is clear, that a municipal employer "may, in its discretion, assume the entire cost or a portion of the cost of such coverage." N.J.S.A. 40A:10-23. It is apparent that because a municipality has the express discretion to provide or deny such coverage to its employees that it might also limit the provision of such coverage to full time employees only. Plaintiff's assertion that Perth Amboy's decision to provide retiree health benefits to part-time employees would constitute an irregular exercise of its delegated powers and an abuse of its discretion is lacking in merit.

Accordingly, Plaintiff's complaint in lieu of prerogative writs is dismissed with prejudice.

Plaintiff also asserts that Perth Amboy should be equitably estopped from denying retirement health benefits to himself and other part-time "employees." Equitable estoppel has been invoked when the facts demonstrate a direct and deliberate inducement by the estopped party upon which the other party relies up on in foregoing its rights. See, e.g., Miller v. Miller, 97 N.J. 154, 163 (1984); Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334, 339 (1979). For example, in Miller, a stepfather was estopped from disavowing responsibility for supporting his stepchildren when he actively interfered with the natural father's efforts to support his children and induced reliance by the children on his financial support. Miller v. Miller, 97 N.J. 154, 163 (1984).

To establish a claim of equitable estoppel, the claiming party must show that the alleged conduct was done, or representation was made, intentionally or under such circumstances that it was both natural and probable that it would induce action. Further, the conduct must be relied on, and the relying party must act so as to change his or her position to his or her detriment. Miller v. Miller, 97 N.J. 154 (1984); see Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334 (1979); The Tax Authority, Inc. v. Jackson Hewitt, Inc., 377 N.J. Super. 493, 512 (App. Div. 2005).

"A prerequisite of equitable estoppel" is that such reliance be in "good faith." Lizak v. Faria, 96 N.J. 482, 499 (1984). Further, the doctrine of equitable estoppel is applied only in very compelling circumstances, where the interests of justice, morality and common fairness clearly dictate that course. Palatine I v. Planning Bd. of Township of Montville, 133 N.J. 546 (1993) (citations omitted). Importantly, "equitable estoppel is rarely invoked against public entities, although it may be invoked to prevent manifest injustice." W.V. Pangborne & Co., Inc. v. New Jersey Dep't of Transportation, 116 N.J. 543, 554 (1989); see O'Malley v. Dep't of Energy, 109 N.J. 309, 316 (1987). Further, the doctrine of equitable estoppel is applied only in very compelling

circumstances where the interests of justice, morality and common fairness clearly dictate that course. Palatine I v. Planning Bd. of Twp. of Montville, 133 N.J. 546, 560 (1993) disapproved of for other reasons by D.L. Real Estate Holdings, L.L.C. v. Point Pleasant Beach Planning Bd., 176 N.J. 126 (2003) (internal citations omitted).

Plaintiff argues that Perth Amboy's Mayor in 1990, Mayor Otlowski, promised Plaintiff that he would receive health benefits upon retirement. However, such a promise contains not only Mayor Otlowski's promise but also the implied promise that Mayor Otlowski's successors would never modify Perth Amboy's benefits structure nor would they decline to reappoint Plaintiff for each succeeding year over the next 15-25 years. In effect, Plaintiff seeks to have this Court enforce a promise that in 15-25 years Plaintiff would receive retirement health benefits, that Plaintiff would continue to be reappointed each year by subsequent and undiscernible Boards of Adjustment, and that future Mayors and City Councils will never modify their ordinance to change the benefits accorded to Plaintiff or other employees irrespective of political and budgetary constraints. The unreliability of the promise is further evident based on the fact that Mayor Otlowski could not legally issue such a binding promise orally and without the approval of the Perth Amboy City Council. See N.J.S.A. 40:69-36 (vesting a Faulkner Act council with legislative powers including the power to appoint and set the salaries of officers and employees); N.J.S.A. 40:69A39; N.J.S.A. 40:69A-40 (granting a Faulkner Act Mayor with executive powers and enumerating same).

Public employment therefore differs from private employment, which is based on a contractual relationship. "[T]he relationship between . . . public officials and the agencies appointing them[] 'is not ipso facto contractual in character,' but is instead controlled by the statutes pursuant to which the public official has been appointed." Walsh v. State, 290 N.J. Super. 1, 15-16, 674 A.2d 988 (App. Div. 1996) (Skillman, J., dissenting) (quoting Espinos v.

Twp. of Monroe, 81 N.J. Super. 283, 288, 195 A.2d 478 (App. Div. 1963)), rev'd on dissent, 147 N.J. 595, 689 A.2d 131 (1997); see also Miskowitz v. Union Cnty. Utils. Auth., 336 N.J. Super. 183, 192-93, 764 A.2d 455 (App. Div. 2001) (rejecting argument that issue regarding utility's termination of plaintiffs' employment contracts should be resolved by simple contractual interpretation); Cooper v. Mayor of Haddon Heights, 299 N.J. Super. 174, 180, 690 A.2d 1036 (App. Div. 1997). A basic presumption in public employment is that one who accepts a public office or position does so "with full knowledge of the law as to salary, compensation and fees," and that "all limitations prescribed must be strictly observed." Walsh, supra, 290 N.J. Super. at 15 (Skillman, J., dissenting) (citations omitted). The limitations imposed supersede conflicting representations made to the employee, whether made by one who apparently has the authority to do so no not. See Maltese v. Twp. Of N. Brunswick, 353 N.J. Super. 226, 228-29 (App. Div. 2002); Walsh, supra, 290 N.J. Super. At 15-16 (Skillman, J., dissenting).

The focus of the estoppel argument must be on the conduct of the person or entity who had the authority to act- the council, not the mayor who did not have the authority. It is only action by the council that could form the basis for equitable estoppel. Maltese v. Twp. Of N. Brunswick, 353 N.J. Super. 226, 245 (App. Div. 2002).

Further, Plaintiff fails to demonstrate that he detrimentally changed his position based on the promise that he would receive retirement health benefits. Prior to his appointment as attorney for the Zoning Board of Adjustment, Plaintiff had his own private practice of law. After accepting the position of attorney for the Board, Plaintiff continued to have his own private law practice and was free to accept appointments to serve on other Zoning Boards. At best, Plaintiff recognizes that he had to forego cases adverse to Perth Amboy because it would present a conflict of interest. However, by that time, the cases where Perth Amboy was a named party only constituted

approximately 15% of his private practice. Merely declining work due to a conflict of interest does not make for a claim sounding in equitable estoppel.

Plaintiff's equitable estoppel claims stands in stark contrast to cases where equitable estoppel was found. In Middletown Twp. Policemen's Benev. Ass'n Local No. 124 v. Twp. of Middletown, 162 N.J. 361 (2000), Middletown Township assured a police officer that, after his retirement, he would continue to have free health insurance benefits for himself and his family consistent with the terms of its collective bargaining agreement with the Police Benevolent Association (PBA). Id. at 364. Thereafter, a suit was brought alleging that the relevant provision of the collective bargaining agreement with the PBA violated N.J.S.A. 40A:10–23 because the statute only permitted the employer to assume the cost for employees who retired after twenty-five years of service. Id. at 365. After the trial court determined that the Township had provided free health benefits to ineligible employees including the plaintiff, the Supreme Court held that the Township could be equitably estopped from terminating the officer's health benefits. Id. at 373. Importantly, in that case the Township repeatedly assured the officer that his health benefits would continue upon retirement thus inducing the officer to retire before completing twenty-five years of service even though the officer could have easily served an additional three years to complete the statutorily mandated twenty-five years of service. Id. at 372-373. The Court noted that the Township had already provided retirement health benefits to the officer for ten years, and after ten years in retirement, the officer was "effectively foreclosed" from obtaining further employment so that he could obtain such health benefits. Id.

Plaintiff also asserts that Perth Amboy cannot rescind retirement health benefits to part-time employees because it would violate the "uniform conditions" requirement of N.J.S.A. 40A:10-23 if it offered such benefits to full-time employees. Indeed, it would be anomalous if a

municipality was prevented from offering benefits to employees that work a full 40-hour work week merely because it does not simultaneously offer those benefits to employees who report to work for a couple of hours a week. Clearly, this is not the law.

To wit, N.J.S.A. 40A:10-23, provides in pertinent part that:

> The employer may, in its discretion, assume the entire cost or a portion of the cost of such coverage and pay all or a portion of the premiums for employees a. who have retired on a disability pension, or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or c. who have retired and reached the age of 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe. The period of time a county law enforcement officer has been employed by any county or municipal police department, sheriff's department or county prosecutor's office, may be counted cumulatively as "service with the employer" for the purpose of qualifying for payment of health insurance premiums by the county pursuant to this section.

(emphasis supplied).

Courts applying the "under uniform conditions" have held that municipalities need not take an "all or nothing" approach. Fair Lawn Retired Policemen v. Borough of Fair Lawn, 299 N.J. Super. 600, 606 (App. Div. 1997). In Fair Lawn, the Appellate Division upheld a municipality's decision to partially reimburse retirement health benefits stating that "[i]f a municipality may freely decide under the statute to 'assume the entire cost of such coverage' or not to do so, we see no reason why it cannot elect (or agree) to assume a portion of such cost." Id.

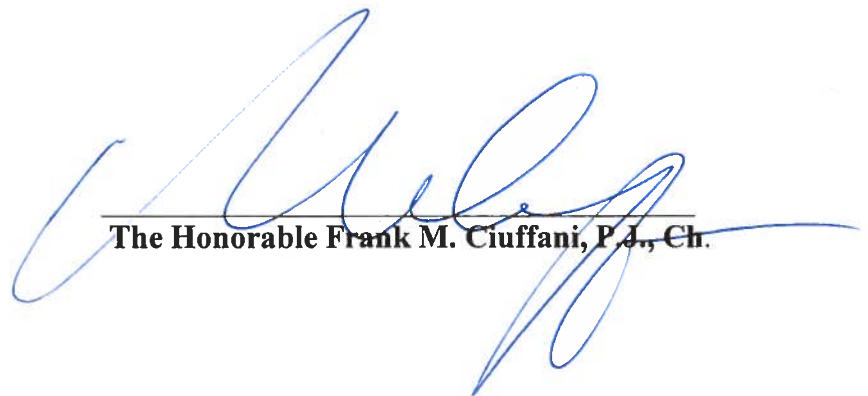
Likewise, in Gauer v. Essex County Div. of Welfare, 108 N.J. 140, 150 (1987), the

Supreme Court held that the "uniform conditions" requirement was satisfied after Essex County provided retirement health benefits to the former employees of the formerly autonomous Essex County Welfare Board even though it denied those same benefits to the other County employees. The Court held that the issue was whether any group of employees was uniquely situated so that particularized treatment may be accorded to such employees without violating the uniformity standard. Id. Because the former employees of the Essex County Welfare Board were situated differently than the remaining County employees, the County was able to provide benefits to those employees while denying benefits to the remaining County employees. Id.

Thus, New Jersey Courts have made clear that the "uniform conditions" requirement does not require strict uniformity across all classes of employees. Instead, this requirement is satisfied so long as employers have a meritorious basis to distinguish a certain class of employees from another.

For the above cited reasons, the Court grants the City of Perth Amboy's motion for summary judgment.

Very truly yours,



The Honorable Frank M. Ciuffani, P.J., Ch.