

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

JAMES I. PRATER, et al.	:	Case No. 2:04-CV-1077
	:	
Plaintiffs,	:	Judge Sargus
	:	
vs.	:	Magistrate Judge King
	:	
OHIO EDUCATION ASSOCIATION	:	Declaration of Richard Bourgault In Opposition to OEA Motion for Summary Judgment
	:	
Defendant.	:	

* * * *

Richard Bourgault, having been duly cautioned and advised, declares as follows:

1. I am Richard Bourgault. My declaration set forth below is true and accurate to the best of my knowledge, recollection, and belief, and I would so testify under oath in court if called as a witness in this matter.
2. I began my career at the Ohio Education Association in 1979 as a Uniserv Consultant, working in the field. During this period, I was a member of the Professional Staff Union. While serving as a PSU member, I participated in the review of bargaining proposals in 1986.
3. I became Director of Human Resources in 1986 and became a member of management. I held responsibility for various areas including Personnel and Fleet Management, and worked with the insurance carrier/third party administrator for OEA on the health plans which covered OEA employees. Over time my role as Director of Human Resources grew, and I assumed responsibility for the Pension Plans, and became paper "administrator" of the Pension Committee.
4. During my service as Director of Human Resources, I participated in contract negotiations with the unions representing the associate staff (OASU) and the professional staff (PSU). I served as spokesman for OEA management in two rounds of bargaining. As a result of my various management positions, my responsibilities serving the Pension Committee, and my responsibilities with respect to the health plans at OEA during my tenure, I became fully aware and knowledgeable concerning the

contract provisions providing post-retirement health benefits to associate and professional staff retirees.

5. The intent of the contract provisions concerning post-retirement health care throughout the entire organization was to continue certain benefits for the life of the retiree and his/her spouse. This intent was reflected in the language of the staff contracts, and was uniformly interpreted that way during my entire employment at OEA. OEA applied the language to provide lifetime benefits to staff retirees.

6. I am familiar with the language of the PSU contracts regarding post-65 retirees, and have reviewed that language in preparation of this Declaration. The contract provision has been renumbered over the years, but the essential language remained the same through the 1997 contract. The provisions governing post-retirement health benefits establish a logical scheme which lays out the benefits guaranteed to PSU retirees. That language describes the benefits guaranteed to PSU retirees by referring first to the sections of the contract which describe the benefits (such as Major Medical, and Prescription Drugs). With respect to early (pre-65) retirees, the benefits are described as to be received "to age 65". Under the section titled "Supplement to Medicare", it was the practice that the same benefits available to early retirees "to age 65", were provided to post-65 retirees as well. This language is purely descriptive, and has never been interpreted as in any way limiting the time in which PSU retirees may receive the benefits. No reason would exist to title the section containing post-65 benefits "Supplement to Medicare", if those benefits were in fact to terminate at age 65 or later, as the overwhelming majority of retirees become eligible for Medicare Parts A and B at age 65.

7. The intent of post-65 health benefits available to both Associate and Professional staff was to provide "gap" coverage, to cover the areas not covered by Medicare.

8. Based on my role as Director of Human Resources, and my position and responsibilities, I am familiar with the insurance Summary Plan Descriptions (SPDs) put out for both the OASU and PSU members. Each SPD was color coded to match the collective bargaining agreement negotiated with the staff unions. This color coding reflected the fact that the benefits contained in the SPDs were directly provided by the terms of the staff contracts.

9. I have reviewed provisions of the SPDs in effect prior to 1997. Those SPDs specifically reserved to the Plan Administrator the right to terminate or amend the plans of benefits. Those SPDs named either me or the employer as the Plan Administrator. As Plan Administrator I knew and understood that I was required by law to act according to the documents governing the plans. I understood the staff contracts to be among the documents governing the plans, as those contracts served as the source of the benefits provided by the plans.

10. The fact that the SPDs reserved the right to terminate or amend to the Plan Administrator reflected the intent of the entire OEA organization to continue post-retirement benefits for the life of the retiree and his/her spouse. The contracts which

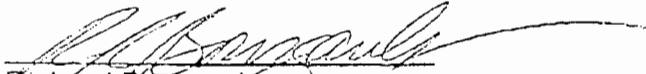
provide these benefits serve as the basis for that intent. Each time OEA would change insurance carriers or benefits administrators, I would send a specific letter to assure that there was to be no reduction in benefits.

11. I was responsible for the administration of these post-retirement health benefits. Communications to retirees on these issues were uniform within each respective group.

12. Administration of post-retirement benefits remained the same within each staff union group across the contracts as they were renewed and the post-retirement contract provisions remained the same.

The foregoing is true and correct to the best of my recollection, ability and belief.

Executed this 30th day of November 2005 in Columbus, Ohio


Richard Bourgauff