

***Cable v. EICON*, 122 Nev. Adv. Op. 12 (Feb. 9 2006)¹**

**EMPLOYMENT LAW – RETIREMENT, STATUTORY
INTERPRETATION**

Summary

Appeal from a district court order granting summary judgment in an employment matter involving former employees of the state's industrial insurance system.

Disposition/Outcome

The court reversed and remanded the district court's order granting EICON an order for summary judgment. The court determined that former employees of the State Industrial Insurance System (SIIS) were entitled to retirement services under NRS Chapter 286, since they were terminated from State employment upon privatization of SIIS.

Factual and Procedural History

In 1999, the Nevada Legislature enacted Senate Bill 37, which resulted in the privatization of SIIS and on January 1, 2000, upon the Governor's proclamation, SIIS became a private mutual insurance corporation company, Employers Insurance Company of Nevada (EICON). When SIIS assets were transferred to EICON, the new company expressly assumed all debts and liabilities, known and unknown, of SIIS. All employees of SIIS on December 31, 1999, automatically became employees of EICON on January 1, 2000. Thus, EICON employees were no longer State employees and were no longer eligible for service credits under Nevada's Public Employees Retirement System (PERS).

Since EICON also assumed control of SIIS operations, SIIS employees were deemed "terminated" from state employ per section 138 of SB 37. Those employees were thus entitled to benefits and privileges of terminated state employees under NRS Chapter 286. Under section 134 of SB 37, EICON was required to pay the full cost of up to five years of service credits for any workers thereby eligible for full retirement benefits.

On December 29, 1999, fourteen of the appellants filed a complaint against EICON and the State of Nevada. They argued that because in three days they would be terminated from their SIIS jobs they were entitled to participate in a NRS Chapter 286 buyout program. Under NRS 286.3007 a state agency is required to subsidize the purchase of retirement service credits for certain employees that are terminated.² After the district court ordered joinder of all similarly situated employees, and after the parties sent notice to those employed at SIIS for more than five years, an additional thirty former SIIS employees joined the action.

The State of Nevada moved to dismiss the action against it for failure to state a claim, asserting the state agency named was no longer in existence as EICON had statutorily replaced it, assuming all of SIIS's liabilities. The district court originally denied the motion, but after reconsideration, the court granted the dismissal with prejudice.

¹ By Brandon P. Kemble

² NEV. REV. ST. § 286.3007 (2003).

EICON and the forty-four plaintiffs moved for summary judgment. After determining there were no factual issues the court framed the issue as how to define the phrase “eligible for retirement.” The district granted EICON’s motion for summary judgment after concluding the Legislature did not intend for employees such as plaintiffs to take advantage of the employee-reduction buyout provided in section 134 SB 37. The district court did not address the applicability of the NRS Chapter 286 buyout program to employees such as plaintiffs.

Appellants appealed the district court’s order granting summary judgment in favor of EICON and challenged the dismissal of the claims against the State of Nevada.

Discussion

Appellants argued that the district court erred in basing its ruling on SB 37 buyout program instead of on NRS Chapter 286. NRS Chapter 286 requires any state agency reducing the number of its employees to offer employees who are “eligible to retire” a subsidized buyout of service credits. Appellants further argued that under SB 37, they were “terminated” from state employ and that such termination was equal to a reduction in workforce for the purposes of NRS Chapter 286, thus making them eligible for the statutory buyout program.

Respondents asserted that appellants were not eligible for the buyout provision because their employment continued with EICON and because SIIS no longer existed. Furthermore, respondents contended that appellants were not “eligible to retire” under NRS Chapter 286 because they could not retire at full unreduced benefits, even with the purchase of up to five years service credit.

The majority announced its procedure for statutory interpretation. The court noted that when a statute was clear on its face that a court may not go beyond the language of the statute, but that when a statute was ambiguous the plain meaning had no application. Courts could construe such statutes inline with reason, public policy, and legislative intent.

The court also assumes the Legislature is aware of other similar statutes when it enacts legislation. It assumed the Legislature was aware of NRS Chapter 286 when it enacted SB 37. The court found no indication that the Legislature sought to replace NRS Chapter 286 by enacting SB 37. Thus, the court reasoned, the district court should have determined whether appellants were entitled to the buyout provision in NRS 286.

NRS 286.3007 contains the buyout provision and reads in relevant part:

3. If a state agency is required to reduce the number of its employees, it shall purchase credit for service pursuant to NRS 286.300 for any member who:
 - (a) Is eligible to purchase credit;
 - (b) Is eligible to retire or will be made eligible by the purchase of the credit;
 - (c) Agrees to retire upon completion of the purchase; and
 - (d) Has been employed by the agency for 5 or more years.

4. If a state agency is required to purchase credit pursuant to subsection 3, it shall pay 5 percent of the cost of purchasing the credit and an additional 5 percent of the cost for each year that the person has been employed by the agency in excess of the minimum requirement of 5 years.

The court determined it would answer two key questions: (1) Whether NRS 286.3007 applied to appellants, employees transferred from public to private employment, and (2) If so, were appellants entitled to the benefits of that provision based on the “eligible to retire” as used in NRS 286.3007(3)(b)?

The court determined NRS 286.3007(3) applies to employees whose jobs are reduced by a state agency and that it obligated the state to purchase service credit for any eligible employee subject to a reduction-in-force termination.³ According to the plain language in SB 37, 138 EICON employees were terminated for the purposes of NRS Chapter 286 because while the employees did not lose their jobs, they did lose their state jobs.⁴ Thus, SIIS did reduce the number of its employees and eligible employees were entitled to the buyout provision under NRS 286.3007(3).

The court rejected respondent EICON’s argument that even if appellants were terminated for the purposes of NRS 286.3007(3), that those employees did not meet the “eligible to retire” criteria of the statute because they were not eligible to retire at full benefits, per NRS 286.510(1).⁵ It rejected respondents argument that Respondent contended that NRS 286.510(6), which discusses retirement with reduced benefits, does not define retirement eligibility but simply defines one alternative by which an employee may retire if not eligible under section 1.⁶

The court instead agreed with interpretations by the Attorney General, the Legislative Counsel Bureau, and PERS which all interpreted “eligible to retire” as retiring with full or reduced benefits. The court noted the agency determination was entitled to deference since it did not conflict with the constitution or other statutes, did not exceed the agency’s powers, and was not arbitrary or capricious. Furthermore, the court reasoned that because the Legislature used clearly distinguishing language in other statutes, the absence of such language in NRS 286.3007 meant the Legislature did not intend to distinguish eligible retirement types under its buyout provision. Finally, relying on the Attorney General and LCB, the court took notice of the fact that other jurisdictions construe pension statutes in favor of pension recipients.

Given these arguments the court held the buyout provision of NRS 286.3007(3)(b) did apply to former SIIS employees who were eligible to retire at either full or reduced benefits. Since the abolition of SIIS as a state agency constituted a reduction in force, since state employees affected by such reductions are entitled to the protection of the buyout provisions under NRS 286.3007, and since EICON assumed all SIIS liabilities per SB 37, section 138, the court determined EICON was required to fund the purchase of service credits for appellants. It further determined the district court was correct to dismiss the State of Nevada from the action.

³ See *SNEA v State, Employment Dep’t*, 107 Nev. 622, 638, 817 P.2d 708, 709 (1991).

⁴ (emphasis added)

⁵ NEV. REV. ST § 286.510(1) reads: “Except as otherwise provided in subsections 2 and 3, a member of the System is eligible to retire at age 65 if he has at least 5 years of service, at age 60 if he has at least 10 years of service and at any age if he has at least 30 years of service.”

⁶ NEV. REV. ST § 286.510(6) reads in relevant part: “Any member who has the years of creditable service necessary to retire but has not attained the required age, if any, may retire at any age with a benefit actuarially reduced to the required retirement age.”

Concurring/Dissenting Opinion

Hardesty, J. concurring in part and dissenting in part:

Justice Hardesty concurred with the majority that the State was properly dismissed but dissented from the majority's extension of retirement credit purchases to former SIIS employees. Justice Hardesty determined that under NRS 286.3007(3) privatization was not the same as a reduction in force. Additionally, he found that appellants did not meet the other requirements of the statute. Finally, he wrote that the majority's application of NRS 286.3007(3)(b) contradicted the Legislature's express intention to deal with the purchase of service credits as part of the SB 37 plan to privatize SIIS.

Conclusion

NRS 286.3007(3) applies to any employee meeting the statutory requirements whether they will retire at full or reduced benefit levels. EICON must fund the service credit purchases for any such employee. The district court order granting summary judgment for EICON is reversed and remanded to the district court.