

Bond Case Briefs

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EMPLOYMENT - OREGON

Bova v. City of Medford

Court of Appeals of Oregon - April 2, 2014 - P.3d - 2014 WL 1316267

Retired city employee brought action against city, seeking declaratory and injunctive relief to require city to make health insurance coverage available to him, and alleging that city's failure to provide coverage was age discrimination. The Circuit Court entered summary judgment in favor of employee on his claims for declaratory and injunctive relief, and, following a bench trial, entered judgment in favor of employee on the age discrimination claim. City appealed.

The Court of Appeals held that:

- Fact issue precluded summary judgment, and
- Disparate impact theory on discrimination claim was different from pleaded theory and thus could not be tried in absence of consent of parties.

Fact issue, as to whether the costs of providing retired employees with health insurance coverage made it unduly burdensome for city to provide that coverage, precluded summary judgment on retired city employee who sought declaratory and injunctive relief that city was required to provide him with health care coverage, under statute requiring a local government "insofar as and to the extent possible," make health insurance coverage available for retired employees to the same extent as coverage was available to non-retired employees.

Disparate impact theory for retired city employee's age discrimination claim, on which theory claim was tried, was different from employee's pleaded theory of disparate treatment, and thus trial court could not allow employee to try claim on disparate impact theory in absence of express or implied consent of parties. A disparate impact case required a showing that a facially neutral policy or criterion had a disproportionately negative impact on a protected class, while disparate treatment required a showing of intentional discrimination.