

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 13 CH 17450
) Calendar 13
CITY OF CHICAGO, a Municipal)
Corporation,)
)
 Defendant,)
)
 and)
)
Trustees of the Policemen's)
Annuity and Benefit Fund of)
Chicago; Trustees of the)
Firemen's Annuity and Benefit)
Fund of Chicago; Trustees of the)
Municipal Employees' Annuity and)
Benefit Fund of Chicago; and)
Trustees of the Laborers' &)
Retirement Board Employees')
Annuity and Benefit Fund of)
Chicago, et al.,)
)
 Defendants.)

REPORT OF PROCEEDINGS had at the
motion in the above-entitled cause before the
Honorable NEIL H. COHEN, Judge of said Court, Room
2308, Richard J. Daley Center, Chicago, Illinois,
on November 16, 2017, at the hour of 11:05 a.m.

1 APPEARANCES:

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11 On behalf of the Plaintiffs;

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19 On behalf of the City of Chicago;

20 LANER MUCHIN

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On behalf of the City of Chicago;

DAVID R. KUGLER & ASSOCIATES, LTD.

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On behalf of the Trustees of the
Policemen's Annuity and Benefit Fund
of Chicago;

1 APPEARANCES: (Continued)

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11 On behalf of the Trustees of the
12 Firemen's Annuity and Benefit Fund of
13 Chicago;

14 TAFT, STETTINIUS & HOLLISTER, LLP

15 BY: Mr. John F. Kennedy

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22 On behalf of the Trustees of the
23 Laborers' & Retirement Board
24 Employees' Annuity and Benefit Fund
of Chicago.

1 THE COURT: Okay. This is City of
2 Chicago versus Korshak, Underwood versus City of
3 Chicago. And we're here today to discuss -- or
4 for me to rule on whether I have jurisdiction to
5 entertain the motion for the issuance of a
6 preliminary injunction as requested by the
7 defendants.

8 To that effect, I have -- last week I
9 had asked the parties to submit memorandum of law,
10 and I have received -- pro and con in support of
11 their position; I have received that from
12 Mr. Krislov, I have received it from the City, I
13 have received it from Mr. Burke, I have received
14 it from Mr. Donaham, the latter on behalf of the
15 Funds, and I have heard from all defendants.

16 Does anyone -- and you can be assured
17 that I --

18 MR. KRISLOV: Your Honor, we did not
19 hear from -- the Police did not file a --

20 THE COURT: No.

21 MR. KRISLOV: -- position.

22 THE COURT: You can be assured that I
23 read everything that anyone had to say, and I
24 don't need any further argument on it, unless

1 anyone wishes to supplement or further expand upon
2 their positions anything new that they didn't put
3 in their memorandum.

4 Mr. Krislov.

5 MR. KRISLOV: I think we have addressed
6 it in our briefs. I would be glad to summarize.

7 THE COURT: I don't need a summary.

8 MR. KRISLOV: Okay.

9 THE COURT: You have done that in your
10 reply. So --

11 MR. PRENDERGAST: No need for anything
12 further.

13 THE COURT: Okay. Before we begin, I
14 just wanted to state, before you all came in here,
15 a gentleman, I don't know who he is or who -- I
16 assume he was one of the retirees was here about
17 10:30. This gentleman (pointing) and the woman
18 next to him were here, and he approached me and
19 started asking -- I was on the bench from another
20 case. And when the case was over -- I don't see
21 him.

22 Is that gentleman here now? He seems
23 to have -- is that you, sir? That's you, who
24 asked me about Joe Greenspan? Yes or no --

1 UNIDENTIFIED SPEAKER: Yes, sir.

2 THE COURT: -- was that you?

3 All right. I don't know this guy
4 from Adam.

5 UNIDENTIFIED SPEAKER: Yes, sir.

6 THE COURT: You don't have to talk
7 anymore.

8 UNIDENTIFIED SPEAKER: I'm sorry.

9 THE COURT: And he started to ask me
10 whether I knew a guy named Joe Greenspan from
11 Glencoe because, I don't know, who was related to
12 him. And I told him I didn't want to talk to him
13 about that. I thought it was -- I sensed that it
14 was the beginning of a conversation about who do
15 you know and -- or what we call in my end of the
16 spectrum, Jewish geography. And I wasn't going to
17 hear anything about that, and I told him to stop
18 talking.

19 Just so everybody knows, I want to
20 make that of record. It makes no difference to me
21 that he wanted to talk to me, and I'm sorry I
22 couldn't talk to him but I can't. The lives and
23 finances of many of the retirees are at stake
24 here, and I can't be accused of any conversation

1 that's ex parte.

2 Do you understand, sir?

3 UNIDENTIFIED SPEAKER: I apologize to the
4 Court. I didn't --

5 THE COURT: I understand you didn't
6 mean any --

7 UNIDENTIFIED SPEAKER: -- I didn't mean a
8 conversation, that was wrong.

9 THE COURT: I didn't take it as you
10 trying to influence me, but I couldn't even afford
11 the appearance of impropriety.

12 UNIDENTIFIED SPEAKER: And I appreciate
13 that. I got to put it in perspective, and I'm
14 sorry.

15 THE COURT: All right. I just wanted to
16 make it of record so everybody knows what
17 happened. And, you know, do what you want with
18 it, if anything, so.

19 So here we are. We begin with
20 June 29th, 2017, on that dat Justice Simon in the
21 First District Appellate Court held that the
22 settlements from the 1987 Korshak litigation in
23 abeyance from 1989 to 2013 had no enduring effect.
24 It held that the pension protection clause does

1 not protect any term of those settlements since
2 those settlements expired by their own terms as
3 the parties' agreed upon and as this court held
4 back in 2016.

5 It said -- Justice Simon said, the
6 pension protection clause locked in the 1983 and
7 the 1985 fixed rate subsidies for any employee
8 than began participating in the system by the time
9 the 2003 -- the time the 2003 settlement was
10 executed; much later than what I held. That
11 meant, according to the Appellate Court, that the
12 participants' right to a fixed right subsidy was
13 guaranteed and could not be diminished or impaired
14 for those employees already in the system as
15 the -- of the date of that settlement.

16 The Court also at paragraph 40,
17 however, said, the retirees were not entitled to a
18 benefit level greater than that provided by the
19 subsidies in the 1983 and 1985 amendments to the
20 pension statutes. The amendments provided for
21 those benefits -- provided to those benefits,
22 quote, according to the court, represent the
23 highest level of benefits to which the retirees
24 ever had an enduring right, paren -- open paren.,

1 and, close paren., the pension protection clause
2 entitled the retirees to nothing more, at
3 paragraph 40.

4 Plaintiffs have filed a PLA from that
5 decision, it is currently pending before our
6 Supreme Court. The PLA challenges many aspects of
7 the Appellate Court's opinion, including the
8 conclusion that the retirees' maximum protected
9 benefit is the fixed rate subsidy amount set forth
10 in the '83 and '85 statutes.

11 The jurisdictional issue is a simple
12 one, if the issues raised by the requests for the
13 issuance of a preliminary injunction are
14 incidental to, collateral to the order on appeal,
15 and the case law says, this court is not the
16 derived of jurisdiction; if, however, they are not
17 merely incidental or collateral to the issues
18 raised by the PLA but rather are closely related
19 to those issues, then the PLA and the failure of
20 Appellate Court's mandate to issue, I might add,
21 has deprived this court of the power to do
22 anything about it.

23 On appeal from this court's 2016
24 order, the Appellate Court recognized that, quote,

1 the retirees' contend that the pension protection
2 clause should be considered to protect their
3 abstract right to healthcare coverage, unquote,
4 again, paragraph 40.

5 Please be seated. No talking. You
6 may stand there, that's fine.

7 The Appellate Court rejected that
8 contention because it said, quote, that's not what
9 the Illinois Constitution provides. It is the
10 subsidy itself that is protected. The 1983 and
11 1985 amendments represent the highest level of
12 benefits to which the retirees ever had an
13 enduring right, unquote, as I said and again,
14 that's at paragraph 40.

15 But in their PLA, the plaintiffs'
16 argue that that's wrong. They argue that
17 interpreting the benefits to be protected is just
18 the statutory subsidy, misunderstands Kanerva and
19 the protection of -- that Article 13, Section 5 of
20 the Constitution affords, PLA at page 19.

21 Now, the current motion for the
22 issuance of a preliminary injunction also seeks
23 this court to require the Funds to do more than
24 just give the subsidies required by statute

1 because it said, the Funds have an obligation to
2 provide not just those statutory subsidies but a
3 plan, and perhaps even increase subsidies to help
4 the retirees afford that plan. But as I just
5 outlined, this is exactly one of the issues
6 decided by the Appellate Court adverse to the
7 plaintiffs' position and exactly the issue that's
8 currently pending by the Supreme Court.

9 And as the City has noted, if the PLA
10 is accepted as the plaintiffs' hope, then the
11 scope of the inquiry is not limited to just what
12 the plaintiffs have raised but might easily
13 include other issues that the City itself may wish
14 you to raise and disagree with this court's
15 opinion in 2016 which is whether the City and the
16 Funds must pay any subsidies at all; and that's
17 what they intend to raise if the retirees are
18 successful in getting the PLA accepted.

19 All in all, although the trial court
20 retains jurisdiction to decide matters which are
21 collateral to its judgment, which is the subject
22 of appellate scrutiny, it is restrained from
23 entering an order that would modify its judgment
24 which is the subject of that scrutiny. And that's

1 the case here.

2 This court therefore holds that it is
3 without jurisdiction to consider the motion for
4 reissuance of a preliminary injunction. My hands
5 are tied as a matter of fact and as a matter of
6 law. That's the Court's decision.

7 What's next?

8 MR. KRISLOV: Obviously we would ask you
9 to reconsider because we think that the request
10 to -- into require the Funds to provide and
11 approve a plan in accordance with your decision
12 of -- actually, it is the December, 2015, decision
13 where you held that they have the primary
14 obligation to provide and approve a plan for their
15 annuitants and the subsidy.

16 Nobody on the other side, nobody has
17 appealed your ruling that they have to do that.

18 THE COURT: This is what you have said,
19 Clint, I understand.

20 MR. KRISLOV: I understand.

21 THE COURT: Your motion to reconsider is
22 denied.

23 MR. KRISLOV: Okay.

24 THE COURT: Much -- I won't say anything

1 more. But that's not what the Appellate Court
2 held. The Appellate Court said, as I have quoted
3 twice now in paragraph 40, the highest benefit
4 they can expect, your clients, is the subsidies
5 that are enunciated in the '83 and '85 amendments.
6 Much to everyone's regret, I am sure, or most
7 people's, but that's the way it is. And that's
8 what you have filed a PLA about, good luck, but my
9 jurisdiction is gone.

10 MR. KRISLOV: Where we differ with you
11 is, this is different from the case of -- the
12 case -- there is one case cited by the City --

13 THE COURT: I am not talking about the
14 cases cited. I am talking about this case.

15 MR. KRISLOV: I am talking about this
16 case.

17 THE COURT: At this time. It doesn't
18 matter what the cases are that were cited by the
19 City or anybody else. It is clearly a matter that
20 is directly on appeal.

21 MR. KRISLOV: Here is why it is --

22 THE COURT: You have kept saying on the
23 last three dates, that I can do what I want to do;
24 if I wanted to, I could require them to -- I could

1 issue an injunction requiring them to come up with
2 a plan. But you're wrong. I wish you were right;
3 you're wrong. It is fine of you to say that. It
4 is -- it is -- but it is almost cruel to expect
5 people to believe that when it is wrong.

6 As a matter of law, if I wanted to, I
7 can't. I have an oath. My oath is to obey the
8 law. The law says I can't, and that's just the
9 way it is. You have a difference of opinion;
10 yours is formed by your position, and that's fine.
11 I have looked at it I think objectively, and I
12 disagree with you. So there it is.

13 MR. KRISLOV: Here -- the reason why we
14 disagree with you, if I may just finish, because I
15 understand --

16 THE COURT: I wish to stop the
17 conversation.

18 MR. KRISLOV: Okay.

19 THE COURT: There really is -- you have
20 told me the reason six times. I understand you
21 disagree with me, but that's the way it is. When
22 you quit your job and become a judge, you can take
23 the role that I have. This is my role. I am not
24 supposed to be partisan. I am supposed to follow

1 the law. That's what I have done.

2 I understand why you don't want me
3 to. I understand why my heart doesn't -- wants me
4 to -- to go with you, but that's not the law.

5 MR. KRISLOV: Respectfully, your Honor, I
6 disagree with you on the law, and I disagree with
7 you on the jurisdiction.

8 THE COURT: You have told me that now
9 seven times.

10 MR. KRISLOV: Okay.

11 THE COURT: And you have written about it
12 many times.

13 MR. KRISLOV: We will proceed ahead on
14 that basis.

15 THE COURT: Okay. Anything else today?

16 MR. KENNEDY: Yes, your Honor.

17 MR. KRISLOV: Yes, I -- Mr. Kennedy's
18 going to ask for an apology for calling them out
19 the other day, and I do apologize.

20 I raised the issue of whether they
21 had notified all of their people based on one of
22 the retirees indicating to me that it had not been
23 done. And so I apologize to Mr. Kennedy for
24 having caused him to be put through that

1 unnecessarily, that's number one. Okay.

2 MR. KENNEDY: Thank you, your Honor. I
3 have nothing further.

4 THE COURT: I received the note from the
5 Funds with regard to that, and an apology was
6 appropriate.

7 MR. KRISLOV: You know, for the stuff
8 that's been thrown at me, one of these days, maybe
9 I'll have -- you know, I look to the higher court
10 for the stuff that's been thrown at me from the
11 other side. But when I -- when I owe somebody an
12 apology, I make it.

13 THE COURT: Well, that's good. I want to
14 remind you, Clint, that when you brought this up
15 on that day, November 6th, I was pretty angry at
16 the Funds. I took you at your word, and I was
17 angry at the Funds for not having advised your
18 clients as to what the potential is for healthcare
19 coverage in 2018. I took you at your word, and it
20 was wrong.

21 And they have given me e-mails
22 indicating that you were given information about
23 that and that you knew or should have known, if
24 you had read them, that it was wrong; and they

1 also had given you information that they had sent
2 this out to each one of your clients.

3 And I am sorry you were wrong because
4 it caused me to get angry at them for not making
5 sure your clients were covered, and you and I were
6 both thinking about just making sure your clients
7 were covered. So it was -- although it was wrong
8 and a mistake, it was an honest mistake in order
9 to error on the side of making sure your clients
10 were covered for healthcare, a not insubstantial
11 issue in today's world. So your apology is
12 accepted.

13 I would only ask you -- caution not
14 only you but every lawyer, as I always do when
15 they're before me, to know what you're talking
16 about before you speak. And this time there was
17 an error, it was an honest mistake, and your
18 apology is accepted.

19 What's the next issue?

20 MR. KRISLOV: By the same token, they
21 have -- among the Funds, they are ones that have
22 not reached out to their annuitants to advise them
23 that if the annuitants come up with a plan, they
24 will consider --

1 THE COURT: Put it writing. Right now I
2 am not sure of anything.

3 MR. KRISLOV: Will do.

4 Number three.

5 THE COURT: Go ahead.

6 MR. KRISLOV: We have a motion up for
7 next week, I believe on the 21st --

8 THE COURT: I haven't received it.

9 MR. KRISLOV: -- dealing with the Korshak
10 audit and reconciliation for 2013 --

11 THE COURT: Do you have a copy of it?

12 MR. KRISLOV: -- 2013 second half.

13 MR. GOLDSTEIN: It just got filed
14 yesterday, I don't.

15 THE COURT: It just got filed?

16 MR. GOLDSTEIN: Just filed.

17 THE COURT: Ken, when was it filed?

18 MR. GOLDSTEIN: I believe it was
19 yesterday.

20 MR. KRISLOV: It was yesterday, it was
21 yesterday -- the day before actually I think.

22 THE COURT: Have you all received a copy
23 of this motion?

24 MR. KRISLOV: Yes, but the --

1 MS. NABER: Yes.

2 THE COURT: You know, let them answer,
3 Clint.

4 MR. KRISLOV: Yes.

5 MR. PRENDERGAST: I am not aware of the
6 motion before you, your Honor, but I may well have
7 received it; it was buried under something else at
8 my office.

9 THE COURT: Do you have a courtesy copy
10 for them?

11 MR. GOLDSTEIN: I did not bring one. I
12 know that --

13 THE COURT: Will you drop one off? And
14 what day is it up for?

15 MR. KRISLOV: It is up for the 21st, but
16 it needn't be dealt with at this point. What it
17 is, you'll recall from our last time before you,
18 we wanted the City to produce its settlement
19 agreement with Blue Cross which resulted in, we
20 thought then that -- and it is true, that the City
21 received 10 1/2 million dollars back from Blue
22 Cross that was not explained in the -- in the --
23 there was a \$1.1 million credit. This deals with
24 a second half of 2013.

1 And we had asked the City produce
2 this agreement. Ms. Naber indicated it was a
3 confidential agreement, she refused. So we made a
4 motion -- and you said, if you want to do
5 something, either file a lawsuit or -- and we made
6 a motion to produce as part of the Korshak
7 reconciliation. In the meantime, we have
8 obtained --

9 THE COURT: Okay.

10 MR. KRISLOV: -- a copy of that agreement
11 by the Freedom of Information Act people at the
12 City, and we have that agreement. And I have
13 already e-mailed Ms. Naber this morning to get the
14 City's explanation for how that money was divided
15 up. That is the remaining issue dealing with the
16 2013 second half.

17 THE COURT: What are you going to do to
18 reconcile that issue?

19 MR. KRISLOV: Well, if the City will
20 share with us how the 10 1/2 million dollars was
21 allocated, because only 1.1 -- it's \$1,107,000 was
22 credited to retiree healthcare. If they will
23 share with us the manner in which it was
24 allocated, we will either sign off on its accuracy

1 or we will fight about that with each other and
2 come back before you. But that's the remaining
3 open issue for 2013 second half.

4 THE COURT: And is that issue teed up for
5 11-21 as well?

6 MR. KRISLOV: No.

7 THE COURT: Or you need to strike the
8 11-21 date and then have a conversation with
9 Ms. Naber to see what her position is and work
10 that out if you can.

11 MR. KRISLOV: We can strike the 21st, and
12 then this is all --

13 THE COURT: Give me a separate order
14 striking 11-21.

15 MR. KRISLOV: Okay. Otherwise, I think
16 that's all for today.

17 THE COURT: But we do need another date
18 then just as a PLA check date to see what's going
19 on, and I don't want to lose the case or have it
20 in the twilight zone of litigation.

21 So what date -- I remember what you
22 said, Richard, that you expect an acceptance or
23 rejection by 11-29 or so. Is that still your
24 reckoning?

1 MR. PRENDERGAST: Your Honor, picked up
2 from the Supreme Court's docket yesterday, they're
3 going to consider the PLA the 22nd.

4 THE COURT: Oh, okay. So on Wednesday.

5 MR. KRISLOV: I think we were all
6 scheduled to be here on the 29th. So if we could
7 leave the 29th open to come back.

8 THE COURT: Well, that's fine with me if
9 that's all right with everybody.

10 MS. NABER: I believe it is status.

11 MS. BOECKMAN: Yeah, it's 2:00 -- 2:00 to
12 4:00 p.m.

13 MS. NABER: At 2:00 in the afternoon,
14 your Honor.

15 THE COURT: Why did I put it at 2:00?

16 MS. NABER: That was the originally
17 scheduled preliminary injunction hearing.

18 THE COURT: Oh. Well, let's do it
19 earlier. Let's do it at 10:30 if that meets
20 everyone's schedule; if it doesn't, I'll leave it
21 at 2:00.

22 MR. KRISLOV: I think I have -- I don't
23 have my calendar here.

24 THE COURT: I will leave it at 2:00.

1 MR. KRISLOV: I would leave it at 2:00
2 because I have something that morning.

3 THE COURT: I think that was actually the
4 issue back then when we set it, all your schedules
5 were all over the place. So we'll keep it on
6 11-29 at 2:00.

7 MR. PRENDERGAST: For status?

8 THE COURT: I'm sorry.

9 MR. PRENDERGAST: For status?

10 THE COURT: For status. Status on the
11 PLA, status on whatever else you want to bring to
12 my attention.

13 Anything else from any parties? The
14 Kuglers?

15 MR. D. KUGLER: No.

16 THE COURT: Mr. Burke? Sarah?

17 MS. BOECKMAN: No, your Honor.

18 THE COURT: Cary? Mr. Kennedy?

19 MR. KENNEDY: No, Judge.

20 MR. DONAHAM: Nothing, your Honor.

21 THE COURT: Ms. Naber?

22 MS. NABER: No, your Honor.

23 THE COURT: Richard?

24 MR. PRENDERGAST: Nothing further.

1 THE COURT: Ken?

2 MR. GOLDSTEIN: No.

3 THE COURT: And Clint?

4 MR. KRISLOV: Thank you, your Honor.

5 THE COURT: I wish you all a happy

6 Thanksgiving. All right.

7 (Which were all the proceedings
8 had in the above-entitled cause.)

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REPORTER'S CERTIFICATE

I, TRACI ELICE BOURBEAU, CSR, doing business in the City of Chicago, State of Illinois, do hereby certify that I reported in computerized shorthand the foregoing proceedings as appears from my stenographic notes.

I further certify that the foregoing is a true and accurate transcription of my shorthand notes and contains all the proceedings had at said motion.

IN WITNESS WHEREOF, I hereunto set my hand as Certified Shorthand Reporter in and for the State of Illinois on November 21, 2017.



TRACI ELICE BOURBEAU, CSR
C.S.R. No. 084-004281