

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

MICHAEL W. UNDERWOOD, *et al.*,

Plaintiffs,

v.

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 & Benefit Fund of Chicago, *et al.*

Defendants.

No. 13 CH 17450

DOROTHY BROWN  
CLERK

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CITY OF CHICAGO

**CITY OF CHICAGO'S MEMORANDUM OF LAW  
CONCERNING THE PENSION FUND'S OBLIGATION TO PAY  
SUBSIDIES UNDER THE 1983 AND 1985 AMENDMENTS TO THE PENSION CODE**

The issue before the Court is straightforward. Under the 1983 and 1985 amendments to the Pension Code, both of which provide that City retirees' health care shall be subsidized in varying amounts, does the obligation to pay the subsidies reside with the Pension Funds or the City? The applicable statutes answer the question unequivocally. Each of the four Funds is required to pay the statutory subsidies for its annuitants in the amounts provided under the applicable statute.

The 1983 statute amending the Pension Code requires the Fire and Police Funds to pay the premiums for health insurance for each annuitant “up to a maximum of \$55 per month if the annuitant is not qualified to receive Medicare benefits, or up to a maximum of \$21 per month if the annuitant is qualified to receive Medicare benefits.” P.A. 82-1044, ch. 108 ½, par. 6-164.2(d). The plain language of the 1983 amendment makes this obligation mandatory, providing that “[t]he Board *shall* pay the premiums for such health insurance for each annuitant.” *Id.* (emphasis added). Similarly, in 1985, the General Assembly amended the Pension Code to require the Municipal and the Laborers Funds to pay up to \$25 per month toward the health care premiums of each annuitant age 65 or older with at least 15 years of experience. P.A. 84-23, ch. 108 ½, par. 11-164.1; P.A. 84-159, ch. 108 ½, par. 11-160.1. The 1985 amendment also leaves no doubt that this obligation is mandatory, providing that “[t]he Board, in conformity with its regulations, *shall* pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized.” *Id.* (emphasis added). Copies of the 1983 and 1985 amendments are submitted herewith as Exhibit A.

The Pension Funds have suggested, however, that the statutory language be ignored, asserting that the opening sentences of paragraph 40 of the Appellate Court’s June 29, 2017 Opinion are dispositive.<sup>1</sup> Those two sentences state that “[u]nder the 1983 amendment, the City is obligated to pay toward its retirees’ healthcare \$55 per month for non-Medicare eligible retirees and \$21 per month for its municipal employees and laborers and retirement board

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<sup>1</sup> The Appellate Court’s June 29, 2017 Opinion affirmed this Court’s decision that members of subclass 3 could state a claim under the pension protection clause for benefits based on the 1983 and 1985 amendments to the Pension Code. *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 62. The Appellate Court also held that members of subclass 4 who began to participate in the City’s retirement system before the 2003 settlement was executed were likewise entitled to benefits under the 1983 and 1985 amendments. *Id.* The Appellate Court further held that the pension protection clause protects the fixed-rate subsidies provided under those amendments. *Id.* ¶ 39.

employees. Ill. Rev. Stat. 1983, Ch. 108½ , par. 5-167.5(d). Under the 1985 amendment, the City is obligated to pay \$25 per month for its municipal employees and laborers and retirement board employees. Ill. Rev. Stat. 1985, ch. 108½ , par. 11-160.1.” *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 40.

Insisting that this single snippet from the Appellate Court’s June 29, 2017 Opinion must be read literally and definitively, the Funds ignore (1) the unequivocal language of the 1983 and 1985 amendments; (2) the equally unequivocal language of paragraph 3 of the same June 29, 2017 Opinion; and (3) the language of Justice Simon’s prior September 16, 2016 Opinion in this case (*Underwood v. City of Chicago*, 2016 IL App (1st) 153613) affirming the denial of preliminary injunctive relief.

While the Funds would like to read paragraph 40 of the 2017 Opinion wearing blinders, paragraph 40 must be read in the context of paragraph 3 of the same Opinion, which expressly states, in relevant part:

The City has long been providing fixed-rate subsidized healthcare to its retirees through the City of Chicago Annuitant Medical Benefits Plan. In 1983, the City agreed to provide a subsidy for the Police and Firefighter funds for a healthcare benefit. *Under that plan, the respective annuity and benefit funds (the Funds) would provide a subsidy to the City to cover a set amount of the participants’ healthcare (\$55 per month for non-Medicare-eligible retirees and \$21 per month for Medicare-eligible retirees).* Ill Rev. Stat. 1983, Ch. 108–1/2, par. 8–167.5 (eff. Jan.12, 1983). The contributions themselves were funded by a City tax. The municipal employees and the laborers and retirement board employees were brought under the same construct as the police and firefighters in 1985, just at a smaller average subsidy (\$25 per month). Ill Rev. Stat. 1985, Ch. 108–1/2, par. 11–160.1 (eff. Aug.16, 1985).

*Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 3 (emphasis added).

Thus, the Appellate Court made clear, as the words of the statutory amendments specify, that “the Funds would provide a subsidy to the City to cover a set amount of the participants’ healthcare.” Even if paragraph 40 is read in a vacuum to provide that the City is obligated “to

pay” towards retirees’ health care the amounts prescribed by statute, the 1983 and 1985 amendments themselves, as well as paragraph 3 of the same Opinion, makes clear that any such payment would be made from subsidies provided by the Funds. The two provisions of the same opinion, paragraphs 3 and 40, can only be read in harmony with each other if the obligation to fund the subsidies resides with the Funds, as the statutes and paragraph 3 provide.

As if the language of the 1983 and 1985 amendments, coupled with the language of paragraph 3 of the same Opinion, were not enough, Justice Simon, the author of the 2017 Opinion, was also the author of the 2016 Opinion on appeal from this Court’s denial of the latest of plaintiffs’ several unsuccessful motions for preliminary injunctive relief. Any ambiguity as to who is required to fund subsidies under the 1983 and 1985 statutes is resolved by examining that Opinion. There, Justice Simon wrote that: “The Funds’ obligations to their annuitants under the Pension Code are financed by the taxpayers of the City through a tax levy. 40 ILCS 5/5–168 (West 2013).” *Underwood v. City of Chicago*, 2016 IL App (1st) 153613, ¶ 3. Paragraph 4 of that Opinion then provides:

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees. Ill Rev. Stat. 1983, Ch. 108–1/2, par. 8–164.1 (eff. Jan.12 1983). *The 1983 amendments also required the Funds to pay the premiums for such health insurance for each annuitant “up to a maximum of \$55 per month if the annuitant is not qualified to receive Medicare benefits, or up to a maximum of \$21 per month if the annuitant is qualified to receive Medicare benefits.”* Ill Rev. Stat. 1983, Ch. 108–1/2, par. 8–167.5 (eff. Jan.12 1983).”

*Id.* at ¶ 4 (emphasis added).

The Opinion further states at paragraph 5 that “In 1985, the General Assembly amended the Pension Code to *require the Municipal and the Laborers Funds to pay up to \$25 per month toward the health care premiums* of each annuitant age 65 or older with at least 15 years of experience. Ill Rev. Stat. 1985, Ch. 108–1/2, par. 11–160.1 (eff. Aug.16, 1985).” *Underwood v.*

*City of Chicago*, 2016 IL App (1st) 153613, ¶ 5 (emphasis added). And, at paragraph 25, the Court held that “Under the 1983 and 1985 amendments, the maximum amount that *the Funds were required to pay for its annuitants* was \$21 or \$55 per month for the Police and Fire retirees, and \$25 per month for Municipal and Labor retirees if they satisfied the Pension Code’s eligibility requirements.” *Id.* at ¶ 25.

Both before and after the 1983 and 1985 amendments were enacted, the City’s tax levy provided the Funds with the money to be used to pay pensions. The 1983 and 1985 amendments did not increase the tax levy or impose any greater financial obligation on the City. The amendments served to authorize the Funds to use money from the tax levy to pay subsidies toward health insurance on behalf of annuitants, and specified the amounts of the subsidies the Funds were to pay. Just as payment of pensions was and is the sole responsibility of the Funds, health insurance premium subsidies payable after 1983 and 1985, respectively, are likewise the responsibility of the Funds. There is nothing in the statutes that suggest otherwise, and an isolated snippet of text from the Appellate Court’s 2017 Opinion cannot and should not be used to overcome the plain language of the statutes, especially because doing so would render that snippet inconsistent with other language in the 2017 Opinion as well as with the Appellate Court’s 2016 Opinion.

Dated: June 15, 2018

Respectfully submitted,

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