EXHIBIT 27

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

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

CITY OF CHICAGO,)
Plaintiff,)
vs.) No. 87 CH 10134
MARSHALL KORSHAK, et al.,)
Defendants.)

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause before the Honorable Albert Green, Judge of said Court, on the 20th day of June, 1988, at the hour of 2:00 o'clock p.m., at the Daley Center, Room 2305, Chicago, Illinois.

APPEARANCES:

(Same as hereinbefore noted.)

1 THE COURT: Any opening statements?
2 MR. FORDE: Very brief.
3 OPENING STATEMENT
4 BY MR. FORDE:
5 Your Honor, I represent the Police Fund.
6 The chart on the wall on the eisel there
7 demonstrates what is at issue at this stage.
8 In the left column these are taken from
9 exhibits that will be in evidence, and in fact a
10 part of this is of the stipulation, the current rate
11 for annuitants are in the left-hand column, and the
12 rates that are threatened by the City are in the
13 right-hand column.
14 These are rates that the City would put
15 into effect immediately if in fact they didn't
16 cancel the coverage entirely, and that is why we
17 have a need for injunctive relief from this Court.
18 We have before the Court a four count
19 complaint. For the most part the first 16
20 paragraphs of that complaint are covered by the
21 stipulation.
22 The stipulation demonstrates since 1964
23 retired employees have participated with the active
24 employees in the City's Health Benefit Program.

1 The City's Health Benefit, your Honor, has
2 heard arguments earlier in the case on, and it is a
3 simple claims made program which the City has
4 undertaken for its active and retired employees.
5 The stipulation also sets forth the amounts
6 to be paid by the Funds from the tax levy, and that
7 is part of the stipulation.
8 This is the Fund's only obligation to make
9 these payments toward the premiums as well as to
10 arrange for the insurance. The rest of the payment
11 has to be made by the annuitant or the City if this
12 Court determines those obligations.
13 Since the '70s, since at least the mid '70s
14 the City has been paying a substantial portion of
15 the annuitant's health benefits cost. The current
16 rates that are in the left-hand column there which
17 are on the stipulation that do not cover the full
18 cost but the City has been paying these, and when
19 they are obligated to continue to do so is the
20 principal issue for your Honor to decide.
21 Our proof in this case will show that since
22 the mid '60s the City has been paying full benefits
23 for its active employees.
24 The active employees don't pay a dime in

1 essence. Active employees know that the City was
2 paying, and the active employees over the last few
3 years knew that the City was paying a substantial
4 portion for retiree health benefits.
5 That retirement, many of those employees
6 who are now retired policemen or were specifically
7 told that their health benefits would continue, and
8 the City would be subsidizing those health benefits.
9 There will also be testimony this is a big
10 factor in planning retirement as the Court can
11 obviously recognize. It became while they were
12 still active, an important term and condition of
13 their employment.
14 It was one of the things that they worked
15 for. The Court will also hear testimony in 1984 or
16 1985 in that era the City considered raising the
17 premiums from this level shown in the left-hand
18 column, but it did not do so.
19 The Court will also hear testimony that the
20 City went out and actively solicited retirees to
21 re-enroll in the health plans in 1985.
22 Many of the retirees did enroll and now
23 they are threatened about the loss of insurance by
24 the City.

1 The principal defense that the City raises
2 is that the appropriation or its conduct in paying
3 part of these health benefits was illegal.
4 Your Honor dealt with this so-called
5 defense earlier when you observed if I could
6 paraphrase the Court that you found it inconceivable
7 that tens of millions of dollars could have fallen
8 through the cracks.
9 Well, your Honor, since that time you have
10 had a chance to take depositions of City employees
11 and to further elicit the specifics of this defense,
12 and it comes down to the City does not dispute that
13 these funds weren't appropriated funds or included
14 every year in the City's appropriation.
15 The City's argument is that the provision
16 of prorating those funds is not specific enough.
17 In other words the line item in the budget
18 did not give specific details as to what was being
19 spent, and while the people in the administration
20 knew that that line item included health benefits
21 for retirees, the members of the City Council
22 wouldn't understand that what they were doing was
23 appropriating funds for retirees as well as active
24 employees.

1 I don't know that I have been in a case
2 before where an administration has taken the
3 position that the legislative body was not competent
4 enough to read its own budget, but really what the
5 defense of the City really is is arguing the
6 incompetence of the legislative body.
7 Coincidentally I will show your Honor which
8 is a document stipulated which will come into
9 evidence which lists the language as it appears year
10 after year, the City's budget, and the language
11 never changes, because it is on a word processor,
12 and so the numbers change from year to year, but the
13 language stays the same.
14 That the highlighted portion, your Honor,
15 is the description of the health care benefits which
16 included the appropriation for retired employees,
17 but the City says was not in specific detail, but
18 the legislator could competently understand it.
19 Significantly the budget over the years in
20 question were all prepared by the office of the
21 budget director, in other words, by the
22 administration.
23 One year the budget in one of the years in
24 question, 1985, the budget was not prepared by the

1 City Administration but aldermen themselves took
2 upon this responsibility to prepare the budget, and
3 they had drafts from the City administration, but in
4 the final analysis they selected the words.
5 In other words, they put it on their word
6 processor and selected words, these aldermen, the
7 City tell us couldn't understand what was intended
8 to be, and that line item describes it a little bit
9 differently.
10 They went on and had the same description
11 that was there, but they added including employees
12 on duty, disability and partial payment of the cost
13 of claims and administration for health and medical
14 care provided to certain policemen, Firemen Benefit
15 Fund, Labor and Retirement Board employees
16 annuitants and benefit municipal employee
17 annuitants, and precisely the same amount that the
18 City prepared with its description.
19 So that the members of the City Council who
20 we are told didn't understand what was in this
21 budget, this one year where they selected the
22 language demonstrates they clearly understand what
23 they were clearly appropriated, what they were
24 appropriating and for what purpose.

1 So what the proof is going to show there is
2 nothing to the City's defense at all. We claim in
3 our verified counterclaim the right to employee
4 benefits on four separate theories.
5 The relief we ask is we will ask the Court
6 at the conclusion to enjoin the City from at least
7 preliminary basis from terminating insurance or from
8 increasing the premiums above the 1982 level and in
9 the alternative we ask that the City be enjoined
10 from terminating any insurance until there has been
11 time to find a suitable alterative, and that is our
12 case, your Honor.
13 Much of it will come on stipulated facts,
14 and we believe the proof will move very rapidly and
15 much of it will not be contested.
16 THE COURT: Firemen's or Municipal Funds?
17 MR. BURNS: Your Honor, I will not add very much
18 more to what Mr. Forde has said, but I will endorse
19 his statements in full.
20 I would comment with respect to the
21 firefighters that beginning in 1982 the City
22 negotiated with Local 2 of the Firefighter's Union a
23 clause which specifically provides for retirees to
24 participate in the City's insurance program.

1 Prior to 1985 the language referred to the
2 contract or policy or plan that was in effect at
3 that time. Subsequent to 1984 agreement, the
4 language was changed slightly, because by the time
5 the agreement was finalized the 1985 changeover that
6 Mr. Forde referred to was then in effect.
7 AS the evidence will show that language
8 states specifically that employees who retire
9 pursuant to the Pension Statute shall be allowed to
10 participate in the City of Chicago Annuitant Medical
11 Benefit Plan until reaching age 65 provided they pay
12 then the current contribution rate, and they set
13 forth the rates reflected in the chart.
14 I would add at this time that subsequently
15 that is upon the expiration of this labor agreement
16 which continued until December 31st, 1987, or until
17 a successor agreement was negotiated.
18 The evidence will show during the recent
19 negotiations culminating an agreement between the
20 City and Local 2, the City has promised Local 2 it
21 will continue coverage for retirees at least until
22 age 65 pursuant to the language of this provision.
23 I submit that this is inconsistent to
24 totally think that the City is concerned about

1 questions of legality, and then they go out and they
2 negotiate specifically that a particular plan is
3 going to continue.
4 So unless their position is somehow the
5 firefighters are a unique group and only the
6 firefighters are going to continue in this annuitant
7 medical plan and those firemen that retire upon the
8 City's counsel ratification unless they submit only
9 those individuals are going to be covered -- we
10 establish beyond doubt active firefighters relied
11 upon these provisions. They worked for the City,
12 they expect the City to cover them, and they have a
13 legal right to be so covered.
14 THE COURT: Municipal Laborer's?
15 MR. HEISS: Your Honor, on behalf of the
16 Municipal Laborer's, I am Fred Heiss and Bill
17 Marovitz, and I represent the Municipal Laborer's,
18 and I will give a short statement and indicate to
19 the Court that the provision of the laborers in the
20 municipality are almost identical, and we will talk
21 with one voice for speed for both funds until there
22 is a point when there is some difference.
23 Most of the things that Mr. Forde said
24 apply to the Municipal and Laborer's Fund.

1 I think in perspective it's important, and
2 of course what I say here as we all indicate to
3 jurors, but I must say it because it is what I
4 expect the evidence to prove not any argument that
5 this particular point is that back into 1975
6 starting that is a good time frame of reference all
7 the way up until now for the purpose of the
8 municipal and laborers, all these retirees were
9 receiving benefits via the City of Chicago before,
10 of course, but it is a good time, and in 1982 the
11 rate structure was changed and was in place by the
12 City, and that is the current rate structure up
13 until this point.
14 In 1985 the only difference between the
15 retiree benefit package and the benefits that he was
16 receiving before 1985 was that there was a reduction
17 in the benefits.
18 The evidence will indicate that there was a
19 plan that is attached to the complaint, Exhibit A
20 that sets forth all of the benefits that the
21 retirees are to receive, and they only difference in
22 the last twelve years is that they reduce some of
23 those benefits.
24 For the municipal and laborers in 1985 a

1 slight change that the legislature made and said is
2 any fellow that worked for the City of Chicago that
3 was age 65 and 15 years of service is going to be a
4 $25 supplement.
5 That individual pays his premium and
6 everybody pays the premium. So in the last twelve
7 years the evidence will indicate that the City has
8 administered the benefit package, set the rates, and
9 the only change in municipal and laborer retirees is
10 that the legislature decided to supplement the
11 annuity that they received the pension, and they did
12 that by members of the plan by giving them some,
13 giving them a small supplement of $25 towards the
14 premium rate.
15 Not to duplicate what Mr. Forde stated,
16 however, it is important that I must point out that
17 the reason we are before your Honor is because the
18 letter of October 19th.
19 That letter is based on not an obligation
20 as we will demonstrate and as we plead in our
21 counterclaims, only as a situation where at the
22 point where the City decided now that we haves to do
23 something about the cost has nothing to do with the
24 legality of the circumstances.

1 The cost and the collateral litigation that
2 has no bearing in this particular matter, and for
3 that reason the City decided we are going to cut off
4 these people who we have a right, a contractual
5 right to receive continued benefits at the rate in
6 1982.
7 The evidence will demonstrate that these
8 people, these retirees are entitled to the coverage
9 and at the existing rate.
10 That the City had no rational reason based
11 on the law other than the cost, as a cost basis.
12 Thank you.
13 THE COURT: City?
14 OPENING STATEMENT
15 BY MS. BECKETT:
16 Your Honor, counsel, I don't know if you
17 remember late March of 1981, it was a real
18 frightening time for this country. President Reagan
19 was gunned down by John Hinckley, and shortly after
20 that then chief of staff General Alexander Haig
21 raised his arm in the press conference and said "I
22 am in charge."
23 Well, that was funny, but it was also
24 frightening, because those of us who study laws of

1 the United States and studied the United States
2 Constitution know that when the President is
3 incapacitated, the vice-president is in charge.
4 That is what the United States Constitution
5 sets forth. That is what our laws demand. It
6 means we have an accountable elected official who
7 heads the country.
8 What the case before you today is about is
9 who is in charge of the City of Chicago. Who is the
10 voice who legitimately by law speaks for the City of
11 Chicago.
12 Well, under the laws in the State of
13 Illinois, as expressed in the statutes and is
14 expressed in case after case, including cases
15 decided by the Illinois Supreme Court, it is the
16 City Council who has the authority to enter into an
17 obligation.
18 That is the basis for our government. That
19 is why they are elected officials so that the people
20 for the City of Chicago for our common good can hold
21 someone accountable when they spend our tax dollars.
22 City Council gets this authority from the
23 State, and so they can obligate the City. They can
24 also delegate the authority, but that delegation has

1 to be expressed, and the City, senator or anyone
2 else who is dealing with the person who is delegated
3 authority is required to know the extent of
4 authority of that person.
5 What does that mean for us today? You are
6 going to hear an awful lot of evidence from people
7 who say they understood that the City had promised
8 them lifetime subsidized free health care.
9 You are going to hear a lot of testimony
10 about statements and letters and conversations with
11 the City officials admittedly very high ranking
12 individuals who have said to have promised annuitant
13 health care, but the fact is in only one year out of
14 the last twenty has the City Council spoken on this
15 issue.
16 We don't say that the City Council was
17 incompetent. We say that they only speak with one
18 official voice, and that official voice is the
19 annual appropriation rights, and with the exception
20 of 1985, the City Council never officially
21 appropriated specific money for annuitant health
22 care.
23 Now you are going to hear a lot of
24 testimony that the line item for active health care

1 was big enough to pay for annuitant health care at
2 least from the years 1984 forward.
3 Well, that doesn't matter, and that is what
4 the most recent case on this issue, the Kincer
5 (phonetic) decision tells you it doesn't matter that
6 the money was somewhere in the budget.
7 That would totally cloud the principal of a
8 line item budget. We are not saying that the City
9 Council was not competent. We are saying they
10 spoke, it is their job to read and write and pass
11 upon the line item authority, and the annual
12 appropriation ordinance.
13 Common sense and reason tells us that
14 public is entitled to be able to hold accountable
15 their elected officials.
16 People of the City of Chicago don't elect
17 the controller. We don't elect the risk and
18 benefits official. We don't elect people in the
19 budget and personnel office. We elect our aldermen
20 and our mayor.
21 You are going to see some exhibits that
22 show that in the past the City did administer some
23 kind of health insurance plan that annuitants were
24 allowed to take place and, in fact, you are going to

1 see a big booklet called Annuitant Medical Benefit
2 Plan.
3 What you are not going to find is authority
4 for this. You are not going to find authority in
5 the State Pension Code, and you are not going to
6 find authority in the Municipal Code.
7 You are going to hear evidence about
8 alleged terms and conditions of employment. Again,
9 the only terms and conditions of employment that the
10 City can be bound to are those expressly authored by
11 the City Council.
12 We will present evidence to you those
13 contracts of employment that are expressly committed
14 to paper that is Union contracts with the exception
15 of two years that are covered in the firemen's
16 contract are silent on the question of annuitant
17 health care; whereas you compare the actions of the
18 City with respect to active employees, you find
19 express authority.
20 You find express budgetary authority. You
21 will see a resolution passed by the City Council
22 specifically setting forth the way the City is
23 supposed to deal with active employment health care,
24 and you will see executive orders signed by then

1 Mayor Harold Washington agains sitting for how the
2 City responds with respect to active employees.
3 While Well the City disputes vigorously that
4 there was ever actually a legal obligation binding
5 it, even assuming that there was a contract we will will
6 show you several exhibits and several pieces of
7 evidence that establish that the City in the past
8 did in effect amend this contract assuming there was
9 a contract.
10 Premiums were raised yearly beginning at
11 least 1965 all the way up to 1982.
12 Certainly you can amend the contract by
13 raising premiums. You can amend it by ending it
14 altogether or to take in reverse looking again at
15 that plan I talked about a few minutes ago, that
16 plan, the 1985 plan they talked about, it contained
17 a specific termination clause.
18 As I say the City does not admit that in
19 any way it is obligated through the voice of the
20 City Council to provide the spending.
21 However, assuming for argument that we are
22 obligated that in somehow there is a contract that
23 is reflected in writing, we are going to argue that
24 first the writing will bind the City over any oral

1 understanding, and secondly that the term, the very
2 terms of that writing give the City permission to
3 terminate, in fact, that is one of the alternate
4 grounds for relief sought by the counterplaintiffs
5 today as they say that if this termination provision
6 binds it all, they ask for a reasonable notice
7 provision.
8 They also argue that the City is to be
9 estopped by its conduct. We will argue to you that
10 you cannot use estoppel when the behavior sought to
11 be estopped was without benefit of legal authority,
12 and then at any rate you cannot use estoppel to bind
13 the City's future conduct.
14 It is one thing to estop the City based on
15 any claims based on its past behavior, and it is a
16 different thing altogether to estop the City from
17 acting a certain way in the future.
18 In summary the City Council is the
19 corporate authority for the people of the City of
20 Chicago, not other officials unless they have
21 express authority to act.
22 No express authority was ever delegated by
23 the City Council to any of the provisions whose
24 voices are going to be replayed for you in the

1 course of this trial.

2 The City Council never approved any medical

3 benefit program for annuitants much less the

4 perpetual program that they seek to impose upon us.

5 The program with 1982 premiums locked in

6 for life, a program with unchanging terms, that

7 contract is simply unlawful.

8 It simply was not entered into with the

9 authority of the City of Chicago.

10 With your Honor's permission, the City

11 requests your Honor's permission to submit a trial

12 brief during the course of this trial flushing out

13 some of its legal argument with citations to

14 authority or at the proper time the Court so deems.

15 THE COURT: I believe you can submit your trial

16 briefs at the conclusion of all of the evidence, and

17 I will take them into consideration for whoever

18 desires to file a brief.

19 Having heard opening statements, are you

20 ready to call your first witness?

21 MR. KRISLOV: Your Honor, knowing our time is

22 short, I will indeed be short and not repeating

23 anything that has been addressed already.

24 Since we agreed in principal with the

1 position stated by Mr. Forde and Mr. Heiss, and with
2 Mr. Burns, and the two points that I believe the
3 evidence also will show is that the City did not
4 provide this coverage unknowingly, that the budget
5 department each year took the previous year
6 expenditures which included the Annuitant Health
7 Care Act on a figure to improve those for inflation
8 costs, and recommended them budgeted, but again each
9 year is the following year's budget for the overall
10 medical coverage under the City plan.
11 This was not without knowledge at any
12 level. This was well known through the appropriate
13 level of the City, and further as presented to the
14 individual people who are now annuitants throughout
15 the period that they work for the City, with the
16 understanding that they retired under and now indeed
17 they are in a position that they cannot change their
18 livelihood. They depend on fixed income from the
19 City's pension plans, and now the City in
20 retaliation, we believe the evidence will show in
21 relatiation for the collateral case Mr. Heiss
22 referred to, decided it wil retaliate against the
23 annuitant and found it would have to repay
24 substantial sum of money and decided to go after the

1 annuitant when they were in the least position to
2 deal with the circumstances themselves, and in fact
3 the City led them to rely upon those representations
4 throughout the work, the retirement, and indeed
5 encourage them and led them to stay on the City's
6 plan and to re-enroll to stay on the City's plan
7 rather than seek other coverage, and now they are in
8 the position where many of them are unable to obtain
9 alternative coverage.
10 We think that the evidence will show
11 overall that this was not an unknowing
12 appropriation, that it was a legally binding
13 appropriation, and that for the existing annuitant
14 class they have a right to expect that that coverage
15 under those terms will continue.
16 (Which were all the proceedings
17 herein transcribed.)
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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

THE CITY OF CHICAGO, a)
municipal corporation,)
Plaintiff;)
-vs-) No. 87 CH 10134
MARSHALL KORSHAK, et al.,)
Defendants.)

REPORT OF PROCEEDINGS had in the hearing of the above-entitled cause before the Honorable Albert Green, judge of said court, on the 20th day of June, 1988 at the hour of 2:00 o'clock p.m.

1 APPEARANCES:

2 HON. JUDSON K. MINER

3 Corporation Counsel

4 By: MS. AMY LOUISE BECKETT

5 Assistant Corporation Counsel

6 and

7 HOPKINS & SUTTER

8 By: MR. WILLIAM CARLISLE HERBERT

9 on behalf of City of Chicago;

10 MR. KEVIN M. FORDE

11 MS. KATRINA VEERHUSEN

12 on behalf of The Police

13 Annuity Fund;

14 JACOBS, BURNS, SUGARMAN & ORLOVE

15 By: MR. MARTIN J. BURNS

16 on behalf of Firemen's

17 Annuity Fund;

18 BOYLE AND HEISS

19 By: MR. FREDERICK HEISS

20 and

21 MR. WILLIAM A. MOROVITZ

22 on behalf of Municipal and

23 Laborers' Fund;

24

1 APPEARANCES, (Continued)

2 SACHNOFF, WEAVER & RUBENSTEIN, LTD.

3 By: MR. CLINTON A. KRISLOV

4 on behalf of the Annuitant

5 Interveners.

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1 THE COURT: Are you ready to call your first
2 witness?
3 MS. VEERHUSEN: Yes, I do.
4 JAMES P. WATERS, JR.,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:
7 DIRECT EXAMINATION
8 BY MS. VEERHUSEN:
9 Q. For the record would you please state your
10 full name and spell your last name?
11 A. James B. Waters, W-a-t-e-r-s, Jr.
12 Q. By whom are you currently employed,
13 Mr. Waters?
14 A. The Policemen's Annuity and Benefit Fund of
15 Chicago.
16 Q. What is your title?
17 A. Executive director.
18 Q. Now and how long have you held that
19 position?
20 A. Approximately six months.
21 Q. When were you first employed by the
22 Policemen's Annuity and Benefit Fund?
23 A. December 1st, 1967.
24 Q. And --

A. And as assistant comptroller.

Q. What position did you hold other than assistant comptroller, comptroller, and executive director?

A. I was appointed comptroller November 1st, 1984.

Q. And continued in that position?

A. Until December 1st, 1987.

Q. Did your duties as assistant comptroller include anything having to do with the annuity health benefits?

A. Yes, they did.

Q. Could you explain what they were?

A. When I first was employed with the Police Pension Fund I was assigned duties, one of which was to oversee the hospitalization that was with annuitants, and that program started a few years before that.

We had several clerks, if I may use that word, who administered on a daily basis, and I oversaw the program.

Q. As executive director, are you still involved in the health benefits plan?

A. Yes, I am.

1 As the chief operating officer of the
2 funds, I'm responsible for the entire operation of
3 the office.
4 Q. Are any of the funds annuitants covered
5 under the city's health benefits plan?
6 A. Yes, they are.
7 Q. How many of the retired employees are
8 covered?
9 A. Approximately 4,100 or ninety-two percent.
10 Q. And how many of those retired employees
11 have dependents who are also covered by the city's
12 plan?
13 A. Approximately 2,600 have additional people
14 that are covered, and that amounts to about sixty
15 percent.
16 Q. Does the fund have widow annuitants who are
17 covered by the city's plan?
18 A. Yes.
19 Q. Do you know how many?
20 A. About 1,100.
21 Q. And could you tell us approximately how
22 many individuals from the police funds, including
23 both annuitants and dependents, are covered under
24 the city's plan?

A. Including annuitants, dependents, surviving spouses, approximately 10,000 individuals covered.

Q. What is the average monthly check paid by the fund to a retired policeman?

A. To a retired policeman it would be $1,440 approximately.

Q. Could you tell us the average monthly check paid to a widow in the annuitant medical --

A. $400.

Q. When were the first eligible to participate in the city's health benefits plan?

A. It was July 1st, 1984, retroactive to the annuitant who retired after July 1st, 1963.

Q. I'm showing you what has been marked as Defendants' Number 1 for identification, and I ask you if you have seen that document before?

A. Yes, I have.

Q. Could you explain generally what it is?

A. The document is entitled "Group Administration Agreement," and it is an agreement between Blue-Cross and Blue-Shield and the Policemen Annuity and Benefit Fund to enroll retirees of the Chicago Police Department in the hospitalization plan.

1 This plan is for retirees retiring on or
2 after July 1st, 1983.
3 It says "Transfers only accepted from Group
4 16600," which is it's City of Chicago plan, and its
5 associates merit-rated with Group 16600.
6 Q. Do you know what is meant by "associate
7 merit rate"?
8 A. As I understand it, "associate merit-rated"
9 means that the retirees participate in a group with
10 younger active employees so that they may benefit
11 from the experience of those younger active
12 employees so that the premium charge to the retiree
13 would be significantly less than if they had to
14 obtain a plan made up over only retirees or
15 annuitants.
16 Q. Was this a traditional type group insurance
17 policy with Blue-Cross?
18 A. Yes, it was.
19 Q. Do you know whether the annuitants were
20 charged premiums at the time?
21 A. Yes, they were. They were charged
22 premiums, and the monthly premium at that time in
23 1964, as I indicated on the form, was $8.04 a month
24 for Blue-Cross and Blue-Shield.

1 Q. Has the city's health benefits plan
2 continued as a traditional group policy to the
3 present day?
4 A. No, it has not.
5 Q. In what respect has it changed?
6 A. 1975 the plan changed from a traditional
7 insurance plan to a self-insured claims made type
8 plan, as in 1975.
9 Q. Does the city administer the plan itself?
10 A. No, the city does not administer the plan.
11 The plan is administered by Blue-Cross
12 Blue-Shield and Bankers Life & Casualty.
13 Q. Do you know what the financial arrangements
14 between the city and Blue-Cross and Bankers is in
15 general terms?
16 A. As I understand it, on a periodic basis and
17 over the years that had been different, but a
18 periodic basis, monthly or quarterly, the city would
19 remit to the carriers, Blue-Cross Blue-Shield and
20 Bankers, a specified amount of money.
21 At the end of a specified period there
22 would be a settlement between the two and
23 administration expenses would be added to that.
24 Q. Directing your attention to the active

1 employees, do you know whether they presently pay
2 for their own health coverage?
3 A. Active employees do not pay for their own
4 coverage.
5 Q. Do you know when this program began?
6 A. It began in 1965, when the city paid for
7 the employees' coverage, and if the employee had
8 dependents, the employee paid for the dependents.
9 And then in 1971 the city picked the entire
10 cost for the employee and the dependents.
11 Q. Referring to annuitants again, did their
12 premium rate change between 1964, when they started
13 in the city's program, and the early 1980s?
14 A. Yes, there were periodic increases.
15 Q. Were they any increases between 1977 and
16 1982?
17 A. There were not.
18 Q. Are you generally aware of the rate-changed
19 annuitant between 1964 and the present?
20 A. Yes, I am.
21 Q. And are you generally aware of the claims
22 that were made by the police annuitants group during
23 that period of time?
24 A. Yes, I am.

1 Q. What is the source of your knowledge in
2 that regard?
3 A. Well, as I said earlier, I was in charge of
4 the insurance program for the Policemen's Fund in my
5 duties as assistant comptroller and comptroller;
6 therefore, I had contact with the city, city
7 comptroller's office and employees of the
8 comptroller's office and with the carriers from
9 Blue-Cross and Bankers.
10 Q. Based on your knowledge of the premium
11 rates and annuitants claims, were the rates charged
12 an annuitant sufficient to cover claims from the
13 period beginning in the mid-1970s through the
14 present?
15 A. No, they were not.
16 Q. I'm showing you what has been marked as
17 Defendants' Exhibit Number 5 for identification.
18 I ask whether you have seen that document
19 before?
20 A. Yes, I've seen this document.
21 Q. Could you tell the Court when and under
22 what circumstances it came to your attention?
23 A. The document is dated December 7th, 1981.
24 Near the end of December 1981 or early

1 January 1982 Mr. Robert Moffat, who then was the
2 insurance manager for the City of Chicago, and a
3 representative actuary from Blue-Cross Blue-Shield
4 visited the Police Pension Fund and spoke with our
5 executive director at that time and our comptroller
6 and myself.
7 We reviewed this document and the document
8 points out that the experience for annuitants for
9 the period -- for one-year period from October of '80
10 to September of 1981 shows that the income produced
11 by premiums charged the annuitant was $939,000.
12 The claims paid in that same one-year
13 period amounted to $1,853,000, or a loss ratio of
14 197%.
15 Mr. Moffat and the actuary commented that
16 in our office to show us this document.
17 Q. What if anything does Exhibit 5 show
18 regarding Blue-Cross projections for calendar year
19 1982?
20 A. The projection for 1982 shows that the
21 premium charged the annuitants would produce
22 approximately one million dollars in claims, plus
23 administration would amount to $2,500,000, or a loss
24 ratio of almost 250%.

1 Q. Does the document indicate the premium
2 charged a single annuitant under age sixty-five at
3 the time it was prepared?
4 A. Yes, it does.
5 At that time when the document was
6 prepared, it shows that the montly rate for under
7 sixty-five, single, was $38.26 per month.
8 Q. And what premium did Blue-Cross project
9 would be needed of the entire cost would be paid by
10 the employee?
11 A. $94.33 per month.
12 Q. I'm showing you what has been marked as
13 Defendants' Exhibit Number 6, 7, 8 for
14 identification.
15 I ask whether you have seen those letters
16 before?
17 A. Yes, I have seen these documents before.
18 Q. Can you explain generally what they are?
19 A. The documents are letters on letterhead,
20 Bankers Life & Casualty Company, Blue-Cross and
21 Blue-Shield, dated February 1, 1982.
22 The documents show and tell the annuitant,
23 who those letters were addressed to, letters
24 addressed to all participants in the group health

1 policy, and these letters tell the annuitants that
2 they are going to have to pay for more of their
3 hospitalization; that the rates are going up
4 effective April 1st, 1982.
5 Q. Do those letters say anything about the
6 premiums charged to active employees?
7 A. Yes, they indicate -- the letters indicate
8 that the premium charged for active employees were
9 higher for active employees than they were for the
10 retirees.
11 Q. Would you please read aloud the sentence in
12 the second to the last paragraph, beginning "The
13 claims cost of the retirees"?
14 A. "The claims cost of the retirees and active
15 employees is combined to give you the benefit of the
16 experience of the younger age group as subsidized by
17 the City of Chicago."
18 Q. Mr. Waters, is there a statute relating to
19 health care for the fund annuitants?
20 A. Yes, there is.
21 Q. Do you know when it took effect?
22 A. For the police fund it took effect on
23 January 12, 1983.
24 Q. Could you tell us your understanding of the

1 terms of that statute?

2 A. As I understand it, the statute calls for

3 the Policemen's Annuity and Benefit Fund to arrange

4 for hospitalization of coverage for its annuitants

5 and to contribute a specified amount towards the

6 cost of that insurance.

7 The amount to be contributed is $55 per

8 month for single non-Medicare annuitants and $21 a

9 month for single Medicare annuitants.

10 Q. Do the funds contribute anything towards

11 the premiums of widows and dependents of retired

12 police officers?

13 A. No, it does not.

14 Q. The statute you have just described, was

15 this considered a new benefit for the annuitant?

16 A. Yes, it was.

17 Q. And were only the annuitants participating

18 in the city plan eligible for the new benefits?

19 A. No. When the statute went into effect,

20 people who were previously not participating in the

21 group health insurance were given permission on an

22 open enrollment, if you will, to join the group,

23 with the knowledge of the carriers and the city.

24 Q. Did the additional annuitants in fact

1 enroll in the plan at that time?
2 A. Yes, they did.
3 Q. How were the premiums which the annuitants
4 are responsible for paid to the city?
5 A. They are deducted from the annuitants'
6 check and a single check is mailed to the city.
7 Q. By the fund?
8 A. By the fund.
9 Q. By the fund?
10 A. Yes.
11 Q. Has the fund at all times paid the city's
12 health plan administrators to the amount
13 corresponding to the dollar amount set forth in the
14 statute and the amounts which are to be deducted
15 from the annuitants' monthly checks?
16 A. Yes, it has.
17 Q. Mr. Waters, I'm showing you what has been
18 marked Defendants' Exhibit Number 10 for
19 identification, and I ask whether you have seen that
20 document before?
21 A. Yes, I've seen this document before.
22 Q. Did you receive this memo on or about the
23 date it bears?
24 A. Yes, I did.

1 Q. And would you explain generally what it is?
2 A. The document is a letter from Leonard C.
3 Uteck, Assistant Comptroller, Insurance Unit of the
4 Department of Finance, dated October 18th, 1983 to
5 the City of Chicago Pension Group.
6 And in this letter Mr. Uteck directs the
7 Pension Fund to immediately increase the
8 hospitalization rate for retirees.
9 Q. What did the Police Fund do in response to
10 this memo, if anything?
11 A. The Police Fund contacted Blue-Cross
12 Blue-Shield to see if in fact these rates were to be
13 increased, since past experience and practice called
14 for a letter coming from the carriers to the Fund
15 saying the rates agreed upon by the city comptroller
16 and the carrier, whether it be Blue-Cross or
17 Bankers, that was the new rate.
18 When upon contacting Blue-Cross and
19 Blue-Shield, we were told that these rates were not
20 to be put into effect.
21 Q. Did you hear anything more about immediate
22 rate increase after contacting Blue-Cross?
23 A. No, we did not.
24 Q. Has the city attempted to increase the rate

1 charged annuitants at any other time since 1982?
2 A. September of 1984 the city called a meeting
3 of representatives of the various pension funds to
4 City Hall.
5 I was not present at that meeting, but the
6 purpose of the meeting was to discuss upon rate
7 increase for the annuitants.
8 Subsequent to that another meeting was
9 scheduled in late September of 1984 in the office of
10 Police Pension Fund, and in attendance at that
11 meeting representing the city was Barbara Malou, and
12 she may have had someone else with her, and I do not
13 recall at this time.
14 Representing the annuitants were
15 representatives of the four pension funds and
16 representatives from various unions of the employees
17 of the City of Chicago.
18 I believe there were about forty people in
19 attendance at that time.
20 The problem of a rate increase was
21 discussed. There was no finalization at that
22 meeting.
23 A subsequent meeting for the end of
24 October, approximately October 28th, 29, was

1 scheduled.

2 The morning of October, that meeting,

3 Ms. Malou called our office and canceled the

4 meeting.

5 That was the end of the discussion of the

6 rate increase for the annuitants at that time.

7 Q. Have you heard any more about a rate

8 increase between that time and the time that the

9 litigation began?

10 A. Not until now, no.

11 Q. I'm showing you what has been marked as

12 Defendants' Exhibit Number 18 for identification.

13 I ask you if you are familiar with that

14 document?

15 A. Yes, I am familiar with that document.

16 Q. Could you explain what these papers are?

17 A. The cover sheet is a memo from Barbara

18 Malou of the Office of Budget and Management, Budget

19 Benefit Management Office, dated May 30th, 1985 and

20 directed to the Pension Fund.

21 In the cover letter it describes what is

22 inside the package, and first of all I should tell

23 you what was happening in 1985.

24 In 1985 the city was undertaking, was

1 undertaking a re-enrollment of its annuitants in a
2 hospitalization program similar to the re-enrollment
3 that it had done for the active employees in 1984.
4 In May of 1985 Ms. Malou sent this to, I
5 presume, all pension funds. I received a copy.
6 This package directs the employee, the
7 retired employee, the annuitant, to re-enroll in the
8 program and how to enroll, what was necessary to
9 re-enroll.
10 There was an application form, instructions
11 on how to fill out the application form.
12 If annuitant wished to add a dependent, it
13 said what documents were necessary to add that
14 dependent, where the documents could be obtained and
15 where personnel re-enrollment would take place in
16 various parts of the city of Chicago.
17 The next part of this document is a draft
18 of the medical benefits of the City of Chicago
19 annuitants and eligible dependent program.
20 Also, this was sent to our office, along
21 with this package of re-enrollment instructions.
22 Q. Mr. Waters, I'm showing you what has been
23 marked as Defendant's Exhibit No. 35 for
24 identification.

1 I ask you if you have ever seen that
2 document before?
3 A. Yes, I've seen this document before.
4 Q. Could you explain what that is?
5 A. The document is a letter to the City of
6 Chicago Annuitants concerning the re-enrollment in
7 the City of Chicago Annuitant Medical Benefit Plan.
8 It is a letter generally describing what I
9 have described that was sent to the people, and it
10 is signed by Harold Washington, Mayor.
11 Q. I'm showing you what has been marked as
12 Defendant's Exhibit No. 33 for identification.
13 I ask if you have seen this document before
14 today?
15 A. Yes, I've seen this document.
16 Q. Would you explain its significance?
17 A. This document is titled your City of
18 Chicago Annuitant Medical Benefit Plan.
19 It is a brief review of eligibility
20 coverage and how the plan works.
21 When the annuitant re-enrolls, this booklet
22 was sent to all of these individuals, and when a
23 city employee retires today and enrolls in the plan,
24 they are sent this booklet.

1 This booklet is a review and explanation of
2 the benefits of the medical plan that these people
3 have.
4 It is not the actual document, but it is a
5 review and a summation of such.
6 Q. Showing you what has been marked as
7 Defendant's Exhibit No. 19 for identification, and I
8 ask you if you have seen that document before?
9 A. Yes, I have seen this document.
10 Q. Could you explain it?
11 A. Yes.
12 Yes. It is entitled Minutes of the
13 Proceedings of the Regular Meeting of the Retirement
14 Board from the Policeman's Annuity and Benefit Fund
15 held Thursday, June 27th, 1985.
16 It was at that meeting that the Board of
17 Trustees adopted the City of Chicago Medical Care
18 Plan for its annuitants as necessitated by the
19 statutes inactive in January of 1983.
20 Q. Next I would like to show you what has been
21 marked as Defendant's Exhibit No. 29 for
22 identification.
23 I ask if you have seen that letter before
24 today?

1 A. Yes, I have. It is a letter dated
2 December 9th, 1987 from Nathan Williams, manager of
3 the Department of Finance, City of Chicago to
4 Mr. Donald Campbell, consulting actuary.
5 Mr. Campbell sat as consulting actuary for
6 The Policemen's Annuity and Benefit Fund.
7 Q. Would you explain what information that
8 letter communicates?
9 A. The letter communicates to Mr. Campbell the
10 projected actuary projected annuitant's cost for
11 hospitalization for 1988.
12 Q. To you knowledge were the rates reflected
13 in that letter intended to reflect the actual cost
14 of coverage?
15 A. As far as I know, they were.
16 Q. And what does Exhibit 29 indicate would
17 happen to the $55 rate presently charged a single
18 annuitant under age 55?
19 A. A single annuitant who is now paying $55
20 per month, a non-Medicare annuitant, that premium
21 would go to $222.50 a month.
22 Q. Mr. Waters, are you familiar with the
23 complaint the City filed in the fall of 1987 naming
24 as defendants the co-trustees of the four funds?

1 A. Yes, I am.

2 Q. And are you aware that it seeks or sought

3 an order directing funds to enter into a contract

4 with a private insurance carrier for the benefit of

5 the annuitants?

6 A. Yes.

7 Q. What, if anything, have you done to locate

8 new coverage for annuitants?

9 A. Shortly after, about three weeks after

10 receiving the complaint for the City I contacted two

11 insurance consultants who represent many different

12 companies to attempt to see if we could place these

13 annuitants in another group, because the City was

14 going to terminate their coverage December 31st,

15 1987.

16 By statute we were required to have

17 coverage for those people. I talked with these two

18 individuals many times between the 1st of November

19 and the end of November.

20 In early December both of these individuals

21 on separate occasions came into my office, talked to

22 me several times at length about the size of the

23 group, how many people were participating in the

24 group, what was the coverage, what were the costs,

1 what were the premiums being charged.
2 I guess you could say it was an in-depth
3 review of a current situation so that they might try
4 to place these people in a group if necessary.
5 Q. And did they at some point present
6 alternative form of coverage to you?
7 A. As I say after several meetings and
8 conversations, letters, the one of the agents
9 proposed a plan for the annuitants of the City and
10 did in fact cut them off as of December 31st, 1987.
11 Q. Were those efforts undertaken only for the
12 Police Fund annuitants or for all of the Fund
13 annuitants?
14 A. At the beginning I acted on behalf of the
15 annuitants of our funds only, but after talking to
16 the directors of the other funds, I contacted the
17 representatives and told them to give me information
18 not only for our fund alone, but for all four funds
19 to see if we could get a better rate if we were to
20 include all four groups.
21 Q. And what, if anything, did these
22 consultants tell you about the availability of the
23 traditional insurance coverage for a group made up
24 of retired city employees?

1 A. I was told to place these individuals in
2 what is termed traditional insurance and was almost
3 impossible given the type of groups we were looking
4 at.
5 Q. Mr. Waters, if the Court were to order the
6 funds to enter into a contract with the private
7 carrier as soon as possible realistically how long
8 do you think it would take to advise the annuitants
9 of the decision they had to make about whether to
10 participate in the new plan and to actually
11 accomplish the transfer of the coverage?
12 A. I would say takes at least 60 to 90 days.
13 Q. During your more than 20 years employment
14 with the Policemen's Fund, have you come into
15 contact with active Chicago policemen?
16 A. Yes, I have on many occasions, probably on
17 a daily basis.
18 Q. Have you had discussions with the active
19 policemen about the fact that the City has been
20 paying a substantial portion of the annuitants
21 health care cost?
22 A. Yes, I have discussed both in and out of
23 the office as I know many policemen outside of the
24 office.

1 Q. Have the policemen you talked to about this
2 generally been aware of the City's payments of
3 substantial portions of the cost of the annuitant's
4 health care?
5 A. Those that I have talked to have had
6 general knowledge of that, and if there seems to be
7 some doubt on their part, I told them in fact the
8 City did pay for it.
9 Q. In your discussions with City policement,
10 was it indicated that this practice was an important
11 consideration to them in continuing their employment
12 as policemen?
13 A. No doubt. They said to me if I have to, I
14 will work until I die rather than retire and lose
15 the insurance.
16 Q. Are you aware of instances where policemen
17 continued working as a policeman in part of the
18 post-employment benefits?
19 A. Yes, I am.
20 MS. VEERHUSEN: Your Honor, at this time I move
21 Exhibits 1, 5, 6, 7, 8, 10, 18, 33, 35, 19 and 29 be
22 admitted into evidence.
23 MS. BECKETT: No objection.
24 MR. HERBERT: I might ask whether Exhibit 33 is

1 admitted --

2 MR. FORDE: No, the exhibit is attached to that.

3 MR. KRISLOV: You say 9 also?

4 MS. VEERHUSEN: The numbers are 1, 5, 6, 7, 8,

5 10, 18, 33, 35, 19 and 29.

6 I have no further questions of this

7 witness.

8 THE COURT: Hold on. 1, 5, 6, 7, 8.

9 MS. VEERHUSEN: Yes. 6, 7, 8.

10 THE COURT: 10.

11 MS. VEERHUSEN: 10.

12 THE COURT: 18.

13 MS. VEERHUSEN: 18.

14 THE COURT: 35, 33.

15 MS. VEERHUSEN: 19.

16 THE COURT: And 19.

17 MS. VEERHUSEN: And 29.

18 THE COURT: 29. No objection, they will be

19 received. Strike the identification marks and they

20 will be received.

21 (Documents received into evidence.)

22 THE COURT: I take it the witness is now being

23 tendered for cross-examination. There are no

24 questions from the others?

1 MR. BURNS: Correct.

2 THE COURT: Cross-examination, Ms. Beckett.

3 CROSS-EXAMINATION

4 BY MS. BECKETT:

5 Q. Hello, Mr. Waters.

6 Annuitant is not the same thing as

7 employee, is it?

8 A. No, it is not.

9 Q. Annuitant is a retired employee?

10 A. That is correct.

11 Q. Directing your attention back to Exhibit 5,

12 you described this at length.

13 Let me hand you that for a moment. This

14 document is dated 1981, and it refers to some 1982

15 rates?

16 A. Correct.

17 Q. And I have circled in red the two rates

18 that you described. One was 38.26 which was the

19 actual rating being paid?

20 A. That is the rate that we were charging the

21 annuitant.

22 Q. Right, but 94.33 was the amount that the

23 person writing this document apparently believed was

24 necessary to make this a self-containing program?

1 A. That is what they were told, yes.
2 Q. You also testified that your understanding,
3 I will take that exibit back, for a moment, but your
4 understanding of Section 5-167.5 of the Policemen's
5 Annuity Fund Act required several things of the
6 Pension Fund?
7 A. That is correct.
8 Q. One of those things was that you could take
9 $55 a month per annuitant to pay for this premium?
10 A. Well, we were directed to take up to $55
11 for a retired annuitant, retired employee.
12 Q. And if they were on Medicare, it was only
13 $21?
14 A. That is correct.
15 Q. And it is also directed the Fund to enter
16 into a contract of insurance?
17 A. We were to arrange insurance for the
18 annuitant.
19 Q. And it is your testimony that the funds in
20 fact did that in 1985 when it passed that resolution
21 that you testified about, right?
22 A. Correct.
23 Q. Now, doesn't this statute also require that
24 the basic premium is more than $55 amount that you

1 are supposed to deduct that excess from the monthly
2 annuity?
3 A. That is correct.
4 Q. So since 1982 you would have had to deduct
5 additional $59 or so per month from the checks in
6 order to meet full price of that insurance, right?
7 A. I don't understand your question.
8 Q. Well, looking back here at Exhibit No. 5 we
9 circled in red two different sums.
10 We indicated that $38.26 a month is being
11 paid for the premium for the coverage, but to make
12 it self-sufficient the actual amount was about
13 $94.33, correct?
14 A. That is what the document shows, yes.
15 Q. 1983, even assuming if you were paying $55
16 a month, then there was a gap between the amount
17 that was being paid by the Fund and the amount that
18 it actually cost --
19 MR. BURNS: Objection, your Honor. It is sheer
20 speculation. 1982 and 1983 the charges were not
21 $94. The rest of it is a matter of mathematics.
22 THE COURT: Objection sustained.
23 BY MS. BECKETT:
24 Q. Mr. Water, you never deducted any more than

1 $55 per month per annuitant unless you were
2 deducting money for dependant health care?
3 A. That is correct.
4 Q. So in fact you never deducted any excess
5 from their monthly annuity as required by the
6 statute, did you?
7 MR. FORDE: Objection to the characterization.
8 THE COURT: I'm going to sustain the objection.
9 BY MS. BECKETT:
10 Q. Mr. Waters, you described to us two
11 standards where the City -- strike that.
12 You described two instances where the City
13 apparently attempted to raise the premiums, right?
14 A. That is correct.
15 Q. First one was in 1983 when a Mr. Len Yutek
16 sent you a letter, had three columns in it
17 indicating premium increases that you sought, he
18 thought that should be imposed, is that correct?
19 A. That is correct.
20 Q. And you and some others, you and the other
21 three funds petitioned the City not to raise those
22 rates, correct?
23 A. No, that is not correct.
24 Q. At any rate, those premiums were not

raised, were they?

A. No, they were not.

Q. Nobody ever said tc you it would have been illegal for you to raise those premiums at that time, did they?

MR. BURNS: Objection. I don't see any relevancy and materiality of unexpressed --

THE COURT: I sustain that objection on a ground, however, I am going to let it stand that the premiums were not in fact raised.

BY MS. BECKETT:

Q. Mr. Waters, in 1984 you have testified that there was at least one meeting with the City offices including Barbara Mileau and several funds met of the funds and unions where the City proposed raising premiums, and this was discussed, correct?

A. That is correct.

Q. But the second meeting that was supposed to be held was cancelled?

A. That is correct.

Q. And nothing further was ever said?

A. That is correct.

Q. Isn't it a fact that the annuitant together with the funds engaged in a lobbying effort to

1 persuade the City not to go through with a premium
2 increase?
3 A. I don't quite understand your question.
4 Q. Isn't it true that annuitants were
5 encouraged by the Police Pension Fund by the Retired
6 Employee's Association and by the Firemen's Annuity
7 and Benefit Funds to telephone Barbara Mileau and
8 Sharon Gillian and to dissuade them from following
9 through on their proposed premium increases?
10 A. In all honesty I don't recall this
11 happpening.
12 Q. Let me show you a document that has been
13 numbered 000410 dated November 1984 bearing the
14 headline Retired Chicago Police Association, and I
15 will direct your attention to the first paragraph
16 which says among other, and I will let you take a
17 minute to read that.
18 A. Okay.
19 Q. Have you ever seen this document before?
20 A. No, I have not.
21 Q. Considering that having read this document
22 does it refresh your recollection that there was an
23 organized protest effort in which annuitants were
24 encouraged to telephone city officials to persaude

1 them not to institute this premium increase?
2 A. I don't recall any such -- the letter would
3 indicate that, but I have no knowledge.
4 MR. FORDE: Objection to what the letter
5 indicates.
6 THE COURT: Sustained and will be stricken
7 BY MS. BECKETT:
8 Q. Mr. Waters, you testified that in your
9 conversations with two different insurance companies
10 in the past few months that they told you that it
11 was quote, unquote, nearly impossible to place this
12 group of persons into a separate health insurance
13 plan, correct?
14 A. Not separate health insurance, traditional
15 insurance.
16 Q. Traditional insurance. Okay.
17 Isn't it a fact among the quote you have
18 received from the perspective insurer that you were
19 quoted costs nearly identical to those quoted to you
20 in Exhibit 29?
21 A. May I see Exhibit 29?
22 Q. Sure.
23 A. Could you please repeat your question.
24 Q. Isn't it a fact that one of the quotations

1 for insurance coverage that you received came up
2 with figures nearly identical to those recited in
3 Exhibit 29?
4 A. No. It depends what identical, nearly
5 identical means.
6 Q. Up to around $460 for a family anywhere
7 from $220 to $460?
8 A. No, they have less.
9 Q. At any rate, when you say impossible to
10 place, isn't it a fact that insurance, either
11 traditional or alternative plan is available as long
12 as the person is willing to pay the extra premiums?
13 A. Yes.
14 MS. BECKETT: No further questions.
15 THE COURT: Any redirect?
16 MS. VEERHUSEN: I have some.
17 REDIRECT EXAMINATION
18 BY MS. VEERHUSEN:
19 Q. Mr. Waters, Miss Beckett asked about the
20 deductions the funds make from annuitant's checks
21 pursuant to the statute.
22 Do you recall that?
23 A. Yes.
24 Q. Do you recall whether the statute directs

1 the funds to deduct the cost of coverage or is it
2 the excess cost of premiums in comparison to the 55
3 and 21?
4 A. As I understand the statutes, we are to
5 deduct from the annuitant's check the amount of
6 premium that exceeds $55 or $21 per month.
7 Q. And have you at all times deducted the
8 premiums that have been in effect?
9 A. Yes, we have.
10 Q. I believe Ms. Beckett also askd you whether
11 following Mr. Yutek's memo the Fund petitioned the
12 City not to increase the rates something to that
13 effect, and I would like to show you what has been
14 marked as Exhibit No 630, one of the documents you
15 designated, and I ask you whether that was written
16 shortly after the Yutek memo?
17 A. Yes, I've seen this document and it is a
18 letter dated October 28th, 1983, directed to
19 Honorable Harold Washington, Mayor of the City of
20 Chicago, signed by the four directors of the four
21 city pension funds petitioning the Mayor to have
22 compassion for the retirees. What do I want to say
23 here, review the rates that were proposed in
24 Mr. Yutek's letter and --

1 Q. Does this refresh your recollection as to
2 whether the Fund petitioned the City for some kind
3 of relief in response to this Yutek memo?
4 A. Yes, it does.
5 Q. Did the funds do so?
6 A. Yes, we wrote this letter.
7 MS. VEERHUSEN: Thank you.
8 CROSS-EXAMINATION
9 BY MR. BURNS:
10 Q. Mr. Waters, just so we get the record
11 clear, 1982 if I understand your testimony,
12 effective on April 1, the City instituted a premium
13 charge or a cost to individual retirees of all four
14 pension funds annuitants under those pension funds,
15 City instituted a premium cost of $55 per month if
16 there was not Medicare coverage and $21 if there was
17 Medicare coverage, is that correct?
18 A. That is correct.
19 Q. Now, do I understand your testimony that in
20 1983 let me ask you between April 1 of 1982 and the
21 December 31st of 1982 with respect to Police and
22 Fire and the other two funds as well, Laborers and
23 Municipal who paid the $55?
24 A. In 1983?

1 Q. Yes.
2 A. The annuitant.
3 Q. Who paid the $21.
4 Q. The annuitant.
5 Q. In 1983 what happened with respect to
6 Police and Fire as to that $55?
7 A. In 1983 the Funds began paying the $55 a
8 month for the single annuitant.
9 Q. Those are Police and Fire Funds?
10 A. Police and Fire Funds.
11 Q. How about for dependent coverage other than
12 for the retired employee himself or herself?
13 A. The premium excess for dependent coverage
14 was deducted from the annuitant's check.
15 Q. And in your opinion was that pursuant to
16 the statute?
17 A. Yes.
18 Q. Now, the Laborer's and Municipal retirees
19 during 1983 what did they pay for the City coverage
20 if they did not have Medicare?
21 A. To the best of my knowledge they paid $55 a mont
22 Q. And if they had Mediare?
23 A. $29.
24 Q. So that the payment by the Pension Fund was

1 independent of the charge levied by the City against
2 the annuitant, is that a fair statement?
3 A. Yes, it is.
4 Q. And how long did the Fund, how long did the
5 annuitant and retirees employees of the Laborer's
6 and Municipal Funds continue to pay for the entire
7 amount of the insurance charge levied by the City?
8 A. Until their statutes were changed
9 approximately two years later.
10 Q. And the amount of the reimbursement from
11 the funds is different from the amount reimbursed
12 from the Police and Fire Funds, is that a fair
13 statement?
14 A. That is a correct statement.
15 MR. BURNS: Thank you.
16 THE COURT: Any recross?
17 MS. BECKETT: No recross.
18 THE COURT: Intervener?
19 CROSS-EXAMINATION
20 BY MR. KRISLOV:
21 Q. Mr. Waters, have you spoken with
22 annuitants, are you familiar with the situation of
23 annuitants as far as their finances in general?
24 A. In what respect?

1 Q. Their ability to pay for additional charges
2 for health care coverage?
3 A. I do know that most of them live on fixed
4 incomes, mainly derived from the annuity check we
5 send out once a month as a group. As an individual
6 annuitant, I can't speak.
7 Q. Have you been apprised from individual
8 annuitants of their ability to pay for this?
9 A. Yes, we have.
10 Q. What was the information you were given?
11 A. From those contacts that I have had any
12 increase or some increase in their monthly premium
13 would be hard for them to bear.
14 Q. Let's talk about these existing annuitants
15 for the moment.
16 Are you familiar with the interplay of
17 their coverage, City plan versus Medicare?
18 A. Somewhat, yes.
19 Q. Do you understand that by their work for
20 the City they were covered by the Medicare program?
21 A. I don't quite understand your question.
22 Q. Are most of the annuitants Medicare
23 qualified for their work by the City?
24 A. I don't think they are.

1 Q. And in effect they were hired prior to
2 April 1, 1986, their work for the City will not
3 quality them for Medicare?
4 A. That is correct.
5 Q. But they were hired after that day, their
6 work for the City will quality them for Medicare
7 coverage?
8 A. That is correct.
9 Q. So that as existing annuitants drop off of
10 the row by attrition, in effect die, future
11 annuitants as they come on will be picked up by the
12 Medicare program, isn't that right?
13 A. When they become Medicare eligible.
14 Q. So that what we are talking about for the
15 existing annuitant group is a group which are
16 uniquely not covered by Medicare?
17 A. I would say yes.
18 Q. Going back to the interplay of the $55,
19 $21, at the time that the funds starting picking up
20 these costs in accordance with the statutes, was
21 there an understanding in effect that the annuitants
22 for themselves not including dependent coverage
23 would not have to pay additional funds?
24 A. If you would rephrase it, please.

1 Q. The interplay of these two operations that
2 the statute created, that the statute permitted you
3 to pay $55 or $21 per month on behalf of the
4 annuitant, and that money was paid off, would
5 indicate that the annuitant themselves for their own
6 coverage would have to pay nothing out of pocket?
7 A. At the time the program was instituted and
8 at the rate that they were in effect at that time,
9 that is correct.
10 Q. And that has been the operation of the plan
11 at least ever since 1982?
12 A. That is correct.
13 Q. Under the terms annuitants have to pay some
14 amount for the medical costs, don't they?
15 A. Depends if you are speaking, are you
16 talking about a single individual?
17 Q. Yes, of their actual, of the claims not
18 talking about premiums, there is actual doctor
19 bills?
20 A. Maybe you could start your question over.
21 Q. Is there a floor amount that annuitants
22 would have to pay for dollar?
23 A. For --
24 Q. For medical costs from doctors?

1 A. There is some cost by the annuitant.
2 Q. And a co-insurance provision?
3 A. Yes.
4 Q. So it is not just that the annuitants are
5 getting a free ride?
6 A. That is correct.
7 Q. You have also, I take it, in your work as
8 the chief operating office of the Police Fund
9 analyzed the Fund's ability to pay additional
10 amounts for annuitants health care, haven't you?
11 A. Yes, I have.
12 Q. Have you been advised as to the Funds, have
13 you come to a conclusion as to the Fund's ability to
14 pay additional amounts for annuitant health care?
15 A. I would say if our Fund had to pick up
16 some, any or all of the costs for the annuitant
17 medical care, the Fund would be impaired.
18 Q. Impaired meaning --
19 A. We would not have as much money to pay for
20 the benefit that the Fund is created for.
21 Q. And those benefits are what?
22 A. A monthly pension after years of service
23 for the City as a police officer.
24 Q. In fact the Police Fund is currently below

1 100 percenting funding on an actuarial basis?
2 A. That is correct.
3 Q. So that if I may, does that mean that the
4 money in the Police Fund is not in a present value
5 basis sufficiently funded to pay the retirement
6 benefit, it was created to provide let alone --
7 A. I am not an actuary, and although I have
8 some knowledge of present value, I cannot say that
9 the Pension Fund is not sound.
10 You can speak of 100 percent funding. That
11 generally relates to private industry for municipal
12 state funds, but 100 percent funding is not
13 necessarily the benchwork.
14 Q. With respect to a public fund by the Police
15 Fund, have you had it -- do you have an opinion as
16 to the Fund acturial ability when adding the medical
17 cost, cost of medical benefits on top of its current
18 obligations, would it be actuarially sound under
19 those circumstances?
20 MS. VEERHUSEN: Your Honor, I would object to
21 this line of questioning insofar as it exceeds the
22 scope of direct.
23 THE COURT: I'm going to sustain the objection.
24 You're going too far afield.

1 MR. KRISLOV: Then I reserve the right to call
2 him at the completion of the two main parties case.
3 THE COURT: I'm not going to tell you how to try
4 your case.
5 Ms. Beckett, do you have any recross?
6 RECROSS-EXAMINATION
7 BY MS. BECKETT:
8 Q. Referring you back to the argument which I
9 believe was shown to you was a letter from Mayor
10 Washington from the four funds, that letter appealed
11 for some kind of sympathy for the pensionaires,
12 didn't it?
13 A. You could categorize it as that, yes.
14 Q. You didn't question the legalities of the
15 City's intentions, did you?
16 MR. BURNS: Objection, your Honor.
17 THE COURT: Sustained.
18 MR. BURNS: I object,.
19 THE COURT: Counsel, don't make any comments
20 after I sustain.
21 BY MS. BECKETT:
22 Q. You don't recall any lawsuit being filed at
23 that time to seek to halt the City from raising
24 premiums in 1983, do you?

1 A. No, I do not.
2 Q. Referring you back to that statute you have
3 discussed in the 1983 statute governing annuitant's
4 health benefit and how the Pension Fund relates to
5 that, you said it was your understanding that the
6 Fund was to obtain some kind of insurance coverage
7 for the annuitants?
8 A. To arrange coverage.
9 Q. And you do know that the statute requires
10 you to arrange coverage with insurance carrier,
11 don't you?
12 A. That is correct.
13 Q. Is it your opinion that the City of Chicago
14 is a carrier within the terms of the statute?
15 MR. FORDE: Objection.
16 THE COURT: Sustained.
17 MS. BECKETT: He has --
18 THE COURT: This is a question the Court is
19 going to determine. Rephrase the question.
20 BY MS. BECKETT:
21 Q. Mr. Waters, you do believe that the Pension
22 Fund has satisfied the requirements of the statute
23 in obtaining and arranging for coverage through the
24 City, correct?

A. Yes.

MS. BECKETT: No further questions.

THE COURT: Anything further.

MR. BURNS: One question.

FURTHER RECROSS-EXAMINATION

BY MR. BURNS:

Q. If you know, did the City object to the passage of the 1983 legislation that had been mentioned?

A. As far as I know, they did not object.

MR. BURNS: I have nothing further.

THE COURT: The witness may step down.

May I suggest that we take about a ten minute recess.

(Whereupon, a short recess was taken.)

(Whereupon, there was a change of reporters.)

1 THE COURT: Mr. Heiss, call your next witness.
2 MR. HEISS: I call James Capasso, executive
3 director of the Laborers to the stand please.
4 (Whereupon, the witness was
5 duly sworn.)
6 JAMES CAPASSO, JR.,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:
9 THE COURT: For the record, I want you to state
10 your full name and spell your last name.
11 THE WITNESS: James A. Capasso, Jr., C-a-p-a-s-s-o.
12 THE COURT: Your witness.
13 DIRECT EXAMINATION
14 BY MR. HEISS:
15 Q. Mr. Capasso, where do you live?
16 A. 8531 West Berwyn, Chicago.
17 Q. What is your present position?
18 A. Executive director, chief operating officer
19 for the Laborers Pension Fund.
20 Q. During the break Mr. Capasso, I showed you
21 what was presented to the previous witness of certain
22 exhibits that were admitted into evidence and except
23 for Exhibit Number 5 and Exhibit Number 1, were these
24 exhibits also presented during the course of time to

1 representives of the Laborer's Fund or the Laborer's
2 Annuitants?
3 MR. HERBERT: Could we have the numbers please?
4 MR. HEISS: Yes. If you want me to, I'll give you
5 the numbers.
6 THE WITNESS: Yes, they were.
7 BY MR. HEISS:
8 Q. Mr. Capasso, did you just review Exhibit
9 Number 8 -- 7, 8, 6, 29, 18, 10, 35, 33 and 19?
10 A. Yes.
11 Q. I show you what has been already received in
12 evidence as Group Exhibit Number 1 which is the Group
13 Administration Agreement for the Policemen's Annuity
14 and Benefit Fund.
15 Does the Laborer's have a similar agreement as
16 contained in that exhibit?
17 A. Yes, sir, we do.
18 Q. And was that dated on or about the same time
19 or at a different year?
20 A. I believe ours was dated around 1966.
21 Q. Now, Mr. Capasso, since when have you been
22 employed as an executive director of the Laborer's
23 Fund?
24 A. Since June of 1986.

1 Q. By whom were you employed prior to being
2 employed by the Laborer's Fund?
3 A. By the City of Chicago.
4 Q. What capacity were you employed by the City of
5 Chicago?
6 A. In various years supervising timekeeper,
7 director of administration, supervisor of
8 administration services and finance officer for the
9 Department of Streets and Sanitation.
10 Q. Prior to working in your capacity as an
11 executive director, were you ever connected with the
12 Laborers Pension fund other then being a member as a
13 City employee?
14 A. Yes, I was. I was a trustee from 1969 until
15 such time as I became the director.
16 Q. Are you familiar with health care benefits for
17 retiree members of the fund?
18 A. Yes, I am.
19 Q. How are you familiar with these benefits?
20 A. Well, as a City employee, I worked with the
21 employees as they left for their health care and, of
22 course, the day-to-day operations in the fund office as
23 executive director.
24 Q. Now, as a City employee would you please

1 explain what you're talking about that you worked with
2 the employees when they left?
3 A. Well, the employee would call me up and notify
4 me that it was about his time that he was about to
5 retire. So the employee had to come into the office
6 and fill out his resignation as well as fill out his
7 exit interview and so to speak, tie up all loose ends
8 with the bureau that he was working with so that he
9 could go onto the pension fund and apply for his
10 annuity.
11 At that time we would take his -- I typed them
12 personally for many years. I type his resignation and
13 then later years when they began to use the exit
14 interview, I typed an exit interview with him and one
15 thing, of course, that we made sure of was to tell them
16 that it was his responsibility to go to City Hall, Room
17 700 to talk to -- at the time it was a woman who
18 handled the hospital care at the Department of Streets
19 and Sanitation who was Lorraine Garvey and after that
20 Marian Fasher.
21 They were to check with them and see how long
22 the coverage would be on the City's end of it and then
23 to make sure that when they went to the pension fund to
24 apply for their annuity, that they were to make sure

1 they would pick up their pension fund so that there was
2 no lapse in coverage. That's the main point, no lapse
3 in coverage.
4 Q. Over what period of time did you perform these
5 duties to maintain the continuity of coverage for an
6 active employee to the point where he became a retiree?
7 A. You mean what my duties were? How long I did
8 it.
9 Q. Yes.
10 A. From 1966 -- approximately 1966 through 1982
11 and after that my subordinants did it.
12 Q. And this is while you were in the Bureau of
13 Streets and Sanitation?
14 A. Department of Streets and Sanitation, Bureau
15 of Streets.
16 Q. What city department -- what departments of
17 the Bureau of Streets advised the active employees
18 about retiree health care; in other words, to maintain
19 the continuity of these benefits?
20 A. Well, I personally know that Asphalt, Curb and
21 Gutter would have and those are the two bureaus that's
22 within the two sections within the Bureau of Streets,
23 and certainly it was commonplace that all the bureaus
24 of the Department of Streets and Sanitation would do

1 the same and there's about eight or nine bureaus within
2 the Department of Streets and Sanitation.
3 Q. What procedure does the fund follow with
4 regard to retiree health care for a member?
5 A. You mean when he comes into the office and
6 applies?
7 Q. Yes.
8 A. Well, when an employee comes into apply for
9 his annuity, he's asked to fill out an application and
10 state whether he wants hospital care or not. At such
11 time he asks for hospital care, we notify him as to
12 what the prorated check would be from the time -- to
13 cover the lapse of time from the time he left the City
14 until his first annuity check where we would start to
15 make that deduction. That lapse in time would be
16 covered by that prorated check that he would make up.
17 Q. When you're talking about a prorated check,
18 you're talking about premium rates; is that correct?
19 A. That's correct.
20 Q. For the Laborer's who established the premium
21 rates?
22 A. The premium rates that we're working with
23 right now were established by the City in 1982.
24 Q. Had those premium rates been changed at

1 anytime for Laborer's since 1982?
2 A. No.
3 Q. How were the premiums paid to the City?
4 A. They're deducted from the employee's annuity
5 check and supplemented with the pension funds portion
6 of their annuity supplement that we pay towards
7 hospital care and those monies are directed to the City
8 benefits division.
9 Q. How often do you pay those monies to the City?
10 A. Once a month.
11 Q. Now, you were referring -- you just referred
12 to a supplement. How was it established that the fund
13 would pay $25 -- pay a supplement for certain
14 individuals?
15 A. A state legislation back in 1985.
16 Q. And who would receive benefit from this
17 legislation in 1985?
18 A. Only those people who -- those annuitants who
19 were 65 years of age and with 15 years of service.
20 Those are the only people that were eligible to receive
21 the annuity supplement towards hospitalization.
22 Q. Now, are there other people, individuals in
23 the -- that receive City -- the annuitant medical
24 benefits from the City of Chicago then those who are 65

1 with 15 years of service?
2 A. Yes.
3 Q. What does the fund do with regard to those
4 individuals in their health care?
5 A. They deduct the City rates from their annuity
6 check.
7 Q. How many retired annuitants are in the fund?
8 A. About 4,058.
9 Q. How many are covered by health care?
10 A. Approximately 2100.
11 Q. How many of the 2100 receive a supplement?
12 A. Little over 1200.
13 Q. What does the average monthly annuity for a
14 retiree receive in the Laborer's Fund?
15 A. Well, I would go over and say that's for the
16 male annuity the average is $661, and for the spousal
17 annuity, it's approximately $250.
18 Q. Do you agree with the testimony that you heard
19 of Jim Waters that it's been well-known for years that
20 the premium rates have been substantially less then the
21 cost?
22 A. Yes, I do.
23 Q. Is that known to the members of the fund or I
24 should say it was easier to say the policemen, the

1 members of the laboring force who are retirees of your
2 fund, is that fact known to the active employees?
3 A. Well, I believe, yes, because of the fact they
4 knew that the City's plan that was offered to them was
5 reasonable, yes.
6 Q. During your course in the job, did you have a
7 discussion with these individuals that were working?
8 A. In the course of business you always have
9 discussions about everything. I'm sure the hospital
10 care was one of them.
11 Q. Was the fact that the City was to maintain
12 this plan, was it important to their continued
13 employment with the City?
14 A. Well, as City employees it was just common
15 knowledge when you retire there was a plan for you to
16 go into. It was a comfort to them.
17 Q. In the plan that's in evidence, it covers the
18 Laborer's' employees, is that correct?
19 A. Would you repeat that?
20 Q. The plan that you just reviewed, the exhibits,
21 is also the benefits package that covers the -- no,
22 it's not. In Exhibit A -- I withdraw that.
23 Exhibit A attached to the complaint is the
24 benefits package that was -- that covers the retirees?

1 A. Are you speaking of the City of Chicago
2 Annuity Health Care Booklet?
3 Q. Yes.
4 A. Yes.
5 Q. How were they -- Number 33?
6 A. That's correct.
7 Q. What coverage prior to 1985 did these
8 individuals receive?
9 A. They were -- they received coverage with two
10 policy holders which were Blue Cross and Blue Shield
11 and Banker's.
12 Q. With Blue Cross and Blue Shield, Banker's were
13 the administrators of the plan; is that right?
14 A. That's correct.
15 Q. The benefits that they received immediately
16 prior to the new plan in 1985, were those benefits the
17 benefits that the active employees received from the
18 City of Chicago?
19 A. Before 198 --
20 Q. '85?
21 A. Yes.
22 Q. And those were the benefits that were in place
23 for the previous ten years?
24 A. Yes. I would say, yes.

1 Q. Were you -- you were familiar with the
2 intention of the City to increase the premium rates by
3 100 percent in 1984; is that correct?
4 A. Yes.
5 Q. How were you so familiar?
6 A. I attended a meeting that was requested by
7 Barbara Malloy in the municipal pension fund office and
8 Barbara Malloy and other representives of the City
9 there were a couple that were some union
10 representatives and the four pension funds attended
11 that meeting.
12 Q. What was discussed at that meeting?
13 A. The discussion centered around the
14 reenrollment of the employees and, of course, the
15 annuitants and the raise in perimeters.
16 Q. Were the annuitants, in fact, reenrolled?
17 A. Yes.
18 Q. Were the premiums raised?
19 A. No.
20 Q. I show you what has already been presented to
21 Ms. Beckett and it's marked laborer's' Exhibit Number 1
22 for identification. They are not marked but it's the
23 Laborers' minutes and are those -- what does that
24 document indicate?

1 A. Well, by Board action, the Board approved
2 reenrolling of the annuitants into that plan as
3 requested, but also at that time legislation came
4 through to allow us to give that annuity supplement of
5 $25 towards his health care so both were taken care of.
6 Q. And that was the statute that you discussed
7 before that was amended in 1985; is that correct?
8 A. That's correct.
9 Q. And is this the action the fund took in
10 approving the plan -- the City of Chicago plan for the
11 annuitants?
12 A. Yes.
13 Q. And then by improving the plan for those
14 person's that were 65 with 15 years of service then at
15 that particular time the fund paid the supplement for
16 those persons; is that correct?
17 A. That's correct.
18 Q. Now, is the fund paid that supplement every
19 month for anybody in that class from the inception in
20 the fall of 1985 to present?
21 A. Yes.
22 Q. And the -- in addition to the $25 that the
23 fund pays, the retirees have continued to make the
24 payments for the premium rate on their own behalf out

1 of their pension check; is that correct?

2 A. That's correct.

3 MR. HEISS: Thank you. Your Honor, I don't have

4 anything further.

5 THE COURT: Cross-examination?

6 MS. BECKETT: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MS. BECKETT:

9 Q. Mr. Capasso, you said that the premium rates

10 in effect currently are those that were established by

11 the City in 1982, right?

12 A. Yes.

13 Q. When you say "the City," isn't it a fact that

14 the rates were communicated to you by Blue Cross/Blue

15 Shield and Banker's?

16 A. I believe Blue Cross and Banker's at the

17 City's request sent out information. They wouldn't

18 have done it without the City making a request.

19 Q. As far as you know there wasn't any executive

20 order issued by the mayor setting those rates, was

21 there?

22 A. I wouldn't know that.

23 Q. You don't know if there was a City Counsel

24 ordinance setting these rates for annuitants?

A. I couldn't tell you.

Q. So you don't know if there was a City Counsel resolution setting out those rates, do you?

A. No.

Q. Mr. Capasso, is an annuitant the same thing as an employee?

A. In essence, yes. It's just a former employee.

Q. An annuitant is not an active employee, is it?

A. To answer the question directly, no. But it makes no difference before or after, you're still either a prior or a past employee of the City of Chicago.

Q. An annuitant is not working for the City and receiving a paycheck is he or she?

A. No. It represents their prior class.

Q. An annuitant receives a pension check?

A. That's correct.

Q. And an employee receives a paycheck, right?

A. Yes.

MS. BECKETT: No more questions.

THE COURT: Anymore questions of this witness?

MR. BURNS: I've just got one question.

REDIRECT EXAMINATION

BY MR. BURNS:

1 Q. Mr. Capasso in your testimony with respect to
2 the monthly annuity, you used the word "spousal
3 annuity." By that do you -- can you define that a
4 little more precisely.
5 A. Of course, we have employees who were women
6 who would have had husbands who would have been
7 entitled to an annuity also.
8 Q. Does their have to be an act that causes that
9 annuity to be paid? Is retirement sufficient?
10 A. Is the retirement sufficient?
11 Q. Or is it a survivor?
12 A. They are. During the course of his
13 employment, the City pays eight and a half percent of
14 his annuity, six and a half percent is for pension for
15 himself, a point and a half is for the spousal's
16 annuity and the other half point is for an automatic
17 increase.
18 Q. Is that spousal benefit paid while the retired
19 employee is receiving a benefit?
20 A. No. He has to die.
21 Q. So it's a widow's benefit?
22 A. That's correct.
23 MR. BURNS: Nothing further.
24 THE COURT: Mr. Krislov?

1 REDIRECT EXAMINATION

2 BY MR. KRISLOV:

3 Q. Mr. Capasso, in your opinion as the chief

4 operating officer of the fund, are you generally

5 familiar with the financial circumstances of your

6 annuitants?

7 A. Yes. Wait a minute now, you're talking about

8 their personal finances?

9 Q. Yes.

10 A. No. Only to the point where they would ever

11 say anything, but no.

12 Q. Have any of them ever said anything?

13 A. Well, the only reason that they would say

14 anything is if they're worried.

15 Q. Have you an opinion based on what they've said

16 and your knowledge of their personal circumstances as

17 to their ability to be paid additional amounts for

18 medical coverage?

19 A. Only by the correspondence.

20 MR. HERBERT: Objection.

21 THE COURT: Technical objection. You've got lay a

22 foundation.

23 BY MR. KRISLOV:

24 Q. Do you have -- based on the communication, do

1 you have the annuitants of your fund? Do you feel
2 yourself able to opine as to their circumstance, their
3 ability in general to bear additional costs in medical
4 coverage?
5 MR. HERBERT: Same objection, your Honor.
6 THE COURT: Objection is sustained.
7 MR. KRISLOV: I'll withdraw it.
8 THE COURT: Anything further?
9 MR. HEISS: I have nothing further.
10 Apparently the record isn't clear Ms. Beckett
11 has stipulated to the admission of Laborer's Exhibit
12 Number 1 in evidence; is that correct?
13 MS. BECKETT: I have seen that. I've not been able
14 to convey that to you. Yes, I have stipulated.
15 MR. HEISS: You didn't produce it so I want to make
16 sure that the stipulation is on the record.
17 MS. BECKETT: That's correct.
18 THE COURT: So stipulated.
19 MR. HEISS: Thank you, your Honor.
20 THE COURT: Nothing further?
21 MS. BECKETT: No.
22 THE COURT: You may step down.
23 MR. BURNS: Firemen want to call Mr. Holland as a
24 witness.

1 (Whereupon, the witness was
2 duly sworn.)
3 NORMAN S. HOLLAND,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6 THE COURT: Have a seat, sir. For the record
7 please state state your full name?
8 THE WITNESS: Norman S. Holland, H-o-l-l-a-n-d.
9 THE COURT: Your witness sir, Mr. Burns.
10 MR. BURNS: Thank you, Judge.
11 DIRECT EXAMINATION
12 BY MR. BURNS:
13 Q. Mr. Holland, who are you employed currently?
14 A. Chicago Fire Department.
15 Q. And what is your status with the fire
16 department?
17 A. I am a captain on detached services as of June
18 1 of this year.
19 THE COURT: Captain of what?
20 THE WITNESS: Detached services, nonactive in the
21 field.
22 BY MR. BURNS:
23 Q. And how long have you been a firefighter?
24 A. Since December 16, 1970.

1 Q. Do you have other family members who are
2 firefighters or who were firefighters?
3 A. My father, Ray Holland, Sr., 32 years, was
4 captain on the Chicago Fire Department, died of cancer.
5 My brother Raymond is a captain on the Chicago Fire
6 Department. Now, my brother Martin is on leave of
7 absence from the Chicago Fire Department.
8 Q. Do you hold a position with Firefighter's
9 Local Number 2?
10 A. Yes. I'm currently the director of contract
11 enforcement for Local 2 since May 1, 1987.
12 Q. And prior to May 1, 1987, did you hold any
13 offices in Local Number 2?
14 A. From May 1, 1982 to May 1, 1984, I was
15 grievance chairman and from 1976 to 1982 I was steward
16 in the 19th Battalion.
17 Q. As an officer of Local Number 2, have you
18 participated in any collective bargaining negotiations
19 with representatives of the City of Chicago?
20 A. Yes, I have.
21 Q. Have those negotiations resulted in collective
22 bargaining agreements?
23 A. Yes, they have.
24 Q. What positions, if any, have you held with the

1 Firemen's Annuity and Benefit fund?
2 A. December 1983 I was elected trustee of the
3 Firemen's Annuity and Benefit fund to fill the
4 unexpired term of Frank Murphy and on or about June of
5 1984 I was elected by the board members as vice
6 president to fill the seat left open by the death of
7 Don Foley, and I was reelected to a three-year term
8 October of '84 and reelected in October of '87 to
9 another three-year term.
10 I was the secretary of the Firemen's Annuity
11 Benefit fund from December 1984 to December 1987 and am
12 currently the president of the Firemen's Annuity
13 Benefit fund.
14 Q. Mr. Holland, I hand you Defendant's Exhibit 6,
15 7, 8, 10, and 18 which have been admitted into evidence
16 with regards to the Policemen's Annuity Fund and I
17 would ask you whether in your capacity as a
18 representative of the Firemen's Annuity fund you've had
19 occasion to see those or identical documents addressed
20 to the Firemen's Annuity fund?
21 A. For Exhibit 8 I've never seen it.
22 THE COURT: Exhibit what?
23 THE WITNESS: Exhibit 8.
24 THE COURT: That's Exhibit 6, I believe.

1 THE WITNESS: Exhibit 6 I have not seen.
2 THE COURT: You have not seen it?
3 THE WITNESS: I have not seen it. Exhibit 7 I did
4 not see this either.
5 BY MR. BURNS:
6 Q. Those precede your time with the Board, you
7 have not seen them subsequently?
8 A. No, I have not. I did see Exhibit 18.
9 Q. Did the Firemen's fund receive a similar memo
10 from Barbara Malloy on or about May 30, 1985 regarding
11 reenrollment of retirees?
12 A. Yes.
13 Q. I hand you Defendant's Exhibit 29, a letter
14 dated December 9, 1987, from Mr. Williams addressed to
15 Donald Campbell, the actuary, and ask you whether
16 you've seen that document?
17 A. Yes, I have.
18 Q. I hand you Defendant's Exhibit 35 an updated
19 letter over the stamped signature of the Harold
20 Washington, Mayor of the City of Chicago, and ask you
21 whether you've seen that letter or are you aware that
22 such a letter was sent to annuitants of the Firemen's
23 Annuity fund?
24 A. Yes. This was sent to our retirees to

1 reenroll in the package.

2 Q. And you have knowledge, sir, as to whether or

3 not firemen and firefighter annuitants are covered by

4 the medical benefits plan, the summary plan description

5 of which is Defendant Exhibit 33?

6 A. Yes, they are.

7 Q. Do you know, Mr. Holland, approximately how

8 many annuitants of the Firemen's Annuity fund are

9 participants in the health care program of the City of

10 Chicago for retired employees?

11 A. We have approximately 1,970 retired

12 firefighters in the City Health Plan.

13 Q. Do you have any idea as to how many

14 dependents -- spouses and dependents would be covered

15 under that program?

16 A. Our records indicate about 1,430 dependents or

17 spouses.

18 Q. Do you have separate coverage for widows of

19 surviving -- surviving widows of deceased firefighters?

20 A. Yes, we do.

21 Q. And about approximately how many widows are

22 currently covered?

23 A. 750 approximately.

24 Q. Have you had occasion to check the average

1 pension check received by recipients of the pension
2 benefits from the Firemen's Annuity fund?
3 A. Based on the information from our December
4 actuarial statement a retiree receives in the area of
5 $1400 a month.
6 Q. How about widows? Are there surviving widow
7 benefits?
8 A. Yes, there is.
9 Q. And how much would that average be?
10 A. $390 approximately.
11 Q. Now, I believe you testified, Mr. Holland,
12 that you have been a firefighter since December 1970.
13 In the course of your employment particularly your
14 involvement with Local 2 of the Firefighters Union,
15 have you had reason to familiarize yourself with the
16 past practice regarding the coverage of retired
17 employees under City sponsored health care programs?
18 A. Yes, I have.
19 Q. All right. Could you tell the Court what the
20 situation was with respect to retired employees as far
21 back as you can go, bring us up to date and give us a
22 brief overview with respect to coverage and with
23 respect to whether the payment by retirees constituted
24 the full cost of providing benefits for these retired

1 employees, their spouse and dependents?

2 A. Prior to 1976, Local 2 was the administrator

3 of the health care program and the City would negotiate

4 with Local 2 and would pay Local 2 hospitalization

5 costs and that would be in lieu of additional salary we

6 negotiated for health benefit package.

7 Up until 1976, the local would handle the

8 retiree's annuity hospitalization and in 1976, the

9 City administration took over and became self-funded

10 and Local 2 turned over the hospitalization program

11 that we were operating out of Local 2's office to the

12 City administrator, and at that time the City gave us

13 the amount whatever the retirees annuities premium

14 would be. Through our negotiations through the '60s,

15 the City picked up the entire active man's health care

16 costs.

17 Q. Now, directing your attention to -- with

18 respect to active employees, was there a time when

19 employees of the City would contribute towards their

20 own health care costs?

21 A. I wasn't on the job then.

22 Q. Okay. Since you've been employed, have City

23 employees paid for health care coverage?

24 A. Not since I've been employed.

1 Q. How about dependent's coverage?
2 A. Not to my recollection.
3 Q. Ever paid for it to your recollection or you
4 have no knowledge of it?
5 A. No. Have never paid for it to my
6 recollection.
7 MR. BURNS: Excuse me, your Honor. There is a
8 mix-up on the exhibits and I need to get the numbers
9 straightened out.
10 BY MR. BURNS:
11 Q. Mr. Holland, I will hand you what has been
12 marked for identification as Defendant's Exhibit 34-A.
13 A. Yes, sir.
14 THE COURT: Mr. Burns, is this in evidence by
15 stipulation?
16 MR. BURNS: Yes.
17 THE COURT: Thank you.
18 MR. BURNS: It's listed as 34 and we didn't have --
19 there are two contracts. One of the reasons for the
20 delay was to identify the exhibits properly.
21 BY MR. BURNS:
22 Q. Mr. Holland, I hand you what has been marked
23 for identification Defendant's Exhibit 34 and ask you
24 if you can identify this document?

1 THE COURT: 34-A.

2 MR. BURNS: 34-A, I'm sorry.

3 THE WITNESS: It's the labor agreement between

4 Chicago Firefighter's Local 2 and the City of Chicago,

5 January 1, '82 to December 31, 1983.

6 MR. BURNS: I have a problem, Judge. The copy I

7 have is missing a page. The page is the important

8 page.

9 Could I examine your copy and see if it's

10 two-sided? It is.

11 BY MR. BURNS:

12 Q. Mr. Holland, I would direct your attention to

13 pages 19 and 20 --

14 A. Yes, sir .

15 Q. -- of Exhibit 34-A and ask you whether those

16 pages accurately reflect the provisions of the labor

17 agreement regarding health care coverage?

18 A. They do and this labor agreement was in effect

19 through and up to March 13, 1986, because there are

20 other contracts which wasn't in effect until March of

21 '86.

22 Q. All right. That continuation and effect was

23 pursuant to the provision and agreement that says it

24 will continue in effect, until it is replaced by

1 another document?

2 A. Yes, sir.

3 Q. Now, directing your attention to those pages

4 again, sir.

5 What change, if any, occurred with respect to

6 the coverage of retired employees as a result of this

7 provision that is Section 12.1 in the labor agreement?

8 A. You're addressing to the new contract?

9 Q. Talking about the 1982-'84 contract.

10 Did that document change the type of insurance

11 coverage that had been enjoyed by retired employees and

12 their dependents prior to the execution of this

13 agreement?

14 A. No. This is the same as prior to this

15 agreement.

16 Q. Does this document reflect the then existing

17 practice with respect to insurance coverage for all

18 City retired employees if you know?

19 A. It's the same that was before and it's the

20 same for all City employees except for I think

21 occupational.

22 Q. Now, under this contract, Mr. Holland, if an

23 employee retires at age 55 a firefighter covered -- how

24 long is that individual covered by this program?

1 A. Up until his age.
2 Q. Or by this clause of the contract?
3 A. To age 65.
4 Q. Now, Ms. Beckett in her opening statements
5 made the statement that coverage is for two years.
6 Do you have any idea what she was referring
7 to?
8 A. No, sir.
9 Q. Is there a clause in that contract that
10 provides that firefighters who continue employment
11 until the compulsory retirement age of 63 will be
12 covered until age 65 at no cost to the individual?
13 A. Yes, sir, there is.
14 Q. And under what plan is that active employee or
15 the retired employee covered?
16 A. City's Active Plan.
17 Q. All right. In 1970 -- I'm sorry 1982, and in
18 1983 was there any difference between those plans?
19 A. No, sir.
20 Q. Is there a difference today?
21 A. With the present plan there is.
22 Q. And when did that change take place?
23 A. March 13, 1986.
24 MR. BURNS: I would offer 34-A, Judge.

1 THE COURT: Is -- 34-A was not included in the
2 exhibit, is that it?
3 MR. BURNS: The list said that it would be the
4 labor agreement without identifying the term.
5 THE COURT: Any objection to 34-A? It may be
6 received?
7 MS. BECKETT: I just want to be clear that 34-A is
8 not a duplication of this yellow book or is it a
9 duplication?
10 MR. BURNS: 34-A is a duplication of the blue book.
11 MS. BECKETT: Of the blue book. That's what I
12 needed to verify.
13 THE COURT: No objection to it. Strike the
14 identification marks. It will be received.
15 (Whereupon, Exhibit
16 Number 34-A was received in
17 evidence.)
18 MR. BURNS: Your Honor, with the court's indulgence
19 I will have marked for identification as Defendant's
20 Exhibit 34-B a copy of the 1982 -- the January 1,
21 1984-December 31, 1987 Labor Agreement. Because of the
22 mix-up, I don't have sufficient copies for everyone at
23 this time, but I have given a copy to Ms. Beckett.
24 THE COURT: That's the yellow copy Ms. Beckett,

34-B.

MS. BECKETT: Thank you, your Honor.

BY MR. BURNS:

Q. Mr. Holland, I show you what has been marked for identification as Defendant's Exhibit 34-B and ask you whether you can identify that document?

A. Yes, sir.

Q. And what is it?

A. It's a labor agreement from 1984 to December 31, 1987.

Q. And when did that agreement become effective as a practical matter?

A. I think City Counsel ratified it to April 10, 1986 or thereabouts.

Q. And what changes, if any, occurred if you can tell us as to health care coverage of retired firefighters?

A. The change was dropped. Those employees who worked to 63 which used to be compulsory retirement age dropped the option that the City pays for their hospitalization from 63 to 65.

Q. And what was the reason for that omission?

A. In the arbitrator's statement of why he dropped that provision is that firefighters could work

1 up to age 70 now, which was then current compulsory
2 retirement age or could retire as early as 50. So he'd
3 seen no need to keep that section in the contract, the
4 arbitrator's position.
5 Q. So compulsory retirement age of 63 was omitted
6 as a employment requirement or practice of the City; is
7 that a fair statement?
8 A. Yes, sir.
9 Q. Now, what would occur upon a retired
10 firefighter who retired at age 55? What would occur
11 when that individual reached age 65 during the term of
12 that agreement?
13 A. He would be allowed to participate in the
14 supplemental City benefit health care.
15 Q. When you say "supplemental" by what do you
16 mean by that?
17 A. When they reach 65, he's eligible for medicare
18 and he can participate in medicare if he has the
19 quarters.
20 Q. What if the individual does not have
21 sufficient credit to qualify for medicare coverage?
22 A. He would stay in the program and pay the $55.
23 Q. Now, does that contract clause express
24 anything different from what you understood the

1 practice to be with respect to all City retirees?
2 A. I believe this to be the same for all City
3 retirees.
4 Q. Now, have you participated in the negotiations
5 for the Labor Agreement which is to succeed the
6 1984-1987 Agreement?
7 A. I have.
8 Q. Now, can you tell us what changes, if any, are
9 present? Let me back up a bit. Has Local 2 reached an
10 agreement with the City upon a labor agreement?
11 A. Yes, we have.
12 Q. And what is the status of that agreement at
13 the present time?
14 A. It's waiting ratification by the City Counsel.
15 Q. All right. Can you tell us the changes, if
16 any, in the health benefit section of the labor
17 agreement which would be -- which will succeed the
18 document that you have?
19 A. It reestablishes the 63 to 65 provision City
20 paid health care.
21 Q. Is there any changes with respect to the City
22 covering retired firefighters under the City of
23 Chicago's Annuitant Medical Benefits Plan?
24 A. No, sir.

1 Q. And what period of time is covered by that
2 labor agreement?
3 A. January 1, 1988 to December 31, 1991.
4 Q. Was it your understanding of when that clause
5 was negotiated that the City was obligated to retired
6 coverage -- retired firefighters under the existing
7 annuitant benefit plan until the expiration date of
8 that labor agreement?
9 A. Yes, sir.
10 Q. Did anybody from the City represent to you
11 during negotiations that that annuitant benefit's plan
12 could be terminated?
13 A. No, sir.
14 Q. Did anybody from the City indicate to you
15 during negotiations that the contribution rates
16 required of participants in that program would be
17 increased?
18 A. No, sir.
19 Q. How many meetings would you say that Local 2
20 had with representives of the City in the negotiation
21 of that labor agreement?
22 A. Over 50.
23 Q. 5-0?
24 A. Yes, sir.

1 Q. At anytime during the negotiations, did any
2 representative of the City advise negotiations for
3 Local 2 that upon attainment of age 65 that the retired
4 firefighters would no longer be covered by the
5 Annuitant Medical Benefits Plan?
6 A. Did not.
7 Q. Mr. Holland, you have been present during the
8 testimony of Mr. Waters and Mr. Capasso today?
9 A. Yes, sir.
10 Q. Have you heard their testimony with respect to
11 conversations with perspective retirees as to coverage
12 under the City of Chicago's Annuitant Benefit Plan?
13 A. Yes.
14 Q. If I asked you questions with regard to
15 conversations that you have had with firefighters, what
16 would your answers be?
17 A. Basically the same.
18 Q. Did Local 2 consider post-employment coverage
19 under the City's Annuitant Benefit Plan an important
20 condition of employment that existed for firefighters?
21 A. It does.
22 Q. I believe there's been testimony, Mr. Holland,
23 with respect to the City reenrolling retirees in the
24 City's program in 1985.

1 Are you familiar or did you have any
2 involvement with the reenrollment process?
3 A. Yes, sir, I did.
4 Q. And what capacity were you serving at that
5 time with respect to the Firemen's Annuity fund?
6 A. I was the secretary of the Firemen's Annuity
7 fund in 1985.
8 Q. Did you participate in meetings with Barbara
9 Malloy in 1985 with respect to reenrollment?
10 A. Yes, sir, I did.
11 Q. And at that time Ms. Malloy was in the
12 employee benefit section or some comparable section of
13 the City?
14 A. Yes, sir.
15 Q. Do you know her title?
16 A. I think she was the benefits director.
17 Q. Now, what if anything was said by Ms. Malloy
18 during your -- well, first let me ask you.
19 How many meetings did you have with her in
20 1985 with respect to enrollment.
21 A. Three or four with Barbara in my office.
22 Q. Can you tell me what Ms. Malloy's position was
23 as to whether retirees would benefit from being in the
24 new medical benefits plan of the City of Chicago?

1 Q. Her position was retirees and widows would
2 benefit greatly based on a major medical being raised
3 from $250,000 to a million dollars.
4 Q. How about any other coverage?
5 A. All our firefighters chemotherapy and cancer
6 treatment. A lot of people have cancer.
7 Q. Prescription drugs?
8 A. Prescription drugs was another item.
9 Q. What if anything was said by Ms. Malloy or any
10 representative of the City in 1985 during the
11 discussions you had with respect to reenrollment as to
12 terminating the insurance in the near future or at
13 anytime?
14 A. None.
15 Q. Was it your understanding based upon your
16 conversation with Ms. Malloy that the City intended to
17 keep those programs or coverage in effect on a
18 indefinite basis?
19 A. That's my understanding with Ms. Malloy.
20 Q. What if anything did Ms. Malloy or any
21 representative of the City say with respect to
22 increasing the premium charges to be made?
23 A. They never talked about increasing premiums.
24 Q. And is it not a fact, Mr. Holland, that at

1 that time in 1985 the City of Chicago and Firefighter's
2 Labor Agreement was still in effect that set the
3 contribution rate at the amounts contained in Exhibit
4 34-B? No, the yellow book.
5 This contract was still in effect at that time
6 or was this one?
7 A. 34-A was in effect.
8 Q. 34-A was in effect.
9 When did you first become aware that the
10 payment made by retired employees was not equal to the
11 cost of the health care coverage that they were
12 receiving from the City?
13 A. When I personally was made aware of it was
14 last October.
15 Q. How did you become aware of that?
16 A. The letter that I received I think one of the
17 letters I looked at earlier.
18 Q. Well, was it your believe, sir, that until
19 that time that the retirees were paying the actual cost
20 of the city coverage?
21 A. To the best of my knowledge.
22 Q. Are you referring to the October 19, 1987,
23 letter that was sent?
24 A. Yes, sir.

1 Q. Over the signature of Mr. Minor?
2 A. Yes, sir.
3 Q. Regarding a lawsuit for benefits -- for health
4 care benefits?
5 A. Yes, sir.
6 Q. I believe the record is clear, but it might be
7 from statements made by me rather then testimony.
8 Isn't it true, Mr. Holland, why don't you tell
9 us with respect to the state statute that Mr. Waters
10 has described, is there a similar provision to the
11 firefighters?
12 A. We have the identical provision in our state
13 statute that was signed on the same date.
14 Q. Now, that distinguishes the police and
15 Firemen's Fund from the Laborer's and Municipal Funds?
16 A. Yes, sir.
17 Q. Now -- well, let me ask with respect to the
18 Firemen's Fund.
19 Does the Firemen's fund make any payment to
20 defray the costs of health care coverage of widows and
21 dependents of deceased firefighters?
22 A. No. We don't pay for that that comes out of
23 their check.
24 Q. Now, is it accurate to say that the only

premium made by the Firemen's Fund towards health care is $55 or $21 provided in the statute we referred to?

A. It's fair to say we pay that supplement up to $25 and up to $21.

MR. BURNS: I have nothing further.

MR. HEISS: No questions, your Honor.

THE COURT: Mr. Krislov any questions?

MR. KRISLOV: No.

THE COURT: Cross-examination, Ms. Beckett?

MR. HERBERT: Could we have just a few moments to confer?

THE COURT: Sure. I'll give you a five minute break before you continue.

(Whereupon, a recess was had.)

THE COURT: Cross-examination Ms. Beckett?

MS. BECKETT: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. BECKETT:

Q. Mr. Holland, could you go back and describe a little bit more the practices you know for annuitants paying their own premium -- annuitants of the Firemen's Fund paying their own premiums for health insurance coverage in the '70s?

1 A. Prior to 1976, Local 2 was the administrator
2 that hired Banker's Life to handle the administrative
3 fee. They were the self-insured of the hospitalization
4 program for active and retirees.
5 Q. So did retirees pay premiums?
6 A. Yes. They paid a premium to Local 2, monthly
7 premium.
8 Q. Drawing your attention first to what has been
9 marked as Defendant's Exhibit 34-A.
10 Do you still have a copy of that in front of
11 you?
12 A. Yes.
13 Q. Could you please look to page 19. You were
14 looking at that earlier.
15 A. Yes.
16 Q. Can you please just read for the record the
17 last sentence of the last paragraph of the --
18 MR. BURNS: Document speaks for itself, Judge.
19 THE COURT: Overruled. It's cross-examination.
20 For emphasis on cross-examination, I'll give her that
21 amount of latitude.
22 What does the last sentence read?
23 THE WITNESS: "However, coverage under a plan for
24 such persons shall terminate when a person either

1 reaches the age of 65 or ceases to be a dependent as
2 defined in the plan whichever occurs first."
3 BY MS. BECKETT:
4 Q. Now, directing your attention to page 28 on
5 the document marked Exhibit 34-B. This is the yellow
6 book. I believe you also have a copy in front of you.
7 Could you look to that page?
8 THE COURT: What page, Ms. Beckett?
9 MS. BECKETT: 28.
10 BY MS. BECKETT:
11 Q. Drawing your attention to paragraph C in the
12 middle of the page, could you please read the first
13 sentence there?
14 A. "Employees who retire pursuant to the pension
15 statutes shall be allowed to participate in the City of
16 Chicago Annuity Medical Benefit Plan until reaching age
17 65 provided they pay then current contribution rates.
18 Q. Thank you.
19 Do you understand that term "City of Chicago
20 Annuitants Medical Benefit Plan to refer to this
21 document that was earlier marked Defendant's Exhibit
22 33?
23 A. Yes.
24 Q. Then you are aware, are you not, that page 3

1 of this document 33 includes a termination of coverage
2 plan -- excuse me, provision?
3 A. Now, that you point it out it says,
4 "termination of coverage section."
5 Q. And it lists several --
6 A. Options.
7 Q. Or continuances which the plan might be
8 terminated?
9 A. Yes.
10 Q. I'd like to draw your attention back to the
11 two documents we just read from and I'm again going to
12 ask you to read from them.
13 Let's look again at page 34-A, page 7.
14 Directing your attention to the top of the page.
15 A. Yes.
16 Q. Article VI entire agreement.
17 Could you read the first -- well, I'm -- let
18 the record reflect that this is this paragraph and
19 could I ask the witness to read the first paragraph of
20 this section?
21 A. Section A?
22 Q. Yes.
23 A. "This agreement constitutes the complete
24 entire agreement between the parties and concludes

1 collective bargaining, except as provided for in
2 grievance procedure for it's term."
3 Q. Okay. Directing your attention to page 9 of
4 the yellow book which is Exhibit 34-B. Near the top of
5 the page it also bears the heading, "Article VI Entire
6 Agreement."
7 As far as you know is this Article VI
8 substantially identical to that in the 34-A?
9 A. Yes, it is.
10 Q. You mentioned that in 1984 you had a series of
11 discussions with Barbara Malloy who was then the
12 benefits manager?
13 A. No, I did not.
14 Q. Did you not say that you met with Barbara
15 Malloy several times in 1984-1985?
16 A. 1985.
17 THE COURT: 1985.
18 BY MS. BECKETT:
19 Q. 1985.
20 Okay. You said that there was no discussion
21 of premium rates going up; is that correct?
22 A. That's true.
23 Q. So there was no discussion of them not going
24 up, there just was no discussion of their going up?

1 A. The only discussion Barbara Malloy had with me
2 was helping her reenroll our retirees and widows and
3 she would provide me with a document showing the
4 benefits of the new plan for 1985.
5 Q. You testified that negotiations have recently
6 been completed on yet a new contract document that
7 would supersede what is Exhibit 34-B, correct?
8 A. Yes.
9 Q. But you testified this has not yet gone into
10 effect, didn't you?
11 A. That's true.
12 Q. And that's because the City Counsel hasn't
13 ratified it?
14 A. Just got it last week.
15 Q. So the City Counsel hasn't ratified it?
16 A. Right.
17 Q. So it isn't if effect?
18 A. No.
19 MS. BECKETT: I don't have anymore questions.
20 THE COURT: Anything further on redirect?
21 MR. BURNS: I have a question.
22 REDIRECT EXAMINATION
23 BY MR. BURNS:
24 Q. Mr. Holland, have you been present during

1 negotiating sessions with the City on behalf of Local 2
2 at which the City expressed it's position as to
3 negotiating for retirees?
4 A. They don't negotiate for retirees.
5 Q. Has that have been expressed at meetings?
6 A. Yes, sir.
7 Q. Has the language of the clauses that
8 Ms. Beckett had you read -- has that language about
9 ending at age 65 any correlation with the City's
10 position that it does not negotiate for retirees?
11 A. Not to my knowledge. It's been in there.
12 It's the language that was in there before with the
13 '82-'84 Agreement.
14 MR. BURNS: I have no further questions.
15 THE COURT: Anything further, Ms. Beckett?
16 MS. BECKETT: No.
17 THE COURT: You may have step down.
18 MR. KRISLOV: Your Honor, one second. I'm --
19 THE COURT: I'm sorry Mr. Krislov. I didn't see
20 your hand up there.
21 REDIRECT EXAMINATION
22 BY MS. KRISLOV:
23 Q. Mr. Holland, is it your understanding that
24 when annuitant -- that when the age 65 termination

1 occurs, that the annuitants will pick up the same plan
2 that the other fund annuitants pick up?
3 A. That's my understanding.
4 MR. KRISLOV: Thank you.
5 THE COURT: Anything else? You may step down now.
6 All right. It's quarter-after-five today.
7 Can somebody give a direction of what you want to do?
8 MR. FORDE: We have another short witness here. An
9 executive director for the fund will not be
10 repetitious.
11 THE COURT: I would like to finish with the chief
12 executives of the various funds today. Any objection,
13 Ms. Beckett?
14 MS. BECKETT: No objection.
15 MR. MAROVITZ: It will be brief, your Honor.
16 MR. HEISS: If I go past 5:20 shoot me.
17 THE COURT: Counsel, you may tell me it's brief. I
18 hold my breath but not long.
19 (Whereupon, the witness was
20 duly sworn.)
21 THOMAS J. STACK,
22 called as a witness herein, having been first duly
23 sworn, was examined and testified as follows:
24 THE COURT: Would you please have a seat, sir.

1 For the record state your full name, spell
2 your last name and keep your voice up so that everybody
3 can hear you.
4 THE WITNESS: Yes, sir. Thomas J. Stack,
5 S-t-a-c-k.
6 THE COURT: Your witness, sir.
7 DIRECT EXAMINATION
8 BY MR. HEISS:
9 Q. Mr. Stack, where do you live?
10 A. 9122 South Oakley, Chicago, Illinois.
11 Q. By whom are you currently employed?
12 A. Municipal Employee Annuity and Benefit Fund.
13 Q. In what capacity are you employed by them?
14 A. As the executive director.
15 Q. How long have you been employed by Municipal
16 as the executive director?
17 A. For two years.
18 Q. Prior to that by whom were you employed?
19 A. I was employed by the Laborer's Pension Fund
20 for approximately a year and a half.
21 Q. In what capacity?
22 A. As executive director.
23 Q. Prior to that, where were you employed?
24 A. I was employed by the Policemen's Annuity and

1 Benefit Fund for 19 years.
2 Q. Now, is it safe to say, Mr. Stack, that you
3 have an idea and are familiar with retiree health care
4 for the retirees of the City of Chicago?
5 A. Yes, sir.
6 Q. You have heard the testimony before of
7 Mr. Waters and Mr. Holland and Mr. Capasso. The
8 testimony that you were to give regarding Municipal
9 workers except for the contractual obligations
10 contained in the Firemen's Fund be similar to those
11 individuals and except for where the statute provisions
12 are different?
13 A. Yes.
14 Q. At the last break I had an opportunity for you
15 to review those exhibits, Defendant's Exhibit 6, 7, 8,
16 10, 18, 33, and 29 already admitted into evidence and
17 ask you if on behalf of the Municipal Fund that you're
18 familiar with those documents?
19 A. Yes, I am.
20 Q. Then the Municipal Fund was also involved in
21 the reenrollment of retirees in 1985?
22 A. Yes, it was.
23 Q. Mr. Stack, how many retired annuitants are
24 there in the Municipal Fund?

1 A. 13,800.
2 Q. How many of those annuitants are covered by
3 the City of Chicago Annuitant Health Care Plan?
4 A. 5,080.
5 Q. Of that 5,080 approximately how many receive
6 the $25 supplement pursuant to the statute?
7 A. About 3500 of them do.
8 Q. The balance of those are then comprised of
9 widows and dependents?
10 A. Correct.
11 Q. Now, the widows and the dependents don't
12 receive anything from the pension fund; that is
13 correct?
14 A. That's correct.
15 Q. And like the Laborer's Fund, does the
16 Municipal Fund subsidize those individuals with 65
17 years of service -- I'm sorry with age 65 and 15 years
18 of service $25 on their premiums?
19 A. Yes, it does.
20 Q. And the premium rate that's in place was
21 established by the City of Chicago and that's been the
22 rate since 1982?
23 A. Yes, it has.
24 Q. I show you what has been -- what will be

1 Defendant's Municipal Exhibit Number 1 and Ms. Beckett
2 this is the minutes from the monthly meeting that you
3 saw before and you are stipulating that Municipal
4 Exhibit Number 1 be admitted into evidence and ask you
5 if this is the minutes of the meeting of the Board of
6 Trustees of the Municipal Fund approving the payment of
7 the $25?
8 A. Yes.
9 Q. Approving the City plan and the payment of $25
10 for those persons 65 years of age with 15 years of
11 service?
12 A. Yes, it is.
13 Q. Now, you don't approve the plan for the
14 individuals that are not 65 and 15, but there are many
15 members of the fund who receive the benefits under the
16 City of Chicago Annuitant Health Care Plan; is that
17 correct?
18 A. That's correct.
19 Q. And for those individuals they pay all their
20 own premiums; is that correct?
21 A. That is correct.
22 Q. And if you deduct that provision -- I'm sorry,
23 you deduct that premium from their monthly annuity?
24 A. We do.

1 Q. Were you familiar with the intention of the
2 City of Chicago to increase the premiums by 100 percent
3 in 1984?
4 A. Yes, I was.
5 Q. And did the City of Chicago, in fact, increase
6 those premiums?
7 A. No, sir.
8 MR. HEISS: I have no further questions.
9 THE COURT: Any questions, Police Fund?
10 MR. FORDE: No
11 THE COURT: Any questions, Firemen's Fund?
12 MR. BURNS: None, your Honor.
13 THE COURT: Any questions, Interveners?
14 MR. MAROVITZ: None, your Honor.
15 THE COURT: Any cross-examination, Ms. Beckett?
16 MS. BECKETT: One moment. We'll waive
17 cross-examination of this witness.
18 THE COURT: Cross-examination waived. You may step
19 down, sir.
20 THE WITNESS: Thank you, sir.
21 THE COURT: All right. Now, before we proceed any
22 further, since the defendants are putting on their
23 case, can you give me an indication of how we'll
24 proceed when we reconvene tomorrow at 11:00 o'clock?

1 How many witnesses?

2 MR. FORDE: Yes, your Honor. I can tell you

3 many -- we have three City witnesses that we've

4 designated and those three witnesses will not --

5 together --

6 MS. BECKETT: Four. Three are actually available

7 now. Four will be available starting tomorrow at

8 11:00.

9 MR. FORDE: Those four witnesses should not exceed

10 one hour.

11 THE COURT: You went past 5:00 today. You're going

12 to go past 5:00 tomorrow if you have to?

13 MR. FORDE: Sir, I just want to give you -- that's

14 my expectation. We have a number of -- we have one

15 other witness in the morning at 11:00 o'clock in the

16 morning who will be a half hour no less.

17 MS. VEERHUSEN: Correct.

18 MR. FORDE: That's an hour and a half. We have a

19 number of annuitants and we are concerned about that

20 fine line between emphasis and redundancy and we will

21 be calling a number of them, but they will be very

22 short witnesses, and if we call 15 or so between all of

23 us that would not consume more then an hour and a half

24 and I think they will be five minute witnesses or less.

THE COURT: What you're indicating, Mr. Forde, the people will be finished with your case sometime tomorrow?

MR. FORDE: We will be finish with our case about three hours after.

THE COURT: I advise Ms. Beckett if there's going to be a defense to be prepared to proceed with your defense sometime tomorrow afternoon.

MS. BECKETT: Thank you.

THE COURT: We will stand recessed untill 11:00 o'clock?

MR. FORDE: We'll be happen to stay late as long as as your Honor will stand us.

THE COURT: For the record, please, Mr. Marovitz are you going to be excused tomorrow or are you going to be present?

MR. MAROVITZ: I'm going to be excused tomorrow, your Honor. I'd like the record to so reflect.

THE COURT: Thank you. We'll stand a recess until tomorrow morning.

(Which were all the proceedings had this date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

MARY ELLEN D'ANDREA and MARCELLA A. WILLIAMS, being first duly sworn, on oath says that they are court reporters doing business in the City of Chicago; that they reported in shorthand the proceedings given at the taking of said hearing, and that the foregoing is a true and correct transcript of their shorthand notes so taken as aforesaid, and contains all the proceedings given at said hearing.

Mary Ellen D'Andrea

Certified Shorthand Reporter

Marcella A. Williams

Certified Shorthand Reporter

SUBSCRIBED and sworn to
before me this 21 day
of June 1988.

Jerome M. Brady Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

THE CITY OF CHICAGO,)
a Municipal Corporation,)
Plaintiff,)
vs.) No. 87 CH 10134
MARSHALL KORSHAK, et al.,)
Defendants.)

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before the Honorable ALBERT GREEN, Judge of said Court, on the 21st day of June, 1988, at the hour of 11:00 o'clock a.m.

1 APPEARANCES:

2

3 HONORABLE JUDSON K. MINER,

4 CORPORATION COUNSEL

5 BY: MS. AMY LOUISE BECKETT,

6 ASSISTANT CORPORATION COUNSEL

7

8 and

9

10 HOPKINS & SUTTER

11 BY: MR. WILLIAM CARLISLE HERBERT

12 for the City of Chicago;

13

14 MR. KEVIN M. FORDE

15 BY: MS. KATRINA VEERHUSEN

16 for the Police Annuity Fund;

17

18 JACOBS, BURNS, SUGARMAN & ORLOVE

19 BY: MR. MARTIN J. BURNS,

20 for the Fireman's Annuity Fund;

21

22

23

24

1 APPEARANCES (CONTINUED):

2

3 BOYLE AND HEISS

4 BY: MR. FREDERICK HEISS

5 and

6 MR. WM. A. MOROVITZ

7 for the Municipal and Laborer's Fund;

8

9 SACHNOFF, WEAVER & RUBENSTEIN, LTD.

10 BY: CLINTON A. KRISLOV,

11 for the Annuitant.

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2 I N D E X

3 WITNESS	EXAMINATION
4 EDWARD ARNEZ	
5 By Ms. Veerhusen (DE)	8
6 By Mr. Burns (CE)	21
7 By Mr. Krislov (CE)	27
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10 PETER JANDERSITS	
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18 CHARLES T. WILHELM	
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3 BENEDICT J. SCACCHITTI

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6 BERNARD PATRICK SWEENEY

7 By Ms. Veerhusen (DE) 70

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9 SAM VENTURELLA

10 By Mr. Heiss (DE) 74

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13 ROBERT SHACKLETON

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16 FRED HINCE

17 By Mr. Heiss (DE) 84

18 By Ms. Beckett (CE) 87

19 By Mr. Burns (CE) 91

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21 MARYANN HESTER

22 By Ms. Veerhusen (DE) 93

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3 CONSTANCE BECKER

4 By Mr. Heiss (DE) 98

5 By Mr. Burns (CE) 101

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1 THE COURT: Good morning, ladies and gentlemen.
2 Matter of City vs. Korshak, 87 CH 10134, trial in
3 progress, let the record reflect trial in progress.
4 The defendant counter-plaintiff's ready to
5 call their next witness?
6 MR. FORDE: We are, your Honor.
7 Before we do, I wanted to advise your Honor
8 that while it doesn't affect anything, doesn't
9 affect these proceedings, this morning the City
10 Council Budget Committee voted to extend the
11 coverage for one month, that is through July.
12 The full Council meets tomorrow, but
13 whether, I mean, as we view it and I believe as the
14 City views it, that one-month extension will not
15 relieve the emergency that's presently confronting
16 the Court, other than maybe give the Court and
17 counsel an extra day or so on briefing or something
18 like that.
19 But other than that, we are still --
20 THE COURT: I'm very pleased to hear that
21 because I still intend to conclude this trial as
22 quickly as possible.
23 I will then receive your trial brief and I
24 will try to expedite an opinion so you'll know where

1 you stand.

2 MR. FORDE: Thank you, your Honor.

3 THE COURT: Mr. Forde, are you ready to call

4 your next witness?

5 MR. FORDE: Yes, we are, your Honor.

6 MS. VEERHUSEN: The defendants called Edward

7 Arenz.

8 THE COURT: Call Edward Arenz to the stand,

9 please.

10 EDWARD ARENZ,

11 called as a witness herein, having been first duly

12 sworn, was examined and testified as follows:

13 THE COURT: For the record, sir, I'd like you to

14 state your full name, spell your last name, and kee

15 your voice up so that everybody hears you.

16 THE WITNESS: Edward J. Arenz, A-r-e-n-z.

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MS. VEERHUSEN:

20 Q. Thank you, your Honor.

21 Mr. Arenz, by whom are you currently

22 employed?

23 A. Employed by Blue Cross, Blue Shield, Health

24 Care Service Corporation.

1 Q. How long have you beem employed by Blue
2 Cross, Blue Shield?
3 A. 18 years.
4 Q. And what is your present title?
5 A. Senior account executive.
6 Q. Does Blue Cross, Blue Shield have any
7 involvement in the City of Chicago's medical
8 benefits plan for its active and retired employees?
9 A. Yes, they do.
10 Q. What is that role?
11 A. It's providing health benefits for the
12 employees and annuitants of the City of Chicago.
13 Q. Have your duties as an employee of Blue
14 Cross, Blue Shield caused you to have any
15 involvement with the City medical benefits plan?
16 A. Yes.
17 I was involved with the City of Chicago
18 benefit plan, from 1980 until 1985.
19 Q. And what was your title at that time?
20 A. Senior account executive.
21 Q. What did your duties entail in that regard
22 during that 1980, 1985 time period?
23 A. My duties involved the day-to-day operation
24 of the plan; dealing with the City at rate time each

1 year.

2 It involved seeing that the plan ran

3 smoothly; that the monies were remitted to us in a

4 proper manner; and just the day-to-day operation of

5 it.

6 Q. Mr. Arenz, I'm showing you what has been,

7 what is Defendant's Exhibit 5 and ask whether you

8 have seen that document before.

9 A. Yes, I have.

10 Q. Do you know who prepared it?

11 A. Blue Cross.

12 Q. What if anything does that document show

13 regarding the relationship between the rates charged

14 the police annuitants and the 1980-'81 period,

15 compared to the actual cost of coverage?

16 A. Well, it shows that the income received is

17 $939,000; and we paid out claims of $1,835,000, for

18 a loss ratio of 197 percent.

19 Q. And what if anything does it show as

20 projections for the calendar year 1982?

21 A. The projections show that if the current

22 rates remain in effect, the projection for claims,

23 plus the administrative charges for the year 1982,

24 would be $2,465,000; for a loss ratio of 246.5

1 percent.

2 Q. Does that document indicate what kind of

3 increase would be needed for the annuitant group to

4 be self-supporting?

5 A. Yes, it does.

6 It indicates an increase of 146 percent.

7 Q. Mr. Arenz, directing your attention to the

8 time period preceding this document, were the rates

9 charged the annuitants in the 1970s high enough to

10 cover the actual cost of the coverage?

11 A. The rates were never high enough to cover

12 the actual cost.

13 Q. I'd like to now show you what has been

14 marked Defendants' Exhibits 7 and 8, and ask whether

15 you are familiar with those documents.

16 A. Yes, I am.

17 Q. Is that your signature on those two

18 letters?

19 A. Yes, it is.

20 Q. Do you know, can you tell us who the group

21 numbers refer to?

22 A. Group numbers refer to the municipal

23 pension, police pension, and fire pension, or

24 laborer's pension.

1 Q. Is that, which exhibit are you referring
2 to?
3 A. I'm referring to Exhibit 7.
4 Q. All right.
5 A. And 8.
6 Q. 7 and 8.
7 Do you know, can you explain where this
8 letter was sent?
9 A. At this time, a rate increase was going
10 into effect for the pension plan.
11 Q. Did the City approve the contents of those
12 letters before they were sent out?
13 A. Definitely, yes.
14 Q. Why did those letters show the rates for
15 active employees?
16 A. At the time we were increasing the rates,
17 it was felt that, this was the first rate increase
18 since I had handled the account; and in talking with
19 the individual that was handling the City's end of
20 the account, Mr. Moffet, at the time it was felt
21 that we would show the retirees that they were, if
22 they were not being charged, that the rates were
23 going up.
24 But they were not going up to actually what

1 they should be.

2 Q. Were the rates for annuitants announced in

3 that letter intended to cover the cost of their

4 claims?

5 A. No.

6 The rates would not cover the cost.

7 Q. If the annuitants' rates had been said at

8 this time to reflect the actual cost of their

9 coverage, how would that rate have compared with the

10 $78 shown for a single active employee?

11 A. What would have happened is the $78, $78

12 was a, was a suggested, was a suggested rate. Had

13 we gone along with the, and increased the retiree

14 rate, the active rate might have come down a little

15 bit. But the retiree rates would have gone up.

16 In other words, where you have the retiree

17 rates at $65 and the active rates at $78, combining

18 the two, it may have ended up around $70.

19 Q. Who developed the premium rates the City

20 charged to its active and retired employees after it

21 became self-insured?

22 A. Who developed the -- I don't understand.

23 Q. The premium rates.

24 A. The premium rate.

1 Q. When the rates were being changed, who
2 would determine what the new -- who would do the
3 initial determination as to what the new rates
4 should be?
5 A. Our actuaries would determine the suggested
6 rate for the coming year.
7 Q. And would the City then review those rates
8 before they were put into effect?
9 A. Yes, they would.
10 Q. Would they ever make any changes in the
11 rates that your company recommended?
12 A. Yes.
13 Q. And in what respect?
14 A. Well, within respect to the annuitant
15 plans, half the time they never accepted them, they
16 left them the way they were.
17 And then when it came in to, when it came
18 up to the 55 and the 155, they just left it there.
19 I mean, we suggested higher rates, but they
20 just left it at the rate that you see here.
21 Q. In other words, was the City paying a
22 portion of the cost for annuitant health care?
23 A. Yes, they were.
24 Q. Why were they doing this, if you know?

A. I don't know.

Q. To your knowledge, would the City periodically project its costs for its health benefits program for the future year, upcoming year?

A. They were projected every year.

Q. Did you have any involvement in the City's projection of those costs?

A. I would deliver the rates to Mr. Moffet and from there Mr. Moffet would deal with whoever. At least he was telling me he was dealing with Mr. Norr or Mr. Belmonte, Prada, whoever was the comptroller at that time.

And the budget director, too.

Q. Would the City ask your company for projected claims as opposed to rates when they were projecting their budgets for the next year?

A. Every year, when budget time arrived, yes, they would ask us what we felt would be the upcoming year.

Q. And what kind of response would you give to those requests?

A. We'd give them what our projections were.

Q. Would you give them a single number for all anticipated claims, or would it be broken down in

1 any respect?

2 A. Well, it was broken down. We broke the

3 City down into the four annuitant groups, plus the

4 active group.

5 And they were given all these figures.

6 Q. Separately?

7 A. Separately.

8 Whether they combined them or what they did

9 with them once they got them, I don't know.

10 Q. I'm showing you what's been marked

11 Defendants' Exhibits 10 and ask you whether you've

12 seen that document before today.

13 A. Yes, I have.

14 Q. Would you explain generally what it is?

15 A. Uh, what this was was a letter that was put

16 out by one of the assistant comptrollers. The

17 gentleman that after Mr. Moffet passed on was put in

18 the insurance office and sort of the overseer of the

19 insurance office.

20 At this time, Coopers & Lybrand had come in

21 to do some consultant work in the City prior to

22 Mayor Washington coming in to get a feel of what was

23 going on, and they saw the problem that existed with

24 the, with the insurance.

1 And at that time suggested that new rates
2 be put into effect. And these were what they
3 figured to be the self-supporting rates for the
4 program.
5 And Mr. Utech, upon getting this
6 information, put this memo out showing the retiree
7 rates going from $55 to $113 and, for single, and
8 $150 to $308 per family.
9 Q. Did you take any action in response to this
10 memo?
11 A. No, I didn't.
12 Q. Were you at any time asked by the funds
13 whether to implement these increases?
14 A. Uh, no, I, one fund had called me and had,
15 I can't recall which one, did have, did see the memo
16 or that. But had asked me and I told them that I
17 had not gotten an official communication to
18 implement these funds or implement these rates.
19 Q. Who would have had authority to give you
20 such a direction?
21 A. In the past, the, either the individual who
22 at this time, when this memo came out, was Barbara
23 Maylow, who was in charge of the insurance; and
24 prior to that it was a Mr. Moffet.

1 I would either get a memo given to me from
2 Mr. Moffet, signed by the comptroller, would either
3 be Walter -- whoever the comptroller was at that
4 time.
5 And then we would implement any changes.
6 Q. To your knowledge, did the rates indicated
7 in that memo ever go into effect?
8 A. Not to my knowledge.
9 Q. Mr. Arenz, in the course of your work with
10 Blue Cross, Blue Shield, have you become familiar
11 with the practices of other public bodies in the
12 Chicago area, as far as whether it's the employer or
13 the retired employee who pays for the retired
14 employees' health benefits coverage?
15 A. Yes, I have.
16 Q. And what can you tell us about those
17 practices?
18 MS. BECKETT: Objection, your Honor. I fail to
19 see the relevancy of this line of questioning.
20 What's at issue today is the practice of
21 the City of Chicago, not the other public bodies in
22 the area.
23 MS. VEERHUSEN: Your Honor, at a minimum, I
24 believe this would go to whether the reliance that

1 we have alleged in our complaint was reasonable or
2 not. The practices of other employers and how
3 common that is.
4 THE COURT: I'm going to overrule at this
5 juncture, Ms. Beckett, for what probative value it
6 has.
7 This man has been in the field for many,
8 many years and has been senior man in charge. I'm
9 going to let him answer.
10 BY MS. VEERHUSEN:
11 Q. Would you like me to repeat the question?
12 A. Yes, please.
13 Q. Are you familiar with the practices of
14 other public bodies in the Chicago areas, as far as
15 whether the employer or the retired employee pays
16 for the retired employees' health benefits?
17 A. Yes, I am.
18 Q. And what are those practices?
19 A. The practices are that the employer pays.
20 THE COURT: Practice is what?
21 THE WITNESS: The employer pays.
22 BY MS. VEERHUSEN:
23 Q. I'm showing you what's been marked
24 Defendants' Exhibits 51 and 52 for identification.

1 Your Honor, these are not on our stipulated
2 exhibits list. I informed Ms. Beckett that I would
3 be showing them to Mr. Arenz.
4 Have you seen these letters before today,
5 Mr. Arenz?
6 A. No, I have not.
7 Q. Are you familiar with the signature of the
8 sender of the letter?
9 A. Yes, I am.
10 Q. And to your knowledge, is that Mr.
11 Corcorhan's signature?
12 A. That's his signature, right.
13 Q. My question relates to the reference at the
14 top of the page, Group No. 35283.
15 Do you know to which group that refers?
16 A. That refers to the, an administrative group
17 of the police pension.
18 Q. Who would the administrative --
19 A. The office employees.
20 Q. Are any annuitants included in that group?
21 A. No.
22 Q. Thank you.
23 Your Honor, at this time I would move that
24 Exhibits, Defendants' Exhibits 51 and 52 be admitted

1 into evidence.

2 THE COURT: Any objection?

3 MS. BECKETT: No.

4 THE COURT: They will be received, strike the

5 identification mark.

6 MS. VEERHUSEN: I have no further questions of

7 this witness.

8 THE COURT: Cross-examination -- before any

9 cross-examination. Fireman's Fund, go ahead.

10 CROSS-EXAMINATION

11 BY MR. BURNS:

12 Q. Mr. Arenz, how long have you been with Blue

13 Cross, Blue Shield?

14 A. 18 years.

15 Q. So your experience goes beyond the dealing

16 with the City of Chicago and the plans for City

17 employees and retired employees?

18 A. Yes, they do.

19 Q. Now, Ms. Veerhusen asked you about Exhibit

20 7 and 8 which are letters to the participants of

21 various programs. And I would hand you Exhibit 9 --

22 I'm sorry, 6, and ask you whether you have, would

23 you have seen the letter from Bankers to

24 participants in the group policy 421-1?

1 A. Yes, I would have seen it.
2 Q. Now, you've testified, sir, that the City
3 approved the contents of these letters.
4 But is it not a fact that the letters are
5 identical?
6 A. Right.
7 Q. Would that result because of the City's
8 input into the composition of the letters?
9 A. Right.
10 Q. Now, you've testified that you have
11 submitted figures to the City for preparation of the
12 annual budget.
13 A. Right.
14 Q. Now, with regards to the Fireman's, would
15 you have submitted figures for the retired employees
16 of the fire department?
17 A. Based upon the, based upon what we had, the
18 firemen that we would have, yes, we would.
19 Q. And would you have done the same for the
20 laborers?
21 A. Yes.
22 Q. And the same for the municipal employees
23 and the same for the police employees?
24 A. Right.

1 Q. So it wasn't just the police funds, but all
2 the other funds; and you broke down the figures
3 between the cost per with regards to active and the
4 cost per with regards to each of the retiree groups?
5 A. Right.
6 Q. And would that have been done each year
7 during the time that you were involved with the
8 City?
9 A. every year.
10 Q. Now, during your years with the Blue Cross,
11 Blue Shield, how many times has an insured
12 terminated only the retiree portion of a group
13 insurance policy?
14 A. Terminated only the retiree?
15 Q. Yes. If at all.
16 A. I haven't run into it, Counselor.
17 Q. Now, in the, prior to 1985, how many
18 policies existed with respect to, respect to the
19 City of Chicago and Blue Cross?
20 A. I don't understand the question.
21 Q. Right to 1985. Would you have these
22 policies, there are various numbers on the policies,
23 would they have been in effect prior to 1985?
24 A. Yes, they were.

1 Q. All right.

2 What happened in 1985, if anything, with

3 respect to the number of policies that were in

4 existence?

5 A. The plan was changed in 1985.

6 Q. All right.

7 And what form did that change take?

8 A. The change that took place was that at that

9 time Blue Cross was selected to cover all of the

10 people as far as the hospital coverage went.

11 And Bankers was selected to handle the

12 doctors and prescriptions and major medical and all

13 that.

14 Q. At the time of the change, did the City of

15 Chicago and Blue Cross, Blue Shield execute a

16 contract for the functions that Blue Cross, Blue

17 Shield was to perform pursuant to that new

18 agreement?

19 A. Yes, it was.

20 Q. Would you know if the City of Chicago and

21 Bankers executed a contract for covering the

22 performance or the functions that Bankers was to

23 perform under the new arrangement?

24 A. I couldn't answer that.

1 Q. Is it your understanding that there was
2 such a contract?
3 A. There was a contract, it's my
4 understanding.
5 Q. Is it common practice in the insurance
6 industry to have contracts if you're going to
7 perform services for an insured?
8 A. Yes.
9 Q. Are those contracts commonly referred to as
10 policies?
11 A. Yes.
12 Q. Now, returning to the questions of
13 termination, Mr. Arenz, what were the rights, if
14 any, of retired employees under the Blue Cross
15 contracts that were in effect prior to 1985?
16 A. What were their rights? I don't understand
17 your question.
18 Q. What were the rights of retired employees
19 under the Blue Cross contract with the City in the
20 event of termination?
21 A. If the contract were terminated?
22 Q. Yes.
23 A. They had the right to convert their
24 coverage to an individual-type contract.

1 Q. And did the plan provide for termination
2 only for the entire group? That is both active
3 employees and retired employees. Was it not a
4 single policy, sir?
5 A. It was one policy with the City, yes.
6 Q. And for the City to terminate that
7 coverage, is it not true or accurate that the City
8 would have had to terminate the entire contract
9 between Blue Cross and the City first, before it
10 could then reinsure the active employees, if the
11 intention was to exclude the retired employees?
12 A. Right.
13 Q. Have you examined the City of Chicago
14 booklet, the Annuitant Medical Benefits Plan, which
15 is Defendants' Exhibits 33?
16 Are you familiar with the document, Mr.
17 Arenz?
18 A. I have seen the document, yes.
19 Q. Was it prepared by Blue Cross, Blue Shield
20 or by the City?
21 A. By the City.
22 Q. And, is it customary in the insurance
23 industry to provide in booklets similar to this
24 provisions with respect to the rights of conversion,

1 if there are such rights?
2 A. Right. Yes.
3 MR. BURNS: I have nothing further.
4 THE COURT: Anything from the Municipal or
5 Laborers?
6 MR. HEISS, No, nothing, your Honor.
7 THE COURT: The intervenors?
8 MR. KRISLOV: Thank you, your Honor.
9 CROSS-EXAMINATION
10 BY MR. KRISLOV:
11 Q. As I understand it, what you testified to
12 is that in order to terminate the annuitant medical
13 coverage, the City would have had to terminate its
14 entire contract, including the active employees,
15 too?
16 A. It was one contract.
17 Q. When in your experience with other major
18 Chicago area employers, when they look to reduce
19 their health care costs, they may seek to reduce the
20 benefits, do they typically do that by cutting off
21 an existing retiree class?
22 MS. BECKETT: Objection, lack of foundation.
23 THE COURT: Sustain that objection.
24 MR. KRISLOV: Your Honor, I think we've already,

1 that was already established on the direct.
2 THE COURT: No, it wasn't, Counselor.
3 Mischaracterizing the testimony. Rephrase your
4 question.
5 BY MR. KRISLOV:
6 Q. In your experience with, in your 18 years
7 of experience with -- do you have experience with
8 other Chicago area employers?
9 A. Yes, I do.
10 Q. In terms of the medical coverage afforded
11 to active employees and retired employees?
12 A. Yes, I do.
13 Q. And I understand that some of them do seek
14 to reduce their costs of medical coverage at
15 different times?
16 A. Yes.
17 Q. Do they typically do that in your
18 experience by cutting off the benefits for an
19 existing annuitant or retiree class?
20 A. No. Normally, by revising the program.
21 Q. Overall.
22 A. Overall.
23 Q. Are you familiar with the interplay of the
24 Medicare program with, as it applies to government

1 employees?

2 A. I don't understand, I don't understand your

3 question.

4 Q. Are you familiar with the coverage under

5 the federal Medicare program of government employees

6 for their work for the government?

7 A. You mean in the -- I still don't

8 understand.

9 Q. In the public sector, are you, do you

10 understand how Medicare covers public employees now

11 where it didn't in the past?

12 A. Yes, I do.

13 Q. And is it your understanding that most of

14 the annuitants -- do you know effects of the --

15 strike that.

16 Do you understand, is it your understanding

17 that for City employees hired prior to April 1,

18 1986, that they are not covered by Medicare, they

19 are not Medicare qualified as is the term?

20 A. Yes.

21 Q. But that hirees after March 31st, '86,

22 would be Medicare qualified?

23 A. Yes.

24 Q. So that the future annuitants may be

1 Medicare covered, whereas the existing annuitants
2 are not?
3 A. Yes.
4 Q. Over the, over the course of your dealings
5 with the City, I take it your dealings were
6 primarily with Mr. Moffet?
7 A. With Mr. Moffet and at times with the
8 comptroller.
9 Q. Were you ever in these dealings with
10 representatives of the City? I take it you never
11 were under the impression that they didn't know that
12 retirees or annuitants were covered by the Blue
13 Cross program?
14 A. Right, yes.
15 Q. They never advised you that they thought it
16 was any way illegal to cover the annuitants, did
17 they?
18 A. Right.
19 Q. And in fact, the reports that you make to
20 them and your conversations with the representatives
21 would have regularly made them aware that annuitants
22 were indeed covered by the Blue Cross program?
23 A. On a quarterly basis.
24 MR. KRISLOV: No further questions, your Honor.

1 THE COURT: Cross-examination, Ms. Beckett.
2 MS. BECKETT: Yes, your Honor.
3 CROSS-EXAMINATION
4 BY MS. BECKETT:
5 Q. Mr. Arenz, if you'd take a look again
6 please, at Exhibits 6, 7, and 8, which you
7 previously testified to.
8 You indicated that the City created the
9 language in these letters, correct?
10 A. Yes.
11 Q. When you say the City, you actually mean
12 Mr. Robert Moffet, right?
13 A. Right.
14 Q. As far as you know, nobody else wrote the
15 language that ended up in these letters in Exhibits
16 6, 7, and 8, right?
17 A. The language was originally put together by
18 us, given to Mr. Moffet.
19 What he did with it, who he reviewed it
20 with, I have no knowledge.
21 Q. So, but as far as you know, he was the
22 only, he was the only person you referred to when
23 you say the City had input in redrafting those
24 letters, right?

1 A. That's all I could say, yes.
2 Q. In your dealings with the City, you
3 indicated that on occasion you met with
4 comptrollers; but on the whole you just met with
5 Mr. Moffet who was the director of insurance
6 programs for the City?
7 A. Right.
8 Q. You never testified before the City Council
9 regarding these programs, did you?
10 A. No, I did not.
11 Q. You never participated in putting together
12 budget proposals for the City Council, did you?
13 A. No.
14 Q. And as far as you know, this language that
15 you referred to in Exhibit 6, 7, 8, was not reviewed
16 by, nor passed upon by the City Council in those
17 years, was it?
18 A. The letter, was the letter passed by the
19 City Council?
20 Q. Yes, as far as you know?
21 A. No, it wasn't.
22 Q. When you worked with Mr. Moffet in putting
23 together this language and in administering the
24 annuitant health care program, you didn't refer to

1 any particular resolution of the City Council, did
2 you?
3 A. I don't follow.
4 Q. In administering your health care programs,
5 you never referred to legislation passed by the City
6 Council in planning this program, did you?
7 MR. BURNS: I'm going to object, your Honor. I
8 think we're going far afield.
9 If we're going to start testifying about
10 negatives, we could be here for quite a while.
11 THE COURT: I'm aware of what you're saying.
12 This is cross-examination. I'm going to give them a
13 little lattitude on them.
14 You're overruled.
15 THE WITNESS: I'm trying --
16 BY MS. BECKETT:
17 Q. The question is, you don't recall referring
18 to any particular City Council ordinance in
19 preparing these letters, do you?
20 A. No.
21 Q. Nor did you refer to any executive order of
22 the Mayor, did you, in preparing these letters or
23 other dealings?
24 A. No.

1 Q. Okay.
2 You just testified that the City of Chicago
3 and Bankers Life and the City of Chicago and Blue
4 Cross entered into policies or contracts of
5 insurance, right?
6 A. With the City of Chicago?
7 Q. Yes.
8 A. Yes.
9 Q. Who executed those contracts for the City?
10 A. The contracts would be signed by the
11 comptroller.
12 Q. Do you know if anybody else signed these
13 contracts?
14 A. To my knowledge, no, just the comptroller.
15 Q. You've testified -- oh, by the way, you
16 don't have that contract before you here today, do
17 you?
18 A. No, I don't.
19 Q. And did you not refer to that contract in
20 testifying, regarding these policies today, did
21 you?
22 A. No, I did not.
23 Q. So your testifying is from your general
24 recollections?

A. Yes, I am.

Q. You wouldn't happen to know the exact termination provision, the exact language of the termination provisions that you testified to, would you?

A. Our termination provision is pretty, is a standard termination in the insurance business.

Q. But you don't happen to recall the exact page or the exact paragraph number of this provision?

A. No, I don't.

Q. You testified regarding what has been introduced as Defendants' Exhibits 33, a copy of the City's Annuitant Medical Benefits Plan.

Do you remember that booklet that was shown to you?

A. The booklet, yes, okay.

Q. You testified that as far as you know the City prepared that document.

Do you know for a fact who prepared that document?

A. We didn't.

Q. You --

A. We did not.

1 Q. You did not, but you don't know --
2 A. I don't know. Bankers could have, okay, I
3 can't speak for them.
4 MS. BECKETT: No more questions.
5 THE COURT: Anything on redirect?
6 You may step down, sir.
7 (Whereupon, no further testimony
8 was heard from this witness at
9 this time.)
10 THE COURT: Ready to call your next witness?
11 MS. VEERHUSEN: Defendants call Peter
12 Jandersits.
13 MR. HERBERT: Your Honor, for the record, the
14 previous witness was called upon to testify about a
15 contract which has not been produced in evidence.
16 He testified only as to his recollection,
17 he can't recall specifically the wording of the term
18 about which he testified and we would move to strike
19 his testimony as to just specific to that contract.
20 If the other parties want to produce that
21 contract in writing so the Court can review it,
22 that's one thing.
23 But I think just oral testimony is
24 insufficient.

1 THE COURT: Objection. Counsel, keep in mind
2 that the man testified that the termination clause
3 was standard in the industry.
4 Objection overruled.
5 PETER JANDERSITS,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 THE COURT: For the record, sir, I want you to
9 state your full name, spell your last name, keep
10 your voice up.
11 THE WITNESS: Peter Jandersits,
12 J-a-n-d-e-r-s-i-t-s.
13 DIRECT EXAMINATION
14 BY MS. VEERHUSEN:
15 Q. Where do you live?
16 THE COURT: Your witness.
17 MS. VEERHUSEN: Thank you, your Honor.
18 BY MS. VEERHUSEN:
19 Q. Mr. Jandersits, where do you reside?
20 A. I live in the City of Chicago.
21 Q. And how old are you, if you don't mind my
22 asking?
23 A. 61.
24 Q. Are you currently employed?

1 A. Retired.
2 Q. And by whom were you last employed?
3 A. Chicago Police Department.
4 Q. In what capacity did you work with the
5 Police Department?
6 A. I was patrol officer.
7 Q. How long were you, did you work as a patrol
8 officer?
9 A. 34 years.
10 Q. And when did you retire?
11 A. April, '85.
12 Q. Are you presently covered by the City of
13 Chicago Annuitant Medical Benefits Plan?
14 A. Yes.
15 Q. Do you pay anything for your coverage?
16 A. No.
17 Q. Do you have any dependents covered under
18 the plan?
19 A. My wife.
20 Q. Do you know, is there a premium for her
21 coverage?
22 A. Yes.
23 Q. And to your knowledge, who pays that
24 premium?

A. I do, or my wife.

Q. Before you retired, Mr. Jandersits, did you have occasion to attend a preretirement seminar?

A. Yes, I did.

Q. Do you recall when that was?

A. That was in November of '84.

Q. And do you recall where it was?

A. That was at the training center of the Chicago Police Department.

Q. I'm showing you what's been marked Defendants' Exhibits 13 for identification, and I ask whether you have seen that document before.

A. Yes, I have.

Q. Did you send that document to me at my request?

A. Yes, I did.

Q. And could you explain what it is?

A. It's a planning seminar, and it tells you what topics are going to be discussed during the day.

Q. Is this the, an agenda from the seminar you testified you attended?

A. Yes.

1 Q. Was the subject of retired policemen health
2 benefits discussed at that seminar?
3 A. Yes, it was.
4 Q. And did anyone from the City speak on that
5 subject?
6 A. Yes.
7 Q. Do you know who that person was?
8 A. No, I don't.
9 Q. Do you recall what that person said about
10 the subject of the cost of retiree health benefits?
11 A. Yes.
12 It was again going to be a continuation of
13 our health benefits, and there'd be no cost to us.
14 Q. Mr. Jandersits, did you retire sooner than
15 you had to?
16 A. Well --
17 Q. In terms of age?
18 A. No.
19 Q. No, you did not?
20 A. No.
21 Q. Was the cost of your health coverage a
22 significant factor to you in deciding when to
23 retire?
24 A. Yes, it was.

1 MS. VEERHUSEN: Your Honor, I move that
2 Defendants' Exhibits 13 be admitted into evidence.
3 THE COURT: Any objection?
4 MS. BECKETT: No.
5 THE COURT: Strike the identification marks, it
6 will be received.
7 MS. VEERHUSEN: I have no further questions for
8 this witness.
9 THE COURT: I take it the Fireman's Fund has no
10 questions, this being a policeman?
11 MR. BURNS: You're right.
12 THE COURT: The Laborers, Municipal, no
13 questions. Intervenor, any questions?
14 MR. KRISLOV: Real quick.
15 THE COURT: Go ahead.
16 MR. KRISLOV: Techincally, this is
17 cross-examination.
18 THE COURT: I understand that, sir. I'm
19 affording you the opportunity to inquire.
20 MR. KRISLOV: Thank you, your Honor.
21 CROSS-EXAMINATION
22 BY MR. KRISLOV:
23 Q. When you say continuation that you, that
24 they promised continuation of retiree health care

1 benefits at no cost to us, I take it that means
2 into your retirement?
3 A. Yes.
4 Q. For how long?
5 A. For the rest of my retirement.
6 Q. For life?
7 A. For life.
8 MR. KRISLOV: Thank you.
9 THE COURT: Cross-examination, Ms. Beckett?
10 MS. BECKETT: No.
11 THE COURT: You may step down.
12 THE WITNESS: Thank you, sir.
13 THE COURT: Thank you.
14 (Whereupon, no further testimony
15 was heard from this witness at
16 this time.)
17 THE COURT: Call the next witness.
18 MR. HEISS: Your Honor, the Laborer and
19 Municipal calls Benedict Scacchitti.
20 Well, then I'll pass Mr. Scacchitti and
21 call Mr. Gayne, please. Mr. Scacchitti is confined
22 to a wheelchair, your Honor, and he had to go to the
23 men's room. So to move along, I'll call Mr. Gayne
24 to the stand.

RICHARD E. GAYNE,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: For the record, I want you to state your full name, spell your last name.

THE WITNESS: Richard E. Gayne, G-a-y-n-e.

THE COURT: Your witness, sir.

DIRECT EXAMINATION

BY MR. HEISS:

Q. Mr. Gayne, by whom are you employed?

A. I'm employed by Streets and Sanitation.

THE COURT: City of Chicago?

THE WITNESS: City of Chicago, yes.

BY MR. HEISS:

Q. How long have you been employed by the Streets and Sanitation for the City of Chicago?

A. 16 years.

Q. Mr. Gayne, prior to being employed by the City of Chicago, by whom were you employed?

A. I was employed by the Chicago Park District.

Q. Was that your employer immediately before coming to work for the City of Chicago?

A. The only one of significance.

1 There was a little hiatus in between.
2 Q. Now, what was the consideration that you
3 had when you came to work for the City of Chicago
4 with, in changing your employment?
5 A. I, actually -- can I explain the hiatus?
6 There was, it was not going from one
7 employer to the other, not direct.
8 Q. All right.
9 A. I had a personal situation that required me
10 to return to school for a year and a half, so I
11 don't know if that's pertinent or not.
12 Q. And then back to your consideration for
13 going to work for the City government, I mean,
14 working for the City of Chicago.
15 MS. BECKETT: One point of inquiry, may I assume
16 that when you say consideration, Counsel, you're not
17 referring to legal term consideration as indicated
18 in contracting?
19 MR. HEISS: Gee, that's been so long ago, I
20 don't even know what that means.
21 Yes, I'll agree to that.
22 THE COURT: Let's rephrase the question. What
23 did you take into consideration when you went to
24 work for the City of Chicago?

1 THE WITNESS: Took into consideration both wages
2 and fringe benefits.
3 BY MR. HEISS:
4 Q. What was your understanding when you came
5 to work with regard to the possibility of health
6 care for your retirement?
7 A. My understanding was that health care would
8 be provided by my employer with, and there would be
9 a, it would be actually, it would be dual
10 participation. There was a small increment by the
11 employee.
12 Q. And was it your understanding that the
13 benefits that were provided for the employer would
14 continue subsequent to your retirement, the health
15 benefits?
16 A. Absolutely.
17 Q. You're covered now by the City plan, is
18 that correct?
19 A. Yes.
20 Q. And I have marked here Laborers' Exhibits 2
21 and 3, and I want to ask you if these are, if these
22 are photostatic copies of the card that you were
23 given to identify your health insurance.
24 A. Yes.

1 Q. And you had that card in your wallet, is
2 that correct?
3 A. Yes.
4 Q. Now, the one card, it identifies, the
5 Exhibit No. 2 identifies that you are a member of
6 the Chicago Medical, City of Chicago Medical Care
7 Plan; and Exhibit 3 identifies who you're to call in
8 case you have any questions about your benefits.
9 Is that correct?
10 A. Correct.
11 Q. Is, during the course of your employment,
12 have you had discussions with fellow employees about
13 the benefit that accrued to the City workers?
14 A. I would, yes, I have.
15 But, of course, recently with the things
16 that have taken place recently, they've been more
17 frequent.
18 Q. And when you say with things taking place
19 recently, you're referring to since it came to the
20 knowledge to you and your fellow employees that the
21 City intended to cut off the plan for retirees. Is
22 that correct? Is that what you're referring to?
23 A. Yes, yes.
24 Q. Now, with regard to that, do your

1 discussions with your fellow employees, can you tell
2 what their feeling was with regard to whether or not
3 they believed in the course of their employment that
4 their coverage would continue as it was, while they
5 were an employee or similar to an employee when they
6 went into retirement?
7 A. It's a source, it's a source of concern;
8 and, of course, more so with the older employees who
9 are facing fixed income.
10 Q. And was it their understanding, those
11 actives that are approaching retirement, that you
12 discussed it with, that those benefits would
13 continue after retirement that are provided by the
14 City?
15 A. Yes.
16 Q. And at the same cost?
17 A. Yes.
18 MR. HEISS: I have no further questions.
19 THE COURT: Police and Fireman's Fund have any
20 questions of this witness?
21 MR. BURNS: No question, your Honor.
22 THE COURT: Intervenor, any questions?
23 MR. KRISLOV: No, your Honor.
24 THE COURT: Cross-examination, Ms. Beckett?

1 MS. BECKETT: Yes.
2 THE COURT: You may proceed.
3 CROSS-EXAMINATION
4 BY MS. BECKETT:
5 Q. Mr. Gayne, if you would look again please
6 at the card that has been admitted, the two cards
7 admitted as Municipal Fund Exhibits 2 and 3 --
8 THE COURT: Hold on before you go any further.
9 Do you want 2 and 3 in evidence?
10 MR. HEISS: Yes.
11 THE COURT: Then move them into evidence.
12 MR. HEISS: I was going to move them after
13 cross, but I'll do it now.
14 THE COURT: Strike the identification marks and
15 they will be received, taking no objection is
16 entered.
17 BY MS. BECKETT:
18 Q. These cards read City of Chicago Medical
19 Plan for Employees, correct?
20 A. Yes.
21 Q. They don't indicate that, they do not
22 contain the words Medical Care Plan for Retirees, do
23 they?
24 A. No.

1 No, not that I can see.
2 Q. Okay.
3 You stated that when you first came to work
4 for the City, that the health care plan was one of
5 dual participation, correct?
6 A. Yes.
7 Q. And that meant that there was some small
8 increment paid by the employee, correct?
9 A. Yes.
10 Q. And has that now changed?
11 A. Has it now changed?
12 No, it's remained constant for many years,
13 at the same level.
14 Q. So for the past 16 years, you've always had
15 the same benefits, they've never changed?
16 A. Now, I can't say that. I'm not an expert
17 on the benefits.
18 I, and in fact, I can't honestly say that
19 early in my tenure the amounts we're talking about
20 may have been adjusted.
21 But I can say that for a very long period
22 now I have, there has been a static amount of
23 participation.
24 Q. Mr. Gayne, are you a member of a labor

union?

A. Well, yes, I am.

Q. Which union is that?

A. The International Union of Operating Engineers.

Q. To your knowledge, does your union have a collective bargaining agreement with the City of Chicago?

A. Yes.

Q. Have you reviewed the terms of that collective bargaining agreement?

A. I'm going to be honest with you and say it's a kind of, it's kind of a loosely-woven agreement that City employees, City employees depend massively more upon the City structure than they do upon the union structure.

While there is a connection, I'm not going to say that I stay up at night reading the union agreement, no.

Q. But you do have, your union does have an agreement with the City?

A. It does.

Q. As far as you know, does that agreement include coverage, health care coverage?

1 A. It's, it does.

2 It's what do they call that, secondary

3 health care coverage where if there's, if you have a

4 claim and it's not fulfilled entirely by the first

5 insurer, then there is, for those who have it, there

6 is an option -- well, there is that secondary

7 insurer that pays the balance.

8 Q. Is that a benefit, is that through your

9 union that you have that extra?

10 A. It's entirely separate, yes.

11 Q. But the contract itself, the union

12 collective bargaining agreement does have a

13 provision, doesn't it, guaranteeing you health

14 benefits as an active employee with the City?

15 A. Now, that's pretty strongly stated. I'm

16 not so sure it guarantees me.

17 I have an option that if I so choose I can

18 also avail myself to an insurance policy with the

19 union.

20 And I have no way of knowing, I may be the

21 only one that avails myself. Others in my situation

22 may not choose to take the coverage.

23 Q. Do you know if that union plan is available

24 for retirees, that secondary coverage?

A. I do not think it is.

In fact, I'm almost certain that it is not.

Q. Do you know for a fact that it is not?

A. Let me think.

It is not. I'd state that as a fact.

Q. But you haven't read all the terms of the contract lately?

A. Right.

MS. BECKETT: Okay.

No more questions.

THE COURT: Any redirect?

MR. HEISS: No redirect on behalf of the Laborers and Municipals, thank you.

Mr. Gayne, thank you.

THE COURT: You may step down.

(Whereupon, no further testimony was heard of this witness at this time.)

THE COURT: Want to call another witness?

CHARLES T. WILHELM,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: For the record, state your full name, spell your last name, keep your voice up.

1 THE WITNESS: Charles, middle initial T., for
2 Thomas, W-i-l-h-e-l-m.
3 THE COURT: Your witness, Counsel.
4 DIRECT EXAMINATION
5 BY MR. FORDE:
6 Q. Mr. Wilhelm, I guess by your attire that
7 you're an active City employee?
8 A. I am.
9 Q. With the police department?
10 A. Yes, sir.
11 Q. How old are you, Mr. Wilhelm?
12 A. 66.
13 Q. Are you required to retire at any certain
14 time?
15 A. Yes, sir. I'll have to retire by the end
16 of this year.
17 Q. How long have you been a policeman?
18 A. June 9, 1955, 33 years.
19 Q. In connection with your imminent
20 retirement, have you attended any preretirement
21 seminars conducted by the City of Chicago?
22 A. Yes, sir, I did last September.
23 Q. And I'm going to show you what has been
24 marked Defendants' Exhibits 25, which is captioned a

1 Retirement Planning Seminar.

2 Is that the agenda that you were provided

3 with for that seminar?

4 A. Yes, sir.

5 Q. Now --

6 A. However, excuse me, if I may interject.

7 Q. Let me give you a copy.

8 A. There was a change on there at the one

9 scheduled 11:15 hours continuation of health

10 benefits, that gentleman was not available. They had

11 a female there.

12 Q. But this is the agenda you received prior

13 to attending that seminar?

14 A. Yes, sir, it is. Yes, sir.

15 Q. And the topics that are listed on that

16 agenda were covered at that seminar?

17 A. Yes, sir.

18 Q. Now, was the subject of retiree health

19 benefits addressed?

20 A. Yes, it was.

21 Q. Was the subject of the cost of the retiree

22 health benefits to you as a prospective retired City

23 employee discussed?

24 A. Yes, yes, sir.

1 Q. Were you told what the cost would be for
2 you as a retired City employee?
3 A. To myself as a retiree, I would be covered.
4 To any dependents, I would have to cover the cost.
5 Q. Did they say what the cost would be for
6 you?
7 A. I believe it was $55.
8 Q. You or for the --
9 A. For my dependent. No cost for me.
10 Q. Now, before this litigation started, were
11 you aware that City employees who retired were
12 entitled to participate in the City's medical
13 benefits plan?
14 A. Yes, sir.
15 Q. What did you understand as to who would pay
16 the costs for the annuitant's health benefits?
17 A. The member or the retiree, there was no
18 cost to him.
19 Dependents, if you had any, you had to
20 cover that cost.
21 Q. Did you ever discuss the subject with other
22 police officers?
23 A. Yes, I did.
24 Q. And you know what their understanding of it

1 is generally?

2 A. The same.

3 Q. Now, insofar as the cost of health benefits

4 as to retirees, is that of any special significance

5 to you in making your retirement plans?

6 A. Reference to the cost of what, sir?

7 Q. Well, do you have, do you have, besides

8 yourself, do you have any dependents?

9 A. Yes, I do, a retarded daughter. I am a

10 widower.

11 MR. FORDE: I have no further questions, your

12 Honor.

13 THE COURT: I take it the Fireman's Fund has no

14 questions of this witness.

15 MR. BURNS: Right.

16 THE COURT: Nor does the employees or Laborers?

17 MR. HEISS: Correct, your Honor.

18 THE COURT: Does the intervenor have any

19 questions?

20 MR. KRISLOV: Could I have one second, your

21 Honor?

22 THE COURT: Certainly.

23 MR. KRISLOV: No questions, your Honor.

24 MR. FORDE: I move Exhibit 25 into evidence,

1 your Honor.

2 THE COURT: Any objection to Exhibit 25, Ms.

3 Beckett?

4 MS. BECKETT: No.

5 THE COURT: Strike the identification marks, 25

6 will be received.

7 Do you have any cross-examination?

8 MS. BECKETT: Yes.

9 THE COURT: You may proceed, Ms. Beckett.

10 CROSS-EXAMINATION

11 BY MS. BECKETT:

12 Q. Officer Wilhelm, as an active police

13 officer, you're a member of the Fraternal Order of

14 Police, are you not?

15 A. Yes, ma'am.

16 Q. And you have been since the, what, early

17 1980s'?

18 A. Prior to that.

19 Q. Longer than that?

20 A. Yes, I have.

21 Q. And the City and the Fraternal Order of

22 Police have been in, had collective bargaining

23 agreements in effect since about the early 1980s?

24 A. Yes.

Q. Or even before that?

A. Yes.

Q. And as far as you know, those agreements are still in effect today?

A. Yes, ma'am.

Q. And most officers are generally aware of the terms and conditions contained within the agreement?

A. Yes, we are.

MS. BECKETT: No more questions.

THE COURT: Any redirect?

MR. FORDE: No redirect.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Whereupon, no further testimony was had of this witness at this time.)

THE COURT: What's your pleasure as to any more witnesses this morning?

MS. VEERHUSEN: We have a number of people ready to go.

THE COURT: All right.

Why don't we keep going. We'll go until about 12:30 and then we'll break for lunch.

1 MS. VEERHUSEN: Defendants call Edwin Ogonowski.
2 EDWIN OGONOWSKI,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 THE COURT: I want you to state your full name,
6 spell your last name, and keep your voice up.
7 THE WITNESS: Edwin Peter Ogonowski.
8 O-g-o-n-o-w-s-k-i.
9 THE COURT: Your witness.
10 BY MS. VEERHUSEN:
11 Q. Mr. Ogonowski, where do you live?
12 A. 4836 South Harding.
13 Q. And how old are you, sir?
14 A. 63.
15 Q. Are you currently employed?
16 A. Yes, at this time.
17 Q. And by whom?
18 A. Chicago Police Department.
19 Q. How long have you been a policeman?
20 A. 32 years.
21 Q. Do you have retirement plans, sir?
22 A. Yes.
23 Q. When do you anticipate retiring?
24 A. Just prior to the 31st of December.

1 Q. Have you had occasion to attend a
2 preretirement seminar?
3 A. Yes.
4 Q. Do you recall when it was?
5 A. A copy, 29th of September, 27th. 29th of
6 September.
7 Q. I'm showing the witness what's been marked
8 Defendants' Exhibits 25, and ask whether that is the
9 agenda from the seminar you attended?
10 A. Yes.
11 Q. Was the subject of retiree health benefits
12 addressed at that seminar?
13 A. Yes.
14 Q. And was the cost of retiree health benefits
15 also addressed?
16 A. Yes.
17 Q. Was the person who spoke on that subject a
18 City employee?
19 A. This person was replaced by a woman, I
20 don't know her name.
21 But James Procose was not there.
22 Q. Can you tell us what was said about
23 the cost to yourself as far as retiree health
24 benefits?

A. The cost to us, we'd never have to pay even after we retire, just for dependents; that's all.

Q. Mr. Ogonowski, will the cost of your health benefts in the future have any bearing on whether you look for new work after you retire?

A. Yes, I would have to.

Q. Before this lawsuit began last fall, were you aware of the fact that retired City employees were allowed to participate in the City's medical benefits plan?

A. Yes.

Q. And what did you understand, if anything, about who paid the cost of the retired employees' coverage?

A. The City of Chicago, full cost.

Q. Did you have -- pardon me?

A. The City of Chicago, full cost.

Q. Did you have any discussions with other active policemen about this practice?

A. Yes.

Q. And were they generally aware of it as well?

A. That's right.

1 MS. VEERHUSEN: Thank you.
2 I have no further questions for this
3 witness.
4 THE COURT: Mr. Burns?
5 MR. BURNS: One question.
6 CROSS-EXAMINATION
7 BY MR. BURNS:
8 Q. Am I correct in understanding that as an
9 active City employee, there is no cost for the
10 policeman to participate in the medical insurance
11 program with the City?
12 A. That's right, no cost before retirement as
13 an active.
14 Q. And your understanding was there'd be no
15 cost after retirement?
16 A. That's right, understood.
17 THE COURT: Any questions for the Laborers
18 administration?
19 MR. HEISS: Pass.
20 THE COURT: Intervenor?
21 MR. KRISLOV: No, your Honor.
22 THE COURT: Cross-examination, Ms. Beckett?
23 MS. BECKETT: No.
24 THE COURT: You may step down, sir.

(Whereupon, no further testimony was heard of this witness at this time.)

MR. HEISS: Your Honor, the Laborers and Municipal Right would call Mr. Scacchitti to the witness stand.

We can put him next to the court reporter.

THE COURT: Certainly may.

BENEDICT J. SCACCHITTI,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: I want you to state your full name for the record, spell your last name.

THE WITNESS: Benedict J. Scacchitti, S-c-a-c-c-h-i-t-t-i.

CROSS-EXAMINATION

BY MR. HEISS:

Q. Mr. Scacchitti, where do you live?

A. 5222 West Melrose.

Q. And is that in Chicago?

A. Yes.

Q. How old are you?

A. 69.

Q. Are you married?

A. Yes.

Q. Is your wife living?

A. Yes.

Q. Are you retired from the City of Chicago?

A. Yes.

Q. How long did you work for the City of Chicago?

A. 42 years.

Q. Did you ever have any other employer in the last 42 years?

A. No.

Q. Do you receive Social Security?

A. No.

Q. When you, who was your last -- what was your last department when you retired from the City of Chicago?

A. Bureau of Public Works.

Q. What is your gross monthly -- I mean, what is your monthly annuity after they take out your taxes and your health care, Ben?

A. $168 a month.

Q. You're talking about $1,068 a month?

A. Yes.

Q. Now, for you, your health care costs $55.

1 Is that correct?
2 A. Right.
3 Q. And there's a supplement, so you pay $30,
4 is that right?
5 A. Yes.
6 Q. And in addition to that, you pay $55 for
7 your wife?
8 A. Yes, yes.
9 Q. Now, of course, when you gave us that
10 figure of 41,068, that money has already been
11 removed from that figure, isn't it, Ben?
12 A. Yes, yes.
13 Q. The address that you live at, is that a
14 home?
15 A. Yes.
16 Q. Is the mortgage paid for on that home?
17 A. No.
18 Q. After you've paid for your mortgage and
19 your electricity and the other necessities,
20 including food, how much per month do you have left
21 to spend?
22 A. Average, $168 to $138.
23 Q. What would, what effect would it have to
24 double the premiums that are to be charged to you?

A. Be disastrous. I wouldn't be able to cover it.

Q. What's your physical condition now, Ben?

A. I'm blind, I had double bypass surgery, quadruple, and I'm diabetic.

I had a stroke.

Q. And this came when -- when did you retire from the City?

A. December 31st, 1986.

Q. When did you have the stroke?

A. Immediately after. I had the stroke on the day I retired, December 31st.

Q. With regard to the quadruple bypass, what was the cost, the hospital cost of that surgery?

A. The cost on the one when I was first admitted was $68,000; and the second time I went in for the heart surgery was $69,000.

Q. Now, you're covered by the City of Chicago Annuitant Medical Care Plan, and you were covered at the time of these surgeries?

A. Yes.

Q. And they, the plan picked up 80 percent of that?

A. Yes.

1 Q. Now, you're not covered by Medicare A?
2 A. No.
3 Q. But you're covered by Medicare B, is that
4 correct?
5 A. Yes.
6 Q. Now, at the time when you had the
7 surgeries, Ben, if the City had cancelled the plan
8 prior to the surgery like they want to do now or at
9 least they told us they want to do it now, and you
10 didn't have any insurance, could you afford to pay
11 those bills?
12 A. No, no way.
13 Q. During your terms for the City that you'd
14 been working for the City of Chicago, has it been
15 your undestanding that when you went to retirement,
16 tha the City would provide medical coverage for you
17 and your wife?
18 A. Yes.
19 Q. Then was it your assumption that they would
20 provide that for your wife in the case of your
21 death?
22 A. Yes.
23 Q. Is that assumption based on your working
24 for, with other employees at the same time and you

1 were told that by your supervisors or while you were
2 working for the City of Chicago?
3 A. Yes.
4 Q. When you left in '86, Ben, what did you
5 think that the rate structure was going to be? The
6 amount that you had to pay or the amount that was
7 deducted from your check?
8 A. The amount that was deducted from my check.
9 Q. And it was going to continue at that same
10 rate until the day you --
11 A. Yes, yes.
12 Q. Until the day you died, is that correct?
13 A. Yes.
14 Q. The City ever give you any other
15 understanding that your insurance benefits were such
16 that they could take them away from you at any time
17 in your retirement?
18 A. No.
19 Q. Did they ever give you any understanding
20 that they could raise the premiums to the extent
21 that you couldn't afford to even have coverage in
22 your retirement?
23 A. No.
24 MR. HEISS: Your Honor, I have no further

1 questions.

2 Thank you very much.

3 THE COURT: Any questions from Fire?

4 MR. BURNS: No questions.

5 THE COURT: Any questions from Police?

6 MR. FORDE: No.

7 THE COURT: Intervenor?

8 MR. KRISLOV: No, your Honor.

9 THE COURT: Any questions, Ms. Beckett?

10 MS. BECKETT: No, your Honor.

11 THE COURT: The witness will be excused.

12 Thank you very much.

13 (Whereupon, no further testimony

14 was heard from this witness at

15 this time.)

16 THE COURT: Call your next one.

17 MS. VEERHUSEN: Defendants call Bernard Sweeney.

18 BERNARD PATRICK SWEENEY,

19 called as a witness herein, having been first duly

20 sworn, was examined and testified as follows:

21 THE COURT: Atate your full name, spell your

22 last name, keep your voice up.

23 THE WITNESS: Bernard Patrick Sweeney,

24 S-w-e-e-n-e-y.

1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MS. VEERHUSEN:

4 Q. Where do you live, Mr. Sweeney?

5 A. 3804 West 110th Place, City of Chicago.

6 Q. And how old are you?

7 A. 58.

8 Q. Are you currently employed?

9 A. No, ma'am.

10 Q. By whom were you last employed?

11 A. The City of Chicago, Police Department.

12 Q. In what capacity did you work with the

13 Police Department?

14 A. I was a police officer.

15 Q. For how long?

16 A. 32 years.

17 Q. And when did you retire?

18 A. January the 15th, 1987?

19 Q. Are you presently covered by the City

20 Annuitant Medical Benefits Plan?

21 A. Yes, ma'am.

22 Q. And what do you pay for your coverage?

23 A. The coverage for my wife and I is $55 per

24 month.

1 Q. Do you know if that's for your coverage or
2 your wife's, or a combination?
3 A. Well, it's for her coverage. Mine is paid
4 in total by the City.
5 Q. Before you retired, did you attend a
6 preretirment seminar?
7 A. Yes.
8 Q. Do you recall when it was?
9 A. It was in 1986. I can't remember the exact
10 time.
11 Q. Did you have any particular reason for
12 being interested in attending that seminar?
13 A. Yes, ma'am.
14 Q. And what was that?
15 A. The health insurance plan.
16 Q. The coverage or the costs?
17 A. The coverage and the costs and how long it
18 would be extended.
19 Q. Was the subject of retiree health benefits
20 and the cost of those benefits discussed at the
21 seminar?
22 A. Yes.
23 I brought it up myself.
24 Q. And how did you bring it up?

1 A. Well, there was so many rumors going around
2 that I wanted to find out if you retire, was our
3 insurance going to be cancelled, continued, or what?
4 And what benefits my wife would have.
5 So this gentleman who was running the
6 seminar, he said he was from the City of Chicago and
7 he was their agent, and I asked him the question,
8 what are the benefits for my wife and I after
9 retirement.
10 And he stated that you'd be fully covered
11 by the plan as it stands now. When you take your
12 retirement, you're locked in.
13 And that's it, there'd be no cancellation
14 or anything.
15 Q. And did he say anything specifically about
16 the cost?
17 A. The cost would be at the present rate that
18 I was paying for my wife, $55 a month.
19 Q. And for yourself?
20 A. Zero.
21 Q. Didyou retire sooner than you had to,
22 Mr. Sweeney?
23 A. Yes.
24 Yes, ma'am. I could have went on a few

1 more years. At that time, you could go on until you
2 were 70, so I went actually 12 years sooner than I
3 went.
4 Q. And was the cost of your health coverage a
5 factor you considered when you decided to retire
6 early?
7 A. That was a big factor, yes, ma'am.
8 MS. VEERHUSEN: I have no further questions of
9 this witness, your Honor.
10 THE COURT: Fire, any questions?
11 MR. BURNS: No questions.
12 THE COURT: Laborers, or Municipals?
13 MR. HEISS: No questions.
14 THE COURT: Intervenor?
15 MR. KRISLOV: No questions, your Honor.
16 THE COURT: Cross-examination?
17 MS. BECKETT: No.
18 THE COURT: You may step down, Mr. Sweeney.
19 Thank you very much.
20 (Whereupon, no further testimony
21 was heard of this witness at
22 this time.)
23 THE COURT: Call your next witness.
24 MR. HEISS: Sam Venturella, please.

1 SAM VENTURELLA,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 THE COURT: For the record, please state your
5 full name, spell your last name.
6 THE WITNESS: Sam Venturella,
7 V-e-n-t-u-r-e-l-l-a.
8 THE COURT: Your witness, sir.
9 DIRECT EXAMINATION
10 BY MR. HEISS:
11 Q. Where do you live, Mr. Venturella?
12 A. 6331 North Fairfield, Chicago.
13 Q. Are you retired from the City of Chicago?
14 A. I'm a retired employee of the City of
15 Chicago.
16 Q. How long were you employed by the City of
17 Chicago?
18 A. 24-1/2 years.
19 THE COURT: How many?
20 THE WITNESS: 24-1/2.
21 BY MR. HEISS:
22 Q. When did you retire?
23 A. In February of 1986.
24 Q. You're covered under the City of Chicago

1 Annuitant Medical Benefits Plan?
2 A. Yes, I am.
3 Q. Is your wife covered under that plan?
4 A. Yes, she is.
5 Q. Now, for your wife, you pay $55 for her
6 coverage?
7 A. Yes, I do.
8 Q. And under your coverage, do you qualify for
9 Medicare?
10 A. Yes, I do.
11 Q. And that's since you've been age 65,
12 correct?
13 A. Yes.
14 Q. Prior to that time that you were age 65,
15 you were not covered by Medicare?
16 A. I was not covered by Medicare.
17 Q. And at that time you were paying $55 for
18 your own coverage?
19 A. For my own coverage, yes.
20 Q. Now, since the fact that you're 65 and
21 have 15 years of service, for you alone the
22 pension fund pays that amount, is that correct, of
23 $21?
24 A. $21 a month, yes.

1 Q. Now, when you were an active employee
2 for the City of Chicago, immediately before or
3 within a few short months before you retired, you
4 were covered by some medical plans, is that
5 correct?
6 A. Yes, I was.
7 Q. And what plan were you covered by?
8 A. HMO.
9 Q. And at the time that you left employment,
10 then you were told that you would have to come into
11 the Annuitant Plan?
12 A. Yes, I was.
13 Q. At the time, at the time that you came
14 into the Annuitant Medical Plan, did you check
15 about remaining in an HMO for yourself?
16 A. Yes, I did.
17 Q. And what did you find out?
18 A. I found out the coverage would run about
19 $350, $360 a month.
20 Q. And that would have been the coverage as an
21 individual, for you and your wife?
22 A. For me and my wife.
23 Q. So obviously you couldn't afford that and
24 you went into the City plan?

1 A. I could not afford that.
2 Q. I'm going to show you what is marked
3 Exhibits No., Municipal Exhibits No. 2 and 3.
4 One of them bears your name of Sam
5 Venturella, and ask you what that is?
6 A. This is identification card for the City of
7 Chicago Medical Care Plan for Annuitants.
8 Q. Was this the card that was issued to you by
9 the City of Chicago when you retired?
10 A. Yes, it was, by the City Health Benefits
11 Office.
12 Q. I'm going to show you what has been marked
13 Municipal Exhibit No. 3, and ask you if that is also
14 a card that was given to you by or submitted to you
15 by the City of Chicago?
16 A. Yes, it is.
17 Q. And does that bear the benefits number on
18 it 794-5100? Is that where you called benefit
19 questions?
20 A. Yes.
21 Q. Now, you have this card in your wallet
22 right now, is that correct?
23 A. Yes, I have.
24 Q. We did this so we can introduce it into

1 evidence.

2 Now, on one side of the card it said your

3 employee benefits adviser, does it not?

4 A. Yes.

5 Q. And that was the card that was given to

6 you, however, after you retired?

7 A. Yes, it is.

8 Q. During your 24 years of service for the

9 City, was it your understanding that when you were

10 in retirement that the City would maintain a benefit

11 plan for you?

12 A. Yes, it is.

13 Q. How was that? Why was that your

14 understanding?

15 A. I don't recall any specifics about that.

16 But that was almost common knowledge, as far as I

17 was concerned, that the benefits would continue on

18 into retirement.

19 Q. And was it with your discussion with

20 fellow employees that the benefits would

21 continue?

22 A. Yes.

23 Q. Did in fact in your case you had a change

24 from the coverage that you had into a different

1 coverage. Is that correct?

2 A. Yes.

3 Q. And what about the payment, was it your

4 understanding that the payment that you paid for

5 your wife would remain constant?

6 A. Yes.

7 Q. Did anybody ever indicate to you that you

8 were not going to have coverage from the City in

9 your retirement?

10 A. At no time.

11 MR. HEISS: Thank you.

12 Ms. Beckett, I'd like to offer 2 and 3. Did

13 you want to cross on 2 and 3, this last 2 and 3 that

14 have been offered?

15 MS. BECKETT: I have no objection.

16 THE COURT: Strike the identification marks, 2

17 and 3 will be received.

18 But before you go any further, whom did

19 you work for in the City of Chicago?

20 THE WITNESS: I last worked for the Department

21 of Economic Development.

22 Prior to that, it was the Department of

23 Planning.

24 THE COURT: Thank you.

1 Fire have any questions?
2 MR. BURNS: I don't know if the record shows
3 your age.
4 THE COURT: Yes, it does.
5 MR. BURNS: Okay.
6 THE COURT: 58 -- no, strike that.
7 MR. HEISS: That's how he looks.
8 THE WITNESS: I'm 66.
9 THE COURT: No, it does not, good point. 66
10 years old, thank you.
11 Police have any questions?
12 MR. FORDE: No questions, your Honor.
13 THE COURT: Intervenor?
14 MR. KRISLOV: No, your Honor.
15 THE COURT: Any further questions, Fire?
16 MR. BURNS: No, your Honor.
17 THE COURT: Cross-examination, Ms. Beckett?
18 MS. BECKETT: One question.
19 THE COURT: Certainly
20 CROSS-EXAMINATION
21 BY MS. BECKETT:
22 Q. Mr. Venturella, were you ever a member of
23 the labor union while working for the City?
24 A. No, I was not.

1 THE COURT: You may step down, sir.
2 (Whereupon, no further testimony
3 was heard of this witness at
4 this time.)
5 THE COURT: Call your next witness.
6 MS. VEERHUSEN: Defendants call Robert
7 Shackleton.
8 ROBERT JAMES SHACKLETON,
9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:
11 THE COURT: For the record, please state your
12 full name, spell your last name.
13 THE WITNESS: Robert James Shackleton,
14 S-h-a-c-k-l-e-t-o-n.
15 DIRECT EXAMINATION
16 BY MS. VEERHUSEN:
17 Q. Mr. Shackleton, where do you live?
18 A. I live at 5921 South Oak Park, Chicago.
19 Q. And how old are you, sir?
20 A. 55.
21 Q. Are you currently employed?
22 A. Yes.
23 Q. By whom?
24 A. Chicago Police Department.

1 Q. In what capacity?
2 A. Patrolman.
3 Q. And how long have you worked as a
4 patrolman?
5 A. 30 years.
6 Q. Do you have any, presently have any plans
7 to retire, Mr. Shackleton?
8 A. Yes, I do.
9 Q. Could you tell us what your plans are?
10 A. Well, my plans are to move out of state,
11 retiring because of my wife's health.
12 Q. And what is the condition of your wife's
13 health?
14 A. Well, she had a bout with cancer last year.
15 Q. And how is your health, sir?
16 A. Well, I'm a diabetic.
17 Q. Have you determined a definite retirement
18 date?
19 A. I had, but due to what's happening now, the
20 plans are on hold.
21 Q. When you refer to what's happening now, are
22 you referring to the current litigation?
23 A. Yes.
24 Q. With regard to your plans to move out of

1 state, have you determined where you're moving to?
2 A. Yes.
3 Before all this took place last year, after
4 I attended the retirement seminar, we bought a home
5 in Arkansas.
6 Q. Have you attended a preretirement seminara,
7 Mr. Shackleton?
8 A. Yes.
9 Q. And was the subjec of the cost of retiree
10 health benefits discussed at that seminar?
11 A. yes, it was.
12 Q. Was it a City employee who discussed that
13 subject?
14 A. Yes.
15 Q. And can you tell us what was said about the
16 cost of your benefits after you retired?
17 A. They stated the benefits would remain the
18 same and there would be, mine would be paid for and
19 there would be a cost for the wife of $55.
20 MS. VEERHUSEN: I have no further questions for
21 this witness, your Honor.
22 THE COURT: Fire?
23 MR. BURNS: No, your Honor.
24 THE COURT: Muncipals and Labor?

MR. HEISS: I'm sorry, we have no questions.

THE COURT: Intervenor?

MR. KRISLOV: No, your Honor.

THE COURT: City of Chicago, cross-examination? You may step down, sir.

(Whereupon, no further testimony was heard of this witness at this time.)

THE COURT: Any other witnesses?

MR. HEISS: Mr. Hince.

FRED HINCE,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: For the record, please state your full name.

THE WITNESS: My name is Fred Hince, H-i-n-c-e.

DIRECT EXAMINATION

BY MR. HEISS:

Q. Where do you live?

A. 8454 West Katelpa in the City of Chicago.

Q. How old are you?

A. 72.

Q. By whom are you currently employed?

A. Department of Electricity, City of Chicago.

1 Q. How long have you been employed by the City
2 of Chicago?
3 A. 41 years.
4 Q. Are you a member of any local union?
5 A. I a member and the president of Local Union
6 No. 9, the International Brotherhood of Electric
7 Order.
8 Q. Are you familiar with the health care
9 benefits that are provided retirees, retired workers
10 for the City of Chicago?
11 A. Yes, sir.
12 Q. When did you become familiar with the idea
13 that retirees were covered by health care?
14 A. Well, I've been, followed all through my
15 career as a City employee.
16 At one time, I was president of the
17 Municipal Employment Society and as such I got
18 involved in that.
19 People would ask me questions and I had to
20 have the answers, so I've been aware of them.
21 Q. And were people generally told that they
22 would be covered while they were retired?
23 A. That was the general understanding.
24 Q. What effect did the fact that there was,

1 the person is covered in retirement have on you with
2 regard to your employment with the City of Chicago?
3 A. Well, I'm a journeyman mechanic and I can
4 have any job out of the local union that I wanted
5 because I could do it, I signed the business
6 manager's pay check.
7 I could have any job I wanted, I could have
8 gone to the contractors and made a lot more money;
9 but I stayed with the City of Chicago for two
10 reasons: One was for the pension benefits, and the
11 other was for the health care coverage.
12 Q. And is it your understanding that your
13 fellow workers have continued to work for the City
14 of Chicago for the same reason?
15 A. We've discussed that on many occasions and
16 there's many that stayed for that same reason.
17 MR. HEISS: Thank you.
18 I have no further questions.
19 THE COURT: Fire, any questions?
20 MR. BURNS: No, your Honor, none.
21 MR. FORDE: No, your Honor.
22 MR. KRISLOV: No, your Honor.
23 THE COURT: Police, none. Intervernor, none.
24 Cross-examination, Ms. Beckett?

1 MS. BECKETT: One moment, we're conferring.
2 THE COURT: Sure.
3 CROSS-EXAMINATION
4 BY MS. BECKETT:
5 Q. Hi.
6 Mr. Hince, you have stated that you are
7 president of your Local of the IBEO, No. 9?
8 A. For 26 years.
9 Q. So I take it you are familiar with the
10 collective bargaining agreement that your local has
11 entered into with the City of Chicago?
12 A. Fairly familiar.
13 Q. Okay.
14 I'm going to show you what has been marked
15 as City's Exhibit No. 32 for identification.
16 Have you seen this document before?
17 A. Sure.
18 Q. What is that?
19 A. This copy of this, this is a copy of our
20 contract with the City of Chicago. Everybody in our
21 Local Union works for the City of Chicago gets, got
22 a copy of that.
23 Q. Is that still in effect today?
24 A. Best of my knowledge.

1 MS. BECKETT: Okay.

2 At this time I'd like to move for the

3 admission of this into evidence.

4 MR. FORDE: Object on the timeliness, it's not

5 her case.

6 THE COURT: Beg your pardon?

7 MR. FORDE: We're not in her case.

8 THE COURT: I'm aware of that.

9 Do you want to call the witness back as

10 your witness or can't, can there be an agreement?

11 I'm only trying to facilitate.

12 MR. FORDE: Okay.

13 MR. HEISS: I don't have any problem with it,

14 but I would like a chance to review it because I

15 haven't got it, and I can see it's 40 pages. And I

16 don't want to do it now.

17 THE COURT: For the purposes of the record, it's

18 been identified by the witness as the collective

19 bargaining agreement.

20 It's his belief that it's still in effect,

21 give them an opportunity to look at it, then renew

22 your motion to have it introduced because I don't

23 want to inconvenience the witness by making him come

24 back.

1 THE WITNESS: I'd be glad to come back.
2 MR. KRISLOV: Can we have a full copy? This has
3 like three pages.
4 MS. BECKETT: I stand so advised.
5 May I proceed to examine the witness
6 concerning the particular pages that I've made
7 available to counsel?
8 THE COURT: Sure, you may proceed.
9 MR. HERBERT: Excuse me one minute, your Honor.
10 MS. BECKETT: Apparently Page 15 was miscopied.
11 I believe I gave it to Ms. Veerhusen, an entire
12 copy.
13 MS. VEERHUSEN: That's correct.
14 BY MS. BECKETT:
15 Q. Mr. Hince, I'd like to draw your attention
16 to Article 6, Page 15 of what has been marked for
17 identification as the City's Exhibit No. 32, if you
18 could take a moment to turn to that page.
19 A. Well, what page?
20 Q. 15.
21 A. I'm telling you something, young lady --
22 MR. HEISS: No.
23 THE COURT: No.
24 THE WITNESS: Okay, I'm sorry.

1 THE COURT: There's no question posted.
2 THE WITNESS: Don't shoot me.
3 THE COURT: Go ahead, Ms. Beckett.
4 BY MS. BECKETT:
5 Q. Is this the provision of the contract
6 between the IBEO and the City that governs health
7 care benefits for active employees?
8 A. I don't know.
9 Q. But you are the president of the local?
10 A. I'm the president of the local, but I don't
11 bargain, okay. We have a business manager who we
12 elect and pay for that.
13 MR. FORDE: Your Honor, I believe the question
14 has been answered by the witness.
15 THE COURT: Objection sustained.
16 BY MS. BECKETT:
17 Q. Is it your belief that you, as an active
18 employee, receive health benefits as one of the
19 benefits provided to you pursuant to the contract of
20 employment?
21 A. That's correct.
22 Q. May I direct your attention to Article 19
23 which begins at Page 40 of this document.
24 I'll withdraw that question at this time

1 and reserve the right to offer this into evidence
2 during the presentation of my case this afternoon.
3 I have no more questions, Mr. Hince.
4 THE COURT: Any further questions?
5 MR. FORDE: No, your Honor.
6 THE COURT: Any redirect?
7 MR. BURNS: Maybe I might have a few questions.
8 CROSS-EXAMINATION
9 BY MR. BURNS:
10 Q. Mr. Hince, you mentioned that as a
11 journeyman electrician you could work outside.
12 If you worked for a contractor in the
13 Chicago area, would contributions be made to a
14 health care program as a result of your employment?
15 A. Well, you made a misstatement. I didn't
16 say electrician, I said I'm a lineman. There's a
17 difference.
18 But the answer to your question with that
19 correction is yes.
20 Q. And does Local 9 have a health care plan
21 covering employees of the contractors who work in
22 the, who employ linemen within the jurisdiction of
23 Local 9?
24 A. Yes, they do.

1 Q. Okay.

2 And does the City contribute to that health

3 care plan?

4 A. No.

5 Q. And how long has the City been providing

6 linemen with health care coverage at no cost to the

7 active employee?

8 A. I can't give you a date. Ever since Mayor

9 Daley started to pay it for us. I've been covered

10 since then, to a small degree; and then so now I got

11 full coverage.

12 MR. BURNS: Nothing further.

13 THE COURT: Anything further on cross?

14 MS. BECKETT: No.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 (Whereupon, no further testimony

18 was heard of this witness at

19 this time.)

20 THE COURT: All right, it's 25 to 1:00. How

21 many more you got?

22 MS. VEERHUSEN: Your Honor, could we put one

23 more short one on? The woman who needs to get back

24 to work, and her husband if necessary.

1 THE COURT: We'll accommodate her.

2 MR. HEISS: I have one, too, your Honor; that's

3 a question of health, not just to get back to work.

4 It'll be very short.

5 MS. VEERHUSEN: Maryann Hester.

6 MARYANN HESTER,

7 called as a witness herein, having been first duly

8 sworn, was examined and testified as follows:

9 THE COURT: For the record, would you please

10 state your full name, keep your voice up, spell your

11 last name.

12 THE WITNESS: Maryann Hester, H-e-s-t-e-r.

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY MS. VEERHUSEN:

16 Q. Where do you live, Mrs. Hester?

17 A. 5855 West Roscoe in Chicago.

18 Q. Are you married?

19 A. Yes, I am.

20 Q. Is your husband employed?

21 A. He's retired.

22 Q. And by whom was he employed before he

23 retired?

24 A. Chicago Police Department.

1 Q. In what capacity?
2 A. Patrol officer.
3 Q. How long did he work as a patrol officer?
4 A. About 32, 33 years.
5 Q. Are you or your husband presently covered
6 by the City of Chicago Annuitant Medical Benefits
7 Plan?
8 A. We both are.
9 Q. Before your husband retired, did either one
10 of you attend a preretirement seminar?
11 A. We both did.
12 Q. Let me show you what has been marked
13 Defendants' Exhibits 22 and 23 for identification
14 and ask whether you have seen those documents
15 before.
16 A. Yes, I have.
17 Q. Did you send those documents to me at my
18 request?
19 A. Yes, I did.
20 Q. And is Exhibit 23 a copy of the agenda from
21 the seminar that you and your husband attended?
22 A. Yes, it is.
23 Q. Does it indicate that anyone spoke about
24 health benefits for retirees?

1 A. Indicates a James Procose from the Risk and
2 Benefit Management Office of the City of Chicago.
3 Q. Do you recall whether the person who spoke
4 actually identified himself as James Procose?
5 A. That, I'm not sure. I know it was a man.
6 Q. Do you recall anything being said about the
7 cost of retiree health coverage at that seminar?
8 A. The retiree would be covered, be given full
9 coverage without charge. Benefits for the wife and
10 for dependent children until 18 or while they were a
11 full-time student would be withdrawn from the
12 pension with the pensioner's approval. It would be
13 a maximum, I believe, of $95, with $55 for one
14 dependent.
15 Q. Mrs. Hester, did you have occasion to take
16 any notes regarding what ws said at the seminar?
17 A. I'm a public stenographer, I always take
18 notes.
19 Q. And I ask whether the second and third
20 pages of Exhibit 22 are a true copy of the notes you
21 did take at that seminar?
22 A. Yes, they are.
23 Q. Did you at some point transcribe your
24 shorthand notes?

A. Yes, I transcribed them, and mailed them to you.

Q. And is the first page of Exhibit 22 the transcription you made?

A. Yes, it is.

Q. Do the words on that page accurately reflect what's on the second and third pages?

A. Yes, they do.

Q. And could you read the short section that refers to the cost of retiree health benefits?

A. Where are we at?

Q. I believe it's the second paragraph under.

A. City pays hospitalization for retiree for life or until he is eligible for Medicare, at which time the City pays for supplemental insurance.

MS. VEERHUSEN: Your Honor, I move that Defendants' Exhibits 22 and 23 be admitted into evidence.

THE COURT: Any objections?

MS. BECKETT: No.

THE COURT: Strike the identification marks, 22 and 23 received.

MS. VEERHUSEN: I have no further questions.

THE COURT: Fire, any questions -- hold it.

1 BY MS. VEERHUSEN:

2 Q. One more question, Mrs. Hester.

3 Do your notes regarding the cost of the

4 coverage accurately reflect what was actually told

5 to you at that seminar?

6 A. Do my notes?

7 Q. Right, do your notes accurately, correctly

8 reflect what was actually said at the seminar?

9 A. Yes, by the speaker.

10 MS. VEERHUSEN: Thank you.

11 THE COURT: Fire, any questions?

12 MR. BURNS: No questions, your Honor.

13 THE COURT: Laborers, Municipal?

14 MR. HEISS: None, your Honor.

15 THE COURT: Intervenor?

16 MR. KRISLOV: None, your Honor?

17 THE COURT: Any cross-examination, Ms. Beckett?

18 MS. BECKETT: No.

19 THE COURT: You may step down.

20 MS. VEERHUSEN: Your Honor, we also have Mr.

21 Hester here who was prepared to take the stand,

22 unless the City would care to stipulate that if

23 asked the same questions about the seminar which he

24 attended with his wife, his answers would be the

1 same.

2 MS. BECKETT: We will so stipulate.

3 THE COURT: What's Mr. Hester's first name.

4 MS. VEERHUSEN: James, I believe.

5 THE COURT: Mr. James Hester is called to the

6 stand, his testimony would be the same as his

7 wife's, so stipulated.

8 MS. BECKETT: Yes.

9 THE COURT: I take it that Laborers has one

10 more?

11 MR. HEISS: There's actually two more people.

12 One, even though they're not related, his testimony

13 would be very similar and cumulative.

14 THE COURT: Whatever your pleasure is, Counsel.

15 CONSTANCE BECKER,

16 called as a witness herein, having been first duly

17 sworn, was examined and testified as follows:

18 THE COURT: Please state your full name, keep

19 your voice up, spell your last name.

20 THE WITNESS: Constance Becker, B, like in boy,

21 e-c-k-e-r.

22 DIRECT EXAMINATION

23 BY MR. HEISS:

24 Q. Mrs. Becker, where do you live?

1 A. 2124 North Sedgwick, Chicago.
2 Q. How old are you?
3 A. 73.
4 Q. Had to do it here.
5 You never worked for the City of Chicago?
6 A. No, my husband did.
7 Q. And your husband retired when?
8 A. Well, he died of cancer in '84.
9 Q. Now, you're covered under the retiree
10 health care plan, the Annuitant Health Care Plan, is
11 that correct?
12 A. Right.
13 Q. And you receive an annuity from the pension
14 fund, correct?
15 A. Right.
16 Q. And what is your annuity per month after
17 they take out the amount?
18 A. 27776.
19 Q. 27776 is your monthly pension check,
20 correct?
21 A. Right.
22 THE COURT: 27776, that's $277.76?
23 BY MR. HEISS:
24 Q. I'm sorry, yes.

1 And that is after they have deducted $55?
2 A. No, $21.
3 Q. $21 because you're Medicare eligible, is
4 that correct?
5 A. Right.
6 Q. Now, when your husband was employed and
7 alive, working for the City of Chicago did you have
8 occasion to discuss with him the facts of retiree
9 health care for yourself and for him?
10 A. Well, just established that if anything
11 happened to him I would be protected.
12 Q. And was that your understanding, did he
13 give you that understanding from his employment?
14 A. Right.
15 Q. Was that important for his employment to
16 continue to remain with the City of Chicago the fact
17 that it was the anticipated health care benefits
18 would be in place for him, or for you, upon his
19 retirement?
20 A. Right.
21 MR. HEISS: I have no further questions.
22 THE COURT: Fire?
23 MR. BURNS: One question.
24

1 CROSS-EXAMINATION

2 BY MR. BURNS:

3 Q. Was your husband an active employee at the

4 time of his death, Mrs. Becker?

5 A. Yes, he became suddenly ill and he died in

6 a year and a half of cancer.

7 MR. BURNS: Okay, I have no further questions.

8 MR. FORDE: No questions for Police.

9 THE COURT: Intervenor?

10 MR. KRISLOV: No, your Honor.

11 THE COURT: Any cross-examination, Ms. Beckett?

12 MS. BECKETT: No.

13 THE COURT: You may step down, please be

14 carefuly on the steps.

15 (Whereupon, no further testimony

16 was heard of this witness at

17 this time.)

18 THE COURT: Call your next witness.

19 MR. FORDE: Your Honor, it's now 12:45 and we

20 have imposed on your lunch hour to a considerable

21 degree and we appreciate it to accommodate these

22 people.

23 We're at a point where I think it's obvious

24 to the Court, it's even becoming obvious to us that

our proof is getting cumulative, and I think that at this point we'd suggest we adjourn for the recess and we take a look at that.

But we have other witnesses, but they would be saying essentially the same thing.

THE COURT: I appreciate that, Mr. Forde, but I'm here to accommodate all parties involved in this case.

MR. FORDE: And I don't believe there is going to be any evidence to contradict the evidence that we've put on, so I think we'll take a look at that and see if we can't eliminate some of the cumulative proof.

THE COURT: Might I suggest this, then.

Let us recess until about 10 minutes after 2:00, the reason I say 10 minutes after 2:00 is so I can accommodate a 2:00 o'clock call and some name changes that we expect to come in.

And we'll reconvene the trial at 10 minutes after 2:00.

(Whereupon, Court was recessed until Tuesday, June 21st, 1988, at 2:10 o'clock p.m.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4
5 SUSAN BYSTRON, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid, and contains all the proceedings given
12 at said hearing.
13
14 Susan M. Bystron CSR
15 SUSAN BYSTRON
16 SUBSCRIBED AND SWORN TO
17 before me this 24, day
18 of June 1988.
19 Thomas Waclawek
20 Notary Public
21 OFFICIAL SEAL
THOMAS WACLAWEK
22 NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. MAR. 7,1992
23
24

1 STATE OF ILLINOIS)
2) ss:
3 COUNTY OF COOK)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION
6 CITY OF CHICAGO, a
7 municipal corporation,)
8 Plaintiff,)
9 vs.) No. 87 CH 10134
10 MARSHALL KORSHAK, et al.,)
11 Defendants.)
12 REPORT OF PROCEEDINGS at the trial of the
13 above-entitled cause before the Honorable ALBERT
14 GREEN, Judge of said Court, on the 21st day of June
15 1988 at the hour of 2:10 o'clock p.m.
16 APPEARANCES:
17 HON. JUDSON K. MINER
18 Corporation Counsel
19 BY: MS. AMY LOUISE BECKETT,
20 Assistant Corporation Counsel
21 and
22 HOPKINS & SUTTER
23 BY: MR. WILLIAM CARLISLE HERBERT
24 On behalf of City of Chicago;

1 APPEARANCES: (Continued)

2 MR. KEVIN M. FORDE

3 MS. KATRINA VEERHUSEN

4 On behalf of The Police Annuity Fund;

5

6 JACOBS, BURNS, SUGARMAN & ORLOVE

7 BY: MR. MARTIN J. BURNS

8 On behalf of Firemen's Annuity Fund;

9

10 BOYLE AND HEISS

11 BY: MR. FREDERICK HEISS

12 and

13 MR. WILLIAM A. MOROVITZ

14 On behalf of Municipal and

15 Laborers' Fund

16

17 SACHNOFF, WEAVER & RUBENSTEIN, LTD.

18 BY: MR. CLINTON A. KRISLOV

19 On behalf of the Annuitant

20 Interveners.

21

22

23

24

THE COURT: Good afternoon, ladies and gentlemen.

Mr. Forde, are you ready to call your next witness.

MR. FORDE: I will in a moment, your Honor. We changed the order for a moment, your honor. We're now thinking in a different order.

MR. FORDE: We would call Mrs. Gilliam, your Honor.

THE COURT: Would you take the witness stand.

(Witness is sworn.)

THE COURT: For the record, would you please state your full name, spell your last name. And please keep your voice up so that everybody hears you.

THE WITNESS: Okay.

Sharon Gist, G-i-s-t, Gilliam, G-i-l-l-i-a-m.

MR. FORDE: Mrs. Gilliam, my name is Kevin Forde. I represent the Police Annuity Benefit Fund in this litigation.

SHARON GIST GILLIAM,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FORDE:

Q. Although we may be familiar with your background from the press, would you mind giving it to the court reporter, just a short summary of your background and experience with the City of Chicago please.

A. Okay.

I'm currently chief operating officer for the City of Chicago, a position I've held since January 1, 1988. Prior to that I was budget director of the City of Chicago from January of 1984 to December 31, 1987. Prior to that I was deputy budget director from June of 1983 to January of 1984.

Prior to that I spent four years, 1979 to 1983, working in the District of Columbia budget office in the District of Columbia Department of Housing and Community Development, both times in the budget field.

Prior to that from 1969 to 1979 I was with

1 the City of Chicago variously in the Model Cities
2 Program as a social planner for the Office of Budget
3 and Management as federal grant coordinator, and
4 then assistant budget director, and finally acting
5 commissioner Department of Human Services.
6 Q. Thank you.
7 As the chief operating officer for the City
8 of Chicago, you're familiar with this litigation,
9 are you not?
10 A. That's correct.
11 Q. And is it accurate to state that the City's
12 position in this controversy is that neither the
13 City nor the pension funds have responsibility,
14 legal responsibility, for the payment of the health
15 care benefits for the annuitants?
16 A. That is correct.
17 Q. Now, so the issue is, so far as the City is
18 concerned, is how much the annuitants have to pay to
19 cover their health care benefits?
20 A. That is not the entire issue from my
21 understanding.
22 Q. Are you -- you're familiar with the
23 background of health benefit payments for retired
24 employees by the City since 1982 or '83?

1 A. Certainly since middle '83.

2 Q. And you are aware that since at least that

3 time the City has been paying at least a portion of

4 those costs for retired employees?

5 A. I'm certainly aware as a result of having

6 gone through this over the last several months that

7 the City pays a portion in two different ways.

8 Q. In two different ways. And what are those

9 two different ways?

10 A. One portion comes through the property

11 taxes and is buried, if you will, within the pension

12 funds. And the other portion is through the

13 corporate fund and the other locally appropriated

14 funds.

15 Q. And insofar as the corporate fund is

16 concerned, you have been aware for some time that

17 the corporate fund included funds to pay for the

18 health care benefits for retired employees?

19 A. I am aware that what we appropriated for in

20 the corporate fund and the other locally

21 appropriated funds was a gross amount of dollars

22 that covered all claims presented for health care

23 costs.

24 Q. And that included retired employees?

1 A. It was my understanding that it included
2 retired employees and their eligible dependents.
3 Q. And how long have you been aware of that
4 fact?
5 A. Since, certainly, '84 or possibly early
6 '85. Most likely '84 when we started working on the
7 issue.
8 Q. I'm going to show you a page from the 1984
9 budget. And this is -- you're familiar with that.
10 This is Exhibit 36.
11 And I'd like to direct your attention to
12 Account .042 with a line -- or the the Line 042.
13 If you'd review that language for Account
14 042 dealing with the health maintenance organization
15 premiums, et cetera.
16 Have you had an opportunity to review that
17 description?
18 A. Yes, I have.
19 Q. Now, the total amount referred to there is
20 $87,200,000, is that correct?
21 A. That's correct.
22 Q. Now, for a little background, that
23 language, that description, is that a -- who
24 selected that language?

1 A. It's hard to know who originally selected
2 this language. It's what's called standing type.
3 And it's in the data base, the budget data base.
4 And it's simply reprinted year after year. The
5 language was there when I got there. And who knows
6 which budget director it came under.
7 Q. But somebody selected that language and it
8 stays in --
9 A. At some point in time. And it just stays
10 there and is rolled over from year to year.
11 Q. Like some things in our court processes.
12 The court says he reads the same briefs over and
13 over again because it stays in the word processor.
14 And the numbers are changed each year?
15 A. Right.
16 Q. How do you go about changing the numbers?
17 A. The budget office basically goes through a
18 process by which it requests of the Benefits
19 Management Office. In the past of whomever or
20 whatever office administered health care, it
21 requests a projection for the year following, since
22 you're doing the budget in a current year. Whatever
23 office or person is in charge of the various benefit
24 programs will come up with an estimate for the year

1 following, send it into the budget office. And they
2 will use that estimate.
3 In the event that they have some question,
4 they will call and ask for further information on
5 how the estimate was developed.
6 Q. Do you know how the estimates were made for
7 health care benefits?
8 A. My general understanding of how they are
9 developed is to take the actual experience of the
10 year prior. The experience to date of the year that
11 one is in, estimate what the experience for that
12 year will be, and then get the best available data
13 from the industry from wherever you can get it on
14 what the inflation factor will be for the next
15 year. And using all of that, assuming that use will
16 remain constant and the population will not change,
17 you come up with a number, which is an estimate.
18 And it's the best estimate you can get at the time.
19 Q. So with respect to the '84 budget that
20 you're looking at, for example, sometime in 1983
21 someone in the Budget Department would have looked
22 at the '83 experience to date for health care claims
23 and made an adjustment for inflation and came up
24 with the number for the year 1984?

1 A. Yes. Except it wouldn't have been done in
2 the budget office. Because certainly I was there in
3 the summer of '83. And that's not the office from
4 which this was administered. But they would receive
5 some numbers.
6 Q. Some city agency, somewhere in the City
7 administration they would have done that
8 calculation?
9 A. That's correct.
10 Q. And you are aware, are you not, that in
11 doing this in 1983 they would have had figures for
12 active employees as well as retired employees in
13 making that calculation?
14 A. They would have come up with a gross number
15 based on claims paid. Had they been paying claims
16 for retirees or annuitants, then that would have
17 been the base number that they calculated.
18 Q. Well, you are aware that they were provided
19 that information, are you not, for retirees as well
20 as active employees?
21 A. It's my understanding they would have known
22 all claims paid.
23 Q. And that those claims paid included
24 retirees?

1 A. That's correct.

2 Q. Now, so that a component of this

3 $87,200,000 was claims paid on behalf of retired

4 employees in 1983?

5 A. It should have been.

6 Q. And you were aware in 1984 that this

7 description and the $87,200,000 included claims to

8 be paid on behalf of retired employees?

9 A. The number for 1984 developed in 1983.

10 Q. That's correct.

11 Now, these accounts, for example 042,

12 code -- maybe my terminology is not accurate. What

13 do you call 042?

14 A. A line item.

15 Q. A line item. Okay.

16 Those numbers, the City isn't bound to

17 spend only that amount or as much as that amount --

18 strike that.

19 You can move money around within these

20 accounts. If there are, say, for example,

21 insufficient funds within each line item, then there

22 is a time when you can use funds from some other

23 line item to make up for shortages in this line

24 item, for example. Could you not?

A. That's correct, within certain parameters.

Q. And what are those parameters?

A. You can move or transfer funds that are in excess of one line item in an account group, to another line item within the same account group.

Q. And the reason you can -- and you can do that without an appropriation by the City Council?

A. You can do it without Council approval, within an account group. That's correct.

Q. And, as a matter of fact, the budget makes the distinction between asterisk items and line items?

A. That's correct.

Q. And an asterisk item within an account -- is there an asterisk item on the page?

A. You can't see the asterisk because of the way this was Xeroxed.

Q. My copy also.

I have a copy of the final 1984 appropriation ordinance. And it should look the same as that page -- give me the '86.

MR. FORDE: Your Honor, as you'll notice on your copy, the asterisk, as Mrs. Gilliam has correctly pointed out, on the left-hand column --

THE COURT: Use mine. You can see the asterisk.

MR. FORDE: The original has the asterisk accounts.

BY MR. FORDE:

Q. Looking at that, looking at the original of Exhibit 36, you see the asterisk after 042.

And what is the account description for the asterisk item? Maybe you can put that in the terms you're more familiar with.

A. The asterisk is really before 9112.000 for personal services. And there's a total amount. That is an account group.

Q. And anything, then, above that line for that group of accounts that's obviously totaled there can be interchanged between line items in that account?

A. Yes, providing there's a sufficiency of funds in the area from which you are wanting to transfer.

Q. And the reason you can do that is that the descriptions that follow or actually precede or accompany the line items like 035, 042, and the others up above, 9112.000, are merely descriptions of what is in the appropriation, is that correct?

A. I don't know that --

MR. HERBERT: Objection.

It's a confusing question. I'm not sure what is being asked.

THE COURT: Rephrase your question, Mr. Forde.

BY MR. FORDE:

Q. The reason you can move funds around within that account group is because the descriptions are there for informational purposes, but the appropriation is 912.000, the asterisk description, which is for personal services?

A. I don't know that I would totally agree with that.

Q. And what would you disagree with?

A. Under state law we appropriated what we called the starred item level. Therefore, we are controlled by the starred item level, what you call the asterisk level. And because that is the control point, there has been, certainly, a practice, because as far as we are concerned it's not illegal to transfer appropriations among line items.

Now, whether you can go on and make the next leap, I don't know.

Q. And the starred item or appropriation

1 following state law on the page you're looking at is
2 the description for personal services?
3 A. That's correct.
4 Q. Now, I think I asked this question before.
5 I'll ask it again. If I did, I apologize.
6 You were aware that the description you're
7 looking at on 042 included retired employees.
8 THE COURT: Asked and answered.
9 MR. FORDE: Okay. I apologize.
10 BY MR. FORDE:
11 Q. And you explained the source of that
12 language.
13 In 1985 originally you followed the same
14 procedure as in previous years, and that is the
15 administration would prepare a proposed budget and
16 submit it to the Council, is that correct?
17 A. That's correct.
18 Q. And in 1985, however, the City Council got
19 very involved in the Act itself and changed some
20 numbers and changed some account descriptions.
21 Do you recall that?
22 A. That's correct.
23 Q. I'm going to show you two documents that
24 have been identified as Defendant's Exhibit 37 and

1 Defendant's Exhibit 38 for identification.

2 And if you would look again, just looking

3 at the Line Item 042. If you would look at those

4 two briefly, then I have a few brief questions.

5 Directing your attention, first, to Exhibit

6 37, that was the document prepared by the

7 administration, was it not?

8 A. That's correct.

9 Q. And Exhibit 38 was the document prepared by

10 the City Council?

11 A. That's correct.

12 Q. And the only difference in those two

13 descriptions for that line item is that Exhibit 38

14 is more detailed in that it specifies that -- it

15 adds "and for partial payment of the costs of claims

16 and administration administration for hospital and

17 medical care provided to certain participants in the

18 Policeman's Annuity and Benefit Fund," et cetera, et

19 cetera, correct?

20 A. That's correct.

21 Q. And there's a modest -- I'd say, in terms

22 of the dollars, we're dealing with a modest

23 difference in the amounts proposed in those two

24 documents?

1 A. That's correct.

2 Q. For the record, the administration document

3 used the number eighty-nine million, twenty-eight,

4 eighty-two hundred. And the final document or the

5 City Council's prepared document uses the amount

6 eighty-nine million four thirty eight.

7 That difference would not be intended to

8 cover retirees health benefits, would it?

9 A. That is correct.

10 Q. So the retirees' benefits were included in

11 the original document prepared by the

12 administration?

13 A. All claims paid. Yes.

14 Q. It would have been just as you had

15 described for 1984. It would have included -- it

16 would have been based on estimates of all claims

17 paid, which include active and retired?

18 A. That's correct.

19 Q. Now, in 1987 the budget was prepared, the

20 final budget was prepared by the -- let me back up

21 one question.

22 With respect to 1985, the Council's

23 version, that is Exhibit 38, was the language that

24 ultimately found its way into the appropriation

1 ordinance?

2 A. That's correct.

3 Q. Now, with respect to 1986, was that -- did

4 the usual procedure -- was the usual procedure

5 followed again, that is the estimates were made, a

6 figure was come up with in the same way, and the

7 language used in that budget was the same as is in

8 the word processor for the earlier years, that is

9 the administration's language?

10 A. That is correct.

11 Q. But the amount included in the '86 budget,

12 likewise, was based on computations that included

13 retirees as well as active employees?

14 A. That's correct.

15 Q. So that in each of these years you, and

16 when I say you, I mean the administration, was aware

17 that this description would include payment for

18 health benefits for retired employees?

19 A. As I said, it included payment for all

20 claims presented for eligible -- for persons who

21 were eligible because of our health care plan, which

22 would have included retirees.

23 Q. And this was never rejected by the City

24 Council?

A. No. It was not.

Q. And in fact, the one year that they played any active part in descriptions they made it even more precise?

A. That is correct.

Q. And in those years that you were aware of this description, you never raised any question of the legality of these expenditures, did you?

A. I did not.

Q. When was the first time the question of the legality of any of these expenditures was raised as far as you know?

A. It came to my attention, I believe, during the course of either late '86 or early '87.

Q. And how did that come to your attention?

A. I'm not absolutely certain of the chain of events. But it became of concern largely because of the because the Corporation Counsel would raise the issue of whether or not we had sufficient authority under the language of the appropriation ordinance to pay these claims.

Q. And the first time the Corporation Counsel raised that was in '86 or '87?

A. To the best of my recollection. Yes.

1 Q. Was there anything else going on about that
2 time that caused this concern by the Corporation
3 Counsel? Was there any litigation involving the
4 pension funds that came up about the same time?
5 A. There may have been litigation. I'm not
6 sure which piece of litigation.
7 Q. Was there ever a time, Miss Gilliam, that
8 you or any others in responsible positions in the
9 administration, proposed an increase in the premiums
10 charged to annuitants?
11 A. Yes. There was.
12 Q. And approximately when did that occur?
13 A. That was either in late '84, mid to late
14 '84, or early '85, as we were trying to bring some
15 cost control over the health care plan for the
16 actives, which led us also to the annuitants.
17 Q. So it was proposed by -- at least proposed
18 in material stages within the administration, that
19 the premiums for retired annuitants be increased in
20 approximately 1985, is that correct?
21 A. That is my recollection of it. Yes.
22 Q. Were any memoranda prepared at that time
23 regarding these costs and the possibility of an
24 increase?

1 A. There were a series of memoranda prepared
2 basically by the Benefits Office to set forth
3 options on what might be done.
4 Q. I am going to show you and exhibit which
5 has been marked Defendant's Exhibit 17 for
6 identification.
7 And I'll just ask, were you the author of
8 that memorandum?
9 A. It came out of my office, and I signed it.
10 Yes.
11 Q. And I'm going to show you a letter dated
12 November 27, 1984 addressed to Mr. Michael Cohen,
13 secretary of the Firemen's Annuity and Benefit Fund,
14 signed by you.
15 Were you the author of that letter?
16 A. Yes, I am.
17 Q. Both of these documents discuss the extent
18 to which the City subsidizes health care benefits
19 for retired City employees, correct?
20 A. Defendant 15 simply acknowledges that we
21 do -- that the City did subsidize it. Defendants 17
22 goes more to the amount. I don't see an amount in
23 Defendants 15.
24 Q. Now, with respect to Exhibit 17 and that

1 period of time, 1985, what happened to the proposal
2 within the administration to increase the premiums
3 paid by retired City employees?
4 A. It was discussed within the
5 administration. I believe we may have had even a
6 meeting with some or all of the Funds to discuss
7 it. And we never implemented the increase.
8 THE COURT: What was the latter part of that
9 answer?
10 THE WITNESS: We never implemented the increase.
11 THE COURT: Thank you.
12 BY MR. FORDE:
13 Q. So there was a determination made in 1985
14 not to implement the increase?
15 A. That's correct.
16 Q. Is there a change of attitude by the
17 administration in 1988?
18 A. That is correct.
19 Q. And it is the present intention of the
20 administration to increase the premium?
21 A. It is the present intention of the
22 administration to reduce or eliminate the taxpayers
23 subsidy.
24 MR. FORDE: If I could have one moment.

(Short pause.)

MR. FORDE: That concludes my examination, your Honor, except to offer Exhibits 15, 17, and 36, 37, and 38.

THE COURT: Any objection to 36?

MS. BECKETT: No objection.

THE COURT: Strike the identification mark.

It will be received.

37 and 38, any objection?

MS. BECKETT: No objection, your Honor.

THE COURT: Strike the identification.

They will be received.

17?

MS. BECKETT: No objection, your Honor.

THE COURT: Strike it.

Received.

15?

MS. BECKETT: No objection.

THE COURT: Strike it.

It will be received.

(Whereupon, Defendant's Exhibits 36, 37, 38, 17, and 15 were received in evidence.)

1 MR. FORDE: Your Honor, for the record, too, at
2 the close of the proofs we would like to submit the
3 entire budget book so that --
4 THE COURT: I understand what you intend to do.
5 MR. FORDE: So that it's clear.
6 But for purposes of the trial, that page is
7 the only page that we wanted to inquire on.
8 THE COURT: Any further questions?
9 MR. FORDE: No further questions.
10 THE COURT: Fireman's Fund, do you have any
11 questions.
12 MR BURNS: I have a few, your Honor.
13 Miss Gilliam my name is Martin Burns. I
14 represent the Fireman's Annuity fund.
15 EXAMINATION
16 BY MR. BURNS:
17 Q. I would ask you with respect to the items
18 that you've mentioned, that is specifically Line
19 Item 042, whether during your years with the City
20 the amounts appropriated by the City Council were
21 sufficient to cover the actual health cost
22 expenditures for active and retired employees?
23 A. They were not in every year. No, sir.
24 Q. And how was the shortfall handled?

A. Well, the year with which I am most familiar, which was budget year 1983, there was in 042 a projected 20 million dollar shortfall, which was part of the 95 million dollar problem of 1983.

Q. And how was that deficit of 20 million handled?

A. Well, the whole budget deficit was handled through a series of layoffs and hiring freezes and everything else. In the end I suspect that -- I can't remember. I suspect that what we did was in the budget amendment. In the late summer of 1983 we had to go back to Council for an amendment to that.

Q. Are you certain or --

A. I'm not certain of that, because there was too much going on.

Q. And how about subsequent years? Were there supplemental appropriations to cover the deficits?

A. I am not aware of any now.

Q. Were there deficits?

A. In every year we ran very close or slightly over.

Q. And when you say over, by how many millions or hundreds of thousands?

A. I would not know that without the audits.

1 Q. Isn't it your testimony today that the
2 amounts in the account for personal service, the
3 salvage in the other accounts, was sufficient to
4 cover the deficit in Line Item 042?
5 A. It may have been in every year other than
6 '83. It certainly was not in '83.
7 Q. I understand your testimony in '83. But for
8 other years do you know?
9 A. I don't know.
10 Q. Do you know whether there were any
11 supplemental budget appropriations other than for
12 1983?
13 A. We did not have -- we had supplemental
14 appropriations. But they were for contracts. Not
15 for this purpose.
16 Q. Now, you say that you learned of the
17 alleged illegality of the appropriations or -- I'm
18 sorry. Strike that.
19 The alleged illegality of the expenditure
20 of City funds for retired employees health care
21 coverage in late 1986 or early 1987.
22 Now, can you pinpoint the time a little
23 more precisely?
24 A. I simply don't recollect when it -- there

1 was not a point in time that I can recollect that
2 this was brought to my attention.
3 Q. Well, did anybody -- who was at the meeting
4 that you learned of this to the best of your
5 recollection?
6 A. I'm not even certain that it was at a
7 meeting, whether it was simply conversation or a
8 meeting or something else.
9 Q. Did you consider this a serious matter?
10 A. Certainly a serious matter. But given the
11 nature of the way we budget in Chicago, there are a
12 lot of things we budget for simply because we have
13 done them year in and year out for dozens and dozens
14 of years. So while it's not a good practice, and
15 certainly would be seen as to be serious, it is
16 something you learn to live with.
17 Q. Now, if this meeting occurred in late 1986,
18 let's assume that. I understand from your testimony
19 that the money appropriated for 1986 by the City
20 Council was sufficient or was intended to cover the
21 projected cost based upon active and retirees' 1985
22 costs plus an inflation factor. Is that basically
23 your testimony with respect to that?
24 A. Are we talking about bugeting in 1986 for

1 '87 or '85 for '86?

2 Q. In '85 for '86?

3 A. Yes. That's correct.

4 Q. So if this meeting occurred in 1986, was
5 there anything to have prevented you and/or the City
6 administration from going back to the City Council
7 and having a change of the line item description
8 042?

9 A. There would not have been if it were, in
10 fact, in late 1986.

11 Q. In 1987 if this meeting occurred is there
12 anything that would have prevented you and/or the
13 City administration from going back before the City
14 Council and correcting the wording of the line
15 description?

16 A. Not if it occurred in '87. No.

17 Q. Were you aware at the time of this meeting
18 of the language of the 1985 appropriation passed by
19 the City Council?

20 A. I have not testified to the fact that I
21 learned this at a meeting. I testified to the fact
22 that I am not aware of how I learned of this matter.

23 Q. When did you first learn that the 1985
24 language of Line Item 042 contained the language

1 that it does?

2 A. I didn't notice that until this proceeding

3 began. There was no reason to go back and read what

4 I thought to be standing type.

5 Q. Was there ever a memo that you have seen

6 from the Corporation Counsel's office with respect

7 to the alleged illegality of the expenditures of

8 moneys for retiree-relate care through Line Item

9 042?

10 A. I have not seen such a memorandum.

11 Q. In your experience with City government, is

12 it customary for alleged illegalities to go without

13 a memo being addressed to somebody?

14 A. I am not currently aware of any other

15 alleged or otherwise illegalities that are going on.

16 Q. Well, if there were, as chief

17 administrative officer for the City of Chicago,

18 would you direct the people responsible for that

19 opinion to put it in writing so that you would have

20 it?

21 A. The only way to request an opinion of

22 counsel is to suspect an illegality and to request

23 an opinion of counsel in writing. Since I don't

24 suspect an illegality, there's no reason for me to

1 ask an opinion of counsel.

2 Q. Well, in late 1986, early 1987 such an

3 alleged illegality came to your attention. Is that

4 true?

5 A. But I did not suspect it nor did I request

6 an opinion of counsel. Therefore, I had no reason

7 to receive a written opinion of counsel or

8 memorandum.

9 Q. And subsequent to that time have you ever

10 requested an opinion in writing from Corporation

11 Counsel?

12 A. With regard to what matter?

13 Q. With regard to this matter.

14 A. No. I have not requested an opinion of

15 counsel.

16 Q. Now, you testified with respect to late

17 1984 or 1985 there was an effort made by the City

18 administration to raise the, I believe you said

19 premium for actives and retirees. Did I

20 misunderstand your testimony?

21 A. Yes, you did.

22 Q. What was the intent of the City at that

23 time?

24 A. The intent of the City in 1985 clearly was

1 to increase the contribution made by annuitants for
2 themselves and their eligible dependents in order to
3 reduce or eliminate the subsidy that was occurring.
4 Q. Well, I believe you testified that
5 connection therewith you wrote a letter to Mr. Cohen
6 of the Fireman's Annuity fund, which is now Exhibit
7 15. And I understood your testimony to be that even
8 though those discussions took place that there had
9 not been an increase in 1985, that the
10 administration decided not to seek an increase or to
11 implement --
12 A. This effort did not eventuate in an
13 increase.
14 Q. But this is in late 1984 that you wrote
15 Mr. Cohen. In 1985 were efforts made by the City
16 administration to contain the costs of providing
17 health care coverage for active and retired
18 employees?
19 A. The cost containment effort occurred in
20 1984 for active employees. The next step in that
21 effort was to take the plan implemented for active
22 employees and move it along to cover retired
23 employees.
24 Q. And what steps were taken with respect to

1 actives to contain costs, that is steps in 1984?
2 A. In 1984 the first thing that we did was
3 enroll all of our active employees and require that
4 they prove up all of their eligible dependants.
5 There had not existed an accurate file of who
6 belonged in our health care plan and who did not.
7 That was a major effort.
8 In addition to that we implemented a series
9 of rather common cost containment measures, such as
10 procedures which would not be paid for except on an
11 outpatient basis; the requirement that second
12 opinions be sought in certain kinds of procedures;
13 the refusal to pay for weekend stays prior to
14 various procedures in a hospital; the requirement
15 that patients once hospitalized be monitored by an
16 outside source to insure that they were not
17 overstaying what was medically necessary.
18 A whole series of cost containment measures
19 that were a part of a package.
20 Q. Were those cost containment measures --
21 well, let me express it in the present tense.
22 Are they reflected in the current City of
23 Chicago medical benefit plan for active employees?
24 A. They are contained within the plan for

1 those employees who are enrolled in what is called
2 the City Plan, that is people who are not enrolled
3 in HMOs.
4 Q. All right.
5 Now with respect to retirees, is it not a
6 fact that efforts were made to contain costs through
7 the implementation of similar matters that you've
8 described such as no weekends admissions, second
9 surgical opinion, monitoring length of hospital
10 stay, et cetera, is it not true that efforts were
11 made to contain costs of retirees in 1985?
12 A. That's correct. That was the next group
13 that we dealt with.
14 Q. And is it not a fact that those efforts
15 involved meeting with Fund representatives to seek
16 their cooperation in the re-enrollment process and
17 in having the retirees participate in a new program
18 or a program different from what had been in
19 existence prior to 1985?
20 A. We certainly dealt with the Funds. And I
21 remember one meeting that I attended with the Funds.
22 Q. And, therefore -- well, let me express it a
23 little differently.
24 As a result of these efforts, is it fair to

1 state that the present annuitants medical benefits
2 plan is the product -- well I'm saying that twice.
3 Is it not fair to state that the present
4 medical benefits plan is a product or result of the
5 City's efforts and/or the -- well, I'll leave out
6 the cooperation of Funds -- as a result of the
7 City's efforts to contain costs for retirees?
8 A. That would be a fair statement.
9 Q. And, if you know, and I don't expect you to
10 know all the details, but is it not true that there
11 were certain pluses for retirees, that is coverage
12 under the present program that they did not have
13 under the former program such as prescription drug
14 coverage, if you know?
15 A. I'm not aware of the detailed differences
16 between what they might have had before and what
17 they currently have.
18 Q. During your testimony in answer to a
19 question from Mr. Forde, if I understood you
20 correctly, with respect to the present intention of
21 the City, that it's to reduce or eliminate what
22 you've referred to as the taxpayer subsidy.
23 First let me ask you with regard to
24 taxpayer subsidy. Isn't it a fact that expenditures

1 out of Line Item 042 are paid for out of general
2 revenues of the City and are not necessarily tied in
3 with real estate taxes?
4 A. That's correct. But all of the corporate
5 fund is supported to a large degree by taxes of one
6 sort or another, whether they're real property or
7 other.
8 Q. Whatever income the City has, is that not a
9 fair statement?
10 A. That's correct.
11 Q. Is it the City's present intention to
12 terminate the coverage of retirees, health care
13 coverage?
14 A. We would prefer not to do that. We would
15 prefer to work out a system whereby the City's tax
16 dollars from whatever tax source they come, does not
17 go to subsidize this plan.
18 MR. BURNS: I have nothing further.
19 THE COURT: Laborer's Municipal, any questions?
20 MR. HEISS: Nothing.
21 THE COURT: Intervener, any questions?
22 MR. KRISLOV: Yes, sir, your Honor.
23 THE COURT: Proceed.
24 MR. KRISLOV: If I may have one minute here.

1 (Short pause.)

2 MR. KRISLOV: With your Honor's indulgence, what

3 I would like to do here is use the exhibit entitled

4 Defendant's Exhibit No. 28 marked for

5 identification, which I believe -- well, we would

6 probably move to admit shortly. I don't think it

7 will disrupt the Funds case. And I think it will

8 probably save the time of Miss Gist Gilliam coming

9 back for an appearance on our case separately.

10 And I don't believe there is any objection

11 from the City or from the Funds.

12 EXAMINATION

13 BY MR. KRISLOV:

14 Q. Miss Gilliam, would you take a look at

15 what's been marked Defendant's Exhibit 28 and tell

16 me if you've seen that before and if you can tell us

17 what it is?

18 A. This is a memorandum from a person who was

19 staff with me at the time I was budget director with

20 regard to various benefit costs that were to have

21 been included in finance general.

22 Q. And the handwriting in the borders,

23 particularly the left-hand borders, because I know

24 there's some stamping of page numbers, which may not

1 have been there. But the handwriting on the borders
2 I take it are yours?
3 A. Those are my notations. Yes.
4 Q. This was, in effect, the memo that was sent
5 to you and your comments upon the memo sending it
6 back?
7 A. That's correct.
8 Q. Let me ask you to look at Page 2 of the
9 memo.
10 MR. KRISLOV: I'm sorry, your Honor. I don't
11 think I gave you one.
12 THE COURT: You certainly did not. I'm reading
13 over Miss Gilliam's shoulder.
14 BY MR. KRISLOV:
15 Q. Could you tell me what the handwriting says
16 on the top left of Page 2?
17 A. It says they are budgeted annuitants
18 separately and then double underlined and then Ryan
19 case double underlined.
20 Q. That's your handwriting?
21 A. Yes.
22 Q. And I take it you meant to break the
23 annuitants costs out separately now?
24 A. That's correct.

Q. Let me refresh your memory, perhaps.

You are aware that at the end of '86, the beginning of '87, the Ryan case had been decided holding that the City had used moneys belonging to the pension funds and would now have to pay them back, isn't that right?

A. I'm not sure that I knew that. I knew that the Ryan case was out there.

Q. And that the City of Chicago would have to pay money back to the pension funds as a result of that case?

A. I can't say that I knew exactly that when I made this note on October 2. I certainly know it now. But I don't know that I knew it on October 2.

Q. Do you know when you became aware of that repayment obligation other than that?

A. I can't recollect. I knew it was out there, one of the things.

Q. You mentioned that there are a number of things in the budget, things that we budget for year after year because they're there and we just keep budgeting for them?

A. That's correct.

Q. There are other things besides annuitant

1 and medical benefits that, aren't there?

2 A. There are a number of small, particularly

3 small accounts scattered through the budget that

4 have been there for time immemorial.

5 Q. And you haven't challenged those for being

6 illegal at this point?

7 A. No one has challenged them to my knowledge.

8 Q. In budgeting each year, the City has chosen

9 year after year not to take a zero base budgeting

10 approach as I understand it?

11 A. That's correct.

12 Q. And under zero based budgeting what would

13 happen is year after year you would look into each

14 item, break it out separately, determine what you

15 wanted to appropriate for and whatnot and make the

16 appropriations starting from zero?

17 A. That's correct.

18 Q. But the City chooses not to?

19 A. That's correct.

20 Q. Instead the City takes last year's

21 expenditure, at -- well, takes last year's

22 expenditure, which includes an amount for annuitant

23 medical benefits, adds inflation, and budgets the

24 following year accordingly?

A. Unless we have made some other change. Yes.

Q. Let's go to 1985, this re-enrollment process?

A. '84?

Q. '84.

When were the annuitants re-enrolled?

A. They would have been re-enrolled in '85. We were slow on that.

Q. Okay. But the process was -- by re-enrollment, what I take it you mean is a person has to show once again that they're qualified to participate in the plan?

A. That's correct.

Q. And you didn't just let people re-enroll, you actively contacted them?

A. That's correct.

Q. "You" being the City?

A. The City.

Q. And solicited them to re-enroll on the annuitant plan?

A. Certainly.

Q. Didn't encourage them to look elsewhere for their medical benefits?

A. No. We did not.

MR. KRISLOV: Your Honor, I would move the admission at this time of Defendant's Exhibit No. 28.

THE COURT: Any objection?

MS. BECKETT: No objection from the City.

THE COURT: 28 will be received.

Any objection from any of the others?

MR. KRISLOV: Thank you, your Honor.

THE COURT: Strike the identification marks and it will be received

(Whereupon, Defendant's Exhibit No. 28 was received in evidence.)

MR. KRISLOV: Thank you, your Honor.

MS. BECKETT: At this time I would like to ask two or three cross examination questions of Miss Gilliam. Then I would like to adopt her as the City's witness for the sake of expediency and out of deference to her schedule which calls her back to other meetings at City Hall shortly.

MR. FORDE: No problem, your Honor.

THE COURT: Presently you're going to cross examine first.

MS. BECKETT: Yes.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. BECKETT:

Q. Miss Gilliam, one of the attorneys for the Funds asked you a series of questions about the budgets in 1983, '84, and 1985 and they continuously drew your attention to the fact that the City Council inserted language with respect to the retirees, specifically in 1985, is that right?

A. That's correct.

Q. There was nothing to stop the City Council from inserting that language in any other year, is that correct?

A. That's correct.

Q. The City Council is the body that makes the final actual official determination of what will be in the budget, is it not?

A. That's correct.

Q. And they are the authority that's known as the Corporate Authority, who passes the budget every year, is that correct?

A. That's correct.

MS. BECKETT: I would like to proceed with my direct examination now.

THE COURT: Before you do that, are there any questions on redirect related to the last question on cross examination.

I figured there would be Miss Beckett. That's why I interrupted you.

EXAMINATION

BY MR. BURNS:

Q. Miss Gist Gilliam, do you have any knowledge whether the City Council specifically the Finance Council compared the budgets for 1985 and '86 and concluded that it was not necessary to do anything to change the language.

Q. I would have no way of knowing what they

1 did on their staff side.

2 Q. Did you have any discussions with any

3 representatives of the City Council at any time

4 concerning the fact that the Line Item 042 was being

5 used to pay for health care costs prior to 1988?

6 A. I did not discuss it? I did not discuss it

7 with Council members.

8 MR BURNS: I have nothing further.

9 MR. FORDE: Nothing further, your Honor.

10 THE COURT: You may start with your direct,

11 Ms. Beckett.

12 BY MS. BECKETT:

13 Q. Miss Gilliam, directing your attention to

14 the years 1984 and 1985, could you please go back

15 and describe the changes in medical benefits that

16 were available to retirees, starting with how they

17 were treated previous to this changeover?

18 A. In '84 we re-enrolled all actives and their

19 eligible dependents. We sought to move that same

20 program to the annuitants and any eligible

21 dependents they might have had.

22 We re-enrolled the annuitants and put in

23 place for the annuitants the same cost containment

24 measures that were applicable to the actives. And

1 that would have been the length of stay provisions,
2 no weekend admission provisions, certain surgical
3 procedures having to be done on an outpatient basis,
4 certain other surgical procedures having to be done
5 on on an outpatient basis. All of those were put in
6 for the annuitants as well.
7 Q. Before these changes, were the annuitants
8 to the best of your recollection generally lumped in
9 together with the active employees, that is did they
10 participate in the same plan?
11 A. As far as I am able to tell, the ones that
12 live in this metro area were.
13 Q. And then after 1985 were they then
14 participating in a separate plan?
15 A. There was a period of time when the actives
16 were in the new plan, as it were, and the annuitants
17 were still going along. However, they had been
18 going along for all of those years before.
19 So that in a sense we were managing two
20 sets of people under different sets of
21 circumstances.
22 Q. In effect in 1985 in the process of
23 re-enrolling these annuitants, did the City
24 effectively terminate the plan that they had been

1 operating under previously?

2 A. Certainly.

3 What we did in order to move to a plan that

4 was better managed was to the terminate an old plan

5 which was unmanaged and totally unwieldy and

6 institute a new plan that made some sense. And we

7 instituted that plan by taking out the old one.

8 Q. I'm giving you to look at what has

9 previously been admitted in evidence as Defendant's

10 Exhibit 33.

11 Will you take a look at that for a minute

12 and tell me if you've seen that before?

13 A. Yes, I have.

14 Q. Is that a copy of the annuitant plan that

15 went into effect in 1985?

16 A. This is the plan booklet that went out to

17 explain the plan to the annuitants.

18 Q. Directing your attention to Page 3?

19 A. Roman 3?

20 Q. Arabic 3.

21 A. Arabic 3.

22 Q. Lower right-hand corner.

23 Do you see a termination provision there?

24 A. Yes. I do.

1 Q. Are you generally familiar with that
2 provision?
3 A. Yes, I am.
4 Q. What is the City's understanding regarding
5 that provision?
6 MR BURNS: Objection.
7 THE COURT: Sir, on the basis that the document
8 speaks for itself?
9 MR BURNS: No. Because she said "the City." If
10 she wants to ask Miss Gist Gilliam's opinion, she
11 can give it for whatever it's worth.
12 THE COURT: I'll sustain you on that objection.
13 BY MS. BECKETT:
14 Q. Let's start with your opinion as the chief
15 operating officer for the City and/or your opinion
16 as the then budget director of the City.
17 What was your understanding of this
18 termination provision?
19 A. My understanding was that this termination
20 provision told in this case the annuitants that they
21 would be terminated if any one of the following
22 three conditions existed: The annuitant himself
23 submitted false bills, either for himself or for his
24 dependents; or if he submitted bills for ineligible

1 dependents, which was a real problem; they would be
2 terminated if the plan itself were terminated; or
3 they would be terminated in the event that they were
4 no longer somehow some way an annuitant and,
5 therefore, eligible for this benefit.
6 Q. To your knowledge has this termination
7 provision been exercised?
8 A. Not in this plan. No.
9 Q. Has the City terminated annuitants for
10 submitting false bills? Do you know?
11 A. I am not aware of it. We may have, but I
12 am not aware of it.
13 Q. Okay.
14 Now, you previously described a termination
15 and then a new plan. And you described changes. Is
16 it fair to say that these were actual changes in
17 benefits to -- let's look first at active employees,
18 that the changes that came about in 1984, '85?
19 A. The '84, '85 was a new plan. It was a new
20 benefits plan. We changed the business side with
21 our ASOs, our carriers, the way we paid for things.
22 That was simply a termination of one plan and an
23 institution of another plan. That was a major
24 upheaval.

1 Q. Can you describe any examples of changes in
2 benefits to City employees, say starting from 1983,
3 forward?
4 A. Just in general a benefit improvement that
5 we gave all employees. And I've forgotten what year
6 it was. It might have been '85 or '86, was the
7 prescription benefit whereby they could get these
8 mail order prescriptions for drugs that had to be
9 used on a continuing basis. So that was certainly a
10 benefit change.
11 We had a change in the way we handled
12 vision benefit. At one point people went anywhere
13 and got reimbursed or through a very small number of
14 providers. We changed that to be not unlike a PPO
15 and executed a contract for that in our vision care
16 plan. The dental plan has had some minor changes in
17 it.
18 Vision care could be seen as a termination
19 of one plan and the institution of a whole new plan.
20 Q. Are there any more recent examples of
21 instances where the City has changed its benefit
22 plans for active employees?
23 A. Currently we are in the process of doing
24 that. We have negotiated the firefighter's

1 contract. And within that there will be for the
2 first time in a generation a contribution on the
3 part of employees for coverage for health care
4 coverage. And we're moving in the health care
5 portion of the plan and the dental portion of the
6 plan to the preferred provider organization system.
7 Q. Let's talk first about that contribution.
8 Is that in essence the charging of a premium?
9 A. It would be most like the charging of a
10 premium. But we're self-insured. So premium is the
11 wrong term to use here.
12 Q. Okay. Then talking about the second
13 example that you raised. Could you explain a little
14 bit further what a PPO is and how it changes either
15 expanding or restricting the level of benefit
16 available?
17 A. It doesn't necessarily expand or restrict
18 the benefits available. What it is is a negotiation
19 by, in this case the City, with a large number of
20 providers that says to them that we can deliver a
21 group of X size and therefore X volume in dollars,
22 in return for which we want consideration on the
23 price we pay for each and every procedure. We
24 negotiate that price. That is the maximum amount we

1 will pay with this group of providers. Consequently
2 those persons in our group can go only to those
3 providers if they want their health care paid for by
4 the City. They can go outside the group if they are
5 willing to pay for it themselves.
6 Q. So it's similar to the concept of -- more
7 similar to the concept of an HMO than --
8 A. Except it's not nearly as restrictive as an
9 HMO. We negotiate with large numbers of providers
10 whereas an HMO is generally a small number of
11 providers within a particular system.
12 Q. Has the City instituted this PPO system to
13 date?
14 A. We have not instituted it yet. We will do
15 that in the very near-term future.
16 Q. Backing up to 1984, Mr. Burns questioned
17 you at length about the City's efforts to raise the
18 premiums.
19 Could you go back and describe those again
20 and elaborate a little bit about on the whole
21 sequence of events surrounding that.
22 A. As I remember the sequence of events, we
23 were concerned about the subsidy amount that was
24 coming out of the corporate and other locally

1 appropriated funds. Benefits Management brought to
2 our attention that this was an ever increasing
3 amount of money.
4 What we sought to do or what we did was to
5 ask the Benefits Management Office to put together a
6 number of scenarios on how you might either reduce
7 or eliminate overtime the subsidy. And they put
8 together that series of scenarios.
9 We shared either some or all of that
10 information with the Funds. I remember attending
11 one meeting with the Funds.
12 Q. Did the City get any reaction from the
13 Funds or their members following this meeting?
14 A. The Funds informed, whether by letter or
15 otherwise, the annuitants, and put one or more of
16 the plans in this informational mailing to them.
17 And because the increases were so great in whatever
18 material they put out to the annuitants, the
19 annuitants and those who had some interest in the
20 annuitants began calling every 744 exchange there
21 was.
22 So they called the Benefits office, they
23 called all the aldermen, they call the comptrollers
24 office, they called my office, and they called the

1 Mayor's office and the general switchboard. And we
2 were literally flooded with calls for over a week
3 from these annuitants.
4 Q. You received a tremendous amount of
5 pressure, in other words, --
6 MR BURNS: Objection.
7 MR. FORDE: I'm going to object.
8 THE COURT: Sustained.
9 And this will be stricken.
10 MR BURNS: That's democracy in action, your
11 Honor.
12 THE COURT: That will be stricken, too.
13 MR BURNS: Touche.
14 BY MS. BECKETT:
15 Q. In your opinion, Miss Gilliam, was there
16 anything besides this reaction from the annuitants
17 to prevent the City from instituting one or more of
18 these proposed premium increases?
19 MR BURNS: Objection.
20 THE COURT: Sustained.
21 Rephrase that question.
22 BY MS. BECKETT:
23 Q. Miss Gilliam, is it your opinion that the
24 City had the power in 1984 and has the power today

1 to raise the premium charged to the annuitants for
2 their health care?
3 A. In my opinion we clearly have the ability
4 to do it. And we simply did not do it before
5 because we couldn't withstand the fire storm of
6 16,000 annuitants calling us all day long every day.
7 Q. You've described a number of changes in
8 benefits that have been instituted by the City and
9 continue to be instituted by the City. Is it your
10 opinion that the City has the power to change
11 benefits?
12 A. Certainly.
13 Q. Is it your opinion that the City has the
14 power to terminate one type of benefit and institute
15 another?
16 A. Yes.
17 MS. BECKETT: I have no more questions.
18 THE COURT: Police. Cross examination?
19 CROSS EXAMINATION
20 BY MR. FORDE:
21 Q. Miss Gilliam, you testified that in 1984
22 the form of the plan was changed or the plan was
23 terminated and another plan was adopted.
24 Do you recall that testimony?

A. That's correct.

Q. There was no gap in coverage during that period, was there?

A. That's correct.

Q. Now, you mentioned that in 1984 or 1985 when there was the proposed increase in premiums that there was a great outpouring of views on the subject. Every 744 number was called, I think you testified, or words to that effect?

A. That's correct.

Q. Did this include calls to members of the City Council?

A. Yes, it did.

Q. Did you hear from any members of the City Council on the subject?

A. I couldn't say that I heard from any one member in particular.

Q. But you are aware that many members of the City Council had been called?

A. Yes. Yes.

Q. And so at that time certainly there's no question but that members of the City Council knew that the health care benefits were covered by the appropriation ordinance?

A. I would not go that far.

Q. Is it your position that when members of the City Council voted on these documents that I showed you earlier that they didn't know what they were doing?

A. I wouldn't make that characterization.

Q. That they didn't understand what they were voting on?

A. I wouldn't make that characterization.

Q. Do you believe that they clearly comprehended that annuitants coverage was included in the appropriation ordinance?

MR. HERBERT: Objection.

The question calls for what is in the mind of many aldermen. And this witness cannot know what is in the mind of many aldermen.

THE COURT: For whatever probative value it may have, I'm going to let her answer. I'm interested in knowing.

MR. FORDE: Do you want that question.

THE COURT: Do you want the reporter --

MR. FORDE: Can you find that last question.

(Record read as requested.)

THE WITNESS: I am not clear that the majority

of the aldermen understood exactly what they were covering.

BY MR. FORDE:

Q. And is that the reason that the City has taken the position that the expenditures were illegal?

A. I can't come to that conclusion. It is the Corporation Counsel who can find that this was not a legal appropriation.

Q. And what is the basis of that statement by the Corporation Counsel?

A. That it was not set forth in the ordinance, in the language of the ordinance.

Q. And would that have the effect that the aldermen didn't comprehend what they were voting on?

A. Not necessarily.

MR. FORDE: I have no further questions, your Honor.

THE COURT: Fire, any cross?

CROSS EXAMINATION

BY MR. BURNS:

Q. Miss Gist Gilliam, you say that you think that a number of aldermen did not understand exactly what they were doing?

1 A. That's correct.

2 Q. Can you tell me what you mean by exactly?

3 A. In discussions over time with the aldermen,
4 it has become fairly clear to me that some
5 significant number of them were under the impression
6 that somehow some way all annuitant health care was
7 covered within the pension funds and that somehow
8 the pension contribution, which was appropriated for
9 back in each of the separate pension funds, was also
10 covering the health care for annuitants. There are
11 were any number of them that believed that. There
12 were any number of them that believed that in
13 addition to that the state of Illinois and not the
14 City of Chicago was paying both health care and
15 pension benefits.

16 It's hard to say exactly how or why this
17 notion had currency among them. Nonetheless, it
18 did.

19 Q. Can you tell me now who you had
20 conversations with, when those conversations took
21 place, and what the positions were of those
22 particular aldermen?

23 A. I certainly can't give dates and times and
24 the individual aldermen. It has largely come out as

1 a result of either their statements in various
2 hearings or just casual conversations with them.
3 Q. When did you have these casual conversation
4 it's with -- what was the first casual conversation
5 that you had with an alderman?
6 A. I certainly don't remember the time and
7 date, counsel.
8 Q. Well, approximate the time?
9 A. Certainly we have been discussing this
10 issue among the various aldermen in various hearings
11 for two or three or even four months now. From time
12 to time you hear these beliefs.
13 Q. So these conversations you had with
14 aldermen were conversations which took place during
15 the last two or three or four months. Is that what
16 you're testifying to?
17 A. I can't remember discussions with them
18 around this issue in years prior. This was not a
19 particular issue that was discussed among them.
20 Q. But you learned in early 1987 that there
21 was an illegal appropriation, did you not?
22 A. I became aware of it then. Yes.
23 Q. Well, did all of these discussions follow
24 the decision by the administration to remove from

1 the appropriations for Line Item 042 for the year
2 1988, the expected cost of retiree health care?
3 A. That is correct. That is what brought it
4 to the aldermen's attention.
5 Q. Okay. Now, how long have those aldermen
6 been in office?
7 A. There are those that are probably now in
8 their fourth term, perhaps even fifth term.
9 Q. Can you tell me these aldermen you've
10 talked with that were in office at the time of the
11 1985 appropriation?
12 A. I can't tell you that with specificity.
13 Every alderman who is there now except those elected
14 in '87 or in the special elections of late '86 was
15 in office in 1985.
16 Q. I don't know which ones you've talked with,
17 Miss Gilliam. I'm trying to find out from you who
18 you talked with and who was under the impression
19 that the pension funds were paying for it.
20 A. And I've testified that I cannot respond to
21 that with specificity.
22 Q. Now, you've testified about a change made
23 in the plan for City employees with some degree of
24 specificity. When did the firefighter's, active

1 firefighter's, come -- excuse me.

2 When did they become covered by the new

3 plan?

4 A. The firefighter's went to arbitration. And

5 they could not be covered by the new plan because

6 their contract includes within it the health care

7 plans.

8 I don't remember when their arbitration was

9 finished, but it went on for something like 15 or 18

10 months. So they lagged way behind the rest of the

11 work force in coming into the new plan. This would

12 have been the plan that was executed in 1984.

13 Q. In order to help pinpoint the time, Miss

14 Gist Gilliam, I thought in the agreement --

15 Well, here. There was a date of

16 ratification.

17 Well, is it your recollection that the

18 firefighter's stayed in the old plan, the pre-1985

19 plan, until sometime in 1986?

20 A. It was whenever the arbitration was

21 completed and we had a decision on that. Because

22 they were out there --

23 Q. If it took 15 or 18 months it would have

24 gone through '85 into 1986?

1 A. It was a very long time.

2 Q. Now, if all the other active employees were

3 in the 1985 plan, the firefighter's were under the

4 former plan, is that correct?

5 A. The other active employees were in the '84.

6 We made the changes in '84, the '84 plan. The

7 firefighter's lagged behind until their arbitration

8 was completed.

9 Q. So from the time in 1984 when the other

10 active employees went into the present City of

11 Chicago Medical Benefits Plan, you had a group of

12 firefighter's and you had a group of retired

13 employees, both firefighter retirees and other

14 retirees who were still under the old plan?

15 A. They were lagging behind. That's correct.

16 Q. Now, are you familiar with the termination

17 clause of the booklets that were distributed to

18 participants in the 1980s describing their benefits

19 under that old plan?

20 A. No. I'm not.

21 Q. Well, you testified with regards to the

22 termination clause of the medical benefits, the

23 annuitants medical benefits plan. Do you know where

24 that language came from?

A. No. I do not.

Q. Do you know the purpose of that language. I mean has anybody ever told you why that language was placed in there?

A. No one ever told me. It was, to me, obvious on its face. To let people know exactly under what conditions they might not be covered any longer by this plan.

Q. Are you aware of whether there was a termination clause of the prior plan?

A. I believe I said before that I was not aware. I had not seen the prior plan.

Q. Are you aware of whether retired employees were given booklets describing their benefits under the prior plan?

A. No. I am not.

Q. Is it your testimony that the City of Chicago intended to change the termination provisions when in 1985 the retired employees re-enrolled in the new plan?

A. I can't know whether or not there was an intention to change if I don't know what was in the previous plan document.

Q. I disagree --

1 MR. BURNS: I ask you, Judge, if she could
2 answer the question.
3 THE COURT: Are you objecting and saying it's
4 not responsive.
5 MR BURNS: Yes.
6 THE COURT: It will be stricken.
7 It's not responsive.
8 BY MR. BURNS:
9 Q. Was it your intention when you became aware
10 of the 1985 annuitants benefit plan to change the
11 termination provisions?
12 A. I did not know what was in the previous
13 one. I did not write the plan document.
14 Q. Who prepared the booklet that is the
15 annuitants medical care plan?
16 A. The plan document was written by the
17 Benefits Management Office, probably with the
18 assistance of consultants in health care.
19 Q. Who was in charge of the Medical Benefits
20 Office at the time the booklet was prepared?
21 A. In 1984 Benefits Management reported to the
22 comptroller -- wait a minute.
23 The office moved around. In '84 I think
24 they reported to the comptroller and in '85 the

1 budget director or the reverse of that.

2 Q. Who is the individual?

3 A. The individual is Walter Knorr (phonetic),

4 who is the former comptroller.

5 Q. I'm asking the benefits manager, the person

6 who was responsible for the benefits booklet?

7 A. Early on it was Barbara Malloy, who is no

8 longer with the City.

9 Q. Was it completed before Miss Malloy left

10 the City's employment?

11 A. I don't know when she left.

12 Q. Let me ask it that way: Did Miss Malloy

13 ever prepare a memo describing the changes that's

14 were to occur in the annuitants' benefit plan?

15 A. She might have. I don't necessarily recall

16 it.

17 Q. How did you become familiar with the

18 changes that exist in that plan as against the prior

19 plan?

20 A. How I would personally become --

21 Q. Yes. When did you become familiar with it?

22 A. This is not something that I would have

23 personally have reviewed line by line for changes.

24 Q. When did you become familiar with the fact

1 that the second surgical opinion, no weekend
2 admission, the in-hospitalization review, et cetera,
3 that they were in the annuitant's medical benefit
4 plan?
5 A. I was aware of that because we discussed
6 throughout '84 the changes that we would make for
7 the entire City of Chicago plan that we would
8 institute it first for the actives and then for the
9 retirees. And those were a series of cost
10 containment measures that were to have been
11 included.
12 Q. Are you familiar with the termination
13 language of the booklet that covers the City of
14 Chicago active employees?
15 A. No. I'm not immediately familiar with it.
16 Q. Is it your understanding that an employee
17 who leaves the City of Chicago's active employment
18 other than retirement is without health care
19 coverage upon cessation of employment?
20 A. That is not my understanding at all.
21 Q. What is your understanding?
22 A. My understanding that a person who has
23 severed his employment relationship with the City of
24 Chicago who is not covered by another employer has

1 rights under COBRA, the federal program, to convert
2 his health care to remain in our group, in effect,
3 and pay through us for that health care until such
4 time under that federal law that individual either
5 gains health care in some other setting or something
6 else transpires.
7 And as employees leave the City of Chicago,
8 they are made aware of that federal law under which
9 they're covered.
10 Q. And that event is the expiration of time or
11 the non-payment of the required premium? Do you
12 know?
13 A. I'm not aware. I'm just aware that every
14 employee must be offered and told by the personnel
15 office that this is available and that they should
16 contact the Benefits Management Office to keep their
17 health care intact should they choose to do so.
18 Q. Do you know what they are charged?
19 A. No. I don't know what the charge is.
20 Q. Do you know what the rights of an active
21 City employee would be if the City of Chicago
22 terminated the plan that covers active employees
23 other than your unionized employees?
24 A. Other than our unionized employees, no.

1 The unionized employees, depending on the contracts,
2 have some rights within those contracts.
3 Q. Which contracts, labor agreements, mention
4 the health care benefits?
5 A. The one that I'm absolutely certain
6 mentions it is the firefighter's agreement.
7 Q. Do you know of any other agreement that
8 mentions health care coverage?
9 A. Not by name. I am aware that some of the
10 others may very well mention that there will be
11 benefits not unlike the benefits that they enjoyed
12 in whatever the last contract was.
13 Q. Well, what is your -- well, do you have an
14 opinion as to how the City would treat a nonunion
15 employee upon termination of health care plan?
16 Would you treat that person or persons at least
17 consistent with the treatment that they're entitled
18 to under COBRA?
19 A. I think I need a -- you're saying of
20 someone who is still in our employ.
21 Q. Yes.
22 A. Would we terminate a plan and leave the
23 employee to go bare? Is that the gist of your
24 question.

1 Q. Yes.

2 A. I would not expect that under normal

3 circumstances that would occur.

4 Q. Well, under normal circumstances does the

5 City terminate the coverage of retired employees?

6 A. Obviously they do not, or we would not be

7 here.

8 Q. So let's assume for the purpose of

9 discussion, what would happen in your opinion if the

10 City of Chicago terminated the active employees

11 plan?

12 A. I expect that our non-covered employees

13 would either leave us or sue us --

14 Q. I'm not asking what they would do. I'm

15 asking what the City would do towards them -- let me

16 ask it this way: Do you feel that you have an

17 obligation towards active City employees to continue

18 their coverage?

19 A. Personally I do not think so.

20 Q. And if your personal opinion were put into

21 effect, what would you do for those employees whose

22 health care was terminated?

23 A. We're way into a kind of wild supposition

24 here. But --

1 MR. HERBERT: Your Honor, I'll object on that
2 grounds, that it calls for speculation.
3 MR BURNS: I'll withdraw the question.
4 THE COURT: The question will be withdrawn.
5 BY MR. BURNS:
6 Q. Miss Gist Gilliam, you testified with
7 respect to the firefighter's negotiation, with which
8 you have some familiarity, I believe.
9 Is it not true that the City takes the
10 position in negotiations that it does not negotiate
11 for retired employees?
12 A. That is correct. They're not in the
13 bargaining unit. How can we negotiate for them?
14 Q. And has that position of the City been
15 expressed to unions, specifically the Firefighter's
16 Union, with regard to a provision that would take
17 care of post employment after the individual reaches
18 age 65, if you know?
19 A. I've not been in any sessions where the
20 Firefighter's Union sought to bargain on behalf of
21 persons who were not in their bargaining unit. And
22 their bargaining unit consists of active
23 firefighter's.
24 Q. Have you been present at any meeting at

which the matter was discussed, even if the union did not request bargaining?

A. With Local 2 or with the pension group.

Q. With Local 2?

A. I have not been. No.

Q. Miss Gist Gilliam, are you familiar with the City of Chicago salaried personnel -- excuse me. Let me get the exact title if I can.

MR BURNS: I can't find it. I'll move on to something else.

BY MR. BURNS:

Q. Do you know of anything done by any representative of the City of Chicago in 1985 prior to the institution of the annuitants medical benefit plan that would have cautioned individuals that the institution of that plan could jeopardize their coverage in the future?

A. No.

MR BURNS: I have nothing further, Judge.

THE COURT: Municipal Labor, any questions?

Intervener, any cross?

MR. KRISLOV: Yes, your Honor.

CROSS EXAMINATION

BY MR. KRISLOV:

Q. Do I call you Miss --

A. Gilliam.

Q. Thank you. Sorry for changing your name before.

Can you tell me what your title is? Your co-title is what?

A. Chief administrative officer probably.

Q. I mean I believe it is chief -- that's what you testified to --

A. Chief administrative officer.

Q. And you said you're the chief operating officer?

A. Chief operating officer.

Q. Co-title is chief administrative officer?

A. That's what's carried in the City Code. Yes.

Q. What does that mean?

A. It depends on the administration.

In this case it means that I am the person through whom all of the executive department report with the exception of law, budget, controller, intergovernmental, and press, to the mayor.

Q. As distinct from chief operating officer can you explain the distinction between the two?

A. There is no distinction. It's just a more au courant title.

Q. I take it the Code bestows chief administrative officer?

A. That's correct. And it's existed since forever.

Q. Who bestows chief operating officer?

A. In the Mayor's office titles change from time to time. The last title for this office was chief of staff.

Q. Where does it say chief operating officer?

A. In the budget.

Q. So in effect you run the City?

A. I try to sometimes.

Q. And I take it that what you've said here, what the City intends to do as far as its plan to cut the subsidy or eliminate what you called the subsidy I think?

A. That's correct.

Q. That's what the City intends to do?

A. That's correct.

Q. That's not what the aldermen intend to do.

1 That's what the City intends to do?

2 MR. HERBERT: Objection.

3 That question calls for a legal conclusion.

4 THE COURT: I don't know what's legal about it.

5 But I'm going to sustain your objection on

6 other grounds. It's a very, very difficult question

7 the way you posed it.

8 Now, rephrase it.

9 MR. KRISLOV: I'll rephrase it, your Honor.

10 BY MR. KRISLOV:

11 Q. You said that the City's intention was to

12 cut the subsidy, that the City does not negotiate

13 for retired employees. That's not the Mayor and 26

14 of the aldermen. That's this administration?

15 MR. HERBERT: Your Honor, I'll object on the

16 grounds that --

17 THE COURT: Counsel, you're posing a question

18 and you're also testifying within the question and

19 you're characterizing something.

20 MR. KRISLOV: On cross, your Honor, I believe I

21 can make in it a leading fashion.

22 THE COURT: I'm aware of what you want to do on

23 cross. But there's going to be a certain

24 limitation. You know how to pose the question. I'm

1 aware there's a lot of latitude.

2 BY MR. KRISLOV:

3 Q. Miss Gilliam, when you say the City intends

4 to cut the subsidy, when you say the City does not

5 negotiate, when you say that what you mean is the

6 administration, don't you?

7 A. That's correct.

8 Q. Within the administration the person who

9 makes those decisions is you, right?

10 A. Certainly.

11 Q. And when you say that this is the

12 administration's intention, this is what the City

13 intends to do, that is something that can be relied

14 on, isn't it?

15 A. Yes. It is.

16 Q. Now, let's go back.

17 We're near the end of '86, at the end of

18 '86, early '87. The City faces a deficit, right?

19 A. A shortfall. Not a deficit.

20 Q. A shortfall. Meaning that either there

21 isn't enough money -- that the revenues aren't

22 coming in or the expenditures are going out faster?

23 A. That's correct.

24 Q. Two years ago or a year ago you tried to

1 cut the costs, you tried to cut the expenditures by
2 raising the premiums, by cutting the amount of money
3 that the City is going to have to pay for health
4 care?
5 A. It would have been '85. So three years
6 ago. It's '88 now.
7 Q. We're at the end of '86 or early '87. So a
8 year or so ago?
9 A. That's correct.
10 Q. We now know that the City is going to --
11 you are aware of the Ryan case at that point?
12 A. That's correct.
13 Q. You are aware that there's going to have to
14 be a payout of another 20 million out of the City's
15 money to go to the pension funds, right?
16 A. I've testified that I'm not sure that Ryan
17 had been settled. It may have been. But whether or
18 not I knew it in October of '87 for 88 is another
19 issue.
20 Q. Let me refresh your recollection.
21 If I suggested to you that the Ryan
22 decision had become final by the end of '86 and at
23 the end of 1987 all that was being done is computing
24 the exact amount of money that had to be paid

1 over --

2 MS. BECKETT: Objection, your Honor.

3 For the record Counsel, is not only

4 testifying but he's testifying inaccurately as to

5 the resolution of the Ryan case. If he wants to

6 refresh the witness' recollection, he can show her

7 records from the --

8 THE COURT: I'll sustain your objection.

9 (Short pause.)

10 MR. KRISLOV: If I said that -- assuming the

11 record shows -- your Honor, I have one copy sitting

12 loose of the Ryan decision, that shows as a public

13 record it was decided, rehearing denied on November

14 12, 1986. I would be glad to supplement the record

15 with an official copy rather than a copy I happen to

16 be carrying around with notes. But it is a public

17 document. And I would just suggest that at this

18 point at least may I show the witness the decision

19 so that perhaps we can refresh her memory as of the

20 status of the case as of November 12, 1987 anyway.

21 Would that satisfy this record?

22 MS. BECKETT: No. First of all, the witness has

23 testified she doesn't recollect the case. All she

24 knows is she was out there.

1 Secondly that opinion was not dispositive
2 of the case. There was still a mandate that had to
3 come down from the Supreme Court. And the witness
4 has not testified as to that.
5 THE COURT: Objection sustained.
6 MR. KRISLOV: Let me rephrase it, then.
7 BY MR. KRISLOV:
8 Q. By early '87 you were aware that the City
9 would have to pay some significant amount of money
10 as a result of the Ryan case?
11 A. I was aware that the Ryan case was out
12 there, that at some point some amount of money would
13 have to be paid.
14 Q. And that it would have to be paid to the
15 pension funds?
16 A. I probably knew at least that.
17 Q. And at that time you were made aware of the
18 fact that you were paying for annuitant health care
19 benefits, and you decided to cut that out to offset
20 whatever money you were going to have to pay
21 underwritten. Isn't that correct?
22 A. That is not correct. That is not correct.
23 Q. Let's change gears a second.
24 You said that the City had effectively

1 terminated the health care plan, I believe on direct
2 testimony, didn't you?
3 A. In '84 when we changed the plan.
4 Q. Yes.
5 A. We terminated the old plan and immediately
6 instituted a new plan. That's correct.
7 Q. If you terminated the plan -- but the fact
8 of the matter is you never told any of the
9 annuitants that the plan had been terminated, did
10 you?
11 A. I don't know if we used the word with the
12 annuitants "terminated." We used the word "plan
13 changed." But in effect it was a termination of one
14 plan and the institution of a second plan.
15 Q. What's the difference between a termination
16 and a change?
17 A. It may be terms of art.
18 To me a change would be minor differences
19 within the plan without making major overhauls. It
20 would also mean that our relationship with our
21 administrative office services only providers was
22 the same.
23 When we made the termination of the old
24 plan, institution of a new plan in '84 into which we

1 brought the annuitants in '85, we changed that part
2 which was visible to the employees. But we also
3 made a major change on the business side to that
4 part which was largely invisible to the employees.
5 Q. Let me try and get this so I understand
6 it.
7 When you notified the employees -- well, in
8 the plan book there are specific termination
9 provisions. This was not a termination for purposes
10 of the plan?
11 A. What was not.
12 Q. What was done in '84, '85 was not a
13 termination under the language of the plan?
14 A. We terminated one plan, we instituted
15 another plan. It was totally -- to the employee or
16 to the annuitant it was of no inconvenience, because
17 benefits went on, albeit the way they got reimbursed
18 might have been changed or even the people to whom
19 they sent their paperwork might have been changed.
20 Q. But it wasn't a termination for purposes --
21 it wasn't a termination for purposes of the plan,
22 was it? It was a change?
23 A. No. We terminated in '84 the plans we had
24 in effect and we put in a new plan. We went from

1 the old "I'm in Bankers," "I'm in Blue Cross" to a
2 new, "You are either in the City Health Plan or you
3 are in an HMO." You will call the Benefits
4 Management Office. You will do this whole series of
5 things.
6 There were totally new behaviors for our
7 employees. That is the termination of an old plan,
8 institution of a new plan.
9 Q. Internally you decided that was a
10 termination. But you never told anybody outside
11 that was a termination?
12 A. I don't know whether we did or not.
13 Q. When it was communicated to the annuitants,
14 if I can show you Defendant's Exhibit 35, which has
15 already been admitted into evidence, I believe the
16 language is "we're changing the plan."
17 A. "Is changing."
18 Q. And I suggested that with any communication
19 with the outside world there was never a statement
20 that the plan was being terminated, only that it was
21 being changed?
22 A. That may have been true in our
23 communications.
24 MR. KRISLOV: No more questions for Miss

1 Gilliam.

2 THE COURT: Any redirect, Ms. Beckett.

3 MS. BECKETT: No, your Honor.

4 THE COURT: You may step down, Miss Gilliam.

5 Thank you very, very much.

6 MR. HERBERT: Your Honor, could we have a brief

7 recess.

8 THE COURT: We will in a moment. I just want to

9 get some idea of our logistics here.

10 MR. FORDE: I have a five-minute witness here

11 who I would like to get on because he's a lawyer

12 with another appointment. Then we have three city

13 witnesses.

14 THE COURT: Can we take a little break.

15 MR. FORDE: We could take a break before, or I

16 could get this man on and off.

17 THE COURT: Why don't we take a break for ten

18 minutes. And then we'll take the witnesses and keep

19 on until we finish.

20 (Recess)

21 THE COURT: Call your next witness, Mr. Forde.

22 MR. FORDE: Mr. Kubasiak.

23 (Witness is sworn.)

24 THE COURT: Have a seat, sir.

1 Please state your name and spell your last
2 name.
3 THE WITNESS: Daniel K. Kubasiak,
4 K-u-b-a-s-i-a-k.
5 THE COURT: Your witness, Mr. Forde.
6 DANIEL K. KUBASIAK,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. FORDE:
11 Q. Mr. Kobasiak, would you state for the court
12 your employment history and professional experience,
13 particularly with city government?
14 A. I worked for the City of Chicago from 1974
15 through January of 1981. I was in various
16 capacities with the City's budget office. My last
17 position with the City's budget office was the first
18 assistant budget director. I then served as the
19 first deputy comptroller for a short period of time,
20 left the City employment, went into the private
21 practice of law, returned to the City of Chicago in
22 June of 1983 and served as chief administrative
23 officer for the Committee on Finance until
24 approximately December of 1986.

1 Q. And specifically in the period 1984, 1985,
2 and 1986, what role did you have in the preparation
3 of budjets and appropriation ordinances for the City
4 of Chicago?
5 A. The appropriation ordinance is considered
6 by the or at that time was considered by the
7 Committee on Finance. The Mayor submitted a budget
8 recommendation to the City Council who referred it
9 to the Committee on Finance.
10 I served as the chief officer for the
11 Committee at that time, and in such capacity worked
12 as a staff person for the members of the Committee,
13 specifically for the chairman of the Committee on
14 Finance, prepared budget estimates and alternatives,
15 and made budget suggestions in consideration of the
16 annual appropriation ordinance.
17 Q. And in those roles that you've described,
18 were you familiar with the City's coverage of health
19 care benefits for retired employees?
20 A. Yes.
21 Q. Now, I'm going to show you a few exhibits
22 that are in evidence. The first is exhibit number
23 36, which is in evidence and is a page from the 1984
24 budget. And I direct your attention to Line Item

1 .042. And the description her in for health care
2 benefits.
3 I would ask you to look at that description
4 please.
5 A. Yes, sir.
6 Q. Were you familiar with that description at
7 that time?
8 A. Yes, sir.
9 Q. Did that cover retired City employees?
10 A. It was my understanding that it did. Yes.
11 Q. Now, perhaps -- your Honor, do you happen
12 to have your copy?
13 THE COURT: The one with the asterisks.
14 MR. FORDE: Yes.
15 Let me show you the court's copy. Because
16 your copy was cut off at the margin.
17 BY MR. FORDE:
18 Q. Would you explain the use of these
19 descriptions in those line items and how they relate
20 to the starred or asterisked items that followed
21 them, in this case personnel services?
22 A. The state statutes set forth certain
23 parameters that municipalities. Specifically the
24 City of Chicago, in this instance, must follow in an

1 annual appropriation ordinance. And it requires
2 that there are appropriations as far as objects and
3 purposes. The City's own budget on a previous page
4 identifies that the objects of appropriation are
5 those which bear an asterick before their number.
6 And it has always been the practice of the
7 City and the intent that the specifically budgeted
8 items were those that had the asterisk in front of
9 them.
10 So in this instance Line Item 9112.000,
11 which reads for personal services bears the asterisk
12 in front of it. And that is the object of
13 appropriation in this instance. The other line
14 items above there, .020 through .057, are put in
15 there for a purpose of internal control and
16 description as to the manner in which the
17 appropriated item is going to be used.
18 Q. I will show you -- first of all, so for
19 that reason you can exchange and transfer funds
20 within that account, because the appropriation, the
21 actual appropriation that is designed to comply with
22 law is only the asterisk item?
23 A. Yes. That's true. But I would also
24 mention that there are, again, certain

1 administrative controls that control the
2 expenditures of these funds. And you can transfer
3 money within those accounts administratively.
4 Q. Now, I'm going to show you a copy of the
5 full 1985 Annual Appropriation Ordinance.
6 At Page 18 of that ordinance, which is the
7 first page, starting with Account 100 or the
8 corporate fund.
9 And you will note at the top in bold face
10 it states "Note: The objects and purposes for which
11 appropriations have been made are designated in the
12 ordinance by asterisk."
13 Is that the reference you referred to a
14 moment ago?
15 A. Yes. It is.
16 Q. Now, if you'd look at Exhibit 37, which is
17 a page which is in evidence and is a page from the
18 appropriation -- is a page from the proposed budget
19 prepared by the administration, at Account 042. And
20 after you've had a chance to look at that, I'd ask
21 you then to look at Exhibit 38. This is '84. This
22 is '85. 37 is '85 as proposed by the
23 administration. 38 is the ordinance as adopted.
24 And you can, comparing those you can see

1 that there is some additional language in Exhibit
2 38, specifically the words are added "... and for
3 partial payment of the costs of claims and
4 administration, for hospital and medical care
5 provided to certain participants in the Policeman's
6 Annuity and Benefit Fund, Firemen's Annuity and
7 Benefit Fund, Laborers and Retirement Board
8 Employees Annuity and Benefit Fund and Municipal
9 Employees Annuity and Benefit Fund."
10 Are you familiar with that language?
11 A. Yes, I am.
12 Q. Who added those words? Who composed those
13 words in 1985?
14 A. I, with members of our staff in the Finance
15 Committee, drafted that language.
16 Q. And did you and members of the Finance
17 Committee staff intend to change anything from the
18 1984 appropriation when you added those words?
19 A. The intent was more for clarity than
20 change. It was our understanding, and I believe it
21 was, in fact, the case, that these particular
22 individuals were covered under the 1984
23 appropriation ordinance.
24 There had been some suggestions being made

1 during the negotiations of the 1985 budget that the
2 annuitants might not be covered in the future. And
3 this language was drafted to clearly set forth the
4 intent.
5 Q. So you intended no change from '84, is that
6 correct?
7 A. That's correct.
8 Q. But you wanted to clarify it because of a
9 controversy going on at that time?
10 A. During the discussions and negotiations
11 that might be for the preparation of the budget
12 between the executive and legislative branch there
13 were some suggestions by the representatives of the
14 executive branch that the annuitants might not, in
15 fact, be covered in the future. And this language
16 was drafted as a result of that.
17 Q. Are you familiar with what happened in that
18 line item description in 1986?
19 A. I believe I am.
20 Q. And I'm going to show you a document that
21 has been marked Defendant's Exhibit 39.
22 And you will see the description there,
23 which I will represent to you goes back to the old
24 or 1984 description.

1 Are you familiar with those events?
2 A. Yes, I am.
3 Q. Is there any reason why you didn't again
4 add the language or found it unnecessary to add the
5 language in the 1986 budget that you had added in
6 the 1985 budget?
7 A. It was my understanding from what took
8 place at that time that the controversy surrounding
9 the covering of the retired City employees was no
10 longer in question.
11 Q. So was it necessary to include the
12 language?
13 A. It wasn't thought to be necessary. That's
14 correct.
15 Q. Were members of the Finance Committee and
16 other members of the Council as far as you knew
17 aware that the 1986 was intended to cover
18 annuitants' health benefits?
19 A. I believe so.
20 MR. FORDE: I have no further questions, your
21 Honor.
22 I move the admission of 39.
23 THE COURT: Any objection to 39, Ms. Beckett?
24 MS. BECKETT: No objection.

1 THE COURT: Strike the identification
2 marks.
3 It will be received.
4 (Whereupon, Defendant's Exhibit
5 No. 39 was received
6 in evidence.)
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1 THE COURT: Fire, any questions?
2 MR BURNS: I have just one or two, I think.
3 EXAMINATION
4 BY MR. BURNS:
5 Q. Mr. Kobasiak, you've answered questions
6 regarding the transfer of money within the starred
7 or asterisked account.
8 Now, what if there's an overrun or a
9 shortfall, to use Miss Gist Gilliam's term, with
10 respect to an account like 042 and that shortfall
11 exceeds any money that would be in the other
12 accounts that comprise that 9112.0 account? In
13 other words, what if there's a shortfall that can't
14 be taken care of by transferring funds within that
15 one account?
16 A. Well, I think there are two responses or
17 maybe one response but two answers I'd have to give
18 in a sense. That it depends when they discover that
19 there's not enough money, or it depends on when they
20 would discover that they have obligations that
21 exceed the appropriation.
22 If during a budget year it's determined
23 that there's insufficient appropriation within a
24 particular budgeted account, then the executive

1 branch or the administration of the City would have
2 a responsibility to present a transfer of funds, to
3 transfer money into that account, or in certain
4 instances, depending on the extent of the shortfall,
5 would call for a supplemental appropriation.
6 Q. What would make the difference between a
7 supplemental appropriation and no appropriation?
8 What would cause one to be done than the other?
9 A. It's a question of the means of the City.
10 If the City has moneys elsewhere in other
11 appropriated accounts that they can transfer without
12 causing shortfalls in other particular areas, then
13 they would properly transfer that money to cover a
14 shortfall within a budgeted item.
15 Q. Well, if I understand you, then -- and
16 maybe I misunderstood Miss Gist Gilliam's
17 testimony. If I understand your testimony now that
18 the administration is not limited to the items that
19 comprise a particular starred item as far as
20 intra-account transfers, but that they could
21 actually take money out of some other account for
22 the Department of Finance generally and use it to
23 pay health care costs?
24 A. I didn't hear her testimony. But what I'm

1 trying to say is if the administration discovers
2 that there's a shortfall within one particular
3 appropriated line item, it may prepare and submit to
4 the City Council a transfer of funds from one
5 appropriated item to another. And that transfer of
6 funds is then considered by the City Council and
7 then either approved or rejected.
8 If it's approved, the money is transferred
9 and you have additional appropriation authority
10 within your line item account.
11 Q. So transfers within the starred account
12 could be without any submission back to the City
13 Council. But if it's going to be from another
14 account, then they would have this transfer of
15 funds?
16 A. The practice has always been that within an
17 appropriated item you can transfer with
18 administrative signoffs or under administrative
19 controls. If it's going from one appropriated item
20 to another, then it requires Council approval.
21 Q. Do you know what the practice has been with
22 respect to any shortfalls with regard to Line Item
23 042?
24 A. No.

1 Q. Do you know whether what you have described
2 as the practice that is followed, if the excess
3 amount is not determined until after the end of the
4 budget year?
5 A. Well, in that instance, and that was the
6 first example that I was given, in that instance if
7 it's after the budgeted year and your budget cycle
8 is closed, you might in the subsequent budget
9 appropriate a sum of money which is sufficient to
10 pay your shortfall from the prior year.
11 Q. What if you had a surplus in some other
12 account in that prior year?
13 A. There are instances where the City has
14 taken into account shortfalls in other appropriated
15 items and balanced off the shortfalls with the
16 overruns.
17 Q. Would that be with City Council approval,
18 or would they do that administratively?
19 A. I don't recall.
20 Q. Okay. One other question.
21 You mentioned that some of these items are
22 used within that starred item that I believe you
23 said for internal control. By internal control did
24 you mean the administration and the -- well, I guess

1 period. The administration.

2 A. Yes. The administration of the budget is

3 in the hands of the executive once it's been passed

4 by the legislative branch.

5 And yes, when I'm talking of administrative

6 controls, I'm referring to those that are in place

7 in the executive branch.

8 MR BURNS: Thank you, sir.

9 I have no further questions.

10 THE COURT: Labor or Municipal, any questions?

11 MR. FORDE: Nothing.

12 MR. HEISS: Nothing.

13 THE COURT: Intervener, any questions.

14 MR. KRISLOV: Not at this time, your Honor.

15 THE COURT: Cross examination, Ms. Beckett.

16 MS. BECKETT: One moment for a conference, your

17 Honor.

18 THE COURT: Certainly.

19 (Short pause.)

20 MS. BECKETT: Thank you, your Honor.

21 I am ready to proceed now.

22 THE COURT: You may proceed.

23 BY MS. BECKETT:

24 Q. Mr. Kubasiak, I don't recall you testifying

1 what jobs you've held since December of 1986. Could
2 you elaborate on those for a moment?
3 A. I've been of counsel with the law firm of
4 Joyce and Kubasiak since then.
5 Q. Could you tell me who the attorneys in that
6 law firm are, please?
7 MR BURNS: Objection. I don't see relevance or
8 materiality.
9 THE COURT: I think it it's preliminary. I
10 don't know.
11 I'm going to overrule your objection at
12 this time.
13 MS. BECKETT: It's appropriate to show bias.
14 THE COURT: Proceed.
15 THE WITNESS: Edward Joyce, Gerald Kubasiak,
16 Richard Cremieux, Steve Rotunno, Vytas Ambutas, John
17 Doyle, Diane McArthur, Art Aufmann, Arlyn Afremow,
18 Al Costiglioni (phonetic), Colleen Tyree, Mark
19 Resnik. Myself, of counsel, and Peter Carey, of
20 counsel.
21 Q. Thank you.
22 I would like to draw your attention back to
23 Defendant's Exhibit 39, which I believe was a page
24 from the final budget passed for the year 1986.

1 You've already testified as to the purpose of the
2 starred item basis of appropriating.
3 Could you elaborate a little bit more about
4 the purpose of the particular descriptions found
5 between the starred items, with particular attention
6 to .020 through .060, which you've already discussed
7 earlier?
8 A. I will try to. I'm not sure I understand.
9 .020 says "overtime."
10 Q. Well, let me rephrase that, then.
11 You've testified that in your opinion the
12 budget authority is for the starred items?
13 A. That's correct.
14 Q. Then what is the purpose for the additional
15 language here elaborated just above this starred
16 item in some six, seven, eight, or nine different
17 line items? What's the purpose of having these
18 specific line items?
19 A. Generally for a brief description as to the
20 nature of the expenditures within the appropriated
21 item.
22 Q. Would it be fair to say that these
23 descriptions are for the benefit of the taxpayers as
24 well as for the City Councilmen who vote on them?

1 A. It's for everyone.
2 Q. It's for everyone, that is for the citizens
3 of the City of Chicago?
4 A. For everyone.
5 Q. For everyone so that they can understand
6 more clearly what the money is going to be spent on?
7 A. That's true.
8 Q. Is there any other purpose for having more
9 specific descriptions?
10 A. Is there a practical purpose or a legal
11 purpose?
12 Q. Well, both. Why don't we start with
13 practical and then why don't you describe the legal
14 purpose?
15 A. Practically it gives the administration
16 better guidelines within which they can control
17 expenditures. Legally there's no obligation to have
18 this.
19 Q. And what's the basis for your opinion that
20 there's no legal obligation to have specific line
21 item authority beyond the starred items?
22 A. Just my reading of state statutes.
23 Q. Off the top of your head can you remember
24 the citation of the particular statute?

A. No.

Q. And, Mr. Kubasiak, during the budget years in question that you've testified to when you were a member of the staff of the City Council Finance Committee, the only people who voted on the budget were the City Councilmen, were they not?

A. Yes.

Q. So staff people had no voting authority, did they?

A. No. Never have.

Q. The corporate authority for the City of Chicago is the City Council, correct?

A. The corporate authority is the City Council and the Mayor acting in unison.

Q. Regarding this 1986 budget, Exhibit 39, which I've already directed to you once, you said that for Line Item 042, that there was an understanding among aldermen that this language continued to include annuitants even though it did not specify annuitants.

Can you please name for me the aldermen who had this understanding?

A. I don't think I can recite the list of them. I don't remember all their names.

1 Q. Were they the aldermen who were within the
2 Finance Committee?
3 A. Yes. There were members of those --
4 certainly those aldermen were members of the Finance
5 Committee. That's true.
6 Q. To the best of your recollection were there
7 additional aldermen beyond the the aldermen who
8 served on the Finance Committee that had this
9 understanding?
10 A. Yes.
11 Q. What's your basis for belief that they
12 shared this understanding?
13 A. Direct communications with them.
14 Q. Were these conversations?
15 A. Yes.
16 Q. Were there any memos that passed between
17 you and these aldermen discussing your reasons for
18 striking the language regarding annuitants?
19 A. Not as I recall.
20 Q. Do you remember when these conversations
21 took place?
22 A. During the budget hearings.
23 Q. And when would those have been?
24 A. November and December of 1985.

Q. To your knowledge can you remember how many aldermen beyond those on the Finance Committee shared that understanding?

A. A majority.

Q. You do know for a fact that it was a majority?

A. My recollection is that it was a majority.

Q. And you're saying at least 26 of the aldermen shared that understanding?

A. That's my opinion. Yes.

Q. But you don't know their names?

A. No.

Q. Do you know if any taxpayers shared this understanding that the language in Line Item 042 in 1986 also included annuitants?

MR BURNS: I'm going to object.

MR. HEISS: I'm going to object.

THE COURT: I'm going to sustain the objection.

MS. BECKETT: Your Honor, the witness has testified repeatedly as to the understanding of the aldermen.

Without being able to identify them, I don't think it's anymore relevant than him being able to answer as to taxpayers.

1 THE COURT: Do you know of any taxpayer or
2 individual that had that understanding.
3 THE WITNESS: As I sit here, yes. The only ones
4 I can specifically say were members of the pension
5 funds that we spoke to.
6 BY MS. BECKETT:
7 Q. Do you recall who they were?
8 A. No, I don't.
9 Q. You mentioned that there were some budget
10 hearings. Were those public hearings?
11 A. Absolutely.
12 Q. And was this line item the subject of
13 discussion at these public hearings?
14 A. I don't recall.
15 Q. You don't remember if this particular line
16 item came up as a matter of discussion between the
17 public and the City Councilmen?
18 A. No. I don't recall.
19 MS. BECKETT: I have no more questions.
20 MR. HERBERT: Your Honor --
21 (Short pause.)
22 THE COURT: Proceed.
23 BY MS. BECKETT:
24 Q. You testified earlier that in 1985 there

1 was some concern that persons in the administration
2 had threatened to cancel annuitant health care
3 coverage, is that correct?
4 A. I'm not sure if that's precisely what I
5 said.
6 In 1984 during the discussions or the
7 negotiations over the preparation of the 1985 budget
8 there was some -- the issue was raised that the
9 annuitants might not, in fact, be covered.
10 Q. So you felt that it was important that
11 there be specific language reflecting the intention
12 that Line Item 042 cover annuitants in addition to
13 active employees, correct?
14 A. Yes.
15 Q. So what was the purpose for deleting that
16 specific language for the following year?
17 A. As I recall, there was not the same problem
18 that existed during that discussion, that the
19 question of the annuitants coverage was not an
20 issue.
21 Q. Why would you need to delete the language
22 if the purpose was for additional clarity?
23 MR. FORDE: Objection, your Honor.
24 There's no testimony that they deleted

1 anything.

2 THE COURT: Objection sustained.

3 BY MS. BECKETT:

4 Q. What was the purpose of the 1986

5 language -- what was the purpose of not continuing

6 the same language that appeared in the 1985 budget?

7 A. I don't recall.

8 Q. Wasn't it your testimony that there was no

9 longer any concern that the annuitants might be cut

10 off?

11 A. That's true.

12 Q. Directing your attention back to Exhibit

13 39, the wording in Line Item 042.

14 What in this language informs any reader,

15 an alderman or a taxpayer or anyone else that this

16 line item covers retired employees?

17 MR BURNS: I'm going to object.

18 MR. HEISS: Objection.

19 That's not the legal standard.

20 THE COURT: Objection sustained.

21 BY MS. BECKETT:

22 Q. Mr. Kubasiak, you've testified that this

23 detailed language served two purposes, a practical

24 purpose and a legal purpose, correct?

A. No. I don't believe I said it has a legal purpose.

Q. Did you not testify that the purpose of having specific line items in addition to the starred items was to satisfy the practical need to have detail and that, secondly, it responded to a legal need?

A. No. I thought when you asked me the question I asked you to clarify it. And I asked if it was practical or legal.

Q. I stand corrected.

At any rate, how besides what appears in this language is a taxpayer or an a citizen or a student or an alderman or any person to understand what is contained in this line item besides looking at the language.

MR BURNS: Objection.

THE COURT: Sustained.

MS. BECKETT: Your Honor, this witness has testified to the understanding of aldermen as to what's in here. He's also testified that this language informs the public as to how the City's money is being spent. I want to know how besides what -- he's also testified that there was no longer

1 any need in 1986 to have specific language. I want
2 to know how else people could know how the City's
3 money was being spent if it's not contained in this
4 language.
5 THE COURT: Objection sustained.
6 MS. BECKETT: No more questions.
7 THE COURT: Are you through, Miss Beckett.
8 MS. BECKETT: Yes.
9 I said I have no more questions.
10 THE COURT: Any redirect.
11 MR. FORDE: Your Honor, only this.
12 RE-DIRECT EXAMINATION
13 BY MR. FORDE:
14 Q. As I understand your testimony after Miss
15 Beckett's inquiry, you did not add the language in
16 1986 because you felt at that time it was
17 unnecessary because there was no longer a threat
18 that it would be interpreted any other way but that
19 it covered annuitants?
20 A. That's my understanding. Yes.
21 Q. And with respect to the appropriations, the
22 starred items in the budget, the starred items are
23 the appropriations, and not the descriptions or the
24 account descriptions?

1 A. That's correct.

2 Q. And the appropriation for health care on

3 that account is contained in Item 912.000 for

4 personnel services?

5 A. That's correct.

6 MR. FORDE: That's all the questions, your

7 Honor.

8 THE COURT: Anything further?

9 Ms. Beckett any recross.

10 MS. BECKETT: No.

11 THE COURT: You may step down, sir.

12 (Short pause.)

13 MR. FORDE: Your Honor, we still have a few

14 witnesses. We thought we would be finished by

15 today. It's obvious that we're not going to finish

16 this afternoon. There are City witnesses here. We

17 are prepared to, especially if it conveniences them,

18 we are prepared to continue examination for awhile,

19 I mean as long as your Honor can --

20 THE COURT: I was expecting to work you until

21 5:30. Do you think you can finish another witness?

22 MR. FORDE: Oh, for sure. Yes.

23 THE COURT: I have to give you tomorrow, too.

24 MR. FORDE: I would call Mr. Williams.

1 MS. BECKETT: May we excuse those additional
2 witnesses that are not going to be --
3 THE COURT: I want to change your schedule for
4 tomorrow.
5 I have you starting at 11:30, but I've been
6 called by my chief to a meeting at 12:00. So I'm
7 going to start you at 1:45 tomorrow. 1:45 instead
8 of 11:30.
9 MR. FORDE: That's fine.
10 MR. HEISS: If we said it wasn't okay, would we
11 have a choice?
12 THE COURT: No.
13 Let the record reflect, no.
14 MR. FORDE: I wasn't intending to approve the
15 change, but to say that I think that we will still
16 finish by 5:00.
17 THE COURT: Do you mean your case.
18 MR. FORDE: I think all the testimony will be
19 concluded tomorrow.
20 MS. BECKETT: Can I confer with counsel about
21 the order of witnesses.
22 THE COURT: Do you want to take a little recess
23 and confer about your logistics.
24 MR. FORDE: We'll excuse everybody except

1 Mr. Williams

2 (Whereupon, a discussion was

3 had off the record.)

4 (Short pause.)

5 THE COURT: We'll recess the trial and start you

6 off at 1:45 tomorrow. And we'll finish up on

7 Thursday. Because I have a doctor's appointment at

8 4:30 on Thursday, in the City of Chicago. We'll

9 recess until 1:45 tomorrow.

10 MR. FORDE: Thank you, your Honor.

11 (Whereupon, the proceedings

12 in the above-entitled cause

13 were continued until Wednesday,

14 June 22, 1988 at 1:45

15 o'clock p.m.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

JOHNETTA STAFFORD, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains all the proceedings given at said hearing.

Johnetta Stafford
Certified Shorthand Reporter

SUBSCRIBED AND SWORN TO
before me this 22 day
of June 1988.

Thomas Waclawek
Notary Public

OFFICIAL SEAL
THOMAS WACLAWEK
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. MAR. 7,1992

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION
6 THE CITY OF CHICAGO,)
7 Plaintiff,)
8 vs.) No. 87 CH 10134
9 MARSHALL KORSHAK, et. al.,)
10 Defendant.)
11
12 Before the Honorable
13 Albert Green
14 Judge of said Court
15
16 June 22, 1988
17 1:45 o'clock p.m.
18
19 APPEARANCES:
20
21 (Same as hereinbefore noted.)
22
23
24

1 I N D E X

2 WITNESS	DX	CX	RDX	RCX
3 RONALD PICUR	114			
4	134			
5	138			
6	141			
7		144		
8			148	
9 S. NATHAN WILLIAMS	150			
10 AL JOHN FATTORE	169			
11	187			

12

13

14

15 E X H I B I T S

16 NUMBER	MARKED FOR ID
17 Defendant's Exhibit	
18 Number 26	P. 174
19 Number 21	P. 176
20 Number 24	P. 177
21 Number 27	P. 182

22

23

24

1 THE COURT: Good afternoon ladies and gentlemen.
2 In the case of City vs. Korshak, 87 CH 10134. Let the
3 record reflect this trial is in progress. The
4 defendant counter-plaintiffs are pursuing their case.
5 Mr. Forde, are you ready to call your next
6 witness, sir?
7 MR. FORDE: Yes, we are, your Honor, Mr. Ronald
8 Picur.
9 THE COURT: Will you call Mr. Picur to the stand.
10 (Whereupon, the witness was
11 duly sworn.)
12 RONALD D. PICUR,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:
15 THE COURT: Have a seat, sir.
16 For the record, would you please state your
17 name and spell your last name?
18 THE WITNESS: Ronald D. Picur, P-i-c-u-r.
19 THE COURT: Your witness, sir.
20 DIRECT EXAMINATION
21 BY MR. BURNS:
22 Q. Mr. Picur, you hold a position with the City
23 of Chicago?
24 A. Yes, sir, City Comptroller.

1 Q. And how long have you held that position?
2 A. Since September 1, 1985.
3 Q. And prior to that time, did you have any other
4 association with the City of Chicago?
5 A. In the -- from the time period July 1984
6 through August 31, 1985, I was a Fiscal Consultant with
7 the Office of Budget and Management and the Mayor's
8 Office.
9 Q. So you were a consultant until September 1 at
10 which time you became City Comptroller?
11 A. Correct.
12 Q. As City Comptroller, do you hold any positions
13 with the pension fund involved in this litigation?
14 A. As virtue of the position of City Comptroller
15 and State Statute, I sit on the Pension Boards of the
16 Firemen's AMB, Municipal AMB and the Laborer's AMB.
17 Q. Mr. Picur, were you here yesterday when
18 Mrs. Gist Gilliam testified with respect to
19 appropriated amounts and accounts and transferring
20 funds?
21 A. I was here for a portion of her testimony, not
22 the entire amount. I did hear some discussion of it.
23 Q. Well, in order to reduce the time needed for
24 your examination, perhaps I could limit my questioning

1 to transfers that take place after the fiscal year has
2 closed. That is, directing your attention specifically
3 to Line Item 042 regarding appropriations for Health
4 Care Costs.
5 What has been the situation in your experience
6 with respect to whether there be a shortfall or an
7 overage in the amount appropriated as against the
8 actual amounts expended for the Health Care Cost of
9 active and retired employees?
10 A. It's my understanding that on occasion there
11 has been a shortfall in that account. That shortfall
12 would not have the -- will not be identified until
13 typically April, May or even June of the subsequent
14 year. That's due to the fact that the dollar amount
15 involved reflects a liability of the City.
16 As of December 31 that liability must be
17 constructed by the servicing agent, either Blue
18 Cross/Blue Shield or Banker's Life. So the City, which
19 is itself insured, does not become aware of the final,
20 total cost for the fiscal year of 1985; for example,
21 until April and May of 1986.
22 At that point and time, if there is a
23 shortfall, as there has been on occasion, then a
24 transfer is typically made within the account group

1 within my office, the 9112 Account Group Finance
2 General, and if you look at the language in the
3 appropriation ordinance says, "to be expended at the
4 direction of the City Comptroller unless otherwise
5 noted," so that we have historically made transfers if
6 a shortfall exists within that group of accounts.
7 Q. And if there were not sufficient funds in
8 Group Account 9112, what -- well, let me ask it to you
9 instead of speculating.
10 Has there been any year with which you're
11 familiar where there was a shortfall that exceeded any
12 overage or salvage in another account within that
13 finance group.
14 A. Not to the best of my knowledge.
15 Q. When did you first become knowledgeable of the
16 fact that the City of Chicago Health Care Cost for
17 retirees exceeded the amount of money which was paid by
18 the retirees to the City and the amount paid by the
19 various pension funds to the City?
20 A. It was approximately in the spring of 1987.
21 Q. And is it fair to say until that time you were
22 aware that retirees were covered, but were not aware of
23 how the financing of that coverage took place?
24 A. That's correct.

1 Q. And how did you come to know that there was a
2 difference between the cost of providing Retiree Health
3 Care Benefits and the amounts paid by the retirees and
4 the various pension funds?
5 A. In conversation and discussion with
6 representives of corporation counsel as it related to
7 various pension matters.
8 Q. Now, that meeting took place when, sir?
9 A. Approximately spring of '87.
10 Q. And did you tell us who was present to the
11 best of your recollection?
12 A. I believe that Matthew Pierce, Deputy
13 Corporation Counsel was there. I believe Mr. Monik,
14 (sic) Corporation Counsel was there. I believe the
15 Budget Director Mrs. Gilliam was there.
16 Again, it was a long time ago and there's
17 literally been hundreds of meetings subsequent on many
18 different topics. It's hard to pinpoint those -- some
19 place along the line that conversation was made that
20 related to this matter.
21 Q. Was this particular meeting called for the
22 purpose of discussing this issue?
23 A. We were discussing overall pension issues as
24 it related to legislation and litigation.

1 Q. And would litigation include the Ryan case?
2 A. Some place in the discussions if not the
3 initial meeting that it did include that, yes.
4 Q. And what position was expressed at that
5 meeting with respect to the payments of Health Care
6 Cost of retired employees?
7 A. The position was that the language in the
8 appropriation ordinance for that and the previous years
9 did not specifically include annuitants.
10 Q. And who expressed that opinion, sir?
11 A. Either the corporation counsel or it's deputy
12 or a representative of the corporation counsel. It
13 came from that office.
14 Q. Was there anything in writing that was
15 distributed and/or reviewed by participants at that
16 meeting?
17 A. If there was, it was the appropriation
18 ordinance language itself that would have been the only
19 thing that I can remember. There was no memo or
20 anything of that nature.
21 Q. Now, when you did you first inform the
22 trustees of the various funds upon which you sit that
23 there was a question as to the legality of the
24 expenditures of money for health care coverage of

1 retirees?

2 A. On advice of corporation counsel. Also as I
3 understand state statute, counsel for the each of the
4 four pension funds that was to be handled by his office
5 and I did not personally make any such notification.

6 Q. Did you become aware during 1987 that
7 subsequent to that meeting that the representives of
8 the corporation counsel and/or other representives of
9 the City had approached the pension funds with respect
10 to increasing payments to the City to cover health care
11 cost to retirees?

12 A. At that point and time in 1987 or at an
13 earlier point and time?

14 Q. Let me ask anytime?

15 A. In recent months, I have become aware of
16 various memos that exist that were discussed yesterday
17 with Mrs. Gilliam as to 1984's actions that the City
18 apparently took.

19 Q. I'm more interested, sir, in anything in which
20 you personally were involved and have personal
21 knowledge of while you were a trustee?

22 A. In 19 -- in the latter part of 1987 as
23 discussions went forward internally, the approach was
24 being structured as to going forward to the pension

1 funds and pursuing additional contributions from them
2 or their membership to offset this subsidized cost that
3 the City had been providing.
4 Q. When did you recuse yourself from acting as a
5 trustee on matters involving Retiree's Health Care
6 Costs?
7 A. In January of '88.
8 Q. So in the latter part of 1987 then you had not
9 recused yourself, you were aware that the City was
10 interested in increasing the payments that the City
11 would receive with respect to health care costs of
12 retirees; is that a fair statement?
13 A. I was aware of the need to have the subsidies
14 cut and pension funds to be approached as a way of
15 eliminating that subsidy.
16 Q. And how about Mr. Miner's letter -- well, let
17 me ask you.
18 Are you aware that Mr. Miner sent a letter to
19 the various funds advising them that as of December 31,
20 1987, that health care coverage would be terminated?
21 A. Yes.
22 Q. Did you participate in the preparation and/or
23 sending of that letter?
24 A. No.

1 Q. When did you become aware of the letter?
2 A. After it had been transmitted to the pension
3 funds.
4 Q. At anytime during 1987 did any representative
5 of the City ever contend that there was anything
6 improper with respect to the expenditure of the funds
7 other then that the Line Item 042 was not descriptive
8 enough?
9 A. Not to the best of my knowledge.
10 Q. Does your office have responsibility for
11 approving expenditures of City funds to pay the bills
12 of the City?
13 A. Yes, it does.
14 Q. And can you tell us briefly with respect to
15 health care costs the procedure that would be followed
16 within your office in approving payments if such
17 approval is, in fact, handled that way?
18 A. As I think you are aware, the City itself is
19 insured. It had setup a payment plan so to speak with
20 the servicing agents, Blue Cross/Blue Shield and
21 Banker's Life. Whereby on a monthly basis an estimated
22 payment is made to those agencies as well as the
23 various HMO's that provide health care services to the
24 City. With respect to the City plan Blue Cross/Blue

1 Shield, Banker's Life, basically each month's payment
2 is one-twelfth of the annual estimated cost.
3 Thereafter, on a quarterly basis, Blue
4 Cross/Blue Shield and Banker's Life presented to the
5 City, to the Benefits Management Office, a summary of
6 actual charges. At which point and time either a
7 credit was made to the City if the City had overpaid on
8 the basis of deposits or an additional payment was paid
9 in order to bring the total payments the City had made
10 up to the actual costs for that quarter. That process
11 would typically could go on several months after the
12 close of the quarter and as a reconciliation of actual
13 to projected costs.
14 Q. Now, what's the correlation between the
15 Benefits Management Office and the Office of the
16 Comptroller with respect to such expenditures? I
17 believe you said that Blue Cross sends a statement to
18 the Benefit's Management Office?
19 A. The Benefit's Management Office has moved
20 around through city government over the last four
21 years. As of January 1, '88, it is now
22 organizationally and functionally and budgetwise
23 located in the Department of Personnel.
24 In '85, '86 and '87, it was in the Department

1 of Finance. Prior to that, I believe it was in the
2 Department of Personnel. So it had been relocated in
3 '85 and back again to Personnel in '88.
4 Q. So it was in Personnel, went to Finance and
5 then back to Personnel?
6 A. Correct.
7 Q. All right. And when that office receives a
8 statement from Blue Cross/Blue Shield, does it indicate
9 approval and send something to your office for the
10 actual check to be issued or can that department issue
11 it's own check?
12 A. The process is as you suggest. They would
13 review the information from Blue Cross/Blue Shield.
14 Prepare a voucher attached to the original copy of the
15 invoice that came from Blue Cross/Blue Shield and
16 forward it to my office for auditing and payment
17 purposes.
18 Q. And is that document that comes down then
19 audited by a Budget Analyst in your office?
20 A. Voucher Auditor is the title and what that
21 person will basically do is to confirm that there is an
22 invoice -- an original copy of an invoice is attached,
23 that the appropriate line item in the budget is being
24 charged, and that there is sufficient funds in that

1 line item, and that an authorized signatory sign the
2 City voucher authorizing payment. At that point and
3 time, it's entered into the computer system and that
4 check is generated.
5 Q. And when did you become aware that the
6 statements of Blue Cross and Banker's included a cost
7 of retirees?
8 A. Subsequent to spring of '87 when it was
9 identified that the City had been paying annuitant
10 costs as part of the City's Health Care Program, I
11 believe I asked that staff to verify that and I was
12 informed that, yes, those costs were included within
13 the monthly payments and the quarterly reconciliations.
14 Q. Did you ask anybody on staff how long that
15 practice had existed?
16 A. I don't remember asking that question.
17 Q. Did you subsequently inquire as to how long
18 that practice had existed?
19 A. Some place along the line I did ask that
20 question as to how did this whole process start, under
21 who, so on and so forth. As many things with city
22 government, it was one of those. It has always been
23 done was the response.
24 Q. Mr. Picur, I understand that you are -- well,

let me break that into two statements.

You are aware, are you not, that the individual annuitants pay something towards the health care costs of the City, set by the City, do you understand that question?

A. Well, if I did I guess I disagree because my understanding is that there are certain annuitants that do not pay anything towards their health care costs.

Q. Well, the City charges a flat amount to the annuitant; is that not correct? For $55 -- if they're nonmedicare, $55 for single coverage, $110 for two people and $150 for family coverage?

A. That's my understanding of the rates, yes, sir.

Q. And where that money comes from with respect to individuals was not the direct concern of the City, was it?

A. Well, from the standpoint of the amounts collected, the amounts were collected as I understand by the pension funds not by the City going individually to each and every annuitant.

Q. Were you aware -- well, let me ask it to you this way.

Are you aware that approximately ten million

1 dollars a year is paid by the pension funds to the City
2 with regards to Annuitant Health Care Cost?
3 A. Yes. It's my understanding that a portion of
4 that -- I don't remember the exact breakdown if it was
5 four or six million dollars from the annuitants and the
6 remaining portion is a return of property tax dollars
7 to the City.
8 Q. Mr. Picur, are you saying that the annuitants
9 send the check to the City of Chicago?
10 A. No. My understanding is that the pension
11 funds do the transmittal.
12 Q. That was my question, sir.
13 Are you aware that the City of Chicago
14 receives approximately ten million dollars a year in
15 checks from the four pension funds?
16 A. That's my understanding.
17 Q. All right. And can you tell us how that money
18 is handled internally by the City of Chicago?
19 A. I do not know the mechanics under which we
20 account for it. Conceptionally, it will be accounted
21 for as a reimbursement to the City and accounted as one
22 of a number of reimbursements that the City has under
23 separate revenue category called, "reimbursements."
24 Q. Would that show as a credit to Line Item 042?

1 A. No. If it was accounted for as a
2 reimbursement, there's a separate revenue item called,
3 "reimbursements."
4 Q. And if it's not treated as a reimbursement the
5 that account covers the -- how would it be handled?
6 A. Again, it would be not a reimbursement to that
7 account. It would be an account called
8 "reimbursibles."
9 Q. If it's not handled in that manner as you have
10 described, a reimbursible account, how would it be
11 handled?
12 A. Conceivably it could be shown as a
13 reimbursement directly to the 042 account.
14 Q. And who would make that decision as to how
15 it's handled?
16 A. The chief accountants out of my office.
17 Q. And you have never asked them how it's
18 handled, sir?
19 A. I have not pursued that, no. I assume it was
20 handled as a reimbursement as it should have properly
21 been.
22 Q. Now, when you were told in the spring of 1987
23 that there was a question about the legality of the
24 expenditure of City funds for the Health Care Cost of

1 retired individuals and their family, what if any
2 investigation did you conduct within your department to
3 ascertain whether there were individuals responsible
4 for the payment of those funds illegally?
5 A. I -- the investigation was simply to the fact
6 were there payments being made and the response was,
7 yes.
8 Q. No one was disciplined or otherwise
9 reprimanded for the approval of expenditures for Health
10 Care Cost of retirees?
11 A. No.
12 Q. Now, at the time that you learned of the
13 alleged illegal expenditure of funds, were you aware
14 that the money appropriated was based upon the cost of
15 both active and retired employees?
16 A. Not at the time I was informed of these
17 payments. Subsequently, we researched what was the
18 nature of the budgeting process, and it was identified
19 to us that the budgeting process was simply taking last
20 year's bill, total cost and effect and adjusting it for
21 th einflation factor so that if in last year's bill
22 there were Annuitant Health Care Costs in effect it
23 would be incorporated into the subsequent year's
24 budget.

1 Q. When did you first learn that the 1987 budget
2 appropriation was based upon that projected figure,
3 including annuitant's costs?
4 A. I knew the methodology. I did not know what
5 the basis was for that methodolgy of last year's bill
6 plus an inflation factor, and it was subsequent to this
7 spring '87 meeting that I then found out that last
8 year's, the so-called "base figure," did include
9 Annuitant Health Care Cost on top of the current
10 employee's health care cost.
11 Q. Did you understand either at the time of the
12 meeting or subsequently that there had been money
13 appropriated in anticipation of -- well, let me strike
14 that.
15 That money had been appropriated which
16 resulted from a calculation which included the cost of
17 providing health care to retired employees and their
18 families?
19 A. Well, yes, subsequent to the spring '87
20 disclosure of Annuitant's Health Costs being paid by
21 the City and then researching the budgeting process, it
22 then became apparent to me those costs were
23 incorporated in the 1987 Budget.
24 Q. Did you at that time take any steps in order

1 to legalize the expenditure of City funds for health
2 care for retirees?
3 A. On the basis of advice of corporation counsel,
4 I took no further action.
5 Q. Is it possible, Mr. Picur, for a budget to be
6 changed after it has been adopted?
7 A. Yes, sir.
8 Q. Do you know of anything which would have
9 prevented either the City Administrator or the City
10 Counsel from changing the language of Line Item 042?
11 A. No.
12 Q. At the time of the meeting in the spring of
13 1987, did any participant there refer to the line item
14 of the 1985 Budget?
15 A. No.
16 Q. Can you tell us the reason, if any, if asked
17 by the corporation counsel at the meeting or a
18 representative of the corporation counsel as to why you
19 should not do anything?
20 A. Well, as related to the broader topic of
21 overall pension strategy that incorporated or
22 encompassed ongoing litigation, number one. Number
23 two, legislation that was being discussed and debated
24 in Springfield. Number three, a means of providing an

1 orderly transition for the annuitants in the way of
2 increasing their payments or having somebody pick up
3 the subsidy, it was agreed at that point and time that
4 an overall game plan would be developed and unfolded
5 over some period of time.
6 Q. Was the litigation that you have referred to
7 identified specifically?
8 A. I'm not sure at that meeting or subsequently
9 but suggested at the Ryan lawsuit.
10 Q. What legislation was involved during this
11 meeting? What was discussed at the meeting regarding
12 the legislation?
13 A. Either the number of bills have been submitted
14 in Springfield to the General Assembly that related to
15 increased benefits for each and every of the four
16 pension funds.
17 Q. Did any of those bills relate to Health Care
18 Cost of retired employees?
19 A. Not to the best of my memory.
20 Q. Now, you referred to, "an orderly transition
21 for annuitants to pay more."
22 Was there a discussion at that meeting of
23 changing the budget appropriations so that the matter
24 could become legal?

1 A. I don't remember any such discussion.
2 Q. Did anybody say if the annuitants pay more it
3 becomes legal?
4 A. No. I don't remember that discussion either.
5 Q. Did anybody set forth a schedule for this so
6 called "orderly transition"?
7 A. We discussed the passage of legislation in
8 Springfield and subsequently tied it into the 1988
9 Budget.
10 Q. What if anything was said with regards to
11 strategy for negotiations with the labor unions?
12 A. Well, part of our overall pension strategy was
13 to suggest that pension legislation and requests for
14 additional benefits should be logically linked to an
15 overall Collective Bargaining Agreement.
16 Q. Did anybody say how that would make legal what
17 was allegedly illegal?
18 A. I don't remember that discussion.
19 Q. So if I understand your testimony then
20 Mr. Picur at this meeting when it came out that there
21 was this alleged illegality, you were told by the
22 corporation counsel and/or it's representative one, not
23 to tell the trustees of the funds of anything regarding
24 the alleged illegality. Two, not to stop payment of

1 Annuitant Health Care Costs and expenditures of funds
2 out of the City Treasury?
3 MS. BECKETT: Objection, your Honor. This is
4 leading into a compound question. I would I think it
5 would be --
6 THE COURT: I'm going to sustain your objection,
7 Ms. Beckett.
8 MR. BURNS: I have no further questions.
9 THE COURT: No further questions, police?
10 MR. FORDE: A few questions, your Honor.
11 DIRECT EXAMINATION
12 BY MR. FORDE:
13 Q. After this meeting in 1987, Mr. Picur, you
14 then played somewhat of a role in this game plan as you
15 described it, to have someone else, the funds or the
16 annuitants, pickup a bigger part of the tab; is that
17 correct?
18 A. Yes.
19 Q. And you worked with the corporation counsel's
20 office in attempting to accomplish this objective?
21 A. Yes.
22 Q. You were aware, however, that the Funds had no
23 obligation to pickup the tab, were you not?
24 A. My understanding is that there is an

1 obligation to the extent that specified amounts and the
2 State Statute.
3 Q. But you knew that amount was all paid?
4 A. I assumed it was being paid.
5 Q. So that having been all paid, you knew the
6 Funds did not owe anymore, is that correct?
7 A. They did not owe anymore pursuant to the
8 current dollar amounts in State Statute?
9 Q. Yet, were you aware that a lawsuit was going
10 to be filed by the City claiming that the Funds owed
11 money?
12 A. At some point and time the approach of a
13 lawsuit was identified.
14 Q. Now, in that meeting -- at the time of that
15 meeting, you were a trustee on three of the four funds;
16 is that correct?
17 A. Yes.
18 Q. And you had to be aware of the
19 responsibilities of a trustee toward the Funds and the
20 beneficiaries of those funds?
21 A. Yes.
22 Q. You were aware of your responsibility.
23 Did you express any concern about an apparent
24 conflicted position or any dispute between the Funds

1 and City?

2 A. I think it was indicated to me that attorneys
3 for the pension funds would be approached. They would
4 be approached by corporation counsel as would be other
5 trustees.

6 Q. But insofar as you were concerned as a
7 trustee, you had certain duties as a trustee which may
8 have been inconsistent with the game plan of the City
9 in getting more money from the Funds; you were aware of
10 that fact?

11 A. Seems to me that my position as a trustee is
12 by virtue of my position as a City Comptroller and so
13 as to the -- if there's a priorization in my own mind
14 as to the City of Chicago.

15 Q. So you followed that priorization, those
16 priorization instincts and assisted the City of Chicago
17 in this program and proceeded against the funds which
18 you were serving as a trustee?

19 A. The corporation counsel proceeded against the
20 Funds and as I understand them also a party to the
21 lawsuit as a trustee of three of the four boards.

22 Q. Now, with respect to the 1988 payments, you
23 are aware that in 1988 funds have been appropriated
24 almost on a monthly basis to pay for health care

1 benefits for the retired employees?
2 A. That's correct. There's been a series of
3 supplemental appropriation ordinances.
4 Q. And you don't have any problem with the
5 legality of those expenditures?
6 MS. BECKETT: Objection, your Honor.
7 For the record, I believe, counsel's aware
8 that these appropriations were entered into pursuant to
9 agreed orders between the parties and without prejudice
10 to the rights entered in this lawsuit, and this witness
11 should not be asked to comment on the legality of those
12 when they were entered into with these express
13 reservation of rights.
14 MR. FORDE: There's nothing in any reservation of
15 rights that I know about that would have any effect on
16 the answer to the question. The question is he has
17 explained what was wrong with the prior procedure and
18 I'm simply asking whether he was following the proper
19 procedure in describing accounts.
20 THE COURT: I'm going to permit him to answer.
21 Overruled.
22 THE WITNESS: I believe it's appropriate procedure
23 to have a separate line item authorization.
24 BY MR. FORDE:

1 Q. Because now the description is -- you're
2 satisfied with the description of the account?
3 A. I believe the description matches the purpose
4 for which the funds were expended?
5 Q. But the starred item or asterisk item you're
6 familiar with those terms, aren't you, "the starred
7 item and the asterisk item"?
8 A. Right.
9 Q. The starred item or asterisk item remains the
10 same this year as in prior years?
11 A. I believe that's correct.
12 MR. FORDE: I have no further questions, your
13 Honor.
14 THE COURT: The Municipal and Laborers?
15 MR. HEISS: I have a couple.
16 DIRECT EXAMINATION
17 BY MR. HEISS:
18 Q. Mr. Picur, you indicated that the money that
19 the City collects for the payment of the funds comes
20 from tax dollars and some from annuitants.
21 It's a fact, isn't it, that every spouse of
22 any annuitant evolved for pension funds pays that
23 amount that the City charges?
24 A. I'm not sure who pays. The spouse pays some.

1 Q. But the individual family unit pays it, isn't
2 that correct, from the deduction of this pension check?
3 A. I do not know the accounting system or
4 procedure of each of the individuals.
5 Q. So you don't know if it all comes from tax
6 dollars, do you?
7 A. I know dollars are set aside pursuant to State
8 Statute in the tax levy. I don't think I testified
9 that there was all ten million dollars from property
10 tax dollars, but a portion --
11 Q. Your Honor, it's not responsive. I'm not
12 asking the witness --
13 THE COURT: The witness is instructed to answer the
14 question. Might I suggest you pose a question and
15 elicit an answer.
16 BY MR. HEISS:
17 Q. Mr. Picur, does the individual widow of an
18 annuitant evolve for pension funds pay that amount
19 that's charged by the City of Chicago for health care
20 coverage?
21 A. I assume it's being collected by the pension
22 funds. I do not know for a fact that it is.
23 Q. Does the -- that portion of the health care
24 benefits that are attributable to an end to a dependent

1 of an individual of all four pension funds; isn't that
2 paid by the individual family unit?
3 A. Same response to the last question.
4 Q. You don't know that either?
5 A. I certainly don't.
6 Q. And you sit on the pension as a trustee of
7 three funds?
8 A. I don't think I would doubt if any of my
9 fellow trustees know the internal accounting mechanisms
10 and techniques for assumably collecting these funds.
11 Q. That wasn't my question.
12 My question was who paid the money not what
13 you did with it, but who paid the money whether it came
14 from the pension fund monies or deducted from an
15 annuitant's check?
16 A. Comes from a combination of both.
17 Q. For those persons that are widows of the four
18 pension funds that portion comes from a combination of
19 both?
20 A. For widows my understanding is it's their
21 contribution.
22 Q. And it is also the contribution of the spouse,
23 just their contribution, isn't that correct, just like
24 a widow?

1 A. I believe that's true.
2 Q. And it's also true that any portion that's
3 attributable to a dependent comes from a deduction from
4 their monthly annuity check; isn't that true?
5 A. I believe that's correct.
6 Q. And in the Municipal and Laborers' Fund, the
7 only part attributable to any member of that fund is
8 the $25 supplement that started in 1984 for any member
9 that was aged 65 with 15 years of service; isn't that
10 true?
11 A. I leave that's true.
12 MR. HEISS: Thank you, Mr. Picur.
13 THE COURT: Interveners, do you have any questions?
14 MR. KRISLOV: Yes, your Honor.
15 THE COURT: You may proceed, Mr. Krislov.
16 MR. KRISLOV: Thank you, your Honor.
17 DIRECT EXAMINATION
18 BY MR. KRISLOV:
19 Q. Mr. Picur, are you familiar with the terms of
20 the City's Annuitant Medical Plan?
21 A. Only in a very broad sense.
22 Q. You ever looked over the booklet that explains
23 the terms to the annuitants?
24 A. No, I've not.

1 Q. If I told you that the annuitant plan provides
2 for a certain floor on certain co-insurance amounts and
3 a certain sealing, would that square with your
4 understanding of the plan?
5 A. Well, I understand that's the City plan
6 generally as I'm a member of it and the terms of this
7 co-insurance and deductibility.
8 Q. "Co-insurance" means then both for you and the
9 annuitants that the City pays a portion, say 80 percent
10 of certain costs and the insured pays a certain
11 portion, say 20 percent; does that square with your
12 recollection?
13 A. That is the concept of co-insurance.
14 Q. And, in fact, that's how the City's plan
15 works?
16 A. It's my understanding.
17 Q. So if there is a medical bill, it's not
18 entirely paid for by the City. It's often paid partly
19 by the City and partly by the annuitant?
20 A. Certain types of bills that the co-insurance
21 applies to others, I believe, it does not apply.
22 Q. So, in fact, your statement that the
23 annuitants do not pay for any of their medical costs
24 isn't right, is it?

1 A. Well, assuming they have medical costs as
2 opposed to protection that they've actually incurred
3 costs under deductibility, assuming that the type of
4 cost falls under the terms of a deductible or
5 co-insurance they would pay that portion.
6 Q. So I guess that is that they do pay a portion
7 of their medical costs?
8 A. Yes. Those would be our costs, yes.
9 Q. Okay. Let's go back to this meeting that took
10 place.
11 You have a deficit you're trying to cover that
12 took place in the spring of '87?
13 A. No. The discussion did not focus on the
14 deficit. The discussion focused on the pension-related
15 matters.
16 Q. How do we cut these costs, right?
17 A. That was part of it but that was not speaking
18 to a deficit.
19 Q. And the Ryan case was brought up and discussed
20 as part of it?
21 A. Some place along the line, yes.
22 Q. In fact, it's as a result of the Ryan case
23 that the corporation counsel comes to all of you and
24 says we've discovered a way to offset the Ryan case;

1 right?

2 A. I believe that's correct.

3 Q. And the next decision is made to go to the

4 Funds and say, we've discovered this problem. We'll

5 offset one against the other; right? That was the game

6 plan, wasn't it?

7 A. That was part of the game plan.

8 MR. KRISLOV: No further questions, your Honor.

9 THE COURT: No further questions.

10 Ms. Beckett, any cross-examination?

11 MS. BECKETT: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MS. BECKETT:

14 Q. Mr. Picur, referring back to pending pension

15 legislation in Springfield last year in 1987, it's your

16 testimony that to the best of your recollection, none

17 of the proposed changes in pension legislation

18 addressed the question of health care.

19 Isn't it a fact that the four pension funds

20 did introduce language proposing an extension of

21 subsidy to widows of annuitants?

22 MR. HEISS: I'm going to object to the revelancy of

23 subsidy of widows as it applies to the counterclaim and

24 keeping health care benefits in place. That has to do

1 with this case which is before your Honor.

2 THE COURT: Are you referring to the increase of

3 benefits to a widow?

4 MS. BECKETT: No, your Honor.

5 I'm referring to the testimony of Mr. Picur on

6 direction examination regarding the status of pension

7 legislation in Springfield which was a matter brought

8 out on direct examination by Mr. Burns and he testified

9 that there was no health care issue addressed.

10 I'm just asking him whether it was in effect

11 that there was in that pension package additional

12 legislation addressing health care and perhaps whether

13 he'd like --

14 THE COURT: To health care, I want know.

15 Overruled.

16 MR. HEISS: I withdraw any portion that applies to

17 health care.

18 THE WITNESS: I do remember discussions going on.

19 I cannot remember if it was specifically '87 or '86.

20 Some place during my term in office that issue in the

21 form of legislation had been proposed. I cannot again

22 pinpoint a specific fund or date.

23 MR. BURNS: I move to strike the answer.

24 THE COURT: It will be stricken as volunteered.

1 BY MS. BECKETT:

2 Q. Mr. Picur, regarding the 1988 Budget, there
3 was testimony that the starred item for personal
4 service -- this is a starred item for a personal
5 services. That's the account group in the Finance
6 General Group that you were testifying to?

7 A. That's correct.

8 Q. And that a new line item was created to
9 reflect funding for Annuitant Health Care?

10 A. That's correct.

11 Q. In your opinion --

12 MR. FORDE: Objection to any opinion testimony by
13 this witness. He's not an expert. He wasn't called by
14 us as an expert.

15 THE COURT: Sustained.

16 BY MS. BECKETT:

17 Q. Is it your understanding that the line item
18 for Annuitant Health Care belongs in the Personal
19 Services Account Group?

20 MR. FORDE: Objection the same if she's asking for
21 an opinion and only changing the word "opinion to
22 understanding."

23 THE COURT: To understanding. We're talking about
24 042, I take it?

1 MS. BECKETT: No, your Honor, we're not.
2 THE COURT: We are not?
3 MS. BECKETT: We're talking before .052.
4 MR. FORDE: New number for this year.
5 MR. HERBERT: Your Honor, this question does
6 respond to the question.
7 THE COURT: I'm going to overrule his objection.
8 THE WITNESS: Repeat the question.
9 THE COURT: Have the court reporter -- want to pose
10 it again?
11 MS. BECKETT: Might I pose it again?
12 THE COURT: Sure.
13 BY MS. BECKETT:
14 Q. Line Item 052 which in the 1988 Budget
15 contains specific appropriations, very general to the
16 health care payments for annuitants belong in the
17 Personal Services Account Group?
18 A. I guess I've got two responses to the
19 question. From the standpoint of health care cost in
20 general, health care costs are accounted for under the
21 9212.000 personal services so that in the sense of
22 health care costs having a home, so to speak, for a
23 category that's the appropriate location.
24 It's also my understanding of personal

1 services for current City employees and on that basis
2 there's a question in my mind if, therefore, it is an
3 appropriate category and if a whole new category should
4 have been created.
5 Q. Are annuitants considered current employees?
6 A. No.
7 Q. To the best of your knowledge, do annuitants
8 generally draw a salary from the City of Chicago.
9 MR. BURNS: I object, your Honor.
10 THE COURT: Sustained.
11 MS. BECKETT: I'll withdraw that. I have no more
12 questions.
13 THE COURT: Any redirect, Mr. Burns?
14 MR. BURNS: I think one question, your Honor.
15 REDIRECT EXAMINATION
16 BY MR. BURNS:
17 Q. Mr. Picur, who decided to create 052?
18 A. I believe that was the Budget Committee of the
19 City Counsel.
20 Q. Did they ask you for your opinion with respect
21 to whether it was appropriate or not?
22 A. They did not.
23 Q. And who is the governing body in this City for
24 appropriations?

1 A. The Budget Committee and the City Counsel.
2 MR. BURNS: Thank you.
3 THE COURT: Anything further?
4 MR. FORDE: Nothing further, your Honor.
5 THE COURT: Police pension?
6 MR. FORDE: Nothing, your Honor.
7 THE COURT: Interveners?
8 MR. KRISLOV: Nothing, your Honor.
9 THE COURT: Anything further on recross?
10 MS. BECKETT: Nothing, your Honor.
11 THE COURT: All right. Mr. Forde, will you tell me
12 how many more witnesses we're going to have this
13 afternoon?
14 MR. FORDE: We have three witnesses, Mr. Williams.
15 MS. BECKETT: He's on call. Mr. Fattore is on
16 call. They can both be here within ten minutes.
17 May I have a moment your Honor?
18 THE COURT: Want to take a recess and call them?
19 MR. BURNS: Why don't we recess. We'll decide
20 which one and have them come back.
21 THE COURT: Recess for ten minutes.
22 (Whereupon, a recess was
23 had.)
24 THE COURT: Mr. Forde, call your next witness.

1 (Whereupon, the witness was
2 duly sworn.)
3 SAMUEL NATHAN WILLIAMS,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6 THE COURT: Have a seat, sir.
7 I want you to state your full name, spell your
8 last name for the record and please keep your voice up.
9 THE WITNESS: Samuel Nathan Williams.
10 THE COURT: Samuel Nathan --
11 THE WITNESS: Williams, W-i-l-l-i-a-m-s.
12 THE COURT: Your witness, Mr. Burns.
13 DIRECT EXAMINATION
14 BY MR. BURNS:
15 Q. Mr. Williams, I'm an attorney for the
16 Firemen's Benefit Fund.
17 Will you state your position with the City of
18 Chicago?
19 A. I'm the Risk Manager for the City of Chicago.
20 Q. And how long have you held that position, sir?
21 A. Since May 15, 1985.
22 Q. And prior to that time by whom were you
23 employed?
24 A. Eleven years prior to that I was with Kraft

1 Foods and the successive corporation, Dart and Kraft,
2 Inc., Northbrook, Illinois and six years prior to that
3 I was with the CNA Insurance Company.
4 THE COURT: CNA?
5 THE WITNESS: CNA, yes.
6 BY MR. BURNS:
7 Q. Is it fair to say, sir, that your position
8 with the Dart and Kraft involved health insurance
9 matters?
10 A. Yes, it is.
11 Q. And just how did that come about? What were
12 your responsibilities with respect to health care?
13 A. I went in in 1974 as insurance supervisor of
14 employee benefits. I was promoted to insurance manager
15 of employee benefits. I was promoted from that to
16 insurance manager which meant that not only did I do
17 employee benefits, but also property casualty and then
18 I was promoted to insurance manager for the successive
19 corporation.
20 Q. Now, during your time with the insurance
21 company CNA or Dart and Kraft, did any of your duties
22 and responsibilities include health care coverage of
23 retired employees?
24 A. Yes, it did.

1 Q. At which or both?
2 A. Active and retired employees, yes.
3 Q. For Dart and Kraft as well as with CNA?
4 A. No, not CNA, but with Dart and Kraft, yes.
5 Q. Would your duties with CNA have included
6 policies that covered --
7 A. That's correct, yes.
8 Q. Now, are you familiar with the plans which
9 the -- are currently in effect covering the active
10 employees of the City of Chicago?
11 A. Yes, I am.
12 Q. And are you knowledgeable as to when that plan
13 went into effect?
14 A. No. I can't tell you when it went into
15 effect, no. I can say it was in place when I arrived
16 three years ago.
17 Q. Now, did you ever have occasion to familiarize
18 yourself with the provisions of the health care plan
19 that was in effect for active employees prior to the
20 time you came to work for the City?
21 A. No, I did not.
22 Q. Have you ever studied or have been told
23 anything with regards to changes or continuity of
24 coverage with respect to those programs?

A. Changes, yes. Continuity of coverages, yes.

Q. Now, could you tell us whether that information has caused you to believe that the plans in effect for active employees under the Chicago Medical Benefits Plan is substantially the same as the coverage of the prior plan?

A. No. I've never done that type of analysis, no. I couldn't address that.

Q. How about with the retiree coverage. What plans are there? Is it true the retirees are covered by City of Chicago Annuitant Medical Benefits Plan?

A. Yes.

Q. And when did that become effective?

A. There is a plan that became effective, I think in 1985, I'm not sure. Perhaps around September of that year which was a rewrite of the old program.

Q. All right. Now, that was after you came to work for the City, but did your responsibilities at that time include the question or issue of health care costs?

A. The issue of health care?

Q. I'm sorry -- health care coverage?

A. Yes, it did.

Q. How about cost?

A. That too, yes.

Q. Did you become aware that the -- well, let me ask it this way.

Did the active employees of the City of Chicago contribute toward defraying costs of providing the benefits?

A. The active employees?

Q. Yes.

A. In some instances, yes, if they were in certain categories such as perhaps layoff or they were allowed to continue coverage directly. Perhaps suspension they could pay directly into the program or to cover their costs. Leaves of absenses that may fall into that category, but other than that, no. There were No employee contributions.

Q. The people who are on leave of absence then are eligible to participate in the Employee Medical Benefits Plan?

A. In some circumstances, yes. I can't delineate those for you. It's not blanket.

Q. Does the City also have HMO's?

A. Yes. At the present we have 13 HMO's.

Q. Do you have a contract with each of those HMO's?

1 A. Yes, we do.
2 Q. And who approves those contracts for the City.
3 A. If you could be a little more specific I could
4 tell you that in 1986 shortly after my tenure began,
5 there was a request for proposal done. There were 14
6 submittals by the HMO community and we accepted the 14.
7 Subsequently one dropped out.
8 The recommendations for acceptance were made
9 by the Office of Risk and Benefits and Management which
10 I was the head of at that point and time and the
11 recommendation was made to the Comptroller and to the
12 Purchasing Agent and the -- obviously the Purchasing
13 Agent has the authority to effect a contract.
14 Q. Well, let me ask it to you this way,
15 Mr. Williams.
16 Are those contracts in your office? I mean do
17 you have --
18 A. Oh, yes. Yes, we do.
19 Q. So they are returned or given to you after
20 they've been signed?
21 A. Yes. The process is that the proposal itself
22 becomes the contract. The submittal by the HMO becomes
23 the actual contract.
24 Q. Would that be the amount of money that the

1 City would pay to the HMO people?

2 A. Contained therein of the rates of the HMO

3 charge on a per person basis or more than one person

4 basis, two people or perhaps a family.

5 Q. What I'm asking I think is maybe if I

6 shortened it a little bit is whether you have annual

7 contracts or whether you have a single contracts that

8 carry forward?

9 A. We have contracts that were effective for two

10 years with each HMO.

11 Q. How about the Chicago -- the plan for the City

12 of -- well, City of Chicago employees. Do you have

13 contracts with Blue Cross with respect to that program?

14 A. There was a contract in effect I think through

15 December 1985 if I'm not mistaken. There was a

16 subsequent contract submitted by Blue Cross thereafter

17 which was never approved and we are evasively operating

18 on an agreement at this point and time.

19 Q. How long has that condition existed?

20 A. I think since January 1, 1986.

21 Q. I hand you what has been marked for

22 identification as Defendant -- a copy of the

23 Defendant's Exhibit 53, Mr. Williams, a document

24 captioned, "Administrative Services Only,

1 Administration Agreement between Health Care Service
2 Corporation and the City of Chicago," and I ask you if
3 you're familiar with that document?
4 A. Yes, sir. I am familiar with it.
5 Q. Can you tell us what the document is?
6 A. It appears to be the document that was in
7 effect between Health Care Service Corporation which is
8 Blue Cross and the City of Chicago. I think, if I'm
9 not mistaken, the contract expired December 31, 1985.
10 Q. Well, it says in the document itself,
11 Mr. Williams, that "It would be in effect through and
12 including December 31, 1984, but may be terminated,
13 etc., etc."?
14 A. '84.
15 Q. I'm not concerned particularly about the time.
16 A. Right.
17 Q. I'm asking -- what I'm interested in is
18 whether there was a subsequent document because this is
19 the only one that has been provided to me by the City?
20 A. There was a subsequent document presented
21 which was never accepted by the City of Chicago for
22 Blue Cross.
23 Q. This is the document that you're currently
24 working under with respect to Blue Cross?

1 A. The provisions are essentially the same that
2 we're operating under with Blue Cross, yes.
3 Q. Are the payments to Blue Cross that are
4 made -- well, let me back up.
5 Blue Cross receives payments from the City of
6 Chicago for administering the Medical Benefits Plan and
7 the Annuitant's Medical Benefit Plan; is that not
8 correct?
9 A. Presently for hospitalization only.
10 Q. And doctor bills are handled by Banker's?
11 A. Banker's Life and Casualty.
12 Q. Now, does Banker's have a contract similar to
13 what has been identified as Defendant's Exhibit 53?
14 A. To the best of my recollection I cannot
15 remember ever having seen a Banker's Life document.
16 Q. Who determines that Banker's Life is going to
17 be involved in the administration of the City's Health
18 Care Plans?
19 A. When I arrived Banker's Life was handling the
20 nonhospital claims, Blue Cross was handling the
21 in-house hospital claims and it's been that way to the
22 current date. We are in the process of changing those
23 relationships.
24 Q. Now, as of May 15, 1985 when you came with the

1 City is it not true, sir, that the annuitants had a
2 plan other than the current Annuitant Medical Benefits
3 Plan and that certain uniform personnel employed by the
4 City of Chicago, specifically police and fire, were not
5 then covered by the Medical Benefits Plan?
6 A. Were not covered by the Medical Benefits Plan?
7 Q. Yes. Were they covered at the time you came?
8 A. To the best of my knowledge all City employees
9 were covered by all the Medical Benefits Plan when I
10 came on board, yes.
11 Q. Including retired employees?
12 A. Inclusive of retired employees.
13 Q. Did you understand that the -- let me strike
14 that. Let me ask the question this way.
15 How would you characterize the relationship
16 with Blue Cross and Blue Shield prior to the adoption
17 of the Administrative Services Agreement?
18 A. This specific agreement?
19 Q. Before that was there a policy -- was the City
20 of Chicago self-insured prior to 1985?
21 A. To the best of my knowledge, yes.
22 Q. Do you know how long that situation had
23 existed?
24 A. No, I do not.

1 Q. And that the change in 1980 whenever the City
2 of Chicago Medical Benefits Plan was put into effect
3 then that change occurred -- strike that.
4 The City of Chicago Medical Benefits Plan
5 involves an administration service relationship with
6 Blue Cross and Blue Shield for hospital charges and a
7 separate agreement with Blue Shield -- I'm sorry with
8 Banker's for doctor bills?
9 A. That's partially correct. It's not Blue
10 Shield just Blue Cross. We should make that
11 distinction.
12 Q. Now, Blue Cross -- is the compensation
13 received by Blue Cross currently the amount of money
14 that's reflected in what has been marked for
15 identification as Defendant's Exhibit 53, if you know?
16 A. On page 3 I see a monthly payment to Blue
17 Cross of 4.5 million dollars. Currently it's 5.5
18 million dollars if I'm not mistaken. Under item one --
19 page 4, I'm sorry.
20 Q. But that's a prepayment by the City to Blue
21 Cross for anticipated costs of paying benefits or just
22 for administration?
23 A. That is the anticipated claimed costs that
24 would be created by the City's work force during a

1 given month.

2 Q. How about the compensation received by Blue

3 Cross for the services performed in administering the

4 program?

5 A. Blue Cross has a unique relationship with the

6 City in that for each dollar of claims presented, the

7 City pays $.96. In other words, all hospital bills are

8 discounted four percent by Blue Cross.

9 Q. Is that because Blue Cross negotiates a

10 special rate with hospitals involved and receives

11 compensation through that discount?

12 A. That's correct. They have a unique

13 relationship with hospitals.

14 Q. And that discount would exceed the four

15 percent that they accredited to the City and the

16 difference would be Blue Cross' compensation for the

17 services?

18 A. It would be contained therein, yes.

19 Q. How about Banker's?

20 A. Banker's is a Cost Plus Program which means

21 that we pay them -- for each dollar of claim we pay a

22 dollar, plus a markup of 5.97 percent I think.

23 Q. Now, let me see if I get this straight now.

24 In regards to a contract with Banker's that

1 compensation of 5.9 percent, is there such an
2 agreement?
3 A. I don't think there is a written agreement.
4 We may have a letter of commitment from Banker's
5 indicating what their current rate happens to be.
6 Q. Well, has the rate changed?
7 A. The rate was changed once or twice over the
8 last three years, yes, it has.
9 Q. Were you involved personally in the
10 negotiations for the increased rate?
11 A. Yes, I was.
12 Q. After you reached agreement with Banker's,
13 could you tell us the procedure that followed within
14 the City to finalize that compensation amount?
15 A. The service fee that Banker's charges?
16 Q. Yes.
17 A. We transferred perhaps 120,000 phone calls to
18 Banker's Life two or three years ago that were being
19 received in the benefits office and we transferred the
20 total administration nearly that the City was
21 performing at that time to Banker's. At which time
22 they increased the rate.
23 Q. I'm not concerned about why, sir, as the
24 procedure that was followed by you after you reached

1 agreement with Banker's that you would pay them an
2 amount in addition to the -- was it 4.9 percent you
3 said they'd get?
4 A. 5.9 percent, yes.
5 Q. How did we arrive at that rate? I mean what
6 happened internally within the City when an agreement
7 was reached that the rate would be 5.9 percent?
8 A. Banker's would have submitted a letter to our
9 office with which would have been passed to the
10 Comptroller's office that would be the normal procedure
11 and they would automatically increase the rate for
12 increased services that they deliver to the City.
13 Q. And you think that's reflected in a letter
14 agreement?
15 A. I would have to say that their standard
16 procedure that is such, yes.
17 Q. Would the charge 5.9 percent include the costs
18 paid by Banker's for Retiree Health Care?
19 A. It's all inclusive, yes.
20 Q. And how long has it been all inclusive if you
21 know?
22 A. To the best of my knowledge since I've been
23 with the City.
24 Q. I believe you've testified, sir, that there

1 are certain active employees who do contribute toward
2 the cost of the health care coverage. Prinicipally
3 those who are on leave of absence or suspension, etc.
4 How about the retirees? Do you know when the
5 rates were first set for the retirees as they presently
6 are?
7 A. Specifically, which rate are you --
8 Q. Well, you tell me. How are the rates set for
9 the retirees?
10 A. The rates that the retirees pay into the
11 program to cover the cost of coverage?
12 Q. Yes.
13 A. To the best of my knowledge it was established
14 by State Statute.
15 Q. Now, do the retirees also pay if they incur
16 medical costs going to a hospital?
17 A. The deductible and co-insurances, yes.
18 Q. Do you know -- well, let me ask you this way.
19 Are you aware that approximately ten million
20 dollars a year is paid by the various pension funds to
21 the City of Chicago in connection with the health care
22 coverage of many retired employees and their
23 dependents?
24 A. How much?

1 Q. Approximately ten million but the amount is
2 not important.
3 A. Yes. I'm aware of that, yes.
4 Q. Does the money go to your office, sir?
5 A. Yes, it does.
6 Q. Do you know what happens to that money?
7 A. We receive checks from each pension fund
8 covering the deduction that they have made from
9 pensioners or annuitant's checks for that given month.
10 It arrives in our office. We do nothing more then pass
11 it along to the Department of Revenue.
12 Q. Do you know whether or not those payments are
13 attributable to a particular account?
14 A. No. I couldn't tell you.
15 Q. Now, based upon your experience in the
16 insurance industry, would it be a fair statement to
17 say, Mr. Williams, that most group insurance
18 policies -- not most, all group insurance policies have
19 conversion privileges upon termination of the policy?
20 A. I think it's a nationwide State law not
21 Federal law. Each state has to require a conversion
22 privilege, yes.
23 Q. Now, when you were at Dart and Kraft, did you
24 ever have the privilege to change insurance carriers?

1 A. Yes, we did.

2 Q. In doing so, did you terminate the one policy

3 and institute another policy?

4 A. Well, policy might not be the correct

5 terminology with an ASO contract and I'd like to make

6 that distinction.

7 Q. Pardon me, sir. I didn't understand you.

8 A. I'm saying that policy might not be the proper

9 terminology. We were self-insured. We had an ASO

10 contract which doesn't fall under insurance law so I'd

11 look to make that distinction.

12 Q. Yes.

13 A. We did change perhaps in 1977 from the

14 Traveler's Insurance Company Administrative Services

15 Only Agreement to the John Hancock Insurance Company

16 under the ASO Agreement.

17 Q. While you were with CNA Insurance Company, did

18 your function and duties there involve Health Care

19 Insurance?

20 A. Yes, it did.

21 Q. Do you have experience with respect to

22 provisions of group policies? Did you have experience?

23 A. I'd like to think so after all these years,

24 yes.

1 Q. In any of that time, how many companies
2 terminated insurance without going out and taking a
3 replacement policy?
4 A. I couldn't venture a guess.
5 Q. But do you know of any?
6 A. Not offhand, no, I don't.
7 Q. Isn't it a fact, Mr. Williams, that the
8 termination clause as contained in insurance policies
9 are put in to take care of situations where the insurer
10 moves elsewhere and the insurance company wants to have
11 a cutoff point for the termination of it's liability
12 towards the insured group?
13 A. I don't think I understand the question.
14 Q. What part of it you do not understand?
15 A. The whole thing.
16 Q. Maybe you could read the question.
17 (Whereupon, the record was
18 read as requested.)
19 THE WITNESS: You said the insured.
20 BY MR. BURNS:
21 Q. The insured group?
22 A. Oh, the insured group?
23 Q. The insured group.
24 A. My experience tells me that the conversion

1 privileges placed into a policy by State Insurance Law
2 to protect the insured so that in the event of
3 termination of his coverage, he has 31 days to make a
4 decision and during that 31-day period, he does not
5 lose coverage.
6 Q. And in group policies would that same
7 principal apply?
8 A. Exactly the same principal, yes.
9 Q. While you were with CNA, sir, how many times
10 did CNA have occasion to terminate Group Health
11 Insurance with a particular insured?
12 A. I can't remember. That's 14 years ago.
13 Q. Is it not the usual practice, sir, for
14 insurance companies to increase premiums if they have
15 some loss of -- bad loss experience with a particular
16 group?
17 A. No question about it, yes.
18 MR. BURNS: I have nothing further.
19 THE COURT: Police?
20 MR. FORDE: No questions, your Honor.
21 MR. HEISS: No questions.
22 THE COURT: Interveners?
23 MR. KRISLOV: Not at this time, your Honor.
24 THE COURT: Any cross-examination Ms. Beckett?

MS. BECKETT: No, your Honor.

THE COURT: No cross. You may step down, Mr. Williams. Thank you.

Are you ready with your next witness.

MR. FORDE: Yes. Our next witness and our final witness, your Honor, will be Mr. Al Fattore.

(Whereupon, the witness was duly sworn.)

AL JOHN FATTORE,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: For the record, sir, would you please state your full name, spell your last name, keep your voice up so that we all hear you.

THE WITNESS: Al John Fattore, F-a-t-t-o-r-e.

DIRECT EXAMINATION

BY MR. HEISS:

Q. Mr. Fattore, you are currently employed by the City as Director of Finance for the Department of General Services; is that correct?

A. Yes.

Q. You've been employed by the City of Chicago since 1982?

A. Yes.

1 Q. From January of 1985 to January of 1986, you
2 were employed by the City of Chicago in the Budget
3 Office as the Principal Budget Analyst; is that
4 correct?
5 A. Yes.
6 THE COURT: When?
7 MR. HEISS: 1985 to 1986, January.
8 BY MR. HEISS:
9 Q. As Principal Budget Analyst, you assisted in
10 the preparation of the annual budget for the City of
11 Chicago, is that correct?
12 A. Yes. Those departments that I was responsible
13 for.
14 Q. Those departments of the budget that you were
15 responsible; is that correct?
16 A. Yes.
17 Q. And you did that for the year 1986, '87 and
18 '88; is that correct?
19 A. I did it for 1988 and 1987, yes.
20 Q. And '86?
21 A. Yes.
22 Q. You were involved with the Line Item 042 that
23 we've been discussing in this litigation as the
24 Principal Budget Analyst in 1986, correct?

1 A. Yes.

2 Q. And with regard to the budget as Principal

3 Budget Analyst, you reported directly to the Budget

4 Director?

5 A. Yes.

6 Q. And the Budget Director at that time when you

7 first came on board was Sharon Gist Gilliam?

8 A. When I first came on board in 1982 Sharon

9 Gilliam was not the --

10 Q. I'm sorry. I eliminated the order so that we

11 may get you back to your important duties other then

12 when we're talking about 042 when you were Principal

13 Budget Analyst in 1986 and that's when what I was

14 referring to.

15 Was Sharon Gilliam the Budget Director in 1985

16 when you were Principal Budget Analyst?

17 A. Yes.

18 Q. And you reported directly to her?

19 A. To her or the first deputy, yes.

20 Q. Now, in 1986 -- in 1985 in preparation of the

21 1986 Budget, you knew that Annuitant Health Care Costs

22 were being paid from Line Item 042, were you not?

23 A. Yes.

24 Q. And that widows of Annuitants Health Care

1 Costs was being paid from Line Item 042?

2 A. I knew that annuitants were being paid. I was

3 not aware of widows or anyone else under the annuitants

4 that were covered.

5 Q. The only reason you weren't aware because you

6 weren't familiar with the entire population of

7 annuitant?

8 A. Yes.

9 Q. But you did know that anything that applied to

10 annuitants from the pension funds were being paid out

11 of 042?

12 A. Yes.

13 Q. And you were aware that for -- in preparation

14 of the 1987 Budget; is that correct?

15 A. Was I aware of that for the 1987 Budget?

16 Q. Yes.

17 A. Yes.

18 Q. And in preparation of the 1988 Budget you were

19 also aware that annuitants were projected to be paid

20 out of Line Item 042 prior to some changes that were

21 made in the fall of 1987; isn't that correct?

22 A. Yes. Prior to the budget being submitted to

23 City Counsel, yes.

24 Q. Now, from the time you came on as Principal

1 Budget Analyst in 1986 -- I'm sorry 1985, the
2 combination that was being paid by the annuitants,
3 widows, spouses and on behalf of the dependents and the
4 pension fund was approximately $10 million; is that
5 correct?
6 A. Yes.
7 Q. For health care. I'm sorry for health care?
8 A. Yes.
9 Q. And that $10 million was used as a deduction
10 from the total Annuitant Health Care Cost in
11 preparation of the projection for the budget?
12 A. Yes.
13 Q. And any cost over the $10 million would be
14 paid from the Line Item 042; is that correct?
15 A. If there was such a cost, yes.
16 Q. While you knew that the ten million collected
17 was not sufficient to pay for the Annuitant Health Care
18 Costs in 1987, did you not?
19 A. To some degree, yes.
20 Q. And when you prepared the 1986 Budget, did you
21 look at the 1985 Budget?
22 A. We looked at the 1985 expenditures from that.
23 Q. And you knew that in '85 that the annuitants,
24 that class or group that I refer to, was contained in

1 042 in the 1985 Budget; is that correct?
2 A. Yes.
3 Q. Now, in the procedure for Line Item 042, you
4 would prepare a cost estimate to give to the Budget
5 Director, correct?
6 A. The original cost estimates would come from
7 the Health Benefits Office of the Comptroller's office
8 and I would review their preliminary estimates and make
9 some conclusions and also determine if those
10 assumptions were correct.
11 Q. Okay. Mr. Fattore, I hand you what has been
12 been previously marked Defendant's Exhibit Number 26.
13 (Whereupon, said document
14 was marked Defendant's
15 Exhibit Number 26, for
16 identification, as of
17 6/22/88.)
18 BY MR. HEISS:
19 Q. Mr. Fattore, the document that I handed you
20 Exhibit Number 26 referred to the nature as a 291; is
21 that correct?
22 A. Yes, 291-A.
23 Q. 291-A.
24 And this is the instrument referring to 042

1 that carries the initial departmental request from the
2 Comptroller's office for Line Item 042; is that
3 correct?
4 A. Yes.
5 Q. Now, this is for the 1986 Budget?
6 A. Yes.
7 Q. Similar document 291-A used for the 1987
8 Budget from the Comptroller's office?
9 A. Yes.
10 Q. To the Budget Office, correct?
11 A. Yes.
12 Q. And also similar document being used for
13 preparation for the 1988 Budget?
14 A. Yes.
15 Q. And when I say "document" then I'm referring
16 to the several pages that are contained that are marked
17 on Exhibit 26, 83 all the way to 93. That is the
18 document that you would receive first from the
19 Comptroller's office; is that correct?
20 A. The Budget Director would receive this
21 directly from the Comptroller's office and then she
22 would forward it to me.
23 Q. So the only -- I was in error that they would
24 forward it to you, but you would ultimately get it

1 after the Budget Director gets it?
2 A. Yes.
3 Q. And the reason she forwarded it to you was to
4 verify the figures; is that correct?
5 A. Yes. To prepare the Department of Finance
6 general budget.
7 Q. Mr. Fattore, I'm handing you what has been
8 previously identified as Exhibit No. 21.
9 (Whereupon, said document
10 was marked Defendant's
11 Exhibit Number 21, for
12 identification, 6/22/88.)
13 THE COURT: These are for identification aren't
14 they, Mr. Heiss?
15 MR. HEISS: Yes.
16 BY MR. HEISS:
17 Q. Now, Mr. Fattore, this is a -- Exhibit 21 a
18 memorandum from Mr. Pockross to Nathan Williams, the
19 Risk Manager, dated September 4, 1986; is that correct?
20 A. Yes.
21 Q. Now, this is a memorandum that you would
22 receive with regard to preparation of the estimate for
23 042 for the year 1987, correct?
24 A. Yes.

1 Q. You would have -- for the preparation of the
2 1986 Budget in 1985 you would have received a similar
3 document from the -- with regard to the projected costs
4 for health care for 042, would you not?
5 A. I'm not sure if it was a similar document, but
6 I would have received some information similar to this.
7 Q. And in this document it contains the total
8 cost of projection for annuitants and employees,
9 correct?
10 A. Yes.
11 Q. And the document that you would have had in
12 1985 would have contained similar information maybe
13 just in a little bit different form, is that a fair
14 characterization?
15 A. Yes, I believe so.
16 Q. I show you what has been marked Defendant's
17 Exhibit Number 24.
18 (Whereupon, said document
19 was marked Defendant's
20 Exhibit Number 24, for
21 identification, as of
22 6/22/88.)
23 BY MR. HEISS:
24 Q. Mr. Fattore, like the previous exhibit this is

1 also a document that was used in the budget process for
2 the preparation of the 1988 Budget; is that correct?
3 A. Yes.
4 Q. And on this again is for Mr. Pockross to
5 Mr. Williams and you would review this document before
6 the preparation of the budget?
7 A. Before the finalization of the budget, yes.
8 Q. Your request for the 291 or that documented
9 Exhibit 26, for instance, for the preparation of the
10 1986 Budget from the Comptroller would be made in
11 August; isn't that correct?
12 A. Approximately in August, yes.
13 Q. And then after you got that request you would
14 meet at some point with individuals involved to
15 determine the appropriate supporting documents to
16 support the figure contained in the projection?
17 A. Yes. I would meet with them or talk with them
18 over the phone.
19 Q. Now, for the cost estimate your authority to
20 was to make recommendations to the Budget Director
21 after you checked the cost estimate; isn't that true?
22 A. Yes.
23 Q. And you knew that the premium paid by
24 annuitants at the time you made your estimate was less

1 than the actual cost?
2 A. The actual cost of what?
3 Q. Of the payment of the health care for
4 annuitants?
5 A. I was not aware of that.
6 Q. Well, your office was not instructed in 1986
7 not to include annuitants when making a projection,
8 were they?
9 A. No.
10 Q. And you knew that the each of the years you
11 worked on the budget the premiums paid by the
12 annuitants was a credit on Line Item 042; isn't that
13 correct?
14 A. Yes.
15 Q. And in August when you made the calculation
16 you did this on -- for Line Item 042 your calculations
17 was made on the claims experience to date from January
18 1 to the date that you made it in August of the year
19 previous to the budget? Is that too confusing?
20 A. It is confusing. Would you explain that?
21 Q. In August when you made the calculation for
22 the next budget, you took the claims experience from
23 January 1 of that year of the August year?
24 A. Yes.

1 Q. And then you added to that the projection for
2 the balance of the year, correct?
3 A. Yes.
4 Q. And added inflation factor?
5 A. Yes. The inflation factor that was present in
6 the medical field, yes.
7 Q. But in that experience and in that calculation
8 the annuitants, spouses and widows were included in the
9 projection?
10 A. Yes, they were.
11 Q. And that was for -- and that was the
12 projection that you made and that was for '86, '87 and
13 '88, correct?
14 A. Yes.
15 Q. In '86 you never told anyone that the
16 annuitants should not be included in the projection for
17 the preparation of Line Item 042?
18 A. That issue was never around in 1986.
19 Q. And is it safe to say that you never told
20 anybody in 1987 that they should not be included in the
21 projection for 042?
22 A. Again, that was not an issue in 1987.
23 Q. But that really is not my question,
24 Mr. Fattore.

1 THE COURT: You move to strike it as being
2 unresponsive?
3 MR. HEISS: I move to strike.
4 THE COURT: It will be stricken. Pose the question
5 again.
6 BY MR. HEISS:
7 Q. In 1986 and in 1987 you never told anybody
8 that the annuitants should not be contained in the
9 preparation for 042, did you?
10 A. No.
11 Q. Mr. Fattore, I'm going to hand you what has
12 already been received in evidence Exhibit Number 28 and
13 ask you if you are the author of this instrument
14 October 2, 1987?
15 A. Yes.
16 Q. And that was used for the preparation of the
17 budget for 1985?
18 THE COURT: What exhibit is this?
19 MR. HEISS: 28.
20 THE WITNESS: This was used to the preparation of
21 the 1988 Budget.
22 BY MR. HEISS:
23 Q. What did I say '85?
24 A. Yes.

1 Q. I apologize. I meant the 1988 Budget; is that
2 correct?
3 A. Yes.
4 Q. I'm going to hand you what has been marked as
5 Defendant's Exhibit Number 27.
6 (Whereupon, said document
7 was marked Defendant's
8 Exhibit Number 29, for
9 identification, as of
10 6/22/88.)
11 BY MR. HEISS:
12 Q. Exhibit Number 28 was a memorandum that you
13 predated 28 -- I'm sorry. That's dated October 2,
14 1987?
15 A. Yes.
16 Q. Is that safe to say that it was submitted on
17 or about the day it bears?
18 A. Yes.
19 Q. And then following that memorandum on October
20 5, 1987, you submitted a memorandum to the Budget
21 Director, Sharon Gist Gilliam, and that's represented
22 by Exhibit 27; is that correct?
23 A. Yes.
24 Q. And that's dated October 5, 1987?

1 A. Yes.
2 Q. Is it fair to say that at that particular time
3 that it was submitted on or about the date it bears?
4 A. Yes.
5 Q. Now, in your memorandum principals in 1987,
6 you had made a recommendation to the Budget Director at
7 this time in early October to separate out of 042 the
8 City plan HMO and mail order prescription, did you not?
9 A. Yes.
10 Q. But at that time in October of 1987, you
11 didn't indicate any -- you made no indication to
12 separate out annuitants?
13 A. I indicated that that should be considered.
14 Q. But you made no recommendation. In fact, you
15 didn't say I neither agree nor disagree with changing
16 the premium?
17 A. Yes.
18 Q. So and the premium structure and you, in fact,
19 at that particular time had not separated out the
20 annuitants?
21 A. No, I did not.
22 Q. And then on that memorandum that's dated
23 October 5, -- I'm sorry Exhibit Number 28 you received
24 a memorandum. That memorandum back from the Budget

1 Director Mrs. Gilliam and she noted -- she put a note
2 to you that said Ryan litigation; is that correct?
3 A. There is a note on this that says, "Ryan
4 case."
5 Q. After that note is that when you then decided
6 to take out annuitants out of the 1988 Budget?
7 A. I don't know if it was at that time. It was
8 prior to October 15.
9 Q. Prior to the preparation of the 1988 Budget
10 there was never any instruction by you to cut anything
11 from Line Item 042 for annuitants, was there?
12 A. No.
13 Q. For the 1988 Budget $18 million was removed
14 from the budget for Annuitant Health Care, was it not?
15 A. Yes.
16 Q. The sole reason that you took out of the
17 budget the amount for the annuitants, the widows and
18 the spouses was because of the size and the cost for
19 the year 1988 -- for the budget for 1988; isn't that
20 true, Mr. Fattore?
21 A. I'm not sure I understand your question.
22 Q. I'll try and repeat it.
23 The sole reason that you took out the 18 -- is
24 it fair to say it was $18 million -- I get confused

1 whether it was $18 or $20 million. You said it's $18.
2 I said it was $20.
3 A. Yes.
4 Q. $18 million for the annuitant for the year
5 1988; is that correct?
6 A. Yes.
7 Q. And the sole reason that that was taken out at
8 that particular time in 1988 was because of the cost
9 the size of that $18 million; isn't that correct?
10 A. The reason why it was taken out is I was
11 instructed to do so and that was the figure that was
12 calculated.
13 Q. But the reason or the difference that it was
14 taken out of '88 for '87 was because of the size,
15 wasn't it? Wasn't that the factor?
16 A. The cost was growing, yes, over the years.
17 Q. And that was the sole factor in your mind?
18 I'm not asking you to get into the mind of anybody
19 else, but the sole factor you at that time -- I think
20 you were the Senior Budget Analyst?
21 A. Supervising Budget Analyst.
22 Q. Which is a greater position principaled or at
23 least equal to?
24 A. Greater title.

1 Q. And in your mind the only reason it was
2 removed was because of the size that you were to remove
3 it?
4 A. I don't know that that's true.
5 Q. Well, Mr. Fattore, do you remember when your
6 deposition was taken on May 27, 1988 where Ms. Beckett
7 was present and all counsel were present at -- I think
8 were you taken at the Municipal Office.
9 Do you remember that the first time your
10 deposition was taken?
11 A. Yes.
12 Q. Ms. Beckett, on page 6.
13 Mr. Fattore's deposition was -- the question
14 was asked:
15 "QUESTION: What was different about '87 that
16 you requested an opinion from corporation counsel in
17 that year and not in the previous years? Were you
18 involved? And this was your answer.
19 ANSWER: Because of the size of the increase
20 from 1987 to 1988, we new that in order to try and
21 maintain expenditures at some reasonable level that we
22 needed to do something.
23 And this question was asked.
24 QUESTION: Prior to you coming here today --"

1 Did you review Sharon -- that's -- was that
2 your answer? Was that given to you and was that your
3 answer?
4 A. Yes.
5 Q. So it was the size of the increase; isn't that
6 correct?
7 A. Among other things, yes.
8 MR. HEISS: Mr. Fattore, I have no further
9 questions.
10 MR. FORDE: No questions, your Honor.
11 THE COURT: Firemen's.
12 MR. BURNS: No questions, your Honor.
13 THE COURT: Interveners?
14 DIRECT EXAMINATION
15 BY MR. KRISLOV:
16 Q. Mr. Fattore, the person that told you to take
17 it out was Mrs. Gilliam, right?
18 A. Yes. She was my direct supervisor.
19 Q. And that's personally instructed. No other
20 questions.
21 MR. HEISS: Your Honor, before Ms. Beckett
22 cross-examines, I would like just Exhibits 26, 21, 24
23 and 27 to be admitted into evidence.
24 THE COURT: Any objection to 26?

1 MS. BECKETT: No objection, your Honor.
2 THE COURT: 21?
3 MS. BECKETT: No objection from the City, your
4 Honor.
5 THE COURT: 27?
6 MS. BECKETT: No objection from the City, your
7 Honor.
8 THE COURT: They will be received. Strike the
9 identification marks.
10 (Whereupon, the document was
11 received in evidence as
12 Exhibits 26, 21 and 27.)
13 MR. HEISS: 24 also, your Honor.
14 THE COURT: 24.
15 (Whereupon, the document was
16 received in evidence as
17 Exhibit No. 24.)
18 MR. HEISS: Thank you, your Honor.
19 THE COURT: Any cross-examination?
20 MS. BECKETT: One moment for conference, please?
21 THE COURT: Sure.
22 MS. BECKETT: No questions, your Honor.
23 THE COURT: You may step down, sir.
24 MR. FORDE: Your Honor, that concludes the evidence

1 of the counter-plaintiffs on the counterclaim except
2 that there are a number of exhibits that are included
3 in our stipulation that were not offered through a
4 witness and we would like to put those exhibits in
5 evidence unless there's an objection and other then
6 that we're prepared to rest.
7 THE COURT: I take it the stipulation which was
8 filed June 1988 executed by all of the attorneys with
9 the appended Exhibit A which consists of four pages?
10 MR. FORDE: Four pages. At that time 50 listed
11 exhibits.
12 THE COURT: 50, correct?
13 MR. FORDE: And 5-0 and there were other exhibits
14 not on that list offered and those have been admitted,
15 but there are -- some of the ones on that list have not
16 been admitted through a witness and we would like to
17 admit them now and then we would rest.
18 THE COURT: They're being stipulated to. They will
19 be received.
20 (Whereupon, the documents was
21 received in evidence.)
22 MR. BURNS: The City reserved the right to object
23 on the basis of relevance.
24 MS. BECKETT: We now waive that objection, right.

1 We have no objection on the grounds of relevancy.
2 MR. BURNS: Your Honor, there's been testimony with
3 regards to Exhibit 35 and I also have marked and have
4 furnished copies, Defendant's Exhibit 54. They're not
5 on the exhibit list stipulation. I would offer them at
6 this time.
7 THE COURT: Counsel, have you seen 54?
8 MS. BECKETT: Yes. I'm familiar with that exhibit.
9 THE COURT: Any objection?
10 MS. BECKETT: No objection, your Honor.
11 THE COURT: Defendant's Exhibit 54, Mr. Burns, for
12 the record may be received, but would you kindly
13 describe it in the record
14 (Whereupon, the document was
15 received in evidence as
16 Defendant's Exhibit Number
17 54.)
18 THE COURT: It's a brochure of the City of Chicago
19 Medical Benefits Plan bearing the date October 1, 1984;
20 is that correct?
21 MR. BURNS: Correct.
22 MR. FORDE: That's correct, your Honor.
23 THE COURT: Anything else?
24 MR. BURNS: Yes. I also have two stipulations of

1 facts that have been executed by myself and Ms. Beckett
2 with respect to testimony that would have been offered
3 by annuitants of the Firemen's Annuity Benefit Fund.
4 One is a stipulation of fact concerning Joseph
5 Quinn's testimony and stipulation of fact as to five
6 individuals by name Carlisle, C-a-r-l-i-s-l-e, Moore,
7 M-o-o-r-e, Arthur Ralicki, R-a-l-i-c-k-i, Arnold
8 Feinberg, F-e-i-n-b-e-r-g, Frank Oman, O-m-a-n, and
9 John Talley, T-a-l-l-e-y.
10 THE COURT: Descriptions have been executed by
11 Ms. Beckett and yourself, they will be received.
12 (Whereupon, document was
13 received in evidence.)
14 MR. HEISS: Your Honor, on behalf of the Laborer's
15 and Municipal, I have a stipulation which has been
16 stipulated to by Ms. Beckett and myself. It is very
17 similar to police. Many of the items admitted deciding
18 the differences have been set forth in the stipulation.
19 THE COURT: Stipulation of facts?
20 MR. HEISS: Yes.
21 THE COURT: Stipulation of facts will be received.
22 (Whereupon, the stipulation
23 of facts was received in
24 evidence.)

MR. HEISS: Your Honor, I discussed it with Ms. Beckett, but what we would like to do is follow the consecutive remarks in exhibits that have been in admitted in evidence so we're writing on the subject that we're not referring to several different exhibits. So what I'd like to do is what was the last number that you just had in this sequence of evidentary exhibits?

THE COURT: That Mr. Forde referred to?

MR. HEISS: Yes.

THE COURT: 5-0?

MR. BURNS: 54.

MS. VEERHUSEN: 54 we've marked.

MR. FORDE: 1 through 50 so that we have it straight were Defendant's Exhibits listed on our stipulation, all of those have been admitted and then there was Exhibits 51, 52 and 53 and 54.

THE COURT: Which have been received.

MR. FORDE: Which have been received and so the next Exhibit is 55.

MR. HEISS: I'm going to repeat the previous exhibit and renumber as we go. If you have any objection, I think for the stipulations for the record is clear.

Defendant's Exhibit 55 was introduced as

1 Laborers' Exhibit Number 1. 56 was introduced as
2 Municipal 1. 57 was introduced as Municipal 2 and 58,
3 Municipal 3 -- I'm sorry that's wrong. 57 is right.
4 Municipal would be 1. 58, Municipal 2.
5 THE COURT: 55 is Laborer's Number 1?
6 MR. HEISS: Yes.
7 THE COURT: 56 was Municipal 1?
8 MR. HEISS: Yes.
9 THE COURT: 57 was Municipal 2?
10 MR. HEISS: Yes.
11 THE COURT: 58 is what?
12 MR. HEISS: Municipal 3.
13 THE COURT: Should be 3 which is when you call in
14 to get the benefit.
15 MR. HEISS: That's 58.
16 THE COURT: All right. Go ahead.
17 MR. HEISS: Then Laborer's 59.
18 THE COURT: Laborer's Number 2.
19 MR. HEISS: Is 59.
20 THE COURT: 60 will be Laborer's Number 3.
21 MS. BECKETT: City has no objections to these.
22 THE COURT: Received.
23 (Whereupon, the documents were
24 received in evidence.)

1 THE COURT: Defendant Counter-Plaintiffs, have all
2 your exhibits been received?
3 MR. FORDE: Yes.
4 THE COURT: Do the Plaintiff Counter-Defendants
5 rest?
6 MR. FORDE: We rest, your Honor.
7 MR. HEISS: Municipal and Laborer's rest.
8 MR. BURNS: Defendant Counter-Plaintiff for the
9 Firefighter's rests.
10 THE COURT: What's the pleasure of the Intervener
11 before I call on the City?
12 MR. KRISLOV: We would just assume the City
13 completes presenting it's case, we may not have anymore
14 witnesses that we would need to call ourselves and it
15 may shorten the time just to proceed through the City's
16 direct case.
17 THE COURT: All right. All the Defendant
18 counter-plaintiffs have rested. City what is your
19 pleasure?
20 MS. BECKETT: One moment, please. Your Honor, the
21 City wishes to proceed at this time with the production
22 of exhibits.
23 THE COURT: Proceed. Ms. Beckett, are you
24 referring to Exhibit 1 through 4?

1 MS. BECKETT: I produced a stipulation listing.
2 THE COURT: 51.
3 MS. BECKETT: Through 51 and I will be presenting
4 Exhibits 52 through 55 adopting a City exhibit already
5 in evidence presented by the Plaintiffs
6 Counter-Defendant.
7 THE COURT: I want you to know that the stipulation
8 covering your group of exhibits through -- including 52
9 only bears your signature.
10 MS. BECKETT: Your Honor, I wish to tender at this
11 time a completed stipulation bearing signatures of all
12 counsel.
13 THE COURT: Thank you. I'll see that it's stamped.
14 MS. BECKETT: Please excuse the delay. I just
15 wanted to make sure I have enough copies for counsel.
16 THE COURT: That's quite all right.
17 MS. BECKETT: Your Honor, at this time the City
18 moves for admission of all exhibits listed with the
19 exception of the following six.
20 MR. HEISS: Excuse me. Just let me catch up here.
21 Okay.
22 THE COURT: No. 6.
23 MS. BECKETT: Yes. These are the exceptions,
24 Number 6, Number 7.

1 THE COURT: Let the record reflect that on the
2 stipulation itself I am going to mark "Accepted"
3 opposite the numbers that are being referred to.
4 MR. FORDE: I understand that 6 has not been
5 offered.
6 MS. BECKETT: That's correct.
7 THE COURT: That's correct.
8 MS. BECKETT: For the record I am going through the
9 list of exhibits on the City's stipulation and produce
10 those that we shall not be moving to the production of.
11 THE COURT: 6. Go ahead.
12 MS. BECKETT: 6, 7, 8.
13 THE COURT: Proceed.
14 MS. BECKETT: 14. And the record may reflect 14
15 was already admitted as an exhibit for the
16 Counter-Plaintiffs.
17 THE COURT: Proceed.
18 MS. BECKETT: 17 is another Exhibit, I believe, is
19 already in evidence. 24.
20 THE COURT: Proceed.
21 MS. BECKETT: 25.
22 THE COURT: Proceed.
23 MS. BECKETT: 29.
24 THE COURT: Proceed.

1 MS. BECKETT: 37.
2 THE COURT: Proceed.
3 MS. BECKETT: 38.
4 THE COURT: Proceed.
5 MS. BECKETT: I might have 46. I'd like to verify
6 that for a moment before I make that an absolute
7 certainty. 46 will not be introduced either.
8 THE COURT: You're accepting that?
9 MS. BECKETT: Yes.
10 THE COURT: All right.
11 MR. KRISLOV: Your Honor, could we run through the
12 numbers one more time.
13 THE COURT: I will go through them. I don't know
14 if Ms. Beckett is finished yet.
15 MS. BECKETT: I have finished with my exhibits that
16 I do not wish to include at this time.
17 THE COURT: Hold on just a moment. I want to read
18 that the following numbers have been accepted from the
19 52 on the stipulation: 6, 7, 8, 14, 17, 24, 25, 29,
20 37, 38, and 46.
21 THE COURT: You may proceed, Ms. Beckett.
22 MS. BECKETT: At this time I wish to move for the
23 admission of the remaining exhibits.
24 THE COURT: Before you proceed with that let the

1 record reflect that a motion has been made for the
2 admission of all of the other exhibits set forth on the
3 stipulation. Except for those that have been accepted,
4 of course.
5 MR. BURNS: Your Honor, I may have objection to
6 relevancy, materiality as to some of these documents.
7 MS. BECKETT: Your Honor, I can produce two ways of
8 proceeding with the Court's indulgence. What I wish to
9 do today is to briefly address each exhibit and explain
10 it's relevancy and materiality. I can do that first
11 and allow counsel to listen to that and --
12 THE COURT: You can reserve your objection.
13 MS. BECKETT: Or make their objections at the end
14 and/or list specific exhibits now and I can speak to
15 those.
16 MR. HEISS: Before we start --
17 THE COURT: They've not been received as yet.
18 MR. HEISS: I understand.
19 Before we start, it would make a lot more
20 sense to me if I had copies of what she's referring to
21 so that I could see what she's referring to in the
22 stipulation.
23 THE COURT: Tell you what, what do you say we
24 recess for about ten minutes and you can give them what

you're going to be doing so we won't be crossings over in front of here.

MR. BURNS: Thank you, your Honor.

MR. HEISS: Thank you, your Honor.

MR. KRISLOV: Thank you, your Honor.

(Whereupon, a recess was had.)

THE COURT: All right. Ms. Beckett, you may proceed.

MS. BECKETT: Thank you, your Honor. What I wish to do now simply is to review and describe briefly the exhibits that the City will be tendering. Handing to you copies or referring you to copies already in evidence as I describe the City's exhibits.

MR. FORDE: Judge, there's no objection to the list.

MS. BECKETT: So in that case --

MR. FORDE: They could be admitted.

MS. BECKETT: In that case I wish to move them into evidence.

THE COURT: All right. You are moving into evidence. All of the exhibits listed on the stipulation except for those that have been accepted on the record; is that correct?

1 MS. BECKETT: Is that correct.

2 THE COURT: There being no objection all other

3 exhibits listed on the stipulation will be received.

4 (Whereupon, the documents

5 were received in evidence

6 listed in the stipulation.)

7 MS. BECKETT: For the record I wish to make one

8 correction to a description listed on page 4 of the

9 stipulation. I have been advised that Exhibit 36

10 should be properly described as, "Unidentified person's

11 notes from June 1985 meeting at the benefit management

12 office."

13 THE COURT: 36 was -- it says: "Minutes from the

14 June 5, 1985 meeting of the Firemen's Annuity Benefit

15 Fund." You wish to amend that?

16 MS. BECKETT: Just for descriptive purposes, I wish

17 for this to read, "Unidentified Person's Notes from

18 June 5, 1985 Meeting at the Benefits Management

19 Office."

20 THE COURT: I put that in parenthesis at the end

21 "Unidentified Person's Notes at the January 5 Meeting

22 at the Benefits Management Office."

23 THE COURT: Is that it?

24 MS. BECKETT: Yes.

1 THE COURT: For the purposes of the record --
2 MR. BURNS: Excuse me, your Honor. I didn't -- I'm
3 not certain I heard what you read as to what you wrote.
4 THE COURT: The way it's originally described as in
5 January 5 of the Firemen's Annuity Benefit Fund. I put
6 in parenthesis "Unidentified Person's Note at the
7 Benefit's Fund."
8 MR. BURNS: It's not the Benefit Funds Office
9 because it was notes of a meeting that was held at the
10 City's Benefit Management's Office. It has nothing do
11 with the trustee's meeting or Annuity Benefit Fund
12 meeting.
13 THE COURT: Hold on. The original notes here in
14 type says, "Meeting of the Firemen's Annuity Benefit
15 Fund.
16 MS. BECKETT: That's right, and that is in error.
17 That is the City's error and we are on advice of
18 counsel for the Firemen's Fund which is we pull this
19 document. I have requested that we amend the
20 descriptive language.
21 THE COURT: Might I suggest that you prepare an
22 amendment to 36 and append it to this. We'll say "See
23 Amendment Attached."
24 MR. BURNS: All right.

1 MS. BECKETT: All right.

2 THE COURT: For the purposes of the record, the
3 following exhibits have been received with no objection
4 on behalf of the City of Chicago: Exhibits 1, 2, 3, 4,
5 5, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23,
6 26, 27, 28, 30, 31, 32, 33, 34, 35, 36 to be amended,
7 39, 40, 41, 42, 43, 44, 45, 47, 49, 50, 51 and 52.
8 You may proceed, Ms. Beckett.

9 MS. BECKETT: Thank you, your Honor.

10 MS. BECKETT: The City has adopted -- the first
11 document I wish to discuss has already been admitted
12 into evidence and that is the Fund's Exhibit 33. The
13 City has identified it and adopted it as it's Exhibit
14 3. That is the City of Chicago Medical Benefits Plan.

15 MR. BURNS: Excuse me, your Honor, are we having
16 closing argument now?

17 MS. BECKETT: No. And I do not intend to be
18 argumentative. I merely wish to bring it to the
19 Court's attention those aspects as being exhibits which
20 I believe are important and address the points that we
21 raised in our opening statement as well as to be raised
22 in the briefs.

23 MR. BURNS: Are we going to file post -- excuse me,
24 your Honor. If we're going to file post-hearing

1 briefs, I submit that the City didn't point out then
2 anything that it considers important. I did not
3 comment on the exhibits that we offered as why we -- I
4 think that's properly for brief.
5 THE COURT: I don't think this -- can this be
6 offered in your trial briefs?
7 MS. BECKETT: It can and will be covered, your
8 Honor. I believe it's important to be able to discuss
9 briefly these exhibits. We only intend to present two
10 more witnesses and I don't believe it is a waste of
11 time to --
12 THE COURT: I will not precluding her from
13 presenting her case. I'm going to give her an
14 opportunity to go ahead this way. You may proceed.
15 Exhibit 3 for the City is the same as
16 Defendant's Exhibit 30, am I correct?
17 MS. BECKETT: Right.
18 THE COURT: You may proceed.
19 MS. BECKETT: Produce this to address three basic
20 points. First of all, our argument that a specific
21 plan would control a plan or understanding. Secondly,
22 you will not find in its plan within it a reference to
23 any City Counsel approval for this plan and finally,
24 there's no reference to the plan to any other kind of

1 authority.

2 The next exhibit I wish to refer to is Exhibit
3 2 and I'm handing you a copy of Exhibit 2. It is an
4 April 21, 1982 selection from the April 21, 1982
5 journal of the City of Chicago which is a resolution.
6 I draw your attention to the first line of that
7 describing the Annual appropriation ordinance and what
8 it takes into consideration.

9 This goes on further to setout the purpose,
10 describes benefits for positions and you will see in
11 this document and I'm drawing your attention
12 specifically to page 10280, letter H that this is for
13 the Administration and Maintenance of the Employee
14 Benefit and Compensation Plan.

15 Only individuals or family employees are
16 referred to in this document and as far as we know this
17 is the only specific City Counsel authorization in
18 existence regarding employee benefit -- or Health
19 Benefit Plans. There's nothing in in document that
20 refers to Retiree Medical Care.

21 Next I'm handing you what has been accepted as
22 the City's Exhibit Number 1 for identification which is
23 the Executive Order Number 84-4, which is an order to
24 provide for the efficient administration of Hospital

1 and Medical Coverage and Dental and Optical Programs
2 for eligible employees.
3 Now, the City of Chicago and their dependents,
4 you will see on the first page and as a matter of fact
5 in the second paragraph on this first page, the whereas
6 clause refers specifically to the authority for this
7 executive order and that authority is the City Counsel
8 Resolution contained in Exhibit 2.
9 Again, this executive order refers only to
10 employees. There is a great deal of detailed language
11 regarding a plan for employees. There is no reference
12 to retirees. The next exhibits that I will address en
13 masse are a series of Collective Bargaining Agreements
14 between the City of Chicago and several of it's
15 employees. Those are: Exhibits 30, 31, 32, 33, 34,
16 and 35.
17 Mr. Holland testified briefly regarding the
18 Collective Bargaining Agreement for the International
19 Brotherhood of Electrical Workers. I'm handing to you,
20 your Honor, those agreements. In order to draw your
21 attention to those provisions, although I can redo the
22 entire agreements, I only wish to draw your attention
23 to specific portions of these and I will briefly
24 identify those.

1 In Exhibit 30, which is the agreement between
2 City of Chicago and what is known as the FOP or the
3 Fraternal Order of Police. Two provisions which we
4 believe are significant. I should -- before I go into
5 each of these, the argument we're addressing here is
6 the City's response to the claim that health care for
7 annuitants, terms and condition of employment in these
8 contracts which expressly state the terms and
9 conditions of employment for several hundreds of City
10 workers.
11 We will see as I go through and identify these
12 that they are silent as to the guarantee as a term and
13 condition of employment of health care for annuitants,
14 and you will also see that each of these contains what
15 is known as an "Entirety Clause," where that is a
16 clause within the contract which says that it contains
17 the complete agreement between the parties.
18 In the FOP Agreement, those -- the Article II
19 recognizes that it only addresses -- recognizes the
20 lodge as the Collective Bargaining Agreement for
21 employees. That is found on page 1. 31 the complete
22 Agreement Clause. The Entirety Clause is found on page
23 47.
24 THE COURT: Page 47?

1 MS. BECKETT: Page 47.

2 And this particular contract refers to health
3 care coverage in the memorandum of understanding found
4 on page 49.

5 MR. BURNS: Your Honor, could I ask for the
6 effective dates of these labor agreements so that -- we
7 don't have the entire document, we have excerpts and if
8 Ms. Beckett would give the effective dates, it might
9 help us.

10 MS. BECKETT: I believe this FOP agreement states
11 on the cover which is effective here December 31, 1985
12 or '86.

13 MR. BURNS: Your Honor, I was interested in the
14 beginning date.

15 THE COURT: First letter in there is October 1984,
16 September. I can't read the date.

17 MS. BECKETT: I apologize for that. I believe
18 that's right, October 1984.

19 Exhibit 31 is the AFSCME Contract. The
20 effective signature date on this, I believe counsel do
21 not have, is December 13, 1985. I draw the Court's
22 attention to Article X which is found on page 19, which
23 describes Group Health Provision Care, Dental, Life
24 and Optical Benefits, and again, that's only for active

1 employees and to Article XXV found on Page 66 which is
2 the Entirety Clause.
3 Our Exhibit 33 is the Collective Bargaining
4 Agreement between the IBEW and the City. Article VI
5 found on page 15 addresses Group Health Provision Care,
6 Dental, Life and Optical Benefits only for active
7 employees. The Entirety Clause is found in the middle
8 of page 41. Exhibits 33, 34 and 35 contains identical
9 Group Health Provision Care, Dental, Life and Optical
10 Benefits and identical Entirety Clauses respectively.
11 Respectively, Exhibit 33 is with the
12 international agreement with the International
13 Brotherhood of Carpenter's. Exhibit 34 is the
14 agreement of State Municipal Teamsters Shepherds and
15 Helpers Union. Exhibit 35 is City of Chicago
16 Journeymen, Plumbers Local Union.
17 For the court's convenience, I will just
18 briefly list the article number and the page rather
19 than recite the terms of each. Exhibit 33, Article IX
20 is found on page 15. Article XVIII is found on page
21 38.
22 THE COURT: Okay.
23 MS. BECKETT: Okay. Exhibit 34, Article IX is
24 found on page 20. Article XVIII is found on page 40.

1 And finally Exhibit 35, Article IX is found on page 15
2 and Article XVIII is found on page 40.
3 THE COURT: Article what?
4 MS. BECKETT: IX and XVIII. Article IX is found on
5 page 15. Article XVIII is found on page 40.
6 THE COURT: It's on my note. I guess it's stuck
7 here. I go from 33 to 34. 34 I also have. I have it.
8 MS. BECKETT: Okay. Also, for the record, these
9 clauses in the labor contract between the Firefighters
10 and the City were spoken to during my cross-examination
11 of Mr. Holland and he read into the record portions of
12 the Entirety Clauses in those.
13 Next, I wish to discuss the question of City
14 Counsel approval for budgets. Exhibits -- the funds
15 have already been admitted into evidence. Exhibit 36
16 through 40 the City has renumbered as the City's
17 Exhibits 53, 54, 55, 56, 57, and 58. Those same pages
18 I've highlighted certain portions for the Judge's
19 convenience and hand them up to you and move for their
20 admission into evidence.
21 THE COURT: 53, 54, 55, 56, 57, and 58.
22 MS. BECKETT: Do you have a copy?
23 THE COURT: Have you seen these?
24 MR. FORDE: We've been told what they are. I just

1 would like to review the highlighting and also, your
2 Honor, we will arrange -- we have introduced pages.
3 THE COURT: I'm aware of that. This is
4 duplicitious to some respect.
5 MS. BECKETT: Not duplicitious, duplicative.
6 THE COURT: Okay. I'll stand corrected.
7 MR. HEISS: I'm not quite sure of the difference.
8 Could Ms. Beckett please define this if the Court
9 please?
10 MR. FORDE: We'll address them in our briefs, but
11 we will have -- these are pages of the budgets. We
12 will have the entire budgets by the way. We should
13 have those in the records.
14 THE COURT: These are Exhibits 53 through 58,
15 correct?
16 MR. KRISLOV: Your Honor, just I presume that what
17 we're talking about is Line Item 042 has been
18 highlighted on these?
19 MR. FORDE: Yes. And certain others. We certainly
20 wouldn't let these go to a jury highlighted like this.
21 THE COURT: I'm aware of that Mr. Forde. All right
22 53 through 58 will be received
23 (Whereupon, Exhibits 53
24 through 58 was received in

1 evidence.)

2 MS. BECKETT: What I wish to show very simply,
3 your Honor, is that the City Counsel has repeatedly
4 appropriated a great variety of employee benefits and
5 those are what are highlighted. Employee benefits such
6 as health care which you'll find in Line Item 042 and
7 other benefits such as life insurance, dental insurance
8 and optical coverage over these benefits is highlighted
9 on each of these exhibits.

10 And as you've heard in testimony and it's
11 already been admitted into evidence, the language about
12 042 is identical for the year 1985 and the City -- of
13 course this is evidence the City Counsel can draft and
14 pass language that says exactly what it intends to say
15 and obviously legal conclusions are to be drawn by you.

16 The last category of document I wish to
17 address today has to do with the idea of increasing
18 premiums, and what I'm handing up to you is a whole
19 pile of documents. They're in chronological order, but
20 the exhibits are not in numerical order. I can read to
21 you now the numbers of the all the exhibits for the --
22 counsel, also has piles of the exhibits. I should
23 remove the identifying tags. These are Exhibits 37,
24 38, 9, 10,

1 THE COURT: 38, 39 or just 9?

2 MS. BECKETT: Number 37, 39 then we go back to

3 Exhibits 9, 10, 11, 40, I think I left out 39, I'm

4 sorry that came before 11.

5 THE COURT: 39?

6 MS. BECKETT: 39, 11, 40, 41, 12, 13, 42, 43, 44.

7 Now, we're going back again 15, 16, 18, 19, 20, 21, 22,

8 23, 45, 26, 27, 28, 47, 49, 50, 51 and 52.

9 THE COURT: 50?

10 MS. BECKETT: 50, 51 and 52 I'm handing them up to

11 you. These are clean. They have not been highlighted

12 in any manner.

13 MS. VEERHUSEN: Excuse me, were numbers 37 and 38

14 the beginning of your list?

15 THE COURT: 37 and 38.

16 MS. VEERHUSEN: I thought those were excluded from

17 your exhibit list?

18 MS. BECKETT: Oh, no. Then I'll have to --

19 THE COURT: 37 and 38 were excluded.

20 MS. BECKETT: You're right.

21 THE COURT: I'm retendering them to you.

22 MS. BECKETT: Let me review them for a moment,

23 please.

24 Counsel, I apologize. I mistakenly excluded

1 them. Would you like to review your decision to admit
2 the documents?
3 MR. HEISS: In other words you want to --
4 MS. BECKETT: I changed my mind. I wish to admit
5 37 and 38. I erroneously failed to --
6 MR. BURNS: Firemen have no objection, your Honor.
7 MR. HEISS: Laborer's have no objection.
8 MS. VEERHUSEN: No objection.
9 THE COURT: Remove the accepted marks and 37 and 38
10 will be received.
11 (Whereupon, the document was
12 received in evidence as
13 Exhibits Number 37 and 38.)
14 MS. BECKETT: Thank you, your Honor.
15 These exhibits which date from 1965 through
16 1985 simply show a 20-year history of the City
17 increasing premiums charged the City or it's agents or
18 insurance companies with whom the City or it's
19 annuitants were doing business increasing premiums.
20 Starting in 1965 the Blue Cross/Blue Shield
21 rate as is shown on Exhibit 37 was $9.74 a month for
22 single coverage, $30.58 for family coverage.
23 THE COURT: $38 what?
24 MS. BECKETT: $30.58.

1 THE COURT: $30.58.

2 MS. BECKETT: Two years later those rates went down
3 as we'll see in Exhibit 38, but by 1975 they had been
4 again been raised substantially up to $24.20 for single
5 coverage, $7.40 a month for family coverage.

6 Rather than go through every single year
7 reflecting changes, let it suffice to say you'll see in
8 chronological order the pattern of increases up to the
9 year 1982. What is reflected in Exhibits 21, 22, 23,
10 and 45, the rates that have remained in effect until
11 now the $55 for single, 4150 per family were
12 instituted.

13 You can see from these documents that in 1983
14 an increase was requested. There's been testimony to
15 that and that attempt was foiled. In 1984 rate
16 increases were considered and never implemented and
17 then in 1985 as is shown on Exhibit 36 at the bottom at
18 least one unknown individual attending a meeting
19 believed that there would be no increase in rates that
20 year or until further notice.

21 When they say "until further notice" it's
22 clear that one can infer that there was no promise of
23 no rate increases, but that there might be one in the
24 future. We see from this history that the City and

1 it's agents have been able to raise premium rates.
2 There's no contractual prohibition against raising
3 premium rates. As a matter of fact changing the
4 contracts in any other way.
5 We thank the Court for affording us the time
6 to describe these exhibits and request the opportunity
7 further to discuss them in our briefs and also request
8 time tomorrow to present two witnesses.
9 THE COURT: We're going to recess this trial until
10 tomorrow. Can we start at 2:00 o'clock tomorrow? You
11 think you can finish in the afternoon?
12 I take it you're all going to reserve your
13 final arguments -- your closing arguments under the
14 circumstances for your trial briefs, correct?
15 MR. FORDE: Right.
16 THE COURT: And the Interveners has to make a
17 decision as to whether he wants to put any witnesses
18 on?
19 MR. KRISLOV: Depending on the two witnesses the
20 City calls, we may not need to call any witnesses and
21 may be able to close at the conclusion of their case as
22 well as -- may I know who those two are?
23 THE COURT: You have who the witnesses are?
24 MS. BECKETT: Martin Oberman. Former Alderman

1 Martin Oberman. We do not know whether the second
2 witness will be available and, therefore I, can't say
3 who it is.
4 THE COURT: You are now informed that one of them
5 will be former Alderman Martin Oberman.
6 MR. KRISLOV: We may have two short witnesses then,
7 your Honor, but we may not just require working it out
8 with the City.
9 THE COURT: We'll until 4:30 and if you have to
10 have sometime Friday, you'll get Friday. 2:00 o'clock
11 tomorrow.
12 (Which were all the
13 proceedings had this date.)
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24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4
5 MARCELLA A. WILLIAMS, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; that she reported in
8 shorthand the proceedings given at the taking of said
9 hearing, and that the foregoing is a true and correct
10 transcript of her shorthand notes so taken as
11 aforesaid, and contains all the proceedings given at
12 said hearing.
13
14 Marcella A. Williams
15 Certified Shorthand Reporter
16
17 SUBSCRIBED and sworn to
18 before me this 23 day
19 of June 1988.
20
21
22
23 Notary Public
24

OFFICIAL SEAL
THOMAS WACLAWEK
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. MAR. 7, 1992

1 STATE OF ILLINOIS)
2) ss:
3 COUNTY OF COOK)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - LAW DIVISION
6 CITY OF CHICAGO,
7 a municipal corporation,)
8 Plaintiff,)
9 vs.) No. 87 CH 10134
10 MARSHALL KORSHAK, et al.,)
11 Defendants.)
12 REPORT OF PROCEEDINGS at the trial of the
13 above-entitled cause before the Honorable ALBERT
14 GREEN, Judge of said Court, on the 23rd day of June
15 1988 at the hour of 2:00 o'clock p.m.
16 APPEARANCES:
17 HON. JUDSON K. MINER
18 Corporation Counsel
19 BY: MS. AMY LOUISE BECKETT
20 Assistant Corporation Counsel
21 and
22 HOPKINS & SUTTER
23 BY: MR. WILLIAM CARLISLE HERBERT
24 on behalf of City of Chicago;

1 APPEARANCES: (Continued)

2 MR. KEVIN M. FORDE

3 MS. KATRINA VEERHUSEN

4 on behalf of The Police Annuity Fund;

5

6 JACOBS, BURNS, SUGARMAN & ORLOVE

7 BY: MR. MARTIN J. BURNS

8 on behalf of Firemen's Annuity Fund;

9

10 BOYLE AND HEISS

11 BY: MR. FREDERICK HEISS

12 and

13 MR. WILLIAM A. MOROVITZ

14 on behalf of Municipal and Laborers'

15 Fund;

16

17 SACHNOFF, WEAVER & RUBENSTEIN, LTD.

18 BY: MR. CLINTON A. KRISLOV

19 on behalf of the Annuitant

20 Interveners.

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1 THE COURT: Good afternoon, ladies and
2 gentlemen.
3 I understand the case on trial will be
4 delayed awaiting a witness.
5 (Short pause.)
6 THE COURT: Again, good afternoon ladies and
7 gentlemen. City versus Korshak, 87 CH 10134.
8 Let the record reflect that this is a trial
9 in progress on a preliminary injunction on the
10 counterclaim.
11 The Plaintiff has rested. The City has
12 started its case.
13 Miss Beckett, are you ready to start your
14 case.
15 MS. BECKETT: Yes.
16 Your Honor, the City would call to the
17 stand Miss Toni Hartrich.
18 THE COURT: Take the stand please, ma'am.
19 THE COURT: Would you raise your right hand
20 please.
21 (Witness is sworn.)
22 THE COURT: Have a seat, ma'am.
23 For the record please state your full name
24 and spell your last name.

1 THE WITNESS: My name is Toni Helen Hartrich,
2 H-a-r-t-r-i-c-h.
3 THE COURT: Your witness.
4 MS. BECKETT: Thank you, your Honor.
5 TONI HARTRICH,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 DIRECT EXAMINATION
9 BY MS. BECKETT:
10 Q. Miss Hartrich, what is your occupation?
11 A. I'm a senior research associate for the
12 Civic Federation of Chicago.
13 Q. Could you please summarize your educational
14 background for the court?
15 A. I have a Ph.D. in public policy analysis
16 with an emphasis on fiscal policy from the
17 University of Illinois at Chicago and a masters in
18 urban planning and policy, also from the University
19 of Illinois at Chicago.
20 Q. Would you please summarize your employment
21 history?
22 A. Currently, well for the past two years I've
23 been working with the Civic Federation as their
24 senior research associate. Prior to that I was

1 working as the public advocate for assessments and
2 taxations for Montgomery County, Maryland.
3 Q. What is the Civic Federation?
4 A. Actually the oldest civic group in
5 Chicago. It was formed in 1894 in Chicago and is
6 concerned about -- it's a taxpayers' watchdog group
7 basically concerned about public finance and public
8 delivery of services.
9 Q. Who funds the Civic Federation?
10 MR. FORDE: Objection to the relevance of any of
11 this, your Honor. I thought the first few questions
12 were preliminary. But this is clearly irrelevant.
13 THE COURT: What's the purpose of the question?
14 MS. BECKETT: Your Honor, if I may I would like
15 to make an offer of proof.
16 THE COURT: Could we have the witness step off
17 the stand, ma'am.
18 MS. BECKETT: My first preface would be to do so
19 through the witness if that's possible.
20 THE COURT: Miss Hartrich, would you step off
21 please.
22 THE COURT: State your point.
23 MR. FORDE: Pardon me --
24 THE COURT: Oh, Miss Hartrich, would you go

1 through this door and stay in the corridor.
2 (Short pause.)
3 MS. BECKETT: Your Honor, the relevance of.
4 Mrs. Hartrich's proposed testimony and the
5 reason I ask what the Civic Federation does is she,
6 if she took the stand, would testify as to the role
7 of the Civic Federation in the City of Chicago
8 appropriation process and the role that they or the
9 role they inact in assisting with the preparation of
10 the annual appropriations ordinance. And by saying
11 assist, I merely mean that they testify to the
12 budget, they analyze the budget, they review annual
13 appropriations.
14 She would discuss how the Civic Federation
15 does that. She would point out that the Civic
16 Federation in the past has brought issues concerning
17 the budget and what is in the budget to the
18 attention of the City Council. She would give
19 examples of those kinds of issues. She would
20 testify that the Civic Federation identifies these
21 issues by reviewing the appropriation language. And
22 she would testify as to what if anything she could
23 refer to or the Civic Federation could refer to in
24 the absence of specific appropriation language. And

1 this would all be general testimony.
2 And then she would testify regarding Line
3 Item 042. And I would ask her to look at Exhibit
4 39, which is the language of the 1986
5 appropriation. I would ask her first to look at the
6 line item for personal services. And then I would
7 ask her if the Civic Federation could determine from
8 that line item what the City had appropriated, the
9 City Council. And then I would ask her to look at
10 the entire -- look at Line Item 042 and ask her to
11 testify how the Civic Federation could try to bring
12 to the attention of the City Council any concerns it
13 had with respect to annuitant or retiree health care
14 based on the language that exists in the 1986
15 appropriation ordinance.
16 MR. FORDE: I think it is not only irrelevant, I
17 think that it sounds like it's also going to invade
18 the province of this court in deciding the legal
19 issue. It sounds like it's opinion evidence on a
20 legal issue. And it's for the court to decide the
21 legal issues.
22 I again emphasize that it's completely
23 irrelevant as to what the Civic Federation would do
24 or would like to do or would like to see in the

1 statute any more than you can bring in three million
2 citizens of Chicago who would each give their views
3 on the budget.
4 I think also that her testimony, if it is
5 opinion testimony, is improper, because she hasn't
6 been designated as an expert, and I don't believe
7 she's called as an expert.
8 THE COURT: Mr. Burns for the Fireman's Fund.
9 MR BURNS: I don't have anything to add to what
10 Mr. Forde has said.
11 Judge, I think it's clearly immaterial.
12 THE COURT: Laborer's Municipal.
13 MR. HEISS: I have nothing further to add.
14 THE COURT: Intervener.
15 MR. KRISLOV: Nothing further.
16 THE COURT: You may reply.
17 MR. HERBERT: Your Honor, if I could have a
18 word.
19 The Counterclaimants have introduced
20 evidence as to one of the purposes of the language
21 of the appropriation ordinance, and they have said
22 that's the only purpose, the purpose that they say
23 is the one that the state has drawn up. And this is
24 testimony that is designed to show that there is

1 more than just the purpose that the Counterclaimants
2 claim for the language of the ordinance. And we
3 wish to show that the testimony they have introduced
4 is not correct as to the purpose.
5 MR. FORDE: Your Honor --
6 THE COURT: This is going to be is your
7 rebuttal. Go ahead.
8 MR. FORDE: Yes. On that point I think anything
9 they want to say to that they can put in their
10 brief. But I think what Mr. Herbert is talking
11 about is the question that reads, "Then what is the
12 purpose for the additional language here elaborated
13 just above this starred item? What is the purpose
14 of having these specific line items?"
15 Is that what you're talking about?
16 MR. HERBERT: As I recall.
17 MR. FORDE: That was Mr. Kobasiak,
18 Mr. Kubasniak's testimony.
19 MR. HERBERT: No. The question also came up in
20 the examination of Sharon Gist Gilliam in which she
21 was asked about the understanding of Council members
22 about the ordinance and about, indeed, their
23 understanding of the history of this particular
24 ordinance. And that was raised by the

1 Counterclaimants. And I think the other side of
2 that should be presented.
3 MR. FORDE: Well, the question that I just read,
4 your Honor, and it was asked again, what is your
5 understanding among aldermen that this language
6 continued to include annuitants. Those are
7 questions Ms. Beckett asked our witness. We didn't
8 ask those questions. And if we did there was no
9 objection to them.
10 THE COURT: All right. Let me tell you exactly
11 where this court's coming from.
12 As to the interpretation of Line Item .042
13 and everything that appears above 9112.000 with an
14 asterisk in front of it, this court will determine
15 its meaning. And I think the testimony of the Civic
16 Federation is irrelevant. And she is disqualified
17 as an expert. Having put her on on 220, she is
18 disqualified.
19 MR. FORDE: Thank you, your Honor.
20 THE COURT: Will you please tell the witness to
21 step back in.
22 (Short pause.)
23 THE COURT: Miss Hartrich, you are excused as a
24 witness.

1 City, do you have any other witnesses.
2 MS. BECKETT: We will ask Mr. Oberman, who will
3 be our next witness to step aside so we can explain
4 the purpose of his testimony as well as Mr. Len
5 Despres, who we intend to call following
6 Mr. Oberman.
7 THE COURT: Mr. Oberman, may I kindly ask you to
8 step out of the courtroom.
9 Is Mr. Despres in the courtroom?
10 MS. BECKETT: We expect him at 2:30.
11 THE COURT: All right.
12 Go ahead, Ms. Beckett.
13 MS. BECKETT: Both Mr. Oberman and Mr. Despres
14 will be called to testify as former city Council
15 members, and in Mr. Dupres' instance as a former
16 parliamentarian, to testify as to their familiarity
17 with the line item appropriation method that they
18 used as City Councilmen, to ask them about their
19 familiarity with the practice of the City Council,
20 of detailing appropriations within the starred item
21 categories. We would ask them their understanding
22 of whether the language set forth in subcategories
23 limits the kinds of expenditures that can be made
24 under the starred appropriation. Again, that's

1 testimony that came out before.

2 We would ask them in what way that language

3 limits the kinds of expenditures that can be made.

4 Then we would ask them whether as City Councilmen

5 they believed that the administration could take

6 money within the general category of personal

7 services and make expenditures that are arguably

8 those for personal services but that are not

9 specified within the subcategories above it.

10 We would ask them if they were familiar

11 with the practice that was testified to, I believe

12 testified to, regarding them taking salvage, that is

13 unspent moneys, from one line item and using that to

14 cover deficiencies for another within a general

15 starred category.

16 We would ask them further, as former city

17 Council members, how the City Council voiced its

18 specific intent or that is how it acted officially

19 and how its official actions are made known.

20 We would ask them, then, whether the City

21 Council does speak through the language that it

22 adopts through its ordinances.

23 Then we would ask them whether they would

24 rely on the statement of somebody not in the City

1 Council as to the City's the City Council's intent
2 in passing such an ordinance.
3 We would ask Former Alderman Oberman --
4 That's where our examination of Mr. Despres
5 would cease.
6 With Mr. Oberman we would continue to ask
7 him whether as a City Councilman he reviewed
8 expenditures in the finance general category that is
9 at issue in this case. We would ask him whether he
10 reviewed these expenditures before he voted on
11 them.
12 I might add as a preliminary that.
13 Mr. Oberman was in the City Council at
14 least from 1979 through 1986. And I would ask
15 whether he believed -- and Mr. Oberman would also
16 testify that he was one of the draftsmen of the
17 amendments to the City of Chicago budget
18 guidelines. And he would further testify that
19 appropriation language within these subcategories
20 exist precisely to advise aldermen and the public,
21 that is persons who are examining the budget, what
22 kind of expenditures the City Council has approved.
23 Then I would ask Mr. Oberman what his
24 understanding is of the personal services group

1 account, which has been at issue in this case. And
2 I would ask him whether expenditures on behalf of
3 retirees fall under that group. I would ask him
4 whether his understanding of Line Item 042 was such
5 that it was meant to be paid on behalf of retirees.
6 Or another way of asking that would be I would have
7 him examine the starred line item for personal
8 services and say whether he understood that line
9 item was to be used for the benefit of any person
10 other than an active City employee given the
11 parameters of what personal services expenditures
12 are allowed within state law and the prefatory
13 language in the annual appropriation ordinance.
14 Finally, we would ask Mr. Oberman whether
15 the City Council budget was ever debated and whether
16 he recalled it ever being disclosed in the debates
17 that he attended that annuitant health care benefits
18 were being paid under the appropriation for employee
19 health benefits in Line Item 042.
20 I would have him examine the budgets for
21 this line item in the budget years 1984, '85, and
22 '86 and compare those and ask him what the change in
23 language signified to him and whether he believed
24 that -- what the purpose was of that change, what it

1 signified to him, and whether he assumed that in the
2 years 1984 and 1986 that that language intended the
3 same thing as in the year 1985.
4 MR. FORDE: In response to that, judge, and when
5 we were advised that Mr. Oberman would be one of the
6 witnesses, we dug up a few cases that state what I
7 know the court knows the law to be, that in
8 construing a statute the courts never allow
9 testimony of a legislator to testify as to what he
10 thinks the intent of the statute would be.
11 Otherwise, of course, your Honor, after Mr. Oberman
12 testified, we would get maybe 49 --
13 THE COURT: 48. She's bringing two in.
14 MR. FORDE: We would get the other 48 --
15 THE COURT: Let the record clearly reflect that
16 your objection is well taken.
17 This court's conversant with the case where
18 the late representative Bernard Upton was chastised
19 by the upper court for giving an opinion as to what
20 certain insurance laws meant. And recently in a
21 case called Chicago Burr Ridge versus Karen
22 (phonetic). I just made a ruling on the case at the
23 trial level, Representative Stetsko (phonetic)
24 rendered an affidavit as to the intent of the Beer

1 Wholesalers Fair Deal Act. And I summarily
2 dismissed it and struck it based on the case
3 covering representative Upton.
4 To bring in legislators to tell us what the
5 intent of their vote was or what a statute was is
6 absolutely verboten. And they will be disqualified
7 as witnesses.
8 MR. HERBERT: Your Honor, could I have one word
9 just in response to Mr. Forde's statement.
10 THE COURT: And I want to make one more
11 statement. This court is the one that has been
12 directed to construe the statute. That is the job
13 of the court. And for whatever reason the a
14 legislator votes "Yea" or "Nae," that's his
15 province. That's an political question. If you
16 don't like what they did, go to the ballot box.
17 As to the intent of a statute or what it
18 means, that's to the court. Go ahead.
19 MR. HERBERT: Your Honor, we wholeheartedly
20 agree with what you just said. What concerned us
21 was that the Counterclaimant called for testimony of
22 a staff member of the Council committee to testify
23 about what this ordinance meant. And our purpose
24 was to offer counterproof on that point.

1 And specifically, Mr. Kubasniak testified
2 that the only legal requirement imposed by the
3 ordinance existed in the starred line item, and that
4 none of the subcategory language had any legal
5 effect whatsoever.
6 And we believe that it was important to
7 make it clear that the the City Council, as opposed
8 to the state, could go further than the language in
9 the starred line item and be more specific as to its
10 intent. And we believe this is true as a matter of
11 law. And one can determine this simply by examining
12 the ordinance.
13 THE COURT: Mr. Herbert, I heard the testimony
14 of Miss Gilliam. I heard the testimony of
15 Mr. Kubasniak. And this court -- remember it's a
16 bench trial -- will only consider that evidence
17 which is relative and admissible, this being a bench
18 trial.
19 I disqualified the two proposed witnesses.
20 Miss Beckett, what's your pleasure now.
21 MS. BECKETT: The City rests.
22 THE COURT: The City rests.
23 MR. FORDE: May we --
24 THE COURT: Any --

1 MR. FORDE: May we file the memoranda anyway,
2 which we were going to submit on the question of the
3 testimony.
4 THE COURT: Mr. Forde seeks to file a Defendants
5 memorandum regarding admissibility of testimony of
6 legislators.
7 Any objection, Mr. Herbert and Ms. Beckett.
8 MR. HERBERT: Your Honor, I believe it's
9 superfluous.
10 THE COURT: It is superfluous. But I'll admit
11 it.
12 MR. FORDE: We do have the Upton case in there
13 and the U.S. Supreme Court cases, Illinois Supreme
14 Court cases.
15 MS. BECKETT: There are a couple of
16 administrative matters.
17 THE COURT: And I want to know what your time
18 parameters are. I read in the paper --
19 MS. BECKETT: May we inform Mr. Oberman and
20 Mr. Despres.
21 THE COURT: Absolutely.
22 I'll try to facilitate this as quickly as I
23 can. You say we have some administrative matters to
24 attend to.

1 THE COURT: You're excused, Mr. Oberman.
2 MR. OBERMAN: Your Honor, I've been excused from
3 other such esteemed places as this.
4 (Short pause.)
5 THE COURT: All right. We have some
6 administrative matters to address.
7 MS. BECKETT: An additional administrative
8 matter. I have a not yet signed the amended
9 stipulation which changes only the the stipulation
10 regarding the City's exhibits tendered. I have
11 amended only the language with respect to Exhibit
12 No. 36.
13 I did not go through and strike from this
14 stipulation those exhibits we did not offer. But
15 pursuant to your request I did amend the language in
16 36. And with leave of court, I can file this at a
17 later date after I've obtained signatures of
18 counsel.
19 THE COURT: Fine. That's the amendment we made
20 yesterday, Mr. Burns, regarding the meeting, not at
21 the Fund office, but I believe it was the benefit
22 manager's office.
23 MR BURNS: I signed Miss Beckett's statement.
24 That that's the only change. I have executed the

1 stipulation.

2 MR. KRISLOV: As have I, your Honor, on behalf

3 of the Intervener. And I will suspect that the

4 Hogan Interveners, who are not separately

5 represented, their attorney is not present in court,

6 but I believe they would have no objection.

7 MR. FORDE: And Municipal and Labor has also

8 executed it.

9 THE COURT: All right.

10 Ms. Beckett, anything else.

11 MS. BECKETT: Is there -- I was just going to

12 ask if there was a briefing schedule proposed.

13 THE COURT: Has the next thing I'm going to

14 address. The quicker you get your briefs to me the

15 faster you're going to get an opinion. How much

16 time do you want for your respective trial briefs --

17 excuse me, Mr. Krislov, does the Intervener have

18 anything to present.

19 MR. KRISLOV: Your Honor, in order to expedite

20 the matter and avoid any cumulative evidence, we

21 will call no additional witnesses. We will have

22 two, possibly three documents to submit as

23 Interveners exhibits. I1 will be the Ryan

24 decision. I2 will be a certified copy of the

1 Circuit Court docket sheet in the Ryan case showing
2 particular dates when items occurred. I don't think
3 that anybody will have an objection either on the
4 basis of relevance or foundation to either of those,
5 since they are proper documents.
6 MR. FORDE: The court will take judicial notice
7 of those.
8 THE COURT: Precisely so.
9 So you're only tendering two Interveners
10 Exhibits, 1 and 2, which the court can take judicial
11 notice of.
12 MR. KRISLOV: Yes, your Honor.
13 THE COURT: How much time do you want to file
14 your respective trial briefs? And I would like them
15 filed simultaneously. There will be no responses or
16 replies.
17 MR. FORDE: Miss Beckett, what do you think?
18 MS. BECKETT: I've discussed that with
19 co-counsel. We can be ready as soon as Monday.
20 THE COURT: Whatever your pleasure is.
21 MR. FORDE: I certainly think we can file a
22 brief by no later than -- let's say Tuesday. And
23 then we'll be sure it's in rather than coming in
24 Monday afternoon --

1 THE COURT: I'll tell you what, let's play it
2 safe. Tuesday is the 28th. I'll give you until the
3 afternoon of the 29th. Wednesday. And you will all
4 file in by 4:00 o'clock. I will take them with me
5 over the July 4 weekend. I'm going to try and get
6 you your opinion.
7 How long is that Kellerman MCI case going
8 to take? That's going to take a pretty long --
9 MR. FORDE: I would think we're talking an hour
10 that day.
11 THE COURT: All right. I'll try and get you
12 your opinion by Monday, July 11. Is that fair
13 enough?
14 That will be at 3:00 o'clock.
15 MR. FORDE: If something develops in the other
16 case, I'll let Ms. Beckett know that 3:00 o'clock
17 may not be --
18 THE COURT: Later on in the afternoon. All
19 right.
20 MR. KRISLOV: Your Honor, I have another brief
21 due on Monday in another division of -- before
22 another judge in chancery. And I would respectfully
23 request that if you are going to take it home if I
24 could have until Thursday.

1 THE COURT: I'll give you until Thursday.
2 MR. KRISLOV: Thank you, your Honor.
3 THE COURT: Just make sure it's here.
4 MR. KRISLOV: Thank you, your Honor. It will
5 be.
6 THE COURT: I want to thank you all for being so
7 cooperative in expediting the trial in this case.
8 I want to tell you, Mrs. Beckett you're
9 absolutely correct. I'm cumulative and
10 duplicitous. I checked it out.
11 MR BURNS: Would the time limit for Mr. Krislov
12 apply to everybody.
13 THE COURT: Yes. Take the time if you need it.
14 MR. KRISLOV: Will we have the time for oral
15 argument before you?
16 THE COURT: No. That's what you're writing it
17 out for. If you put it in writing, there's nothing
18 more you can do in words. And there's no jury in
19 the box, so I'm not swayed by it.
20 MR. FORDE: Thank you, your Honor.
21 MS. BECKETT: Thank you, your Honor.
22 (Which were all the proceedings
23 had in the above-entitled cause
24 on this date.)