

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

Michael W. Underwood, et al.,

Plaintiffs,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant,

And

**Trustees of the Policemen’s Annuity and Benefit Fund
of Chicago;
Trustees of the Firemen’s Annuity and Benefit Fund
of Chicago;
Trustees of the Municipal Employees’ Annuity and
Benefit Fund of Chicago; and
Trustees of the Laborers’ & Retirement Board
Employees’ Annuity & Benefit Fund of Chicago, et al.**

2013 CH 17450

Defendants.

**LABORERS’ & RETIREMENT BOARD EMPLOYEES’
ANNUITY & BENEFIT FUND OF CHICAGO REPLY
TO THE CITY OF CHICAGO’S MEMORANDUM OF LAW
CONCERNING THE PENSION FUND’S OBLIGATIONS TO PAY SUBSIDIES
UNDER THE 1983 AND 1985 AMENDMENTS TO THE PENSION CODE**

The City of Chicago (the “City”) should fund the \$25 per month group health insurance subsidy that eligible retirees of the Laborers’ and Retirement Board Employees’ Annuity and Benefit Fund of Chicago (the “LABF”) are to receive based on the Appellate Court opinion in *Underwood v. City of Chicago*, 2017 IL App (1st) 162356. .

There is no dispute that in the *Underwood* decision, the appellate court placed the responsibility for funding the health care subsidy squarely on the City: “[u]nder the 1985 amendment, the City is obligated to pay \$25 per month for its municipal employees and laborers and retirement board employees.” *Id.* ¶ 40. There is no ambiguity in this statement. *See Id.* ¶¶

37, 57 (stating that the City is obligated to City retirees under the 1983 and 1985 amendments and that “[t]his opinion merely speaks to what the City is constitutionally obligated to provide”).

Further, requiring the City to fund the health care subsidy is consistent with *Kanerva v. Weems*, 2014 IL 115811. In that case, our Supreme Court held that the Pension Protection Clause safeguarded state employees’ right to compel the state, as employer, to continue to contribute to the cost of healthcare benefits. *Id.* ¶ 35. Here, the City is the employer, not the LABF. As the employer, it is the City that has the obligation to pay the constitutionally protected health care subsidies.

The City asserts that the 1985 amendment calls for the LABF to pay the subsidy. However, the City overlooks the fact that the mechanism by which the City contributes to the LABF has changed since 1985. Under P.A. 100-0023, effective July 6, 2017, after our General Assembly overrode Governor Rauner’s veto on July 4, 2017, the City’s funding of the LABF is no longer based on a tax levy multiple as was the case in 1985:

Beginning in payment year 2018, the city's required annual contribution to the Fund for payment years 2018 through 2022 shall be: for 2018, \$36,000,000; for 2019, \$48,000,000; for 2020, \$60,000,000; for 2021, \$72,000,000; and for 2022, \$84,000,000.

(2) For payment years 2023 through 2058, the city's required annual contribution to the Fund shall be the amount determined by the Fund to be equal to the sum of (i) the city's portion of projected normal cost for that fiscal year, plus (ii) an amount determined on a level percentage of applicable employee payroll basis that is sufficient to bring the total actuarial assets of the Fund up to 90% of the total actuarial liabilities of the Fund by the end of 2058.

40 ILCS 5/11-169(a-5). The LABF submits that the General Assembly did not take into account the additional financial obligation the health care subsidy would impose when it adopted P.A. 100-0023, as the *Underwood* decision did not become final until Plaintiffs’ petition for leave to appeal to the Supreme Court was denied on November 27, 2017, well after P.A. 100-0023 had

taken effect. The increased City contributions that the General Assembly required of the City were due to the well-known fact that the City Pension funds are dramatically underfunded. It is not logical that at the same time the General Assembly addressed the City pension funds' severe underfunding, the Court would exacerbate the underfunding issue by requiring the funds to pay a health care subsidy.¹

CONCLUSION

For all the above reasons, this Court should rule that the responsibility for funding the \$25 per month group health insurance subsidy due to LABF retirees age 65 and older with 15 years of service lies squarely with the City.

Dated July 20, 2018

Respectfully Submitted,
LABORERS & RETIREMENT BOARD EMPLOYEES'
ANNUITY & BENEFIT FUND OF CHICAGO,
Defendant

/s/ Cary E. Donham
By: One of Its Attorneys

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¹ The LABF also adopts the arguments of the Police, Fire and Municipal pension fund defendants.