In the Supreme Court of Illinois

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 388 Other Named Plaintiffs listed, Plaintiffs-Appellants, v. CITY OF CHICAGO, a Municipal Corporation, Defendant, and Trustees of the Policemen's Annuity and Benefit Fund of Chicago; Firemen's Annuity and Benefit Fund of Chicago; Municipal Employees' Annuity and Benefit Fund of Chicago; and Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al., Defendants-Appellees.	Presently before: 1. The Illinois Appellate Court, First Judicial District No. 15-3613 (Preliminary Injunction Appeal) 2. Trial Judge: Hon. Neil Cohen Case No. 13-CH-17450 Date of Denial of Preliminary Injunction: December 23, 2015 Interlocutory Appeal: December 29, 2015; and 3. The Illinois Appellate Court, First Judicial District No 15-2183 (2013 Audit and Reconciliation) Trial Judge: Hon. Neil Cohen Case No. 01-4962 Notice of Appeal: July 31, 2015

Plaintiffs-Appellants' Rule 302(b) Motion For Direct Appeal

Oral Argument Requested

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Plaintiff-Appellants, City of Chicago retirees, move this court under Rule 302(b) to grant direct appeal of the City of Chicago Retirees' healthcare claims presently pending on interlocutory appeal of the Circuit Court denial of preliminary injunction, an associated appeal (regarding the accuracy of health coverage premium charges)[1], and a pending case in the Cook County Circuit Court, Chancery Division over the City's actions to phase out and terminate the healthcare benefits at year end.

A. Background History and Status of the Cases Below.

The City of Chicago has provided retirees medical benefits since before 1980. The City provided the Plan to annuitants of its four Annuity and Benefit Funds, under agreements under which all subsidized retirees as lifetime benefits.

As we previously presented to this court, as *amicus curiae* in *Kanerva v. Weems* addressing State retirees' retirement healthcare claims, this litigation was first launched by the City's 1987 *City v. Korshak* lawsuit challenging its retiree healthcare obligation. Circuit Court Judge Green dismissed the City's claims and upheld the Contract and Estoppel counterclaims for participants' retiree healthcare. The case was tried in 1988, but settled by interim settlements, the last expiring June 30, 2013; but all of which explicitly preserved Participants' rights to revive the City retirees' claims to lifetime healthcare entitlement under the subsidized "City of Chicago Annuitant Medical Benefit Plan."

Rather than negotiate further for a permanent resolution, the City declared its

[1] Participants appealed an issue arising under the Settlement to the Illinois Appellate Court, First Judicial District, No. 15-2183. In that pending case, Participants effort is to audit post June 30, 2013 charges (because the Settlement audit and reconciliation process had shown overcharges in every year of the Settlement, with more than $51 million in refunds to retirees). The issue in that Appeal and its connection is fully described below.

intention to "phase out" and end retiree healthcare by the end of 2016. App. No. 15-3613, Record on Appeal, C 173, May 15, 2013 Letter, triggering this litigation by participants, current and future City annuitants.

Participants' most recent efforts to revive the claims in 2013 were initially blocked by the Circuit Court's refusal to revive it within the *Korshak* case; requiring the retirees to file their Medical Benefit Plan entitlement claim as a new complaint in a new case. When Plaintiff Retirees filed the new complaint (*Underwood et al v. City et al.* 13CH17450), the City removed the matter to Federal District Court, which dismissed the case, wrongly predicting this court would rule that retiree healthcare benefits are not protected by our Constitution's "Pension Protection" clause, *Underwood v. City of Chicago*, 2013 U.S. Dist. LEXIS 174455 (N.D. Ill. Dec. 13, 2013), dismissing the class certification and injunction motions as moot.

Plaintiffs immediately appealed. The Seventh Circuit stayed the case pending this court's *Kanerva* decision, and denied our request to refer the issue to this court. When this Court issued its decision in *Kanerva* on July 3, 2014, the Seventh Circuit thereafter vacated the dismissal of the Illinois claims, and remanded the matter back to the Circuit Court of Cook County.

Back again in the Circuit Court, Participants sought class certification and preliminary injunction against the City's declaration of substantial additional premium increases beginning January 1, 2016. Declaring that it would deal with the case in a "linear" fashion, the Circuit Court deferred Plaintiffs' motions, preferring to first deal with all of the City and Funds' motions to dismiss. On December 3, 2015, Circuit Court Judge, Hon. Neil H. Cohen refused to afford either law-of-the-case or any deference at all

to Judge Green's 1988 *Korshak* ruling, which had upheld the contract and estoppel claims for participants. Ex. 3. Judge Cohen upheld our Constitutional count (recognizing *Kanerva*, but ruled that the terms of the protected benefit were not appropriately defined on a motion to dismiss, leaving them for a future determination), but dismissed the contract and estoppel counts with leave to amend. Judge Cohen then, on December 23, 2015, denied participants' request for a preliminary injunction, in his view, contrary to *Kanerva*, that the "Pension Protection Clause" protects only what the Pension Code requires and is determined by one's retirement, rather than hire date,[2] ignoring this

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[2] Judge Cohen: *Underwood v. City of Chicago* 12-23-15 Tr., (Pages 133:10 to 136:7)

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So it's clear to me that the parties who were -- who are covered under the 1983 and 1985 amendments is every retiree who retired prior to August 23rd, 1989, and those are the ones who have the lifetime benefits to be supplied by the City; that the City -- another discussion -- does not claim that they're not going to give. They claim they

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don't have to, but they claim they're going to, so -- as I understand their position.

But everyone after that date, per my ruling, is covered by the 1989, the 1997, and the 2003 amendments to the Illinois Pension Code, which I said at page 11 were time limited at creation. …

. . .

So that's why I found that although Count 1 does state a cause of action for everyone, August 23rd, 1989, and before, who retired that date, it does not -- it does not state a cause of action for declaratory relief as to obligations under

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the '89, '97 and 2003 amendment.

And see December 23, 2015 Tr. at 215-219 (limiting the protected benefit to just the Pension Code's explicit obligation to finance the Funds' subsidies, rather than the healthcare benefit actually provided annuitants by the City).

…

Court's specific declaration in *Kanerva v. Weems*, 2014 IL 115811, that:

> **¶40** Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, **eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections.**
> …
>
> **¶54** Defendants observe that health care costs and benefits are governed by a different set of calculations than retirement annuities. While that is unquestionably true, it is also legally irrelevant. The criterion selected by the drafters and approved by the voters is status based. **Whether a benefit qualifies for protection under article XIII, section 5, turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected.** If it does not, it is not. How the benefit is actually computed plays no role in the inquiry.

Kanerva, at ¶40 and ¶54.

Participants thus filed an Appeal of the denial of the preliminary injunction, currently pending in the First District (Docket No. 15-3613). The Circuit Court clerk's office took a remarkably long time to assemble the record. Our opening brief was filed on March 11, 2016. The City after multiple requests to extend its briefing time, filed

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11 What I'm saying is that by
12 providing -- ….
the
15 City of Chicago annuitant healthcare plan ….to people
17 based solely on their being annuitants or
18 participants in the plan, you're stuck with it for
19 life. Yes.
20 …..
3 THE COURT: Providing the tax levy is
4 what the City did per the statute, '83 and '85.
5 MR. KRISLOV: Per the Pension Code
6 statute.
7 THE COURT: Yeah, well, isn't that
8 what I'm stuck with?

their Response on April 15, 2016. Our Reply brief is due April 22, 2016.

In the Circuit Court, Plaintiffs filed a Third Amended Complaint January 13, 2016. The City and Funds obtained extensions and filed motions to dismiss on or about March 21, 2016, and Plaintiffs filed their Response on April 13, 2016. The court advised that if we want oral argument it will take much longer to get a resolution.

Despite the Circuit Court's statement that it would be inappropriate to define the terms of the protected benefit on a motion to dismiss, nonetheless the court on March 3, 2016, granted the City's motion to clarify the dismissal ruling, "clarifying" that all that is protected is the City's Pension Code's explicit obligations strictly construed; rejecting our assertion that the benefit to be protected is the "City of Chicago Annuitant Medical Benefit Plan", under which the City is the actual provider, and participants' eligibility is conditioned on and flows directly from being an annuitant in one of the City's four retirement Funds.

Plaintiffs' core claim is that the Constitution protects a benefit provided by a public employer to persons whose entitlement is conditioned on and flows directly from one's participation in one of the employer's annuity and benefit funds. The protected benefit here is the City of Chicago Annuitant Medical Benefit Plan, as it was certainly on August 23, 1989. Here, just like in in *Kanerva*:

> Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. (*Kanerva*, at ¶40)

Participants also claim their entitlement by Contract and Estoppel.

B. The Current Dire Situation.

The City has imposed premium increases of some 300% since 2013 (some

families are now being charged over $25,000 per year), and will discontinue healthcare coverage entirely at the end of this year, for this last group of City employees whose City employment does not qualify them for coverage under the federal Medicare program.[3] In short, they have nowhere else to go; the end is coming, and the City, together with the Funds, have strategically divided up this litigation into three different litigations, none near a resolution, despite the fact that the core dispute is an issue of law which this court has definitively ruled.

This court's taking these matters on a Rule 302(b) Direct Appeal is likely the only way that City retirees can ensure their retiree healthcare benefits continue without lapse before year-end.

The public interest requires expeditious determination because this case involves 22,000 current City retirees injured by increased current charges and facing the end of coverage at the end of this year, and these Rights being diminished are protected rights under the Illinois Constitution Pension Benefit Protection Clause.

These issues fall squarely into this Court's recent decisions, not only in *Kanerva v. Weem*s, 2014 IL 115811, but in the recent Opinion issued in *Jones v. Mun. Employees. Annuity & Ben. Fund of Chi.*, 2016 IL 119618.

Accordingly, there are three pending cases that this court can consolidate on Rule 302(b) direct appeal and its supervisory authority.

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[3] The need for the City's coverage is particularly acute, as local government employees who were originally hired and began their work prior to April 1, 1986 cannot qualify for healthcare coverage under the Medicare plan by their government employment, *regardless of their length of service or age*. (*See* Federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)).

1. Preliminary Injunction Appeal – *Underwood*, pending in the Illinois Appellate Court, First Judicial District, No. 15-3613, Participants' brief is filed, the City's response is due April 15, 2016 and our Reply will be timely filed thereafter, April 22, 2015.

2. The Constitution, Contract and Estoppel Claims, *Underwood*, in the Circuit Court of Cook County, Case No. 13-CH-17450.

3. The Extended Coverage, Audit and Reconciliation appeal, *City v. Korshak,* pending in the Illinois Appellate Court, First Judicial District, No 15-2183, fully briefed.

Jurisdiction

This court has jurisdiction to hear this motion and take direct appeal of the case.

Case 15-3613 is pending in the Appellate Court, pursuant to Supreme Court Rule 307. Plaintiffs-Appellants appeal the December 24, 2015 Order of the Circuit Court of Cook County, Illinois, refusing to grant a preliminary injunction to preserve the status quo against the City of Chicago's declared "phase out" of its Annuitant Medical Benefits Plan, reduction of the appropriation from 2015 to 2016 by $31 million, and to raise annuitant healthcare rates January 1, 2016.

On December 24, 2015, the Circuit Court, Hon. Neil H. Cohen, denied the preliminary injunction. *See* submitted Opening Brief (Attached hereto as Ex. 1) at Appendix ("A") 1, C 00912. Pursuant to S.Ct Rule 307, a timely Notice of Interlocutory Appeal was filed December 29, 2015. *See* Ex. 1, Opening Brief, A58, C00903.

Jurisdiction is also appropriate for the pending appeal in the *Korshak* appeal regarding the 2013 Full Plan Year audit and reconciliation case (a reasonable request in light of the overcharges during every one of the ten years of the 2003 Settlement). That appeal is fully briefed (as of March 22, 2016) in the Illinois Court of Appeals, First

District, Case No. 15-2183. There, pursuant to Illinois Supreme Court Rule 301, Plaintiffs-Appellants appeal to the Appellate Court of Illinois, First District, from the Memorandum and Order Entered on July 1, 2015, and final judgment of the Circuit Court, Cook County, Illinois, Chancery Division, entered on July 14, 2015. Pursuant to Illinois Supreme Court Rule 303, Plaintiff-Appellant timely filed a Notice of Appeal on July 31, 2015. *See* Opening Brief (attached hereto as Ex. 2).

The Court has jurisdiction under Rule 302(b) which applies after the filing of a notice of appeal to the appellate court, and does not require a final judgment. This Supreme Court has granted direct appeals of properly appealed interlocutory orders. *Dixon Ass'n for Retarded Citizens v. Thompson*, 91 Ill. 2d 518, 522 (1982) (appeal under Rule 307(a)(1) transferred to supreme court under Rule 302(b)). Indeed, *Kanerva* itself was before this Court on a Rule 302(b) Direct Appeal for similar reasons.

Supporting Record and Copies of Timely Filed Notice of Appeals

The supporting record is presented here as the submitted opening briefs on Appeal in Appeal No. 15-3613 (Ex. 1) and Appeal No. 15-2183 (Ex. 2). The Record on Appeal in both cases is prepared and indexed and currently on file in the Appellate Court. Copies of the Notice of Appeals to both Appeals are attached to the Opening Briefs attached hereto.

Summary of the Facts

The full facts statements of these cases are detailed in the submitted Opening Briefs (Ex. 1 and Ex. 2).

This litigation continues a dispute initiated by the City in 1987 over its obligation to continue providing retiree healthcare under the City of Chicago Annuitant Medical

Benefits Plan (the "Plan") for life, on the basis of a promised fixed-rate subsidized plan.

Participants seek to enforce their Illinois constitutional, contract and estoppel rights to protected public employee healthcare to prevent the City and the four Annuity and Benefit Funds from reducing or ending the Plan benefits.

At issue in the interlocutory appeal is the participants' motion for preliminary injunction *pendente lite* against the City's 2016 decrease in its appropriation and increase in annuitant healthcare rates charged against annuitants' annuity checks.

These issues arise from the pleadings, and undisputed facts, as a question of law, as to whether the City and its four annuities and benefit funds (Policemen, Firemen, Municipal Employees, and Laborers) may reduce the benefits provided under the City of Chicago Annuitant Medical Benefits Plan.

This preliminary injunction arises from litigation that began in 1987. Since the early 1980s, the City has provided, subsidized by the Funds, the City of Chicago Annuitant Medical Benefits Plan. Now, the City is "phasing out" (i.e., reducing its appropriation for the City of Chicago Annuitant Medical Benefits Plan, toward ending all annuitant healthcare coverage) (excepting only pre-8/23/1989 retirees) by the end of 2016.

Relying on the Illinois Supreme Court's *Kanerva v. Weems*, 2014 IL 115811, declaration that the 1970 Illinois Constitution's Article XIII, Section 5, protects all benefits whose eligibility "is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems", Participants oppose the phase out and termination, asserting the City of Chicago Annuitant Medical Benefits Plan is such a benefit, and its provisions are protected for life, enforceable under Constitution,

contract and estoppel as a matter of law.

The Circuit Court upheld the participants' complaint, with the view that the participants have an enforceable benefit, but then denied a preliminary injunction to preserve the status quo, in the erroneous view that the Constitutional protection extends only to those obligations required by the Pension Code, determined by a Participant's retirement date, rather than their hire date, ignoring *Kanerva's* direction to construe pension rights liberally in favor of the participants and to enforce a public employer's annuitant healthcare benefits as protected and permanent.

Indeed, in *Jones,* this Court captures the essence of the issue in this case:

> She particularly noted the concerns related to the proposed adoption of home rule powers for municipalities, including that the municipalities might abandon their pension obligations, leaving civil servants unprotected. 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2926 (statements of Delegate Kinney).
>
> *"The solution proposed by the drafters and ultimately approved by the people of Illinois was to protect the benefits of membership in public pension systems not by dictating specific funding levels, but by safeguarding the benefits themselves."* Heaton, 2015 IL 118585, ¶ 15.

Jones v. Mun. Emples. Annuity & Ben. Fund of Chi., 2016 IL 119618, ¶¶ 8-9 (Emphasis added).

The current pending interlocutory appeal presents the participants' rights to prevent the City from reducing the benefit provided, while the (il)legality of the City's actions is being adjudicated.

The Related Audit and Reconciliation Appeal.

This case also involves another related (the same case) pending appeal,[4] where the

[4] Despite different captions, the cases are the same. The Circuit Court required the Retirees to file a new complaint, then removal and remand followed.

City of Chicago unilaterally declared it was extending the coverage and benefits of the 2003 Settlement (specifically allocating healthcare costs among the City, the Retirement Funds, and the participants, with an audit and reconciliation provision) beyond the Settlement's June 30, 2013 expiration, and through the end of the 2013 Plan Year, but then refused to comply with the Agreements' obligations to audit and reconcile the retiree health care charges for the second half of 2013.

Despite the Agreements' provisions explicitly retaining jurisdiction to interpret and enforce (which themselves are a term and benefit of the settlement), the Circuit Court on July 1, 2015 denied Class Counsel's motion to enforce, and granted the City's motion to strike and dismiss, declaring that it lacked jurisdiction, because the Agreement's term had been reached.

Participants' class counsel sought to revive the litigation within the *Korshak* case, but was denied by Circuit Judge Neil H .Cohen, in his view that it had to be done via a new complaint. (C 130, Amended Complaint, ¶4.)

When Class Counsel refiled the case, with participants' plaintiffs, in a new complaint (C 3), incorporating all three claims previously upheld by Judge Green, plus explicit assertion, inter alia, of the Article XIII, Section 5 claim, the City, predictably, removed the case to federal court (C 59), resulting in two years diversion of the case.

The District Judge, in the erroneous view that the Illinois Courts would not regard healthcare benefits as constitutionally protected, dismissed the complaint and denied Participants' motions for class certification and preliminary injunction as moot.

Participants appealed to the Seventh Circuit, which stayed the case pending the Illinois Supreme Court's decision on the State retirees' healthcare claims. When the *Kanerva v. Weems*, 2014 IL 115811 (2014) decision was issued, declaring that annuitant healthcare benefits provided by a public employer are indeed protected by the Illinois Constitution's Article XIII, §5 against being diminished or impaired, the Seventh Circuit vacated the District Judge's dismissal of this case, declared that the actionable claims are State law claims, and ordered it to be remanded to the Illinois Circuit Court. *Underwood v. City*, 779 F.3d 461 (7th Cir. 2015), *and see* remand order, C 128.

Rule 302(b) Direct Appeal assists in that the extended litigation in the Circuit Court impedes the substantive rights of the retirees and have them litigating the same issues essentially in three different cases and/or forums.

The City's Declaration to Phase Out and End the Annuitant Benefit by December 31, 2016.

The City, on May 15, 2013, issued a letter to participants, notifying them that it would:

(i) extend the then-current retiree healthcare benefits to the end of 2013;
(ii) maintain the current level of benefits for pre-8/23/1989 retirees for their lifetimes;
(iii) phase out the benefits for post-8/23/1989 retirees, beginning January 1, 2014, and terminate their coverage entirely, by January 1, 2017.

(C 1659, City Letter dated May 15, 2013; C152, Amended Complaint, ¶98.)

The City's May 15, 2013 letter acknowledges its obligation, and agreed to continue retiree healthcare for the Certified Korshak (12/31/1987 Retirees) and "Window"[5] Retirees Subclasses:

> 2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and "Window" Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.

In spite of that assurance, the City is actually diminishing the benefit, even for those pre-8/23/1989 subclasses as well, raising their premiums, too. Contrary to the City's Settlement commitment to contribute *"at least"* 55% of the costs of retiree healthcare for all retirees, the City's letter surreptitiously changes its commitment to a much different "*up to*" 55%. Thus, even if the rates were correctly calculated, the City is now "capping", rather than "flooring" its commitment, even to these two classes. Indeed,

[5] The "Korshak" subclass is persons who retired on or before December 31, 1987. The "Window" subclass is those who retired in the "Window" period after 12/31/1987 but prior to August 23, 1989, the date of enactment of PA 86-273, Pension Code Amendment.

their rates are in fact being increased.

In short, the retiree healthcare participants are at least entitled to be accurately charged. The 2003 Settlement obligated the City to continue its City of Chicago Annuitant Medical Benefits Plan, and explicitly obligated the City to pay at least 55% of Healthcare Costs, with audit and reconciliation obligations which showed overcharges in every single year, even the last six months of the settlement ending June 30, 2013. The crux of this appeal is that the City's May 15, 2013 declaration that it would extend the Korshak settlement's "current coverage and benefit levels through December 31, 2013", necessarily carried with it the obligation to audit, reconcile and refund overcharges to participants for that period.

Pending Case Before the Circuit Court.

If these two appeals were not enough – the core claims of the case are pending before the Circuit Court, which has upheld the complaint, then granted the City's narrowing motion for clarification on reconsideration. Despite upholding our constitutional claim, albeit wrongly "clarified", dismissed the previously upheld contract and estoppel claims, and refused to require the defendants to answer even the upheld Count I, pending the court's adjudication of all of the City's and Funds' challenges to our Third Amended Complaint. The Circuit Court has very troublingly entertained the City's and Funds' repeated motions to dismiss, clarify, reconsider, etc.; while simply refusing to rule on virtually all of Participants' submissions, e.g., to clarify, correct, and vacate, repeated motions for Class Certification, Summary Judgment – the court declaring its intention to manage the proceedings "linearly" (meaning entertaining all of the defendants' repeated challenges before addressing any of plaintiffs' requests) – all of

which underscores the necessity to consolidate these cases before this Court, and address the central questions of law and resolve this dire situation for the 22,000 retirees before the City ends their health coverage at the end of this year.

Argument In Support of Direct Appeal

This case has been pending since 1987, with multiple settlements, and revivals; the current iteration of this case is that it was refiled, and removed and remanded – for an overall delay of nearly two years. After remand to state court, the case is on a slow "linear" track in the Circuit Court while it is also split into two appeals – the procedural machinations are amounting to substantial infringement of the retirees' benefits and rights – this Court's granting a Direct Appeal is vital. If this case continues to proceed in a "linear" fashion, the Retirees have reached the point where their rights are shells and will exhaust at the end of the year.

The questions of law in this case address the Illinois Constitution's Pension Protection to 22,000 thousand current City of Chicago retirees about their City of Chicago Annuitant Medical Benefit Plan, for which the City of Chicago has reduced its appropriation, is "phasing out" appropriation, vastly increased the Retirees' payments, and declared its intention to end Retiree coverage for all those not retired after certain dates in 1989. On their appeal of the preliminary injunction denial, the issue is stated as:

> Whether the City and the four Annuity and Benefit Funds should be enjoined from "phasing out" the City of Chicago Annuitant Medical Benefits Plan, reducing its appropriation, and eliminating retiree coverage at the end of 2016 while the Retirees/annuitants' upheld complaint is pending in the Circuit Court, and the question of law is determined—whether Retirees can enforce their entitled and promised lifetime healthcare benefits in the City of Chicago Annuitant Medical Benefits Plan, under the 1970 Illinois Constitution's Article XIII §5 protection of benefits of participation in an Illinois retirement system, as well as principles of contract and estoppel?

The Third Amended Complaint is currently pending in the Circuit Court, upholding the severely restricted constitutional Count I but, refusing to order the City or Funds to answer anything until the Court addresses all of their challenges to all the repled counts. The issues there are strictly questions law: the enforceability of the City's Annuitant Medical Benefit Plan, under the Constitution (Count I), contract (Count II) or estoppel (Count III). Thus, this motion for Direct Appeal pursuant to Rule 302(b) is a case in which this Court's declaration of law will direct the result, and the public interest requires expeditious determination.

I. The Controlling Questions at Issue are Constitutional Questions of Law

Supreme Court Rule 302(b) is appropriately invoked here because the case presents pure legal and Constitutional issues. Even the City/Funds defendants will not dispute that the issues are virtually all questions of law, whose resolution dictates the outcome either way. Indeed, the Circuit Court's initial upholding of the complaint and subsequent clarification actually hold that portions of the 1989 and subsequent amendments to the Pension Code are unconstitutionally "unenforceable." The City chose not to appeal that because of the City's net benefit from the court's otherwise accommodating holdings.[6]

[6] The Circuit Court held the 1985 and 1989 and subsequent amendments that purported to create benefits that were not protected by the Constitution, as unconstitutional. December 3, 2015 Order at 9 (Ex. 3):

> The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause.

Fighting the City's declared intention to phase out and end its "City of Chicago Annuitant Medical Benefit Plan", and the Funds disavowal of any obligation to obtain or provide coverage for their annuitants, the plaintiffs/Plan Participants' claims are that the City and Funds are obligated under the Plan, via three causes of action:

First, that *Kanerva v. Weems* obligates the City and Funds permanently against reduction, "phase out" or ending, by the Constitution's Article XIII, Section 5 protection of benefits of participation in a retirement system[7], because the City of Chicago Annuitant Medical Benefit Plan is such a benefit, whose participation is "limited to, conditioned on, and flows directly from membership in one of the [four City of Chicago] public pension systems." *Kanerva* at ¶40.

Second, that the Funds' obligation to provide annuitant healthcare under the 1983 and 1985 Pension Code amendments was fulfilled by contracting with the City, thus binding both under principles of contract. In *Jones* this Court has "explained" that:

> under the clause, a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to the benefits of that contractual relationship. *Heaton*, 2015 IL 118585, ¶ 46. Those constitutional protections attach at the time an individual begins employment and becomes a member of the public pension system. Id. Thus, under its plain and unambiguous language, the clause prohibits the General Assembly

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> Defendants do not cite to any authority holding that the General. Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.
>
> Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

[7] *Jones v. Mun. Employees . Annuity & Ben. Fund of Chi.*, 2016 IL 119618, ¶ 36 ("the benefits protected by the pension protection clause include those benefits that are "attendant to membership in the State's retirement systems" (2014 IL 115811, ¶ 41), including "subsidized health care…).

> from unilaterally reducing or eliminating the pension benefits conferred by membership in the pension system. Id. ¶ 46 & n.12.

Jones v. Mun. Employees. Annuity & Ben. Fund of Chi., 2016 IL 119618, ¶ 29

Third, by estoppel, that having induced participants to work for the City, reasonably relying on the assurances by the City and Funds (in pre-retirement seminars and officially issued handbooks) that they could rely on their City of Chicago Annuitant Medical Benefits Plan benefits for life, especially for those hired before 4/1/1986 whose City employment does not qualify them for federal Medicare coverage, no matter how long they work(ed) for the City, now estopps the City and Funds from denying or reducing their promised lifetime healthcare benefits. *Jones v. Mun. Emples. Annuity & Ben. Fund of Chi.*, 2016 IL 119618, ¶ 43 ("the plain meaning of the pension protection clause, would undermine our holding in Heaton, and would lead to an absurd and unjust result. Rather, as we have explained, the Illinois Constitution mandates that members of the Funds have "a legally enforceable right to receive the benefits they have been promised").

The circuit court's March 3, 2016 "clarification" was an erroneous declaration that the constitutionally protected benefit is strictly limited to only what the Pension Code explicitly requires of the City.

> The City is correct that it does not have any obligation under the 1983 or 1985 amendments to subsidize or provide healthcare for the Funds' annuitants. That obligation is placed on the Funds. However, the City does have a obligation to contribute, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare · for the Funds' annuitants. Therefore, both the Funds and the City have certain obligations under the 1983 and 1985 amendments and both the City and the Funds are proper parties to Count I.
>
> The court notes that Plaintiffs' Response challenges this court's prior findings regarding the extent and nature of the City's obligations under

> the 1983 and 1985 amendments. If Plaintiffs believed the court's ruling was in error, they should have filed their own motion to reconsider.

March 3, 2016 Order at p. 5 (Ex. 4).

In that respect the ruling is just wrong. Per *Kanerva*, 2014 IL 115811at ¶¶ 38, 40 and 54, the protected benefits are status based; i.e., whatever a public entity provides explicitly to (or that they receive by their being) participants in public retirement systems, and without limitation to those created under State Pension Code:

> [*¶40] Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections. See *Duncan v. Retired Public Employees of Alaska, Inc., 71 P.3d 882, 887 (Alaska 2003)* (giving comparable provision of Alaska Constitution "its natural and ordinary meaning," there "is little question" that it encompasses "health insurance benefits offered to public employee retirees").
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> ….
>
> [*¶54] Defendants observe that health care costs and benefits are governed by a different set of calculations than retirement annuities. While that is unquestionably true, it is also legally irrelevant. The criterion selected by the drafters and approved by the voters is status based. Whether a benefit qualifies for protection under *article XIII, section 5*, turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected. If it does not, it is not. How the benefit is actually computed plays no role in the inquiry. [*¶40] Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections. See *Duncan v. Retired Public Employees of Alaska, Inc., 71 P.3d 882, 887 (Alaska 2003)* (giving comparable provision of Alaska Constitution "its natural and ordinary meaning," there "is little question" that it encompasses "health insurance benefits offered to public employee retirees").

Kanerva, 2014 IL 115811, at ¶¶ 40 and 54.

Accordingly, *Kanerva's* Constitutional protection embraces benefits that are provided explicitly to participants/annuitants, whether done by an employer or a pension system, from the Pension Code or elsewhere. As long as their eligibility is defined as "being an annuitant", the benefit is protected for all Fund participants (both retirees and workers) on that date.

II. The City of Chicago Annuitant Medical Benefit Plan is a Protected Benefit

A. The City of Chicago Annuitant Medical Benefits Plan.

The Plan provides comprehensive medical healthcare coverage for annuitants, their spouses and dependents. Eligibility for participation in the "City of Chicago Annuitant Medical Benefits Plan" is conditioned on and limited to annuitants of the City:

> Per the Plan Handbook, (C 757, p. 2), eligibility is described as follows:
>
> **ELIGIBILITY**
>
> You will be eligible for coverage if you are:
>
> - An Annuitant of the City of Chicago. "annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,[8]
> - The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
> - A dependent of a deceased Annuitant if you are receiving annuity payments.

City of Chicago Annuitant Medical Benefit Plan Handbook at 2.

The Circuit Court erred as a matter of law in regarding the protected benefit as limited to what is required by the Pension Code, rejecting the Participants' assertion that the protected benefit is the City of Chicago Annuitant Medical Benefit Plan, as the

[8] Policemen's Annuity and Benefit Fund of Chicago: 40 ILCS 5/5-101ff;
Firemen's Annuity and Benefit Fund of Chicago: 40 ILCS 5/6-101ff;
Municipal Employees and Officers Annuity and Benefit Fund of Chicago: 40 ILCS 5/8-101ff;
Laborers and Retirement Board Employees' Annuity and Benefit Fund of Chicago: 40 ILCS 5/11-101ff

healthcare benefits that an Illinois public employer provides basing eligibility exclusively on one's being an annuitant (i.e., the benefits of participation in one of the City's Annuity and Benefit Funds).

The Circuit Court's denial of an injunction, and decision on clarification/reconsideration was based on its wrong holding that protected benefits are limited to just the obligations explicitly required by the Illinois Pension Code.

The core legal issues here are shown by Counsel's colloquy with the court: *Underwood v. City of Chicago* 12-23-15 Transcript (Pages 141:12 to 142:13):

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MR. KRISLOV: No. I said that the statute does not require the City to provide the healthcare coverage, but Kanerva says where the City does that. I mean, the City does this by ordinance. The state does it by state statute. You don't have to have it in the Pension Code.

But Kanerva is absolutely clear. That's where you and I differ. Kanerva says that the state provided benefit to people who are participants in the Funds, in one of the state retirement funds -- that's all that makes you eligible to participate in the state group health benefit -- that that is protected as well by Article 13, Section 5.

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And so the City, having provided the -- what it's providing now, the annuitant -- the City of Chicago Annuitant Health Benefit plan, that by doing that, that is a benefit which is limited in its eligibility to -- conditioned on people who are receiving an annuity or will receive an annuity from one of the four Funds.

It is the same thing. The City having signed onto that deal, the City having created a retirement benefit of the annuitant healthcare plan is obligated to continue providing that without reduction. That's what Kanerva says Article 13, Section 5 protects.

In limiting the protected benefit to just those provisions that the Pension Code explicitly requires, rather than the healthcare benefit provided annuitants by the City, the Court makes a fundamental error of law that should be reviewed here on Direct Appeal. Illinois Law is absolutely clear that a benefit provided by a governmental employer to its annuitants, whose "eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems" is protected against being diminished, without requiring it to be a Pension Code obligation.

Rather than "following the law", the Circuit Judge's decisions were based on three clear errors of law, in:

(i) ignoring the presumption in favor of pensioners,

(ii) ruling that the protections were limited to what the Pension Code requires, rather than what benefits the City and Funds provide explicitly conditioned on being an annuitant, and

(iii) conflating the City's statutory obligation to finance the Funds' subsidies with the City's actually providing the healthcare benefit.

While the Circuit Court's December 3, 2015 decision (Ex.3) acknowledges that the participants (clearly those who were participants on 8/23/1989) have an enforceable right to permanent protection of their benefits, Judge Cohen's December 23, 2015 ruling denying the requested preliminary injunction misunderstood the Constitution's protection as limited to what the Pension Code requires, ignoring *Kanerva's* direct rejection of precisely that limitation, holding that Art. XIII, §5 explicitly enforces for life whatever benefit a government employer provides to participants.

Here, the participants are actually entitled to summary judgment – and to reach the issue as soon as possible. The protected benefit is the City of Chicago Annuitant Medical Benefits Plan, as it existed on 8/23/1989, for people who were participants in

one of the four Funds on that date. Once that is recognized as the law, which it is, the circuit court should enter an injunction against the City's most recent changes, leaving for future issue only the extent of the summary judgment and the extent of accounting that the participants are entitled to, as a matter of law.

As a matter of law, the Court below should have ordered the City to defer its declared diminution/"phase out" until its (il)legality can be determined by the court.

Especially in light of the Circuit Court's recognition that the 8/23/1989 participants have enforceable rights to permanent protection of a benefit, it should have simply followed through and blocked the January 1, 2016 changes, which by reducing the City's appropriation from $100 million to $29 million, diminished the City's benefit/subsidy/contribution and raised rates to annuitants.

III. Direct Appeal is Appropriate Because the Issues are Pure Legal and Constitutional Questions of Great Public Interest Hugely Impacting the City of Chicago and Over 22,000 Current City Retirees, and Other Retirees Who Started Working Before April 1, 1986 and September 23, 1989.

The court exercises this authority for direct appeal in cases that present an issue of substantial public interest.[9] The public interest is triggered by the fact that some 22,000 current annuitants have seen their annuitant healthcare premiums increased by the City as much as 300% or more, over just the period since 2013.

[9] Indeed, *Kanerva v.Weems* (regarding the same issues for State retirees' healthcare) was itself decided on direct appeal. *And see Weinstein v. Rosenbloom*, 59 Ill.2d 475 (1974). In Weinstein, an attorney brought an action against members of the Industrial Commission and one of its arbitrators seeking to have information made available to him and seeking to have a Commission rule declared invalid and enjoin the Commission from enforcing it. The order was appealable under Rule 302(b), because the subject matter was of considerable importance and public interest.

A. The City's Post-2013 Unilateral Reduction in the Benefit

Beginning with the 2014 Appropriation, the City has unilaterally reduced the annuitants' healthcare benefit appropriation as follows:

		Reduction From 2013
2013 Appropriation and Expenditure	$102,326,353	
2014 Appropriation:	$ 80,609,808	**$ 21,716,545**
2015 Appropriation:	$ 62,912,845	**$ 39,413,508**
2016 Appropriation	$ 32,700,910	**$ 69,625,443**
Cumulative Reduction from 2013 Levels:		**$ 130,755,496**

Accordingly, the 2016 diminishment alone is $**69,625,443**; the aggregate diminution in appropriation from 2014 to 2016 is $ **130,755,496.**

B. In Any Event, the Retirees are Entitled to Have Their Premiums Accurately Calculated. The City's Method of Calculating Premium Rates has Always Resulted in Overcharges to Annuitants.

The retirees have also asserted the "New Rates" imposed by the City for the post-6/30/2013 Settlement period should be enjoined because they are calculated by a flawed method that systematically overcharges annuitants.

During the course of the 2003-2013 Settlement, it was discovered that the Segal projections, on which the City based its settlement period "rates" for retiree healthcare, were *in all ten years*, substantially more than actually experienced during the settlement period.

Accordingly, an audit and reconciliation process was ordered, in order to conform rates charged to annuitants with the actual experienced costs of annuitant healthcare. Over the ten-year period of the settlement, the audit and reconciliation process identified overcharges to participants in each and every year. Total overcharges to participants during the 2003-6/30/2013 period exceeded $51 million, which were refunded as part of the audit and reconciliation process.

Since the June 30, 2013 expiration of the 2003 Settlement, the City has refused to audit and reconcile the rates charged to actual experience; refused for the last half of 2013, and will not audit or reconcile the rates to actual charges for 2014, 2015 or 2016.[10] (Transcript, Supp. Record, C 4, at 99-102). This dispute is separately before the Appellate Court, fully briefed, with no argument yet scheduled. *City v. Korshak*, Illinois Appellate Court, First Judicial District, No 15-2183.

Moreover, the process by which the City continues to calculate annuitant healthcare rates is based on the same estimating source and method, but which the City refused to audit or reconcile.[11] Participants assert that the rates charged for 2014, 2015 and 2016 are excessive, even before considering the City's unilateral reduction of its appropriation for annuitant healthcare.

C. There are Two Diminishments at Issue.

Thus, there are two unilateral diminishment actions by the City: (i) increasing the premiums by an estimated costs factor that has been overstated in every previous year going back to its 2003 inception[12] and (ii) reducing its appropriation for the benefit, viewed either individually or in the aggregate, from the $102,326,353 aggregate appropriation and expenditure in 2013, to $80,609,808 in 2014, reducing to $62,912,845 in 2015, and reducing it by a further 50% or $31 million in just the 2016 appropriation alone[13]; (a total diminution of $100 million through 2015; $130,755,496 million by the

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[10] C 00737, Chart of City Rate Changes for 2016.

[11] Testimony of Nancy Currier, Transcript, Supp. Record, C 4, at 80-82)

[12] C 1695, Motion for Audit of 2013-2d half, documenting how City's use of estimated premiums has resulted in post-audit refunds when compared to actual experience for each year, totaling more than $50 million over the last ten-year settlement period.

[13] C 00737, Comparison of City Appropriations for Annuity Healthcare 2012-2016. Source: City's 2016 and 2014 Budget Books (C 1756), portions showing $31 million cut

end of 2016; all of which diminutions result in corresponding increases in premiums to annuitants.

Thus, the public interest triggered is the result that over 22,000 annuitants have seen their annuitant healthcare premiums increased by the City as much as 300% or more, over just the period since 2013. Indeed, some annuitants are faced with health insurance premiums that actually nearly reach or exceed the amount of their annuities. (Supp. Record, C 490, 703-704). Many face premiums exceeding 30% of their entire gross annuity. (Supp. Record, C 330-338, Chart). Some, especially the non-Medicare qualified who have families, spouse and dependents, face premiums exceeding $25,000 per year. (Supp. Record, C 330 at Tab. No. 15, 77, 128, 214, and many others in or in excess of the $20,000 range - *passim*).

Direct appeal resolves the issues more quickly and thus serves the public interest. On a macro level, related to the City's budget, the City can set its budget knowing what its liabilities are. But, obviously, Plaintiffs' focus is on the individual hardship suffered – the Plaintiffs submitted extensive evidence related to the issue of the balance of equities and irreparable harm (*See* spreadsheet attachment to preliminary injunction motion, (Supp. Record C 330) plus statements from participants, displaying severe hardships some having to drop coverage as too expensive, in some cases costing more than their entire monthly annuity (C 00822, Supp. Record C 593-839).

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from city's line item 0052 expenditures for Hospital and Medical Care to Eligible Annuitants and their Dependents for 2016; following $21.7 million reduction in 2014, and $17.7 million reduction in 2015, for a cumulative reduction of $69,625,443 to date, which has been entirely borne by annuitants. Confirmed by testimony of City Budget Director Holt (Supp. Record C 4, Transcript, 19:13-30:24), and City Benefits Manager Currier (*Id*. at 80:15-20).

Thus, on the balance of equities and hardships, there was little dispute that the hardships and equities weigh towards the participants. But also, on review here, these inequities underscore the public interest in granting Direct Appeal at this stage. The Participants' submissions spreadsheet summary (C 00822) and submissions of 148 participants (Supp. Record C 329-749) describing their not having sufficient quarters to qualify for Medicare (Supp. Rec. 330, at Tab 9, 12, 20, 36, 48, 52, 65, 107, 141, 165, 233), having to forego health care and health insurance (Supp. Rec. 330, at Tab 23,134, 154, 224), seek other coverage because they cannot afford these crushing increases (Supp. Rec. 330 inter alia at Tab 7,15, 16, 30, 37,43, 89, 118, 177, 214), facing premiums that range above 30% of one's annuity (Supp. Rec. 330 inter alia at Tab 83, 96, 102, 107, 184, 205, 3, 15, 35, 91, 95, 104, 130, 134, 136, 138, 157, 168, 179, 209, 217, 224) with some exceeding the entire annuity (*Supra*.), are incontestable irreparable harms, huge inequities, and a violation of their legitimate expectation of lifetime healthcare coverage under the City's Annuitant Medical Benefits Plan.

Granting Direct Appeal for quicker resolution relieves these hardships and is in the public interest.

IV. Multiplicity of Actions Impedes the Retirees' Constitutional Rights

This case now is proceeding in three forums at the same time. The case is pending before the Appellate Court on interlocutory appeal for denial of the preliminary injunction (No. 15-3613), separately before the appellate court regarding the 2013 reconciliation for the City's extension of the Plan for a full Plan Year (No 15-2183), and at the same time the before the Circuit Court.

In the Circuit Court, the case is subject to not just the slow track, but also a

muddled track with conflicting opinions. Thus, on December 3, 2015, Judge Cohen (i) upheld the Complaint's Constitutional Count 1, dismissing the contract and estoppel counts with leave to replead; (ii) refused to recognize Judge Green's May 1988 decision (upholding the participants' claims of term of employment, contract and estoppel) as law of the case, (iii) declared that the post-1983 statutes' labels of the benefits as not protected were unenforceable, (iv) denied the City and Funds' motions to dismiss Count 1 (Constitutional Protection of Retiree Healthcare Benefits), leaving for future determination the parameters of the protected benefit, and dismissing without prejudice Counts 2 (Contract) and 3 (estoppel), with leave to replead. A2, C 00567. Plaintiffs filed their Third Amended Class Action Complaint on January 13, 2016.

But then on "clarification", the Circuit Court "clarified" its ruling, now defining the City's sole responsibility as just what is required in the Pension Code, nothing beyond financing the funds' subsidies. (March 4, 2016 ruling at page 5 attached hereto at Ex. 4). In the December 3, 2015 ruling, the court had upheld Count 1 as stating a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but stated that "the exact nature of those obligations … is not properly decided on a §2-615 motion to dismiss." The court appeared to be leaving the definition of the protected benefit to a future determination. Subsequently however, the Circuit Court, without full briefing, narrowly defined what the City and Funds' constitutional obligations are – as the Pension Code's obligation to the Funds to provide health care programs for their annuitants and the City to just finance the Funds subsidies.

Thus, this case is spinning out of control, and not just in numerous court rooms, and with numerous captions, but even on what would seem to be the main track – the

case is subject to conflicting decisions, and on a slow track that will not be finally resolved before the City's terminating the benefits at year-end.

As a question of law this Court can advance this case and answer on direct appeal:

> Whether the City of Chicago's having provided the City of Chicago Annuitant Medical Benefit Plan, whose eligibility is determined by one's being an annuitant, triggers the protection of 1970 Illinois Constitution Article XIII §5, despite its not being explicitly required by the Illinois Pension Code, or may be enforced under principles of contract or estoppel, as described in the Third Amended Complaint.

Participants are entitled to a speedy resolution of this issue and to have their entitlement determined sufficiently before year end to obtain other coverage if need be. Indeed, the City itself takes the position that people who are forced to leave the program will not be accepted back after September, 2016 even for those who are healthy if the Plan terminates.

However, the Circuits Court's refusal to order an answer of the complaint and instead require another round of motions is a problem – to go through another round of lengthy machinations, to be essentially the same place we are now at, or worse, another appeal on a certified question months from now on the very eve of the City's total threatened Plan termination.

All the while the Retirees are suffering under the current healthcare premium rates, some of which actually exceed their total gross annuities.

The time is short to grant Rule 302(b) direct appeal.

This Court should grant direct appeal to reaffirm for the City's retirees that these benefits provided by a public employer based on participation in the City's retirement systems (i.e. provided, conditioned on, and flowing from participation in an Illinois

retirement system) are Constitutionally protected benefits of participation, at least to restore the rates to their 2013 levels until the legal issues are resolved.

Conclusion

This Court's taking the cases on Direct Appeal on all three questions of law is the only way to bring resolution of these claims before the City terminates coverage entirely at year end, not merely diminishing, but actually ending Constitutionally protected benefits for more than 22,000 City annuitants, most of whom devoted their working lives to the City, who were assured of, and reasonably relied upon, lifetime healthcare coverage that is being phased out and terminated, despite their Constitutional Contract and Estoppel claims. Participants' claims have been under attack since 1987, revived under challenge, and repeatedly settled by interim settlements until the City's 2013 determination to end their claims for all time. Now with the case relaunched, it has been strategically divided and stalled by the City and Funds.

Accordingly, this Court should grant Rule 302(b) Direct Appeal to reach the pending questions of law regarding the City's plan to "phase out" the City of Chicago's Annuitant Medical Benefit Plan.

Dated: April 18, 2016

By: /s/Clinton A. Krislov
Attorney for Plaintiffs, Participants

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Certificate of Service

I, Kenneth T. Goldstein, an attorney, on oath state that on April 18, 2016, I caused the foregoing **Motion** to be served on Defendant and upon the Illinois Supreme Court, at the addresses below on by U.S. Mail, (as indicated below) with proper postage paid, deposited from the U.S. Mail box located in the Civic Opera House, 20. N. Wacker Drive, properly addressed, and before 5:00 p.m.

s/Kenneth T. Goldstein

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EXHIBIT 1

No. 15-3613
Appeal to the Illinois Appellate Court, First Judicial District
From the Circuit Court of Cook County, Illinois Chancery Division

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 388 Other Named Plaintiffs listed, Plaintiffs-Appellants, v. CITY OF CHICAGO, a Municipal Corporation, Defendant, and Trustees of the Policemen's Annuity and Benefit Fund of Chicago; Trustees of the Firemen's Annuity and Benefit Fund of Chicago; Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al., Defendants-Appellees.	Trial Judge: Hon. Neil Cohen Case No. 13-CH-17450 Date of Denial of Preliminary Injunction: December 23, 2015 Interlocutory Appeal: December 29, 2015

Plaintiffs-Appellants' Opening Brief
Interlocutory Appeal Re: Denial of Renewed Emergency Motion
For Preliminary Injunction Preserving the Status Quo,
To Enjoin City from Changing and Reducing Terms of The City of Chicago
Annuitant Medical Benefits Plan, During the Litigation
Oral Argument Requested

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Points and Authorities

Introductory Statement

This litigation continues a dispute initiated by the City in 1987 over its obligation to continue providing retiree healthcare under the City of Chicago Annuitant Medical Benefits Plan (the "Plan") for life, on the basis of a fixed-rate subsidized plan. Participants seek to enforce their Constitutional, contract and estoppel rights to prevent the City and the four Annuity and Benefit Funds from reducing or ending the Plan benefits.

At issue are the participants' motions for preliminary injunction *pendente lite* against the City's 2016 decrease in its appropriation and increase in annuitant healthcare rates charged against annuitants' annuity checks. These issues arise from the pleadings, and undisputed facts, as a question of law, as to whether the City and its four annuity and benefit funds (Policemen, Firemen, Municipal Employees, and Laborers) may reduce the benefits provided under the City of Chicago Annuitant Medical Benefits Plan.

Since the early 1980s, the City has provided, subsidized by the Funds, the City of Chicago Annuitant Medical Benefits Plan. The City is "phasing out" (i.e., reducing its appropriation for the City of Chicago Annuitant Medical Benefits Plan, toward ending all annuitant healthcare coverage) (excepting only pre-8/23/1989 retirees) by the end of 2016.

Relying on the Illinois Supreme Court's *Kanerva v. Weem*, 2014 IL 115811, declaration that the 1970 Illinois Constitution's Article XIII, Section 5, protects all benefits whose eligibility "is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems", Participants oppose the phase out and termination, asserting the City of Chicago Annuitant Medical Benefits Plan

is such a benefit, and its provisions are protected for life, enforceable under Constitution, contract and estoppel as a matter of law.

The Circuit Court upheld the participants' complaint, with the view that the participants have an enforceable benefit, but then denied a preliminary injunction to preserve the status quo, in the erroneous view that the Constitutional protection extends only to those obligations required by the Pension Code, ignoring *Kanerva's* direction to construe pension rights liberally in favor of the participants and to enforce a public employer's annuitant healthcare benefits as protected and permanent.

This appeal presents the participants' rights to prevent the City from reducing the benefit provided, while the (il)legality of the City's actions is being adjudicated.

Issues Presented

Whether the City's and the four Annuity and Benefit Funds should be enjoined from "phasing out" the City of Chicago Annuitant Medical Benefits Plan, reducing its appropriation, and eliminating retiree coverage at the end of 2016 while the Retirees/annuitants' upheld complaint is pending in the Circuit Court, and the question of law is determined—whether Retirees can enforce their entitled and promised lifetime healthcare benefits in the City of Chicago Annuitant Medical Benefits Plan, under the 1970 Illinois Constitution's Article XIII §5 protection of benefits of participation in an Illinois retirement system, as well as principles of contract and estoppel?

Standard of Review

Although the standard for review of an order denying interlocutory injunctive relief is usually abuse of discretion, *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 62-63 (2006); and *Desnick v. Dept. of Professional Regulation* 171 Ill.2d 510, 516 (2006), where, as here, the issue is a question of law (i.e., the legal entitlement of retirees to protection of their annuitant healthcare benefits under the Constitution's Article XIII, Section 5, the "Pension Protection" clause), the standard of review is *de novo*. *Mohanty*, supra.; *Price v. Philip Morris, Inc.*, 219 Ill.2d 182, at 236 (2005) *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523 (2001) (the question on appeal is limited to application of the law to undisputed facts, the standard of review is *de novo*).

Statement of Jurisdiction

Pursuant to Supreme Court Rule 307, Plaintiffs-Appellants appeal the December 23, 2015 Order of the Circuit Court of Cook County, Illinois, refusing to grant a preliminary injunction to preserve the status quo against the City of Chicago's declared "phase out" of its Annuitant Medical Benefits Plan, reduction of the appropriation from 2015 to 2016 by $31 million, and to raise annuitant healthcare rates January 1, 2016.

On December 24, 2015, the Circuit Court, Hon. Neil H. Cohen, denied the preliminary injunction. Appendix ("A") 1, C 00912. Pursuant to S.Ct Rule 307, a timely Notice of Interlocutory Appeal was filed December 29, 2015. A58, C00903.[1]

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[1] A note regarding the Record On Appeal:

Volumes 1-9 were prepared for *Underwood v. City of Chicago*, Appeal No. 15-2854 (withdrawn), and this Court granted leave to transfer that record to this Appeal. These Volumes are designated "C x" (with*out* preceding "00").

Volumes 1-4 were prepared for this Appeal No. 15-3613, are designated "C00x" (with preceding "00").

There is additionally a Supplemental Record of 4 Volumes, cited to as "Supp. Record."

Statement of Facts

A. This Case Represents 30 Years of Litigation Seeking to Protect City Annuitants Permanent Healthcare Benefits.

This case is the most recent revival of litigation that was initiated by the City in 1987, litigated, settled twice on interim settlements, all of which reserved participants' rights to revive the claims in the event no permanent solution was reached.

There being no "permanent solution", and the City now unwilling to negotiate a permanent resolution, is "phasing out" its annuitant medical benefits Plan, reducing its appropriation, and eliminating it entirely at the end of 2016.

B. Historically, Retirees Have Been Provided Health Care Benefits.

Beginning as early as the 1970s, the City of Chicago provided full paid healthcare benefits to its annuitants, most recently since 1980 under the City of Chicago Annuitant Medical Benefits Plan.

Pursuant to a negotiated agreement initially with the Police, later extended to the participants in the Firemen's Fund, as an alternative to a pay increase (*See* Affidavit of James McDonough) (Supp. Record. C 115, 116, 117 at ¶6 & 7) (Testimony, C 1003, 1007, Supp. Record. C. 151-152), the Pension Code was amended to enable the Pension Funds to approve an annuitant healthcare plan for their members, and to pay a subsidy to the City, which acting as the insurer, provided the coverage at a monthly premium equal to the Funds' subsidy amount. In 1985, the "deal" was extended to the Municipal and Laborers' Funds, with a $25 monthly subsidy.

Virtually all current retirees need this coverage because local government employees whose beginning hire date precedes April 1, 1986[2] do not accrue qualifying employment quarters for benefits under the federal Medicare program, regardless of how long they work for the City.

The agreement was that City agreed to provide the coverage, under the City of Chicago Annuitant Medical Benefits Plan at a rate equal to the Police and Fire subsidy amounts, the Funds paid the premium for the annuitant, and the annuitant paid for spouse and dependent coverage.

C. The City of Chicago Annuitant Medical Benefits Plan.

The Plan provides comprehensive healthcare coverage for annuitants, their spouses and dependents. Eligibility for participation in the City of Chicago Annuitant Medical Benefits Plan is conditioned on and limited to annuitants of the City:

Per the Plan Handbook, (C 757, p. 2), eligibility is described as follows:

> **ELIGIBILITY**
> You will be eligible for coverage if you are:
> - An Annuitant of the City of Chicago.
> "annuitant" means a former employee who is

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[2] Most of the current City retirees do not qualify for Medicare coverage, either (a) because they retired before age 65, or (b) Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

This applies to most of the class members; who are the finite last group of City employees who began their City employment before 4/1/1986; thus accrued no qualifying employment quarters for Medicare from their City employment, no matter how long they worked for the City.

receiving an age and service annuity from one of four retirement funds,[3]
- The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
- A dependent of a deceased Annuitant if you are receiving annuity payments.

City of Chicago Annuitant Medical Benefit Plan Handbook at 2.

D. The 1983 Fund Subsidy Amendments to the Pension Code.

In 1983, the City's Byrne administration was seeking a way to increase compensation for Police and Firemen without appearing to raise City taxes. As part of an agreement between the City and the Funds' trustees[4], legislation was enacted to enable the Police and Firemen's Funds to contribute to the City's cost of providing the Annuitant Medical Benefits Plan.[5] In 1985, similar legislation was passed to enable the Municipal and Laborers Funds to contribute.[6]

The agreement between the City and the four Funds was that the City provided the City of Chicago Annuitant Medical Benefits Plan coverage, and set the premiums at the amount of the Police and Firemen's Funds' subsidy amounts; the Funds contributed

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[3] Policemen's Annuity and Benefit Fund of Chicago: 40 ILCS 5/5-101ff;
Firemen's Annuity and Benefit Fund of Chicago: 40 ILCS 5/6-101ff;
Municipal Employees and Officers Annuity and Benefit Fund of Chicago: 40 ILCS 5/8-101ff;
Laborers and Retirement Board Employees' Annuity and Benefit Fund of Chicago: 40 ILCS 5/11-101ff

[4] *City v. Korshak*, Funds' Verified Counterclaims at C 568, C 582, C 595, and C 613.

[5] C14, ¶33 (Complaint), C140 (Amended Complaint), and alleged in pending Third Amended Complaint at ¶5, 6, and 7. Citing to 1983 Pension Code amendments creating §§ 5-167.5 and 6-164.2; both added by P.A. 82-1044, § 1, eff. Jan. 12, 1983 – A18 and A20.

[6] Beginning with the 1985 legislation, there was added a declaration that the benefits provided were not intended to be benefits protected by the Constitution. Following *Kanerva*, the circuit court ruled that the provision is unenforceable. A2, December 3, 2015 ruling by Judge Cohen.

the subsidy amounts and withheld spouse and dependent coverage from annuitants' annuity checks, and the City bore the costs of medical coverage that exceeded the amount of the subsidies. *City v. Korshak*, Funds' Verified Counterclaims, C 568, C 582, C 595, C 613.

Accordingly, from 1983, into 1987 and beyond, the Plan benefit was provided by the City providing the healthcare at a fixed rate ($21/month for Medicare participants, $55/month for those not qualified[7] for Medicare). For Police and Firemen Annuitants, their fund paid their premium, (*See* Police Fund Pamphlet: Your Service Retirement Benefits, effective January 1, 1986 ("the Fund pays annuitant's premium") C 796), Municipal and Laborers' Funds paid a flat $25/month per participant. The City conducted regular "pre-retirement seminars" at which employees were assured that this subsidized retirement healthcare plan was a permanent benefit, which they could rely on in their retirement for life, and indeed, because for most of the classes their City employment began before April 1, 1986, their City employment does not qualify for coverage under the federal Medicare program.

E. The City v. Korshak Case: Initial Rulings, Trial, and First Settlement.

In 1987, the City was facing a liability for converting tax levies belonging to the Funds.[8] Concocting a "game plan" ploy to offset its liability for having wrongfully converted Pension tax levies belonging to the Funds, the City approached the Funds Trustees and threatened to stop providing annuitant healthcare unless the Funds would

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[7] Either less than age 65, or began City work prior to April 1, 1986.

[8] C149, ¶80, alleged in Third Amended Complaint at ¶12; City liability for converting pension fund tax levies. *Ryan v. Chicago*, 148 Ill.App.3d 638 (1st Dist. 1986) (participant derivative action filed for benefit of the Funds) and 274 Ill.App.3d 913(1st Dist. 1995).

waive its conversion liability to them (C 553). Rebuffed for what would have been a clear breach of their fiduciary duty, the City sued the Trustees (*City v. Korshak*, 87 CH 10134) for a declaration that it was not obligated to provide annuitant healthcare, and to recover the money it had spent over the previous years. (C 557). The Funds and Participants' Classes responded with verified counterclaims asserting the Funds' Agreements with the City, and the City's obligation to continue to provide annuitant healthcare permanently, as a term of employment, contract and estoppel. (Funds: C 568, C 582, C 595 and C 613; Participants: C709; later, the participant classes asserted the 1970 Constitution's Article XIII Section 5 protections, as prohibiting a diminution in the healthcare benefit, as well.)

The Circuit Court (Hon. Albert Green) dismissed the City's claims with prejudice, denied the City's motion to dismiss the Counter-complaints for participants' continued coverage, enjoined the City from terminating coverage during the litigation[9], and proceeded to a trial of those claims in June 1988.

After the trial concluded, but before Circuit Judge Green rendered his decision, the City and the Funds entered into a settlement for the period through 12/31/1997 (C 821), codified in part by a statute, P.A.86-273 enacted August 23, 1989), which, for the settlement period through 12/31/1997, continued the City's Annuitant Medical Benefits Plan, allocated healthcare costs among the City (at least 55%), the Funds (a tax dollar subsidy), and the Participants; and in the event no permanent solution was reached

[9] C721, *City v. Korshak*, May 16, 1988, Decision by Judge Green, upholding claims for participants under theories of term of employment, contract, and estoppel.

by 12/31/1997, preserved the Participants' rights to revive the litigation with all claims as they existed at the beginning, on October 19, 1987.

F. The *City v. Korshak* Case: Case Revival, and the Second Settlement

No permanent solution having been reached by the end of 1997, the participants' classes moved to revive the claims, and, assisted by this court's June 15, 2000 order (C 846), the claims were revived, and eventually settled in 2003, by another interim ten-year settlement, through June 30, 2013, which also preserved the Participants' rights to revive their claims and the litigation at that time. (C 856)

G. The *City v. Korshak* Case: Audit and Reconciliation Process

During the operation of the 2003 Settlement, it was also discovered that the City's estimates of health costs had been much higher than actually incurred. Pursuant to a negotiated Audit and Reconciliation process, each year's charges were ultimately audited and reconciled, resulting in substantial refunds to annuitants in each of the ten years, totaling over $51 million in overcharges refunded to participants. (C 872).[10]

H. The City Extended the Plan, and Declared on May 15, 2013 that It Would "Phase Out" and End Annuitant Healthcare

Despite the Participants' Class Counsel's requests to negotiate another, hopefully permanent settlement, the City instead, on May 15, 2013, issued a letter to participants, notifying them that it would:

(i) extend the then-current retiree healthcare benefits to the end of 2013;
(ii) maintain the current level of benefits for pre-8/23/1989 retirees for their lifetimes;
(iii) phase out the benefits for post-8/23/1989 retirees, beginning January 1, 2014, and terminate their coverage entirely, by January 1, 2017.

[10] Participants' motion to compel an audit of the last half of 2013 was denied, and is on appeal here as No. 15-2183.

(C 1659, City Letter dated May 15, 2013; C152, Amended Complaint, ¶98.)

The City's May 15, 2013 letter acknowledges its obligation, and agreed to continue retiree healthcare for the Certified Korshak (12/31/1987 Retirees) and "Window"[11] Retirees Subclasses:

> 2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and "Window" Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.

In spite of that assurance, the City is actually diminishing the benefit, even for those pre-8/23/1989 subclasses as well, raising their premiums, albeit in lesser amounts.

Also, contrary to the City's previous commitment to contribute *"at least"* 55% of the costs of retiree healthcare for all retirees, the City's letter surreptitiously changes its commitment to a much different "*up to*" 55%. Thus, even if the rates were correctly calculated, the City is now "capping", rather than "flooring" its commitment, even to these two classes. Indeed, their rates are in fact being increased.

I. 2013 Revival of the Litigation,

1. Required by the Court to File a New Complaint.

Participants' class counsel sought to revive the litigation within the *Korshak* case, but was denied by Circuit Judge Neil H .Cohen, in his view that it had to be done via a

[11] The "Korshak" subclass is persons who retired on or before December 31, 1987. The "Window" subclass is those who retired in the "Window" period after 12/31/1987 but prior to August 23, 1989, the date of enactment of PA 86-273, Pension Code Amendment.

new complaint. (C 130, Amended Complaint, ¶4.)

When Class Counsel refiled the case, with participants' plaintiffs, in a new complaint (C 3), incorporating all three claims previously upheld by Judge Green, plus explicit assertion, *inter alia*, of the Article XIII, Section 5 claim, the City, predictably, removed the case to federal court, resulting in two years diversion of the case.

2. Removal, Wrongful Dismissal, Reversal, Remand.

Since the City is a *defendant* in the new complaint, it removed the case to federal court, (C 59), where the District Judge, in the erroneous view that the Illinois Courts would not regard healthcare benefits as constitutionally protected, dismissed the complaint and denied Participants' motions for class certification and preliminary injunction as moot.[12]

Participants appealed to the Seventh Circuit, which stayed the case pending the Illinois Supreme Court's decision on the State retirees' healthcare claims. When the *Kanerva v. Weems*, 2014 IL 115811 (2014) decision was issued, declaring that annuitant healthcare benefits provided by a public employer are indeed protected by the Illinois Constitution's Article XIII, §5 against being diminished or impaired, the Seventh Circuit vacated the District Judge's dismissal of this case, declared that the actionable claims are State law claims, and ordered it to be remanded to the Illinois Circuit Court. *Underwood v. City*, 779 F.3d 461 (7th Cir. 2015), *and see* remand order, C 128.

The case was thus back before the Circuit Court of Cook County, and assigned to Hon. Neil H. Cohen.

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[12] *Underwood v. City of Chicago*, 2013 U.S. Dist. LEXIS 174455, 2013 WL 6578777 (N.D. Ill. Dec. 13, 2013)

J. The Claims in this Case.

The Plan participants' claim is that the City and Funds are obligated under the Plan via three causes of action.

First, that *Kanerva v. Weems*, 2014 IL 115811, obligates the City and Funds permanently against reduction, phase out or ending, by the Constitution's Article XIII, Section 5 protection of benefits of participation in a retirement system.

Second, that the Funds' obligation to provide annuitant healthcare under the 1983 and 1985 Pension Code amendments was fulfilled by contracting with the City, thus binding both under principles of contract.

Third, by estoppel, that having induced participants to work for the City, reasonably relying on the assurances by the City and Funds that they could rely on their City of Chicago Annuitant Medical Benefits Plan benefits for life estopps the City and Funds from denying or reducing their promised lifetime healthcare benefits.

K. The 2016 Reduction in Benefits; Increase in Premiums at Issue Here

Without prior notice the City, on September 18, 2015, sent notices advising annuitants of vastly increased annuitant healthcare premiums, effective January 1, 2016, (C 1661), a direct result of the City's reducing its 2016 appropriation for annuitant healthcare by $69 million from 2012's appropriation; $31 million cut from 2015's appropriation alone. *See* 2016 City Budget Books C 1756.

L. The City's Post-2013 Unilateral Reduction in the Benefit

Beginning with the 2014 Appropriation, the City has unilaterally reduced the annuitants' healthcare benefit appropriation as follows:

		Reduction From 2013
2013 Appropriation and Expenditure	$102,326,353	
2014 Appropriation:	$ 80,609,808	**$ 21,716,545**
2015 Appropriation:	$ 62,912,845	**$ 39,413,508**
2016 Appropriation	$ 32,700,910	**$ 69,625,443**
Cumulative Reduction from 2013 Levels:		**$ 130,755,496**

Accordingly, the 2016 diminishment alone is $**69,625,443**; the aggregate diminution in appropriation from 2014 to 2016 is $ **130,755,496.**

M. A Preliminary Injunction Denied, Complaint Upheld, and then Renewed Preliminary Injunction Denied again

1. First Preliminary Injunction.

Participants' request for a preliminary injunction to preserve the status quo against the 2016 increases (C 1752) was initially denied November 2, 2015, without prejudice, in the Circuit Court's expressed desire to deal with the issues in a "linear way", first addressing the City and Funds' motions to dismiss the new complaint, believing there to be sufficient time before the January 1, 2016 premium increases (Vol. 9 of 9, Report of Proceeding, September 28, 2015, at 19, 69:3-4).

2. Plaintiffs Complaint Upheld, December 3, 2015 Denial of City and Funds' Motions to Dismiss.

On December 3, 2015, Judge Cohen upheld the Complaint's Constitutional Count 1, dismissing the contract and estoppel counts with leave to replead; (i) refused to recognize Judge Green's May 1988 decision (upholding the participants' claims of term of employment, contract and estoppel) as law of the case, (ii) declared that the post-1983 statutes' labels of the benefits as not protected were unenforceable, (iii) denied the City and Funds' motions to dismiss Count 1 (Constitutional Protection of Retiree Healthcare Benefits), leaving for future determination the parameters of the protected benefit, and

dismissing without prejudice Counts 2 (Contract) and 3 (estoppel), with leave to replead. A2, C 00567. Plaintiffs filed their Third Amended Class Action Complaint on January 13, 2016.

3. December 23, 2015 Preliminary Injunction Hearing

Following the court's upholding the Constitutional Count 1, plaintiffs renewed their motion for preliminary injunction against the City's declared 1/1/2016 increases. On December 23, 2015, the court conducted an evidentiary hearing, heard argument and ruled. (Transcript, Supp. Record, C 4.)

At the hearing, the City's Budget Director, Ms. Alexandra Holt, admitted that:

- the 2016 premium increases is simply product of the City's unilateral decision to reduce its appropriation for annuitant healthcare subsidy by $30 million from the 2015 subsidy amount, which was itself a $60 million reduction from the 2012 amount (Holt testimony at 16-20, 21-36);

- the City is a self-insurer, the actual provider of the annuitant healthcare benefit (*Id.* at 36-38);

- the $30 million cut from was one of the only actual expenditures cut in making the City's 2016 "reductions" of $57 million (most of the rest made up of things that were not actually being spent (i.e. cancelling unfilled job positions) (*Id.* at 28-30);

- the $30 million amounts to no more than 1% of the City's $3 billion general corporate budget, and that simply raising the property taxes to keep the appropriation at 2015 levels would amount to only $30 for the average property taxpayer. (*Id.* at 38-42); and

- all that is necessary to legally authorize the annuitant health benefit plan was the appropriation ordinance. (*Id.* at 52-58).

The City's Benefits Manager, Nancy Currier, acknowledged that the City is a self-insurer, the provider, not mere subsidizer of the City of Chicago Annuitant Medical Benefits Plan, and acknowledged as well that the premium methodology used in

calculating the 2016 premiums is the same methodology that has, for every one of the ten years of the 2003 Settlement, after being subjected to audit and reconciliation, caused participants to be overcharged in each year, resulting in aggregate overcharges exceeding $51 million, and that the City has not and will not audit and reconcile the full year 2013, 2014, 2015 or 2016 premiums. (Currier Testimony, *Id.* at 99-102) She also acknowledged that the only way for participants to reduce their premiums in the City plans now would require them to choose alternative "Choice" plans which offer substantially reduced networks, substantially increased out-of-pocket costs, or both. (*Id.* 65, 118-122, 125)

N. The Unreliable Calculation of the 2016 Rates.

The participants also assert that the "New Rates" imposed by the City for the post- 6/30/2013 Settlement period should also be enjoined because they are calculated by a flawed method that systematically overcharges annuitants.

During the course of the 2003-2013 Settlement, it was discovered that the Segal projections, on which the City based its settlement period "rates" for retiree healthcare were substantially more than actually experienced during the settlement period.

Accordingly, an audit and reconciliation process was ordered, in order to conform rates charged to annuitants with the actual experienced costs of annuitant healthcare. Over the ten-year period of the settlement, the audit and reconciliation process identified overcharges to participants in each and every year. Total overcharges to participants during the 2003-6/30/2013 period exceeded $51 million, which were refunded as part of the audit and reconciliation process.

Since the June 30, 2013 expiration of the 2003 Settlement, the City has refused to

audit and reconcile the rates charged to actual experience; refused for the last half of 2013, and will not audit or reconcile the rates to actual charges for 2014, 2015 or 2016.[13] (Transcript, Supp. Record, C 4, at 99-102)

Moreover, the process by which the City continues to calculate annuitant healthcare rates is based on the same estimating source and method.[14] Participants assert that the rates charged for 2014, 2015 and 2016 are excessive, even before considering the City's unilateral reduction of its appropriation for annuitant healthcare.

O. Two Diminishments at Issue.

Thus, there are two unilateral diminishment actions by the City: (i) increasing the premiums by an estimated costs factor that has been overstated in every previous year going back to its 2003 inception[15] and (ii) reducing its appropriation for the benefit, viewed either individually or in the aggregate, from the $102,326,353 aggregate appropriation and expenditure in 2013, to $80,609,808 in 2014, reducing to $62,912,845 in 2015, and reducing it by a further 50% or $31 million in just the 2016 appropriation alone[16]; (a total diminution of $100 million through 2015; $130,755,496 million by the end of 2016; all of which diminutions result in corresponding increases in premiums to

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[13] C 00737, Chart of City Rate Changes for 2016.

[14] Testimony of Nancy Currier, Transcript, Supp. Record, C 4, at 80-82)

[15] C 1695, Motion for Audit of 2013-2d half, documenting how City's use of estimated premiums has resulted in post-audit refunds when compared to actual experience for each year, totaling more than $50 million over the last ten-year settlement period.

[16] C 00737, Comparison of City Appropriations for Annuity Healthcare 2012-2016. Source: City's 2016 and 2014 Budget Books (C 1756), portions showing $31 million cut from city's line item 0052 expenditures for Hospital and Medical Care to Eligible Annuitants and their Dependents for 2016; following $21.7 million reduction in 2014, and $17.7 million reduction in 2015, for a cumulative reduction of $69,625,443 to date, which has been entirely borne by annuitants. Confirmed by testimony of City Budget Director Holt (Supp. Record C 4, Transcript, 19:13-30:24), and City Benefits Manager Currier (*Id.* at 80:15-20).

annuitants.

The result is that annuitants have seen their annuitant healthcare premiums increased by the City as much as 300% or more, over just the period since 2013. Indeed, some annuitants are faced with health insurance premiums that actually nearly reach or exceed the amount of their annuities. (Supp. Record, C 490, 703-704). Many face premiums exceeding 30% of their entire gross annuity. (Supp. Record, C 330-338, Chart). Some, especially the non-Medicare qualified who have families, spouse and dependents, face premiums exceeding $25,000 per year. (Supp. Record, C 330 at Tab. No. 15, 77, 128, 214, and many others in or in excess of the $20,000 range - *passim*).

Nor are the "cost saving" alternatives offered by the City equivalent by any means. Per the testimony of City Benefits Manager Nancy Currier, Participants who wish to save money, are offered a selection from plans that either (a) exclude from the covered network (NorthShore, Northwestern, University of Chicago, Advocate, and Rush) the institutions and physicians who make up the overwhelming percentage of healthcare providers in the region, or (b) carry vastly increased out-of-pocket costs for participants, or (c) both. Supp. Record, C 4, December 23, 2015 Transcript at 65:4-9, and 121:10.

P. The Preliminary Injunction Hearing and Denial.

After hearing arguments, Judge Cohen denied the preliminary injunction, (Supp. Record, C 4, December 23, 2015 Tr. 224 - bottom) ignoring the presumption in favor of pensioners (*Id.* 215-217), holding that participants' protected benefits are only the provisions that the Pension Code explicitly requires (*Id.* at 228-231) rather than the healthcare benefit provided annuitants by the City, and declaring the City's providing

annuitant healthcare benefits to annuitants does not "willy nilly" or "magically" make those benefits permanent. *Id.* at 235.

Despite Judge Cohen's never actually reaching the issues of balance of equities and irreparable harm, Plaintiffs submitted substantial ample evidence. (*See* spreadsheet attachment to preliminary injunction motion, (Supp. Record C 330) plus statements from participants, some having to drop coverage as too expensive, in some cases costing more than their entire monthly annuity (C 00822, Supp. Record C 593-839).

As well, on balance of equities and hardships, there was little dispute that the hardships and equities weigh far more towards the participants (who have seen their premiums rise some 300% since 2013, which in some cases is more than 30% of their pension, and some actually more than the entire amount of their monthly pension check, with some families facing premiums beyond $25,000 per year, while the City's argument of hardship and that it would have to find $30-60 million "additional" is only because it cut that amount that was previously in its budget, which amounts to less than 1% of its overall budget, a mere $30 additional on the average property tax bill.

Argument

The court below erred as a matter of law, in regarding the protected benefit as (a) merely that which is required by the Pension Code, or (b) the City of Chicago Annuitant Medical Benefit Plan, as the healthcare benefits that an Illinois public employer provides basing eligibility exclusively on one's being an annuitant (i.e., the benefits of participation in one of the City's Annuity and Benefit Funds.

The Circuit Court's denial of an injunction was based on its wrong holding that protected benefits are limited to just the obligations explicitly required by the Illinois Pension Code.

Illinois Law is absolutely clear that a benefit provided by a governmental employer to its annuitants, whose "eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems" is protected against being diminished, without requiring it to be a Pension Code obligation.

Rather than "following the law", the Circuit Judge's denial of preliminary

injunction was based on three clear errors of law, in:

(i) ignoring the presumption in favor of pensioners,

(ii) ruling that the protections were limited to what the Pension Code requires, rather than what benefits the City and Funds provide explicitly conditioned on being an annuitant, and

(iii) conflating the City's statutory obligation to finance the Funds' subsidies with the City's actually providing the healthcare benefit.

While the circuit court's December 3, 2015 decision acknowledges that the participants (clearly those who were participants on 8/23/1989) have an enforceable right to permanent protection of their benefits, Judge Cohen's December 23, 2015 ruling denying the requested preliminary injunction misunderstood the Constitution's protection as limited to what the Pension Code requires; ignoring that *Kanerva* rejected precisely that limitation, holding that Art. XIII, §5 explicitly enforces for life whatever benefit a government employer provides to participants.

Here, the participants are actually entitled to summary judgment. The protected benefit is the City of Chicago Annuitant Medical Benefits Plan, as it existed on 8/23/1989, for people who were participants in one of the four Funds on that date. Once that is recognized as the law, which it is, the court below should have entered the injunction against the City's most recent changes, leaving for future issue only the extent of the summary judgment and the extent of accounting that the participants are entitled to, as a matter of law.

As a matter of law, the Court below should have ordered the City to defer its declared diminution/"phase out" until its (il)legality can be determined by the court.

Especially in light of the Circuit Court's recognition that the 8/23/1989 participants have enforceable rights to permanent protection of a benefit, it should have simply followed through and blocked the January 1, 2016 changes, which by reducing

the City's appropriation from $100 million to $29 million, diminished the City's benefit/subsidy/contribution and raised rates to annuitants. In short, Plaintiffs have satisfied the criteria necessary to preserve the status quo[17], and the court should enter the injunction.

I. Illinois law is clear:

- **A. Benefits are to be determined with a presumption in favor of "pensioners";**
- **B. All benefits that are provided by a public employer based on participation in the City's retirement systems (i.e. provided, conditioned on, and flowing from participation in an Illinois retirement system) are protected benefits of participation; not just obligations required by the Pension Code; and**
- **C. Retiree Healthcare Benefits are protected benefits under the Constitution's Art. XIII, §5; thus cannot be diminished, reduced or impaired.**

While the court below recognized that participants are entitled to Article XIII Section 5's protections, the fundamental error of the court below was in thereafter interpreting the protected benefit narrowly (with a presumption in favor of the City rather than the pensioners) and viewing the protected benefit as limited to the Pension Code's explicit obligations, rather than to the benefits the City employer provided its annuitants. Its interpretation of the *persons* whose rights are protected may well be determined by what benefits are provided at any time during their participation, but the *benefits* that are protected are all those provided by the City as a benefit to its retiree participants in the City's Annuitant Healthcare Plan, not just the obligations imposed by the Pension Code.

[17] While we would be entitled to restore the status quo *pendent lite* to the July 1, 2013 status at the time the injunction was first sought, at this point we only seek to preserve the current status quo.

A. *Kanerva v. Weems* directs that Pension Rights under the Constitution are to be determined with a presumption in favor of "pensioners", and Benefits that a public employer provides, that are conditioned on and flowing from participation in an Illinois retirement system are protected for life.

While the issue of whether annuitant healthcare is protected for life may have been once uncertain, Illinois law has, since *Kanerva v. Weems*, 2014 IL 115811, been absolutely clear on "¶35 [t]he question of whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems". *Kanerva* held that it *does*, and precludes the employer from reducing the subsidized healthcare benefits provided to its annuitants.

Indeed, the issue there was whether the State could reduce the State's share/subsidy from providing 100% full-paid health insurance to its "former employees", not under the Pension Code, but simply the benefits legally provided by the State to its former employees:

> **¶1** At issue in this appeal is the validity of Public Act 97-695 (eff. July 1, 2012), which amended section 10 of the State Employees Group Insurance Act of 1971 (Group Insurance Act) (*5 ILCS 375/10* (West 2012)) by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems.

The court recognized that the healthcare was not contained or required by any Pension Code provision;[18] they were merely benefits legally provided to the State's former employees.

Consequently, the court resolved two questions: (1) whether the so-called

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[18] State employees' participate in one of five retirement systems, whose Pension Code provisions are contained in 40 ILCS Art. 2 General Assembly Retirement System, Art. 14 SERS, Art. 15 SURS, Art.16 Teachers Retirement System, Art. 18 Judges

"Pension Protection Clause" protects benefits beyond annuities, and (2) whether the protection extends beyond benefits compelled by the Pension Code. The Court's holding is absolutely clear: The Constitution protects, and prohibits the reduction of, all benefits that a person receives that are "conditioned on, and flowing directly from a person's being a participant in an Illinois governmental retirement system", *Kanerva* at ¶40.

B. The court's obligation to construe these questions with a presumption liberally in favor of the annuitants.

Ignored by the court below, *Kanerva* begins and ends the framework of interpreting by directing the court to interpret pension rights *liberally* in favor of the *annuitants*:

> **¶36** The construction of constitutional provisions is governed by the same general principles that apply to statutes. . . . . Our objective when construing a constitutional provision is to determine and effectuate the common understanding of the citizens who adopted it ..., and courts will look to the natural and popular meaning of the language used as it was understood when the constitution was adopted .... Where the language of a constitutional provision is unambiguous, it will be given effect without resort to other aids for construction. .... In addition, it is proper to consider constitutional language "in light of the history and condition of the times, and the particular problem which the convention sought to address ***." ... "Moreover, *** **to the extent there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner."**
>
> ...
>
> **¶55 Finally, we point out again a fundamental principle noted at the outset of our discussion. Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.** This rule of construction applies with equal force to our interpretation of the pension protection provisions set forth in article XIII, section 5. Accordingly, to the extent that there may be any remaining doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems.

Kanerva, at ¶¶ 36 and 55; Citations omitted, emphasis added.

C. Participants' protected benefits are not limited to just what the Illinois Pension Code requires. Rather the protection against diminution applies to all benefits whose eligibility is conditioned on, and flows from, a person's being an annuitant, participant in the City's retirement systems.

Kanerva also declares that the Constitution's protection extends beyond the explicit obligations contained in the Pension Code, to protect *all benefits whose eligibility flows from participation in a public employer's retirement systems.* The *Kanerva* plaintiffs challenged the reduction in healthcare benefits provided under the Group Insurance Act, not the Pension Code:

> **¶37** In this case, plaintiffs contend that, by eliminating the statutory standards in the prior version of *section 10* of the Group Insurance Act and requiring annuitants and survivors to contribute additional amounts toward the cost of their health care, Public Act 97-695 has diminished or impaired this retirement system membership benefit, in violation of the pension protection clause.

The State argued against Constitutional protection, asserting that the Constitution's Pension Protection clause should only apply to Pension Code provision:

> Defendants respond by asserting that State contributions to retiree health insurance premiums, which are not codified in the Pension Code and are not paid from the assets of the retirement funds established in the Pension Code, are fundamentally different from pension annuities and, therefore, are not included within the protections afforded by *article XIII, section 5*. *Kanerva*, at ¶ 37.

The Court held that the benefits were nonetheless constitutionally protected and permanent; declaring the rule that Article XIII §5 protects *all benefits provided by a public employer to participants in an Illinois public pension or retirement system*, deriving from their status as participants in the unit's retirement systems:

> **¶40** Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, **eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving**

the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections.

...

¶41 **No principle of statutory construction supports a contrary view.** Defendants contend that the reach of *article XIII, section 5*, is confined to the retirement annuity payments authorized by the Pension Code, but there is nothing in the text of the Constitution that warrants such a limitation. ..... If they had intended to protect only core pension annuity benefits and to exclude the various other benefits state employees were and are entitled to receive as a result of membership in the State's pensions systems, the drafters could have so specified. But they did not. The text of the provision proposed to and adopted by the voters of this State did not limit its terms to annuities, or to benefits conferred directly by the Pension Code, which would also include disability coverage and survivor benefits. Rather, the drafters chose expansive language that goes beyond annuities and the terms of the Pension Code, defining the range of protected benefits broadly to encompass those attendant to membership in the State's retirement systems. Then, as now, subsidized health care was one of those benefits. For us to hold that such benefits are not among the benefits of membership protected by the constitution would require us to construe *article XIII, section 5*, in a way that the plain language of the provision does not support. We may not rewrite the pension protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve. See *Prazen, 2013 IL 115035,* ¶¶ *37-38*

...

¶54 Defendants observe that health care costs and benefits are governed by a different set of calculations than retirement annuities. While that is unquestionably true, it is also legally irrelevant. The criterion selected by the drafters and approved by the voters is status based. ***Whether a benefit qualifies for protection under article XIII, section 5, turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected.*** If it does not, it is not. How the benefit is actually computed plays no role in the inquiry.

...

¶56 CONCLUSION

¶57 For the foregoing reasons, we conclude that the State's provision of health insurance premium subsidies for retirees is a benefit of membership in a pension or retirement system within the meaning of *article XIII, section 5, of the Illinois Constitution*, and the General Assembly was precluded from diminishing or impairing that benefit for those employees, annuitants, and survivors whose rights were governed by the version of *section 10* of the Group Insurance Act that was in effect prior to the enactment of Public Act 97-695. Accordingly, the circuit court erred in dismissing plaintiffs' claims that Public Act 97-695 is void and unenforceable under *article XIII, section 5*.

Thus, if a public employer provides a benefit for which eligibility is a person's annuitant status, that benefit is protected permanently for that participant, by the Illinois Constitution's Article XIII §5.

II. The Benefit to be protected is the City of Chicago Annuitant Medical Benefits Plan, whose eligibility is conditioned on one's being an annuitant of the City's four retirement funds.

The benefits we seek to enforce are the healthcare benefit plan legally provided by the City to its retiree participants in the four annuity and benefit plans; not just the limited wording of the Pension Code provisions that the City finance the Funds' subsidies.

Per the terms of the City of Chicago Annuitant Medical Benefits Plan, as set out in the Plan Handbook, eligibility is "limited to, conditioned on, and flows directly from membership in" one of the City's four annuity and benefit funds:

> **ELIGIBILITY**
> You will be eligible for coverage if you are:
> - An Annuitant of the City of Chicago. "annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,
> - The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
> - A dependent of a deceased Annuitant if you are receiving annuity payments. (C 757, p. 2, Plan Handbook at 2).

Accordingly, the City of Chicago Annuitant Medical Benefit Plan has been, at all relevant times, a benefit of participants' participation in their respective Funds, which 1970 Illinois Constitution, Article XIII §5 prohibits from being diminished or impaired. Nor was there any reservation of right by the City to amend or terminate the plan.

A. The importance of the City's role as the "provider", not merely a "subsidizer".

While the City portrays itself as merely "subsidizing" retiree healthcare (as if that would diminish Article XII Section 5's force against it), the City does not merely "subsidize" retiree healthcare by payments to a third party health insurer. The City is not a "subsidizer"; it is the self-insured actual *provider* of the benefit itself. (Supp. Record, C 4, December 23, 2015 Tr. 36:6-8; 77-79).

Alternatively, we show that the "contract", as asserted by the Funds in their original *Korshak* counterclaims upheld against the City, is that the Funds fulfilled their obligations to obtain coverage for their participants by contracting with the City qua provider for a fixed rate, either paid for fully by the Police and Fire Funds, and mostly paid by the Municipal and Laborers funds. In any event, the City's obligation is not the "subsidies", nor just the amounts paid by the Funds, but the coverage itself at the rates set to the subsidies.

III. Rather than "following the law", the Circuit Judge's Denial of Preliminary Injunction was based on three clear errors of law, in:

(i) ignoring the presumption in favor of pensioners,

(ii) ruling that the protections were limited to what the Peusion Code requires, rather than what benefits the City and Funds provide explicitly conditioned on being an annuitant, and

(iii) conflating the City's statutory obligation to finance the Funds' subsidies with the City's actually providing the healthcare benefit.

Against this standard, Judge Cohen's analysis was flawed in (i) not applying the presumption in favor of the pensioners (ii) limiting the Constitutional protections to what the Pension Code required, and (iii) miscalculating a non-reduction by comparing the City's currant appropriation to the Funds' subsidies.

Illinois law is thus simple and clear: The Illinois Constitution's Article XIII,

Section 5 protects all benefits a public employer provides to people by reason of their participation in an Illinois public retirement system. And, the benefits protected are not just those required by Pension Code provisions, but all of those benefits that public entities provide to participants in public retirement systems.

Since eligibility for the City of Chicago Annuitant Medical Benefit Plan is "limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems"[19] , this subsidized healthcare benefit "must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within [the Article XIII Section 5's] protections" and prohibited from being diminished or impaired. The Circuit Court's denial of the injunction based on its view that the Constitutional protection is limited to the Pension Code provisions, or that the City ... was clear error, and abuse of discretion.

The Circuit Court's focus on just the language of the specific Pension Code provisions (which were enacted to help finance, not to replace, the City's annuitant healthcare obligation) ignores that the protection extends to *all* benefits that are explicitly provided by the City to its retirement system participants. That is, while the 1983 and 1985 Pension Code provisions explicitly require the Funds to obtain or administer coverage, the Constitution protects against a public employer's diminishing the benefits it provides to its former employees who are participants in the Funds. This is the explicit holding of *Kanerva* that the City totally ignores.

Indeed, even if we accept, arguendo, the City's characterization of its participation as a monetary *subsidy*, rather than a *provided benefit*, *Kanerva* squarely

[19] *Kanerva v. Weems*, 2014 IL 115811 (2014) at ¶40.

rejects a public employer's diminution of a subsidy to a plan provided exclusively to participants in its retirement systems.

Also clearly wrong was Judge Cohen's limitation of the protected benefit to those things required by the Pension Code.

While the court below paid lip service to Constitutional interpretation, it ignored the Supreme Court's admonition that the courts are required to construe pension benefits liberally in favor of the pensioners. Judge Cohen's denial ignored the presumption in favor of pensioners:

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23 **THE COURT: ...**

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1 But I'll tell you, it's just ordinary
2 rules of statutory construction. You look at the
3 four corners of the statute and the contract. You
4 look at the four corners of the contract, and you are
5 limited by those terms as to what was given. That's
6 just the ordinary rules of construction, whether it's
7 a constitutional amendment provision, statutory
8 provision or a contract.

(Supp. Record, C 4, December 23, 2015 Tr. 215-216)

The court held that participants' protected benefits are only the provisions that the Pension Code explicitly requires, rather than the healthcare benefit provided annuitants by the City:

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9 **You're asking me to read into that**
10 that which is not there. You're asking me to do it
11 because of Kanerva, and I understand that.
12 **But Kanerva didn't just give carte**
13 blanche. It doesn't say that which has been given
14 with limitations is, carte blanche, given for life.
15 It just said that which is given is guaranteed. It's
16 not guaranteed for life. It's guaranteed within the

ambit in which it was given, and that's up to the legislature. It's not up to you, and it's not up to me. I wish it were up to me; then we'd have a real nice, platonic republic, and lots of things would be changing. But we don't have that, and I'm somewhat limited by that which is the -- by the separation of powers in that regard.

MR. KRISLOV: ....

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....

Our view of Kanerva is that Kanerva says where a public employer has granted a benefit that is conditioned on --

THE COURT: Participation.

MR. KRISLOV: -- participation in one of the retirement systems, it is a protected benefit for life. And giving it --

THE COURT: **What if the nature of that which has been given is limited? I'm giving you $5 every week for the rest of your life. Somehow, because you need more money, or because things change -- and I'm not trying to insult anybody here, believe me, I'm not -- are you trying to tell me that it should be $10 or $20 because the value of the dollar has gone down? Does it ipso facto mean that I have to give you $100 a week? Isn't it limited to that which I give?**

MR. KRISLOV: **If I'm a public employ[er], and I say here is a benefit that I will give to people who are participants in the retirement system, I will provide your healthcare -- I will provide the following benefit. I will provide, the City of Chicago --**

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THE COURT: I will give you $55 a month.

MR. KRISLOV: But that's not what I'm seeking to enforce.

THE COURT: I know. But that's what it says. I understand you're trying to go beyond that.

MR. KRISLOV: That's what the Pension Code wording says. ... What I'm saying is that by providing -- ....

the
City of Chicago annuitant healthcare plan ....to people based solely on their being annuitants or participants in the plan, you're stuck with it for life. Yes.

.....

THE COURT: Providing the tax levy is what the City did per the statute, '83 and '85.

MR. KRISLOV: Per the Pension Code statute.

THE COURT: Yeah, well, isn't that what I'm stuck with?

Id.

And, the court declaring that the City's providing annuitant healthcare benefits to annuitants does not "willy nilly" or "magically" make those benefits permanent:

225

.....

And Mr. Krislov's argument notwithstanding, the Constitution protects that which was granted. It doesn't add to it. It doesn't magically create a right that was not given. The problem therein lies with the legislature if you have a beef, not with anybody else. And that was a long time ago.

So, clearly, as to the -- it seems to me, as to the post-August 23rd, 1989 group, the fourth subclass, they do not have an ascertainable claim for relief, and I need go no further.

[Regarding the *pre*-8/23/1989 hiree subclass:]

With regard to the prior groups, the 1983 and '85 [Pension Code] amendments were in effect when the Korshak subclass and the Windows subclass and subclass 3 entered into the Funds' retirement systems, as I stated.

Although Mr. Krislov and I argued about the issue, I do find, of course, that those who

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were participants prior to August 23rd, 1989, do have an ascertainable claim for relief. And that's

what I said earlier in my December 3rd opinion.
What that claim for relief is, as I mentioned earlier, and Mr. Krislov mentioned, is going to be subject to further discussion between the parties, arguments, etcetera. **But as I have alluded to, I use rules of statutory construction, and I cannot write into a statute that which is not there, even if I want to.**
And I look at the 1983 and the 1985 [Pension Code] statutes, and much as Mr. Prendergast has as argued, they are limited. They are limited by their terms. And the ascertainable claim for relief for those three subclasses is, thus, limited thereby.
Therefore, they do have an ascertainable claim for relief, but I have to go on to see their likelihood of success on the merits as to that which is being asked of me today and is being asked of me in the complaint. That's the second element, as you may recall I said to you.
Much as Mr. Prendergast has argued, and I accept his argument, those retirees are subject to the limitations of the statute that gave them the

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benefit, the '83 and the '85 statute, which is clearly less than that which is being given by the 2016 enactment, or appropriation.
Therefore, I do not find that there would be a likelihood of success on the merits with regard to that which is before me today.

Id.

Read fairly, the transcript demonstrates the Circuit Court's absolutely wrong interpretation as limited to what the Pension Code requires.

IV. The Contract and Estoppel Causes of Action are Also Strong Claims Likely to Succeed.

The contract and estoppel theories of Counts 2 and 3 (respectively, that the Funds complied with their Pension Code obligations by contract with the City agreeing to provide the coverage, and that the City had repeatedly represented that permanent

coverage under the City of Chicago Annuitant Medical Benefit Plan was a term of one's employment) as previously recognized and upheld by Judge Green's May 1988 decision, were certainly well-founded, should have been recognized as law of the case for these purposes, over Judge Cohen's view that the repeated communications of permanent coverage to active employees, and in pre-retirement seminars, were unenforceable without proof of each communication being from a person with authority to bind the City.[20]

While a single hearsay or rumor might not be enforceable, repeated City-issued benefits handbooks and City-sponsored "pre-retirement seminars" conducted over a number of years certainly constitutes sufficient "apparent authority" to bind the City contractually or estop the City from denying the enforceability of the benefits. *See, e.g.*, *Dell v. City of Streator*, 193 Ill.App.3d 810 (3d Dist. 1990), enforcing those promised benefits over that city's arguments that providing lifetime coverage for annuitants was either beyond its authority, or fell short of some contract requirement or formality:

> The principle which controls the instant case is not the statutory provision asserted by defendant City, but rather is the doctrine of equitable estoppel: Where a contract is within the general power of a corporation but a portion of the contract exceeds the corporate powers and where the City receives a benefit, it is equitably estopped from refusing payment. The Illinois Supreme Court has stated:
>
> > "[Municipal] corporations, as well as private corporations and natural persons, are bound by principles of common honesty and fair dealing." *McGovern v. City of Chicago* (1917), 281 Ill. 264, 284, 118 N.E. 3.
>
> The case of *McGovern v. City of Chicago,* though more than 70 years

[20] Such an obstacle to enforcement would similarly require each City employee, police, fire, municipal or laborer, to question each directive received from a superior or dispatcher to verify the authority of each direction.

old, is instructive of the principle. There the City of Chicago had awarded a 13 month contract to McGovern to make needed repairs to city streets, as directed by the Superintendent of Streets, and to be paid at a particular rate based on area and kind of repairs. The City Council did not make an appropriation for the full amount, and at the conclusion of the contract term, the City refused to pay for some $ 117,394 of work performed on the ground that the contract was void for want of an appropriation and for extending beyond one fiscal year. The Supreme Court of Illinois ruled that the City had the power to contract to repair its streets, that McGovern had performed in good faith, and that the City was estopped to refuse payment on the ground that it had exercised its power improperly when it had received and accepted the benefit of the contract.

Illinois courts do recognize that those contracts expressly prohibited by law are *ultra vires* and thus unenforceable. (*E.g., DeKam v. City of Streator* (1925), 316 Ill. 123, 146 N.E. 550.) However, as we have previously held, a municipality has the power to enter into employment contracts with its employees, and the irregular exercise of that power does not entitle the City to accept its employees labor without giving them the full compensation promised. *Eertmoed v. City of Pekin* (3d Dist.1980), 83 Ill.App.3d 362, 39 Ill.Dec. 351, 404 N.E.2d 942.

We also observe that rights to lifetime life and medical insurance benefits have, in effect, "vested" for those retired employees who are union members as well as for plaintiffs. To deny plaintiffs their vested rights while paying benefits to union members would be discriminatory and might raise a constitutional question concerning impairment of contract rights.

The City also argues that any agreement with non-union employees was void because there was no formal, recorded action by the City Council but rather some sort of "secret" action. Plainly it was a matter of public record that the City Council appropriated the money to pay insurance benefits for these plaintiffs, after their retirement and until November of 1987. That was hardly "secret" action. Also, the union collective bargaining agreement expressly provided for such lifetime retirement benefits, and it was no "secret" that non-union employees had been promised the same benefits as union employees. The record does not support the City's contention, and the trial court's finding that the City had agreed to provide non-union employees with the same benefits as union employees was not contrary to the manifest weight of the evidence. Furthermore, the evidence is more than sufficient to establish that these lifetime benefits were a part of the compensation for the work performed by these plaintiffs. The 1987 ordinance of the City Council purporting to change the benefits for retired persons will apply only to those non-union

> employees retiring after the effective date of that ordinance. The City was properly held estopped to refuse to pay the agreed benefits to plaintiffs. The order of the circuit court of LaSalle County is affirmed.

Dell v. City of Streator, 193 Ill.App.3d at 254. Similarly here the City cannot in good faith induce its employees to understand their entitlement as lifetime healthcare coverage, accept the benefit of their service over their lifetimes, then dump them during retirement, especially when pre 4/1/86 hires can cannot qualify for Medicare.

The enforceable contract or estoppel benefit also is not limited to what state law *requires*; the protection applies to whatever benefit the public employer legally provides to participants in its annuity and benefit plans.

As *Matthews v. CTA* 2014 IL App (1st) 123348[21] set out, in un-dismissing the participants' claims against the CTA, as distinct from the separate Healthcare Trust established by the collective bargaining agreement there:

> ¶84. .....Thus, under the specific terms of the retirement plan agreement, the CTA has no obligation to make any contributions other than those set forth in the retirement plan agreement.
> ....
> ¶85. .... Accordingly, the terms of the retirement plan agreement contradict plaintiffs' claims that the CTA had an obligation to pay retiree health care benefits.. ...
> ¶86 All is not lost for plaintiffs, however. Although the CTA does not have a contractual or statutory obligation to pay for retiree health care benefits, plaintiffs have alleged that the CTA nevertheless continued to pay for retiree health care until 2009 and, at this early stage of the proceedings, "we accept as true all well-pleaded facts and all reasonably drawn inferences from those facts in favor of the plaintiff." *Doe*, 213 Ill.2d at 28. As will be explained later in our opinion, plaintiffs' allegations are sufficient to state a cause of action for promissory estoppel and declaratory judgment as we cannot find that it is clearly apparent that no

[21] Appeal pending before Illinois Supreme Court No. 117638, 117713, 117728 cons; argued May 14, 2015.

> set of facts can be proved that would entitle the plaintiff to relief. *Feltmeier*, 207 Ill.2d at 277-78. Thus, while the trial court correctly granted the CTA's motion to dismiss with respect to the majority of the claims against it, those two counts remain and should not have been dismissed.

Thus, whether enforced under the Constitution or principles of contract or estoppel, the Circuit Court's interpretation of the benefits protected as limited, and strictly so, to the obligations contained in the Pension Code 1983 and 1985 provisions, which explicitly impose only duties on the Funds, ignores that the City's obligations to provide healthcare to its retirees/Fund participants do not rest solely on whether they are directed in the Pension Code. The City's obligation, once it provided benefits to its retiree participants, continues[22]. That is *Kanerva*. Similar to the State's establishing its healthcare obligations by the legislature's enacting a law; the City did the same by its ordinances establishing and the Plan, under which it was the insurer, providing the benefit of coverage at the rate of the Police and Fire subsidies. That is precisely what James

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[22] There was also no reservation of right to the City to terminate or amend the plan. The Plan's language is that coverage terminates if the plan terminates, (Plan Handbook at C632) does not mention what rights the City had to terminate the Plan (if indeed, Post-*Kanerva*, such a right could be effective). Nonetheless, the ERISA decisions make clear that such a reservation would have to be clear and unequivocal:

From 2005 American Bar Association The Brief, THE EMPLOYER GIVETH AND TAKETH AWAY, RETIREE HEALTH BENEFITS UNDER ERISA-GOVERNED HEALTH PLANS, By Helen M. Kemp, The following are examples of typical unambiguous reservation of rights provisions that courts have held negate any inference that the employer intended for *benefits* to vest:

1. "This plan can be amended at any time, without consent of the insured employees or any other person having a beneficial interest in it."
2. "The coverage described here may be amended, revoked or suspended at the Company's discretion at any time, even after your retirement."
3. "The Plan Sponsor and your employer intend to continue the Plan indefinitely. Since future changes and conditions cannot be foreseen, we do reserve the right to suspend, terminate or modify the Plan at any time when deemed to be in the best interest of the participating member firms."

The City Plan contains no such language.

McDonough testified. Supp. Record C. 155-157.

As well, the City did, by its May 2013 declaration, voluntarily subject itself to the obligation of providing annuitant healthcare, and may not thereafter diminish it for participants on that date.

V. All of the Applicable 1989 and Subsequent Pension Code Healthcare Amendments are Invalid, Unconstitutional Provisions, Leaving the 1983 and Possibly 1985 Amendments as the Still Applicable Provisions

The 1989 and subsequent versions of the healthcare statutes all share three invalidating aspects.

1. Labelling Annuitant Benefits as Not Protected. First, as actually recognized by Judge Cohen, the 1985 and 1989 and subsequent amendments all purport to create benefits that are not protected by the Constitution. Judge Cohen recognized this as "unenforceable" because post-*Kanerva* they are unconstitutional. A 2, C 00567, December 3, 2015 Order at 9:

> The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause.
>
> Defendants do not cite to any authority holding that the General. Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.
>
> Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

2. Invalid "Special Legislation". Second, they are all invalid "special

legislation"[23] because, different from all the rest of the provisions in each Fund's Pension Code Articles 5, 6, 8 and 11 (which create Funds in Cities with populations above 500,000), the amendatory provisions provide healthcare only to annuitants "by reason of employment by" a named City: "the City of Chicago".

As applied, this invalidates laws whose terms explicitly limit their application to an identified locality or date[24]. Accordingly, Illinois laws (including these four Annuity and Benefit Funds) are customarily crafted as applying to public entities, determined by defined population numbers; such as, above 500,000, or some other figure. While the conditions of applicability may exist only in Chicago, nonetheless the law is valid if it

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[23] Article IV, §13 - Special Legislation

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

[24] *People ex rel. East Side Levee and Sanitary Dist. v. Madison County Levee and Sanitary Dist.*, 54 Ill.2d 442, 447 (1973) (invalidating legislation applicable only to sanitary district meeting stated criteria on December 22, 1972); *Lee v. City of Chicago*, 31 Ill.2d 252, 255 (1964) (invalidating statute conferring a benefit upon policemen listed on a particular date's pledgibility roster). Contrast with *Lee v. Retirement Bd. of the Policemen's Assn. and Benefit Fund*, 22 Ill.App.3d 600, 606-7 (1st Dist. 1974) (upholding constitutionality of statute computing benefits for employees of cities with a population in excess of 500,000); *Gaca v. City of Chicago*, 411 Ill. 146 (1952) (obligation of City of Chicago to indemnify police, application to municipalities greater than 50,000); *Matthews v. City of Chicago*, 342 Ill. 120, 132 (1930) (population classification valid if it applies to all that are now or may hereafter come within its terms, whether the condition currently exists in one place or many.); *Devine v. Commrs. of Cook County*, 84 Ill. 590 (1877); *Pettibone v. West Chicago Park Commrs.*, 215 Ill. 304 (1905)(invalidating law applicable only to any town "now" falling within applicable definition),

With that preface, the statutes' providing group health benefits only for persons receiving an annuity "by reason of previous employment by the City of Chicago" are unquestionably invalid. This is all rather strikingly highlighted by the fact that the provisions all appear within Illinois Pension Code Articles otherwise validly applicable only "in each city of more than 500,000 inhabitants." Pension Code §§-101, 6-101, 8-101 and 11-101.

operates "uniformly throughout the state in all localities and on all persons in like circumstances and conditions." *Rincon v. License Appeal Comm.*, 62 Ill.App.3d 600, 605 (1st Dist., 4th Div. 1978) (upholding dramshop provisions applicable only in municipalities with over 500,000 population); quoting from *People Ex Rel Vermilion County Cons. Dist. v. Lenover*, 413 Ill.2d 209, 217 (1969).

In contrast, P.A. 86-273 and its successor statutes (see A17-49, C 1258-1299), invalidly provide for group health benefits only for persons receiving an annuity "by reason of previous employment by the City of Chicago"[25] and are unquestionably invalid. This is all rather strikingly highlighted by the fact that the provisions all appear within Illinois Pension Code Articles otherwise validly applicable only "in each city of more than 500,000 inhabitants." Pension Code §5-101, 6-101, 8-101 and 11-101.

3. Time limited Pension Benefits. Third, it has never been determined whether the creation of a time-limited retirement benefit (e.g., P.A.86-273's application through 1997) ends the benefit at that date, or serves as a floor which cannot be validly diminished or terminated, for those who were participants during its applicable period.

VI. Nor Can the City Legally Discriminate Among "Participants" Based on When They Retired.

Under our Constitution, Participants' interest s vest with their participation in a Fund, not just at their retirement. Thus, protected benefits are those that exist during their participation; not just those in effect at their retirement. An employee's contractual right in his pension plan vests at the time he becomes a member of the system. *Kraus v. Board of Trustees*, 72 Ill.App.3d 833 (1979). The terms of this contractual relationship are

[25] New Pension Code §§5-167.5, 6-164.2, 8-164.1 and 11-160.1, all as amended by P.A. 86-273

governed by the version of the Pension Code in effect at the time the employee became a member of the system. *Di Falco v. Board of Trustees of the Firemen's Pension Fund*, 122 Ill.2d 22 (1988). And may not be thereafter reduced for that employee. *Buddell v. Bd. Of Trustees, SURS*, 118 Ill.2d 99, 106 (1987) (invalidating Pension Code amendment retroactively abolishing entitlement to service credit previously available, if not yet elected on enactment date.).

Nor can the City's declared policy of providing lifetime healthcare "confined to the *Korshak* and *Window* sub-classes" [i.e., pre-8/23/89 *retirees* only], while excluding coverage for others who were participants on 8/23/1989, be legal either. When the City declared its commitment to provide arguably unchanged healthcare to those who could claim under the statutes in effect on 8/23/1989 (i.e., "not because of the 1983 or 1985 amendment, but because in 2013, the City voluntarily committed to do so for these older retirees") actually seals its fate. Since it is "participants", not "retirees", who are protected by the Constitutional protection of the benefits as they exist during one's participation, the City also cannot pick only some groups of participants to obligate itself to. In obligating itself to any participants on that date, it necessarily obligated itself to all participants on that date, whether active or already retired. Otherwise, it would also violate our State's equal protection clause as well.

VII. Other Aspects of the Circuit Court's Flawed Legal Analysis—Comparing Apples to Oranges.

The Court's adoption of the City's argument that there is no diminution because the City's 2016 appropriation arguably "subsidizes" coverage at a higher rate than the *Funds' subsidy amount*s in 1983 and 1985, confuses apples with oranges; it ignores that

the *Funds' subsidy* is different from what the *City provides*. The 2016 plan provides no subsidy from the City, it just provides coverage and charges a higher rate. In short, the argument that "retirees will receive greater health care subsidies under the City's 2016 plan than they would receive under the 1983 and 1985 amendments" ignores that the City is not providing a subsidy; it is just diminishing the benefit, reducing the appropriation, which results in vastly higher premiums for coverage under the Plan provided.

VIII. The Irreparable Harm, Balance of Equities and Public Interest Overwhelmingly Favor the Participants.

The Participants' irreparable harm is undeniable. Their submissions spreadsheet summary (C 00822) and submissions of 148 participants (Supp. Record C 329-749) describing their not having sufficient quarters to qualify for Medicare (Supp. Record 330, at Tab 9, 12, 20, 36, 48, 52, 65, 107, 141, 165, 233), having to forego health care and health insurance (Supp. Record 330, at Tab 23,134, 154, 224), seek other coverage because they cannot afford these crushing increases (Supp. Record 330 inter alia at Tab 7,15, 16, 30, 37,43, 89, 118, 177, 214), facing premiums that range above30% of one's annuity (Supp. Record 330 inter alia at Tab 83, 96, 102, 107, 184, 205, 3, 15, 35, 91, 95, 104, 130, 134, 136, 138, 157, 168, 179, 209, 217, 224) some exceeding the entire annuity (*Supra.*; Supp. Record at Tab 166 (C687)and 198 (C754)) are incontestable irreparable harm, huge inequities, and a violation of their legitimate expectation of lifetime healthcare coverage under the City's Annuitant Medical Benefits Plan.

In contrast, the City's "hardship" effort to avoid the rather minimal (1% of the City's corporate budget) annuitants' benefits springs not from any bona fide belief that

either the language does not cover or that the annuitants were not promised the benefits. The basis for the entire effort sprang first from the City's efforts to offset the effect of the *Ryan* decision,[26, 27] now from the City's desire to just shear them off as a cost, despite they're being the last group of City workers whose City work will not qualify them for Medicare coverage.

This is not a case of an employer's good faith effort to cut or cap its medical costs. Rather, it is simply retribution for being caught "red-handed." The City's unclean hands under these circumstances leaves it without much to oppose the equitable relief sought here for the annuitants.

In contrast, the City's burden of continuing the coverage as promised is minimal and declining and an injunction will have no material adverse impact on the general public. Preserving the status quo ante by a permanent injunction as to all participants in the City healthcare plan would restore less than 1% of the City's $3 billion annual budget, (of which 80% is already spent on personal services)[28] about $20 (twenty dollars) annually per taxpayer, an item which has existed in all previous City budgets since at least 1982.

Moreover, by freezing the protection of the August 23, 1989 participant class, the City is not facing an open-ended obligation. In total numbers, the present non-Medicare qualified annuitants will decline over the years by natural attrition and so, too, the costs

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[26] Picur June 1988 trial testimony at C 814, Tr. Page 143-144. C523, fn 3.
[27] In November 1986, the Illinois Appellate court refused rehearing and in January 1987, the Illinois Supreme Court refused the City's Petition for Leave to Appeal. The mandate issued, and by spring 1987, the parties were back in court calculating the damages to be repaid. On May 11, 1987 the City presented the offset ploy to the trustees. C554, Minutes of Police Funds Trustees meeting May 11, 1989.
[28] Testimony by Budget Director Alexandra Holt, Supp. Record. C14, Tr. 39-41.

of their medical treatment will eventually decline to zero, as well. Their numbers will be replaced by Medicare-covered annuitants for whom the City's obligation need not be as significant; need only be what the City can negotiate with those employees and their representatives who have some advance notice that they need to make such provisions for their retirement, and some time in which to do it.

The public's interest in the City employees working and continuing to work in reliance upon the representations made in the course of their employment is also significant.

Conclusion

Accordingly, this Court should reverse the denial below, declare the Participants rights to permanent healthcare benefits under the City of Chicago Annuitant Medical Benefits Plan, enjoin the City's "phase out" and reduction of its annuitant healthcare appropriation, and such other actions as are necessary to restore the parties to the status quo when this litigation began.

Dated: March 11, 2016

By: /s/Clinton A. Krislov
Attorney for Plaintiffs, Participants

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Certificate of Service

I, Kenneth T. Goldstein, an attorney, on oath state that on March 11, 2016, I caused three copies the foregoing **Appellate Brief** to be served on Defendant and upon the Illinois Appellate Court, at the addresses below on by U.S. Mail, (as indicated below) with proper postage paid, deposited from the U.S. Mail box located in the Civic Opera House, 20. N. Wacker Drive, properly addressed, and before 5:00 p.m.

s/Kenneth T. Goldstein

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Certification of Compliance

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of point and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under rule Rule 342(a), is 12,978 words.

s/Kenneth T. Goldstein

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APPENDIX TABLE OF CONTENTS

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

Michael W. Underwood, et al., Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 388 other Named Plaintiffs listed, **Plaintiffs,** **v.** **CITY OF CHICAGO, a Municipal Corporation,** **Defendant,** **And** **Trustees of the Policemen's Annuity and Benefit Fund of Chicago;** **Trustees of the Firemen's Annuity and Benefit Fund of Chicago;** **Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and** **Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.** **Defendants.**	**No. 13-CH-17450** **Calendar No. 5** **Hon. Neil H. Cohen**

Order No. 1 of 2.

This matter came to be heard on Plaintiffs' Motion for a Preliminary Injunction. Due notice was given, all parties were present by counsel, who had briefed the court. The Court heard arguments, received testimony from witnesses and, for the reasons stated by the Court on the Record, it is HEREBY ORDERED:

Plaintiffs' motion for preliminary injunction is DENIED.

Hon Neil H. Cohen, Circuit Judge

ENTERED
Judge Neil H. Cohen-2021
DEC 24 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Entered on December 23, 2015
Prepared by:
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff Michael W. Underwood and 349 other named Plaintiffs, as participants in the Annuity & Benefit Funds covering the City of Chicago's employees, have filed an Amended Class Action Complaint seeking declaratory and other relief regarding their contention that they are entitled to lifetime subsidized health care.

Defendants are the City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago.

They have all filed Motions to Dismiss the Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code ("Pension Code"), the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) the Firemen's Annuity and Benefit Fund ("Fire");
(3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to their annuitants under the Pension Code are actually financed by the taxpayers of the City through a tax levy.[1]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

The Pension Code was amended from time to time, as new collective bargaining agreements were negotiated.

A discussion of the salient provisions of the amendments which are relevant to the disposition of these Motions to Dismiss follows.

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7] While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Pension Code specifies that the City's tax levy finances all of the Funds' financial obligations under the Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.[9]

The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

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[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

[6] Id.

[7] Id.

[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.

[9] Id.

[10] Id.

C. *The Korshak Litigation, and the 1989, 1997 and 2003 Amendments to the Illinois Pension Code*

In 1987, the City notified the Funds that it intended to terminate retiree health care by the beginning of 1988.

The City soon thereafter filed suit in the Chancery Division of the Circuit Court of Cook County, City of Chicago v. Korshak, 87 CH 10134, seeking a declaration that it had no obligation to provide healthcare to retirees ("the Korshak litigation"). (Am. Compl. ¶89). In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds' retirees. (Am. Compl. at ¶¶93-94).

Employees who retired on or before December 31, 1987 were allowed to intervene as a group. This group was certified as the "the Korshak sub-class." (Id. at ¶92).

Employees who retired after December 31, 1987, but before August 23, 1989, were permitted to intervene as a group, which was certified as the "Window sub-class." (Id.).

In 1988, the parties entered into a settlement agreement. This agreement was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.[12]

Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement which extended the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.[14]

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.
[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).

the City to pay 50% of the costs of the annuitants' health care coverage.[15] The amendments stated that the obligations set forth would terminate on June 30, 2002.

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013 and, again, the Pension Code was amended to codify the terms of the settlement.[17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10 per month for all annuitants.[21]

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

D. *2013: The RHBC Report and the City's Decision to Phase-Out Health Care Support*

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees, other than those who retired before August 23, 1989, e.g., the Korshak and Window subclasses. (Am. Compl. ¶98).

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[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.

To that end, the City sent annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and to ultimately phase-out its healthcare subsidies and plans by the beginning of 2017. (Id.).

E. Proceedings in this Case

In July 2013, Plaintiffs filed a motion before this court seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003.

On July 23, 2013, Plaintiffs filed this new action against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal district court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

Count II of the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract.

Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits.

Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision. As only the state law claims were remanded, only Counts I, II and III are currently pending before this court.

II. Motions to Dismiss

The City and the Funds have filed motions to dismiss Counts I, II and III of the Amended Complaint pursuant to 735 ILCS 5/2-619.1.

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

A. *Judge Albert Green's Rulings in the Korshak Litigation*

During the Korshak litigation, the trial judge, Judge Albert Green, denied the City's motion to dismiss the Funds' counterclaim. Now, in the present litigation, Plaintiffs initially contend that Judge Albert Green's order denying the City's motion to dismiss in the Korshak litigation disposes of virtually all of the bases for dismissal raised by City and Funds' current Motion to Dismiss. Plaintiffs are incorrect.

First, Judge Green did not address many of the issues currently pending before this court. Second, a denial of a motion to dismiss is not a final judgment as required for the application of collateral estoppel. State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007). Nor does Judge Green's denial of the City's motion to dismiss in the Korshak litigation constitute the law of *this* case. Only final and appealable orders which are left undisturbed by the appellate court become the law of the case. Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1st Dist. 1997). A denial of a motion to dismiss is not a final and appealable order.

B. *Capacity to Be Sued*

The trustees of Fire and Municipal Funds contend that dismissal is proper since they do not have the capacity to be sued.

The court finds this argument to be wholly unconvincing given the existence of the Korshak litigation and the Funds' active participation in it. The trustees of the Fire and Municipal Funds were defendants in that suit, filed counterclaims in that suit, and were parties to the settlement agreements in that suit. They have now waived any right to claim that they lack the capacity to be sued. Aurora Bank FSB v. Perry, 2015 IL App (3d) 130673 (lack of standing to be sued can be waived); People ex rel. Illinois State Dental Soc. v. Vinci, 35 Ill. App. 3d 474 (1st Dist. 1976)(same).

C. *Statute of Limitations*

The Laborers, Municipal and Fire Funds all contend that Plaintiffs' claims are time-barred because they were not filed within 10 years of 1987. Plaintiffs contend that the settlement agreements entered into during the course of the Korshak litigation reserved Plaintiffs' rights to assert the claims raised in the Amended Complaint. Plaintiffs are correct.

The 1989 settlement agreement provided that if the parties failed to reach a permanent resolution of their dispute by December 31, 1997, the parties would be restored to the same legal status which existed as of October 19, 1997. (Response at Ex. 10). The 1989 settlement agreement further provided that the court's jurisdiction would continue after January 1998 if no permanent solution was reached. (Id.). And, the 2003 settlement agreement expressly provided that after its expiration the class members would retain any right they then had "to assert any claims with regard to the provision of annuitant healthcare benefits" other than claims arising under the prior settlement agreements or amendments to the Pension Code.

The court finds that the 1989 and 2003 settlement agreements defeat any statute of limitations claims.

Moreover, "a statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting, Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999). This action was triggered by the City's letter of May 15, 2013 informing the Funds' annuitants of the City's plan to modify and ultimately phase-out its healthcare subsidies and annuities by 2017. Arguably, the statute of limitations did not begin to run until May 15, 2013.

D. *Motion to Dismiss Count I (§2-615)*

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

The City and the Funds argue that Count I should be dismissed with prejudice because a reduction in the annuitants' healthcare benefits does not constitute a violation of §5, Art. XIII of the Illinois Constitution of 1970.

Article XIII, §5 of the Illinois Constitution of 1970 ("the Pension Clause") provides that:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Ill. Const. 1970, art. XIII, §5.

1. Kanerva v. Weems

Plaintiffs contend that Kanerva v. Weems, 2014 IL 115811, definitively establishes that Plaintiffs' healthcare benefits cannot be reduced.

In Kanerva, the plaintiffs in four consolidated cases filed suit challenging the validity of Public Act 97-695 which amended §10 of the State Employees Group Insurance Act of 1971 by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems. Id. at ¶¶1, 16. The plaintiffs argued that by amending the law to require annuitants to contribute additional amounts toward the cost of their health care, where the amounts were previously paid by the State, Public Act 97-695 diminished or impaired a membership benefit in violation of the Pension Clause. Id. at ¶20.

Our supreme court identified the central issue of Kanerva as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Id. at ¶35.

The supreme court found that currently, and prior to the approval of the Pension Clause, most state employees were provided with a package of benefits including subsidized healthcare, disability and life insurance coverage and eligibility to receive a retirement annuity and survivor benefits. Id. at ¶39. Eligibility for all these benefits, including healthcare, is conditioned on, and flows directly from, membership in a public pension system. Id. at ¶40. Therefore, subsidized healthcare must be considered a benefit of membership in a pension or retirement system protected by the Pension Clause. Id.

Our supreme court found that although it is true that healthcare costs and benefits are governed by a different set of calculations than retirement annuities, this fact is legally irrelevant. Id. at ¶54. If a benefit is derived from membership in a public pension system, it is protected under the Pension Clause. Id.

Finally, our supreme court reiterated the fundamental principle that "[u]nder settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule

of construction applies with equal force to our interpretation of the pension protection provisions set forth in article XIII, section 5." Id. at ¶55.

2. Application of Kanerva v. Weems

Kanerva is clear that healthcare benefits are covered by the Pension Clause and, therefore, cannot be diminished or impaired. The question is whether the healthcare benefits of Plaintiffs and the putative class members will be diminished or impaired by the City's plan to gradually phase out healthcare coverage for annuitants retiring on or after August 23, 1989.

a. Whether the Legislature Could Validly Disclaim the Pension Clause's Application to the 1985, 1989, 1997 and 2003 Amendments to the Pension Code

The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause. Defendants do not cite to any authority holding that the General Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.

Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

b. Whether Kanerva Applies to the Funds

At oral argument, the Funds asserted that Kanerva applies only to public *employers* and, therefore, has no application to the Funds. It is true that the Funds are not public employers. It is also true that the Kanerva court framed the central issue as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Kanerva, 2014 IL 115811 at ¶35. That being said, however, it does not follow under the circumstances of this case that Kanerva has no application to the Funds.

The Pension Clause protects, "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency ***or instrumentality thereof***." Ill. Const. 1970, art. XIII, §5 (emphasis added).

Under Kanerva, healthcare benefits fall within the scope of the Pension Clause. Nothing in the language of the Pension Clause limits its scope to benefits provided *directly* by public employers.

The Illinois Pension Code provided for the creation of the Funds, by the city council, for the specific purpose of establishing, funding and administering pension funds for the City's employees. E.g., 40 ILCS 5/5-101; 40 ILCS 5/6-101; 40 ILCS 5/8-101; 40 ILCS 5/11-101.

Accordingly, in a very real and practical sense, the Pension Code designed a scheme by which the Funds were created as an instrumentality of the City. Since the Pension Clause protects the benefits of membership in the retirement system of any "unit of local government" or "any agency or instrumentality, thereof," Ill. Const. 1970, art. XIII, §5, Kanerva applies to the Funds.

c. The 1983 and 1985 Amendments: No Time Limitations

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak sub-class, the Window sub-class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes. The court notes that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its Memorandum in support of its Motion to Dismiss.

Therefore, Count I clearly states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

The exact nature of those obligations, however, is not properly decided on a §2-615 motion to dismiss.

d. The Effect of the Time Limitations of the 1989, 1997 and 2003 Amendments

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the settlement agreements in Korshak were all time-limited. The 1989, 1997 and 2003 amendments did not provide that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, these amendments were clear that the obligations set forth expired with the settlement agreements the amendments codified.

Plaintiffs contend that there is an argument that the rates set forth in the 1989, 1997 and 2003 amendments cannot be diminished or impaired. Plaintiffs, however, fail to develop this argument. Furthermore, the court disagrees that such an argument is valid.

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. The Pension Clause, however, does not by itself confer benefits. The nature and extent of any health benefits to be conferred is the subject of the legislative power. In this case, the 1989, 1997 and 2003 amendments to the Illinois Pension Code were time-limited at creation, and for good reason. They were enacted solely to codify the time-limited settlement agreements between the parties. By their express terms, these amendments specifically did *not* provide the annuitants with "lifetime" or "permanent" healthcare benefits. Since any obligations under these amendments expired by the specific terms of those amendments, there is nothing to diminish or impair.

Plaintiffs cite to In re Pension Reform Litigation (Heaton v. Quinn), 2015 IL 118585, to argue that the General Assembly cannot impose a time limit on a grant of pension benefits. Heaton, however, nowhere addresses whether the General Assembly can enact pension statutes with time limitations. Indeed, the General Assembly generally has the right to impose conditions, including time limitations, on statutorily created rights. E.g., In re Petition for Detachment of Land from Morrison Community Hosp., 318 Ill. App. 3d 922, 930 (3d Dist. 2000); Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 831 (1st Dist. 1988).

The Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

E. *Motion to Dismiss Count II (§2-615 and §2-619)*

Count II asserts a common law breach of contract claim against the City based on a contractual right the Plaintiffs and the putative class members have alleged they have under the Pension Clause "to the fixed-for-life subsidized healthcare premiums in effect on their retirement date." (Am. Compl. ¶116).

Count II also alleges that, independent of the Pension Clause, "Plaintiffs and the pre-August, 23, 1989 retirement or hire date putative class members have a contractual right to the plan in effect during the period of October 1, 1987 to August 23, 1989, at the $55/$21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction." (Id. at ¶117).

Plaintiffs allege that the City "has breached its contractual obligation by unilaterally requiring the plaintiffs and [putative] class members to pay increased healthcare premiums." (Id. at ¶119).

The City and the Funds argue that any breach of contract claim would be barred by the Statute of Frauds. The City and the Funds further argue that Count II alleges no facts supporting the existence of any contract between themselves and Plaintiffs providing for life-time subsidies for healthcare benefits.

1. Statute of Frauds

Illinois law is clear that any "lifetime" contract must be in writing or the contract is barred by the Statute of Frauds. McInerey v. Charter Golf, Inc., 176 Ill. 2d 482 (1997).

Plaintiffs argue that Dell v. Streator, 193 Ill. App. 3d 810 (3d Dist. 1990), provides otherwise, but that case did not address a Statute of Frauds defense. Plaintiffs further contend that written contracts *do* exist. But, as discussed below, the Amended Complaint fails to allege sufficient facts to establish the existence of such written contracts.

2. Section 2-615

"In order to state a cause of action for breach of contract, a plaintiff must allege (1) an offer and acceptance; (2) consideration; (3) definite and certain terms of the contract; (4) plaintiff's performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach." Weis v. State Farm Mut. Auto. Ins. Co., 333 Ill. App. 3d 402, 407 (2d Dist. 2002).

Illinois is a fact-pleading jurisdiction. Simpkins v. Csx Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Count II fails to allege specific facts showing the existence of any written contracts between Plaintiffs, the City, or the Funds. While Plaintiffs attempt to cure this deficiency in their Response, this court can only consider those facts actually pled in the Amended Complaint.

During oral argument, Plaintiffs argued at length that the City's handbook constituted a contract for lifetime healthcare, and that a "three-way" contract to provide lifetime healthcare somehow existed between the City, the Funds, and the annuitants. But, regardless of Plaintiffs' assertions during oral argument, the existence of a contract relied upon by them for relief must be actually pled in order to be considered by this court. Count II does not plead that the handbook is the contract at issue or contain any allegations regarding any supposed "three-way" contract. Furthermore, Plaintiffs failed to attach the handbook to the Amended Complaint, as required by 735 ILCS 5/2-606.

The court further notes that Count II does not allege any breach of contract by the Funds. While their Response makes it clear that Plaintiffs believe they have a breach of contract claim against the Funds, Count II only alleges a purported breach by the City and only seeks relief from the City.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

F. *Motion to Dismiss Count III (§2-615)*

Count III asserts that Defendants are, as a matter of common law, estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Though Count III fails to allege whether Plaintiffs are asserting a claim for promissory or equitable estoppel, Plaintiff's Response confirms that they are asserting a claim for equitable estoppel.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1st Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the *express authority* to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials, *and* upon his or her own inquiry into the official's authority. Id.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (Am. Compl. ¶¶121-122). Count III, however, fails to set forth any specific facts supporting the application of equitable estoppel.

Plaintiffs allege that between 1984 and 1987, the City held a series of "Pre-Retirement" seminars at which unidentified City officials informed the attendees that they would be able to participate in the City's health plan for life with no cost for their own coverage. (Id. at ¶¶46-47). This allegation does not show an affirmative act by a City official with *express authority* to bind the City. Furthermore, Plaintiffs have failed to allege that they undertook any inquiry into the

unidentified City officials' actual authority to bind the City. Without such factual allegations, Count III does not state a claim against the City.

Count III is even more deficient in factual support as to the Funds. The Amended Complaint does not contain a single allegation of any affirmative act by any of the Funds, much less an affirmative act by an official with the express authority to bind the Funds.

At oral argument, Plaintiffs' counsel asserted that the City representatives at the "Pre-Retirement" seminars had "apparent authority" to bind the City. "Apparent authority," however, is not a basis for equitable estoppel against a public body:

> Because apparent authority is not actual, but only ostensible, an apparent agent may make representations the specifics of which the principal is unaware, and still bind the principal. **'If the unauthorized acts of a governmental employee are allowed to bind a municipality ***, the municipality would remain helpless to correct errors'** (*City of Chicago v. Unit One Corp.*, 218 Ill. App. 3d 242, 246, 578 N.E.2d 194, 161 Ill. Dec. 67 (1991)) or, worse, to escape the financial effects of frauds and thefts by unscrupulous public servants (*D.S.A. Finance Corp.*, 345 Ill. App. 3d at 563). **Thus, we have required, 'anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and *** this is so even though the agent himself may have been unaware of the limitations on his authority.'**

Patrick Engineering, 2012 IL 113148, ¶36 (emphasis added).

Count III is dismissed, without prejudice, for failure to state a claim.

III. Conclusion

Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

Count III is dismissed, without prejudice, for failure to state a claim for breach of contract under a theory of common law equitable estoppel.

Plaintiffs are given leave to amend Counts II and III.

The status date of December 11, 2015 at 9:30 a.m. stands.

Enter: 12/3/15

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
DEC 03 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS IN EFFECT PRIOR TO
ENACTMENT OF P.A. 86-273

S.H.A. ch. 108 1/2 ¶ 5-167.5

SMITH-HURD ILLINOIS ANNOTATED STATUTES

CHAPTER 108 1/2. PENSIONS
PENSION CODE
ARTICLE 5. POLICEMEN'S ANNUITY AND BENEFIT FUND--CITIES OVER 500,000

Pension Code § 5-167.5

5-167.5. Group health benefit

§ 5-167.5. Group health benefit. (a) For the purposes of this Section:
"Annuitant" means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.
"Carrier" means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, [FN1] the Medical Service Plan Act [FN2] or the Voluntary Health Services Plan Act, [FN3] which is authorized to do group health insurance business in Illinois.
(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits. The group health insurance program may also include:
(1) prepaid preventive health care through health maintenance organizations;
(2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;
(3) optional coverage for dependents of the annuitant;
(4) other optional coverage, such as for dental, psychological, or optometric services.
(c) The group contract shall be on terms deemed by the Board to be in the best interest of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.
The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.
(d) The Board shall pay the premiums for such health insurance for each annuitant with funds provided as follows:
The basic monthly premium for each annuitant shall be contributed by the city from the tax levy prescribed in Section 5-168, up to a maximum of $55 per month if the annuitant is not qualified to receive medicare benefits, or up to a maximum of $21 per month if the annuitant is qualified to receive medicare benefits.
If the basic monthly premium exceeds the maximum amount to be contributed by the city on his behalf, such excess shall be deducted by the Board from the annuitant's monthly annuity, unless the annuitant elects to terminate his coverage under this Section, which he may do at any time. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity.

Laws 1963, p. 161, § 5-167.5, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

[FN1] Chapter 32, ¶ 551 et seq.

[FN2] Chapter 32, ¶ 563 et seq.

[FN3] Chapter 32, ¶ 595 et seq.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

States ⇔93.
C.J.S. States § 156.
Words and Phrases (Perm. Ed.)

S. H. A. ch. 108 1/2 ¶ 5-167.5
IL ST CH 108 1/2 ¶ 5-167.5
END OF DOCUMENT

S.H.A. ch. 108 1/2 ¶ 6-164.2

SMITH-HURD ILLINOIS ANNOTATED STATUTES

CHAPTER 108 1/2 . PENSIONS
PENSION CODE
ARTICLE 6. FIREMEN'S ANNUITY AND BENEFIT FUND--CITIES OVER 500,000

Pension Code § 6-164.2

6-164.2. Group health benefit

§ 6-164.2. Group health benefit. (a) For the purposes of this Section:
"Annuitant" means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.
"Carrier" means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, [FN1] the Medical Service Plan Act [FN2] or the Voluntary Health Services Plan Act, [FN3] which is authorized to do group health insurance business in Illinois.
(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out- patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits. The group health insurance program may also include:
(1) prepaid preventive health care through health maintenance organizations;
(2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;
(3) optional coverage for dependents of the annuitant;
(4) other optional coverage, such as for dental, psychological, or optometric services.
(c) The group contract shall be on terms deemed by the Board to be in the best interest of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.
The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.
(d) The Board shall pay the premiums for such health insurance for each annuitant with funds provided as follows:
The basic monthly premium for each annuitant shall be contributed by the city from the tax levy prescribed in Section 6-165, up to a maximum of $55 per month if the annuitant is not qualified to receive medicare benefits, or up to a maximum of $21 per month if the annuitant is qualified to receive medicare benefits.
If the basic monthly premium exceeds the maximum amount to be contributed by the city on his behalf, such excess shall be deducted by the Board from the annuitant's monthly annuity, unless the annuitant elects to terminate his coverage under this Section, which he may do at any time. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity.

Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

[FN1] Chapter 32, ¶ 551 et seq.

[FN2] Chapter 32, ¶ 563 et seq.

[FN3] Chapter 32, ¶ 595 et seq.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

States ⇔93.
C.J.S. States § 156.
Words and Phrases (Perm.Ed.)

S. H. A. ch. 108 1/2 ¶ 6-164.2
IL ST CH 108 1/2 ¶ 6-164.2
END OF DOCUMENT

S.H.A. ch. 108 1/2 ¶ 8-164.1

SMITH-HURD ILLINOIS ANNOTATED STATUTES

CHAPTER 108 1/2. PENSIONS
PENSION CODE
ARTICLE 8. MUNICIPAL EMPLOYEES', OFFICERS' AND OFFICIALS' ANNUITY AND BENEFIT
FUND--CITIES OVER 500,000 INHABITANTS

Pension Code § 8-164.1

8-164.1. Group Health Care Plan

§ 8-164.1. Group Health Care Plan. Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The Board, in conformity with its regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.

As of the effective date the Board is authorized to make payments up to $25 per month for employee annuitants age 65 years or over with at least 15 years of service.

If the monthly premium for such coverage exceeds the $25 per month maximum authorization, the difference between the required monthly premiums for such coverage and such maximum may be deducted from the employee annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate.

Amounts contributed by the city as authorized under Section 8-189 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.

The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 8-164.1, added by P.A. 84-23, § 1, eff. July 18, 1985.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

Municipal Corporations ⇐186(1), 187(2).
C.J.S. Municipal Corporations §§ 586, 588 et seq.

S. H. A. ch. 108 1/2 ¶ 8-164.1
IL ST CH 108 1/2 ¶ 8-164.1
END OF DOCUMENT

SMITH-HURD ILLINOIS ANNOTATED STATUTES

CHAPTER 108 1/2 . PENSIONS
PENSION CODE
ARTICLE 11. LABORERS' AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT
FUND--CITIES OVER 500,000 INHABITANTS

Pension Code § 11-160.1

11-160.1. Group health care plan

§ 11-160.1. Group Health Care Plan. Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The Board, in conformity with its regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.
As of the effective date the Board is authorized to make payments up to $25 per month for employee annuitants age 65 years or over with at least 15 years of service.
If the monthly premium for such coverage exceeds the $25 per month maximum authorization, the difference between the required monthly premiums for such coverage and such maximum may be deducted from the employee annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate.
Amounts contributed by the city as authorized under Section 11-178 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.
The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 11-160.1, added by P.A. 84-159, § 1, eff. Aug. 16, 1985.

S. H. A. ch. 108 1/2 ¶ 11-160.1
IL ST CH 108 1/2 ¶ 11-160.1
END OF DOCUMENT

ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 86-273
EFFECTIVE AUGUST 23, 1989

P.A. 82-342, in the second paragraph, in the first sentence, inserted "from January 1, 1976 to July 1, 1981, and $250 per month"; and at the end of cl. (a), added "or who dies in the service after June 30, 1981".

Section 2 of P.A. 82-342 provided:

"The General Assembly finds that the changes made by this amendatory Act of 1981 relating to Articles 5 and 6 of the Illinois Pension Code accommodate a request from local governments or organizations thereof, and therefore reimbursement of local governments is not required of the State under the State Mandates Act, by reason of the exclusion specified in clause (1) of subsection (1) of Section 8 of that Act."

P.A. 84-1104, in the second paragraph, substituted "January 1, 1986, the minimum amount of widow's annuity shall be $325 per month for the following classes of widows", for "July 1, 1975 the minimum amount of widow's annuity shall be $175 per mon... July 1, 1975 to January 1, 1976 and $... month from January 1, 1976 to July ... and $250 per month thereafter for all ... hereinafter described"; inserted "of 198... ceding "(b)", inserted "and"; and in ... substituted "and does" for "who does".

P.A. 86-273, in the first paragraph, sub... ed "$200 per month, without regard to wh... the deceased policeman was in service on ... effective date of this amendatory Act of 1... for "$150 per month"; in the second pa... graph, substituted "1990" for "1986", "$400" ... "$325", "whether the deceased policeman ... in service on" for "the fact that the death of ... policeman occurred prior to" and "1989" ... "1985".

P.A. 87-849 inserted the paragraph increas... ing the minimum amount of a widow's annuity ... effective Jan. 1, 1992.

Library References

Municipal Corporations ⇐187(7).
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 588, 589.

5/5-167.5. Group health benefit

§ 5-167.5. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the

following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 5-167.5, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 5-167.5.

above 4% a year, to the extent necessary and available to finance the cost of such increases for the following year, shall be transferred each year beginning with the year 1969 to a fund account designated as the Supplementary Payment Reserve from the Interest and Investment Reserve set forth in Section 6-203.

If the money in the Supplementary Payment Reserve in any year arising from interest income above 4% a year as defined in this Section accruing in the preceding year; and the contributions by retired persons, are insufficient to make the total payments to all persons entitled to the annuity under this Section; and any investment earnings over 4% a year beginning with the year 1969 not previously used to finance such increases and transferred to the Prior Service Annuity Reserve, may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year. Such sums shall be transferred from the Prior Service Annuity Reserve. If the total money available in the Supplementary Payment Reserve from such sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the money available to the total of all the payments specified for that year shall be paid to each person for that year.

No part of any such increase under this Section is an obligation of the fund otherwise established under this Article 6.

Laws 1963, p. 161, § 6-164.1, added by P.A. 76-1163, § 1, eff. Aug. 29, 1969. Amended by P.A. 77-1496, § 1, eff. Sept. 8, 1971; P.A. 79-633, § 1, eff. Oct. 1, 1975; P.A. 82-971, § 1, eff. Sept. 8, 1982.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6-164.1.

Historical and Statutory Notes

P.A. 77-1496 substituted "2%" for "1½%" in the first and second sentences of the first paragraph.

P.A. 79-633 substituted "The provisions of the preceding paragraph of this Section apply" for "This Section applies" at the beginning of the second paragraph, inserted the third and fourth paragraphs, and in the fifth paragraph, substituted "the increases indicated in the preceding part of this Section" for "such increases".

P.A. 82-971, in the third paragraph, made the following substitutions: "in July, 1982" for "on July 1, 1975"; "1976" for "1967"; and "$400" for "$350.00 a month thereafter"; in the fourth paragraph, inserted "minimum"; substituted "specified in the preceding paragraph" for "of $350.00"; and following "6-128.1", inserted a comma.

For retroactive application of P.A. 82-971, see note following 40 ILCS 5/5-167.2.

5/6-164.2. Group health benefit

§ 6-164.2. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance

of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6-164.2.

Historical and Statutory Notes

P.A. 86-273 rewrote this section which, prior thereto, provided:

"(a) For the purposes of this Section:

"'Annuitant' means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.

"'Carrier' means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, the Medical Service Plan Act or the Voluntary Health Services Plan Act, which is authorized to do group health insurance business in Illinois.

"(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits.

"The group health insurance program may also include:

"(1) prepaid preventive health care through health maintenance organizations;

"(2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;

"(3) optional coverage for dependents of the annuitant;

"(4) other optional coverage, such as for dental, psychological, or optometric services.

"(c) The group contract shall be on terms deemed by the Board to be in the best interest of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.

"The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.

"(d) The Board shall pay the premiums for such health insurance for each annuitant with funds provided as follows:

"The basic monthly premium for each annuitant shall be contributed by the city from the tax levy prescribed in Section 6-165, up to a maximum of $55 per month if the annuitant is not qualified to receive medicare benefits, or up to a maximum of $21 per month if the annuitant is qualified to receive medicare benefits.

"If the basic monthly premium exceeds the maximum amount to be contributed by the city on his behalf, such excess shall be deducted by the Board from the annuitant's monthly annuity, unless the annuitant elects to terminate his coverage under this Section, which he may do at any time. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity."

Library References

Municipal Corporations ⇐220(6), 220(9).
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 722, 727.

5/8-164.1. Group health benefit

§ 8-164.1. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: $10 per month to each annuitant who is not qualified to receive medicare

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The payments described in this subsection shall be paid from the tax levy authorized under Section 8-189; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 8-164.1, added by P.A. 84-23, § 1, eff. July 18, 1985. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 8-164.1.

Historical and Statutory Notes

P.A. 86-273 rewrote the section which prior thereto, provided:

"Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The

Board, in conformity with its regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.

"As of the effective date the Board is authorized to make payments up to $25 per month for employee annuitants age 65 years or over with at least 15 years of service.

"If the monthly premium for such coverage exceeds the $25 per month maximum authorization, the difference between the required monthly premiums for such coverage and such maximum may be deducted from the employee annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate.

"Amounts contributed by the city as authorized under Section 8–189 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.

"The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970."

Library References

Municipal Corporations ⇐186(1), 187(2). WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 586, 588, 589.

5/8–165. Re-entry into service

§ 8–165. Re-entry into service. (a) When an employee receiving age and service or prior service annuity who has withdrawn from service after the effective date re-enters service before age 65, any annuity previously granted and any annuity fixed for his wife shall be cancelled. The employee shall be credited for annuity purposes with sums sufficient to provide annuities equal to those cancelled, as of their ages on the date of re-entry; provided, the maximum age of the wife for this purpose shall be as provided in Section 8–155 of this Article.

The sums so credited shall provide for annuities to be fixed and granted in the future. Contributions by the employees and the city for the purposes of this Article shall be made, and when the proper time arrives, as provided in this Article, new annuities based upon the total credit for annuity purposes and the entire term of his service shall be fixed for the employee and his wife.

If the employee's wife died before he re-entered service, no part of any credits for widow's or widow's prior service annuity at the time annuity for his wife was fixed shall be credited upon re-entry into service, and no such sums shall thereafter be used to provide such annuity.

(b) When an employee re-enters service after age 65, payments on account of any annuity previously granted shall be suspended during the time thereafter that he is in service, and when he again withdraws, annuity payments shall be resumed. If the employee dies in service, his widow shall receive the amount of annuity previously fixed for her.

Laws 1963, p. 161, § 8–165, eff. July 1, 1963. Amended by P.A. 81–1187, § 1, eff. Jan. 1, 1981; P.A. 81–1536, § 1, eff. Jan. 1, 1981.
Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 8–165.

Historical and Statutory Notes

P.A. 81–1187 inserted "or on behalf of" in the second paragraph of subd. (a).

P.A. 81–1536 in the second sentence of the second paragraph of subd. (a), following "Contributions by", deleted "or on behalf of".

Prior Laws:
Laws 1921, p. 203, § 34.
Laws 1935, p. 303, § 34.
Laws 1935, p. 303, § 38½, added by Laws 1949, p. 829, § 1.

ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 90-32
EFFECTIVE JUNE 27, 1997

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1981; and (b) the widow of a policeman who withdraws after 20 or more years of service and does not withdraw a refund, provided the widow is married to the policeman before he withdraws from the service.

"Effective January 1, 1992, the minimum amount of widow's annuity shall be $500 per month for the following classes of widows, without regard to whether the deceased policeman is in service on or after the effective date of P.A. 87-849: (1) the widow of a policeman who dies in service with at least 10 years of service credit, or who dies in service after June 30, 1981; and (2) the widow of a policeman who withdraws from service with 20 or more years of service credit and does not withdraw a refund, provided that the widow is married to the policeman before he withdraws from service.

"Effective January 1, 1993, the minimum amount of widow's annuity shall be $600 per month for the following classes of widows, without regard to whether the deceased policeman is in service on or after the effective date of this amendatory Act of 1993: (1) the widow of a policeman who dies in service with at least 10 years of service credit, or who dies in service after June 30, 1981; and (2) the widow of a policeman who withdraws from service with 20 or more years of service credit and does not withdraw a refund, provided that the widow is married to the policeman before he withdraws from service.";

Inserted subsec. (a); and inserted subsection designations for the former fifth and sixth paragraphs.

P.A. 90-766, in subsec. (a), added the second paragraph.

5/5-167.5. Group health benefit

§ 5-167.5. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity, under Article 5, 6, 8 or 11,[1] by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents through June 30, 2002. The basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan) shall cease to be a plan offered by the city, except as specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer additional plans for any annuitant. The city may amend, modify, or terminate any of its additional plans at its sole discretion. If the city offers more than one annuitant plan, the city shall allow annuitants to convert coverage from one city annuitant plan to another, except the basic city plan, during times designated by the city, which periods of time shall occur at least annually. For the period dating from the effective date of this amendatory Act of 1997 through June 30, 2002, monthly premium rates may be increased for annuitants during the time of their participation in non-Medicare plans, except as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall not exceed the highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the rate in effect on December 1, 1996, with monthly premium increases to take effect no sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1, 1998 may remain in the basic city plan, if they so choose, on the condition that they are not entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

(d) From January 1, 1998 until June 30, 2002, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans, the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (h). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (h).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90-32, § 5, eff. June 27, 1997.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 5-167.5.

1 40 ILCS 5/5-101 et seq., 5/6-101 et seq., 5/8-101 et seq., or 5/11-101 et seq.

January of the year following the year he attains the age of 65, or in January, 1970, if he is then over age 65, his then fixed and payable monthly annuity increased by an amount equal to 2% of the original grant of annuity, for each year he received annuity payments after the year in which he attains age 65. An additional 2% increase in such fixed and payable original granted annuity shall accrue in each January thereafter.

However, beginning January 1, 1996, the increases payable under this subsection (a) to a fireman born before January 1, 1945 shall be at the rate of 3% of the originally granted annuity amount, notwithstanding that the fireman terminated service prior to the effective date of this amendatory Act of 1995.

(b) The provisions of subsection (a) of this Section apply only to a retired fireman eligible for such increases in his annuity if he contributed to the fund a sum equal to 1% of the final average monthly salary used in the computation of the annuity for each full year of credited service upon which his annuity was computed. All such sums contributed shall be placed in a Supplementary Payment Reserve and used for the purposes of such fund account.

(c) Beginning with the monthly annuity payment due in July, 1982, the monthly annuity payment for any fireman who retired from the service before September 1, 1976 at age 50 or over with 20 or more years of service or who was granted duty disability benefits prior to September 1, 1957 and entitled to an annuity or duty disability benefits on July 1, 1975 shall be not less than $400.

(d) The difference in amount between the minimum monthly annuity specified in subsection (c) and the minimum monthly annuity to which the fireman was entitled before July 1, 1975, in accordance with the provisions of Section 6–128.1, shall be paid as a supplement in the manner set forth in subsection (a).

(e) To defray the annual cost of the increases indicated in the preceding part of this Section, the annual income accruing from investments held by this fund, above 4% a year, to the extent necessary and available to finance the cost of such increases for the following year, shall be transferred each year beginning with the year 1969 to a fund account designated as the Supplementary Payment Reserve from the Interest and Investment Reserve set forth in Section 6–203.

If the money in the Supplementary Payment Reserve in any year arising from interest income above 4% a year as defined in this Section accruing in the preceding year, and the contributions by retired persons, are insufficient to make the total payments to all persons entitled to the annuity under this Section, and any investment earnings over 4% a year beginning with the year 1969 not previously used to finance such increases and transferred to the Prior Service Annuity Reserve, may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year. Such sums shall be transferred from the Prior Service Annuity Reserve. If the total money available in the Supplementary Payment Reserve from such sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the money available to the total of all the payments specified for that year shall be paid to each person for that year.

No part of any such increase under this Section is an obligation of the fund otherwise established under this Article 6.

Amended by P.A. 89–136, § 15, eff. July 14, 1995.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6–164.1.

Historical and Statutory Notes

P.A. 89–136 inserted the section heading; designated the subsections; in subsec. (a), in the first paragraph, in the first sentence, inserted "on or"; added the second paragraph; in subsec. (b), in the first sentence, substituted "subsection (a)" for "the preceding paragraph"; and in subsec. (d), substituted "subsection (c)" for "the preceding paragraph" and "subsection (e)" for "the immediately following paragraph".

5/6–164.2. Group health benefit

§ 6–164.2. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or

a minimum annuity, under Article 5, 6, 8 or 11,[1] by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents through June 30, 2002. The basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan) shall cease to be a plan offered by the city, except as specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer additional plans for any annuitant. The city may amend, modify, or terminate any of its additional plans at its sole discretion. If the city offers more than one annuitant plan, the city shall allow annuitants to convert coverage from one city annuitant plan to another, except the basic city plan, during times designated by the city, which periods of time shall occur at least annually. For the period dating from the effective date of this amendatory Act of 1997 through June 30, 2002, monthly premium rates may be increased for annuitants during the time of their participation in non-Medicare plans, except as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall not exceed the highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the rate in effect on December 1, 1996, with monthly premium increases to take effect no sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the Basic city plan as of July 1, 1998 may remain in the basic city plan, if they so choose, on the condition that they are not entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

(d) From January 1, 1998 until June 30, 2002, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans, the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6–165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year, plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90–32, § 5, eff. June 27, 1997.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6–164.2.

[1] 40 ILCS 5/6–101 et seq., 5/6–101 et seq., 5/6–101 et seq. or 5/11–101 et seq.

Historical and Statutory Notes

P.A. 90–32 rewrote this section, which prior thereto read:

"Group health benefit. (a) For the purposes of this Section, 'annuitant' means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, 'the city').

"(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

"(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

"(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

"For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

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he period January 1, 1988 through the date of this amendatory Act of 1989, under this Section shall be reduced by the paid by or on behalf of the board's annuitants during that period.

"The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

"(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

"(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

"(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

"If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

"(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g)."

Notes of Decisions

Construction with other law 1

1. Construction with other law

City did not engage in "any kind of insurance or surety business" so as to entitle attorney for class of annuitant intervenors to award of fees under Illinois Insurance Code where Pension Code requiring city to contribute specified amount for annuitants' health care coverage focused upon governmental purpose and plainly did not place the city in the insurance business as contemplated by the Insurance Code. City of Chicago v. Korshak, App. 1 Dist.1995, 213 Ill.Dec. 144, 276 Ill.App.3d 597, 658 N.E.2d 1165, rehearing denied, appeal denied 217 Ill.Dec. 663, 167 Ill.2d 551, 667 N.E.2d 1056.

5/6-165. Financing; tax

§ 6-165. Financing; tax.

(a) Except as expressly provided in this Section, each city shall levy a tax annually upon all taxable property therein for the purpose of providing revenue for the fund. For the years prior to the year 1960, the tax rate shall be as provided for in the "Firemen's Annuity and Benefit Fund of the Illinois Municipal Code". The tax, from and after January 1, 1968 to and including the year 1971, shall not exceed .0863% of the value, as equalized or assessed by the Department of Revenue, of all taxable property in the city. Beginning with the year 1972 and each year thereafter the city shall levy a tax annually at a rate on the dollar of the value, as equalized or assessed by the Department of Revenue of all taxable property within such city that will produce, when extended, not to exceed an amount equal to the total amount of contributions by the employees to the fund made in the calendar year 2 years prior to the year for which the annual applicable tax is levied, multiplied by 2.23 through the calendar year 1981, and by 2.26 for the year 1982 and for each year thereafter.

To provide revenue for the ordinary death benefit established by Section 6-150 of this Article, in addition to the contributions by the firemen for this purpose, the city council shall for the year 1962 and each year thereafter annually levy a tax, which shall be in addition to and exclusive of the taxes authorized to be levied under the foregoing provisions of this Section, upon all taxable property in the city, as equalized or assessed by the Department of Revenue, at such rate per cent of the value of such property as shall be sufficient to produce for each year the sum of $142,000.

(2) For the family of an employee whose death is the result of any cause other than injury incurred in the performance of duty, in which the combined annuities for the family exceed 60% of the employee's final monthly salary, the annuity for each child shall be reduced pro rata so that the combined annuities for the family shall not exceed such limitation.

(3) The increase in child's annuity provided by this amendatory Act of 1997 shall apply to all child's annuities being paid on or after the effective date of this amendatory Act of 1997. The limitations on the combined annuities for a family in parts (1) and (2) of this Section do not apply to families of employees who died before the effective date of this amendatory Act of 1997.

(4) The amendments to parts (1) and (2) of this Section made by Public Act 84-1472 (eliminating the further limitation that the monthly combined family amount shall not exceed $500 plus 10% of the employee's final monthly salary) shall apply in the case of every qualifying child whose employee parent dies in the service or enters on annuity on or after January 28, 1987.

Amended by P.A. 90-32, § 5, eff. June 27, 1997; P.A. 90-511, § 2, eff. Aug. 22, 1997.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 8-159.

Historical and Statutory Notes

The amendments by P.A. 90-32 and P.A. 90-511, which were identical, in the introductory paragraph, substituted "on the effective date of this amendatory Act of 1997" for "January 1, 1988", "$220" for "$120", and "$250" for "$150"; in subpar. (3), in the first sentence, substituted "1997" for "1987" and "the effective date of this amendatory Act of 1997." for "January 1, 1988, subject to"; in the second sentence, deleted "above" preceding "limitations" and added "in parts (1) and (2) of this Section do not apply to families of employees who died before the effective date of this amendatory Act of 1997".

5/8-160. Duty disability benefit—Child's disability benefit

Cross References

Early retirement incentive, see 40 ILCS 5/8-138.1.

5/8-161. Ordinary disability benefit

Cross References

Early retirement incentive, see 40 ILCS 5/8-138.1.

5/8-164.1. Group health benefit

§ 8-164.1. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents through June 30, 2002. The basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan) shall cease to be a plan offered by the city, except as specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer additional plans for any annuitant. The city may amend, modify, or terminate any of its additional plans at its sole discretion. If the city offers more than one annuitant plan, the city shall allow annuitants to convert coverage from one city annuitant plan to another, except the

basic city plan, during times designated by the city, which periods of time shall occur at least annually. For the period dating from the effective date of this amendatory Act of 1997 through June 30, 2002, monthly premium rates may be increased for annuitants during the time of their participation in non-Medicare plans, except as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall not exceed the highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the rate in effect on December 1, 1996, with monthly premium increases to take effect no sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1, 1998 may remain in the basic city plan, if they so choose, on the condition that they are not entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

(d) From January 1, 1993 until June 30, 2002, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: $10 per month to each annuitant who is not qualified to receive medicare benefits; and $14 per month to each annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 8-189; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

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(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan, pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90-32, § 5, eff. June 27, 1997.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 8-164.1.

40 ILCS 5/5-101 et seq., 5/8-101 et seq., 5/8-101 et seq. or 5/11-101 et seq.

Historical and Statutory Notes

P.A. 90-32 rewrote this section which prior thereto read:

"Group health benefit. (a) For the purposes of this Section, 'annuitant' means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, 'the city').

"(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

"(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

"(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of $75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of $45 per month for each such annuitant who is qualified to receive medicare benefits.

"For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

"Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: $10 per month to each annuitant who is not qualified to receive medicare benefits, and $14 per month to each annuitant who is qualified to receive medicare benefits.

"The payments described by this subsection shall be paid from the tax levy authorized under Section 8-169; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

"(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

"(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 3 of Article XIII of the Illinois Constitution of 1970.

"(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

"If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the Independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

"(h) An annuitant may elect to terminate coverage for a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g)."

Notes of Decisions

Construction with other law 1

1. Construction with other law

City did not engage in "any kind of insurance or surety business" so as to entitle attorney for class of annuitant intervenors to award of fees under Illinois Insurance Code where Pension Code requiring city to contribute specified amount for annuitants' health care coverage focused upon governmental purpose and plainly did not place the city in the insurance business as contemplated by the Insurance Code. City of Chicago v. Korshak, App. 1 Dist.1995, 213 Ill.Dec. 144, 276 Ill.App.3d 597, 658 N.E.2d 1163, rehearing denied, appeal denied 217 Ill.Dec. 663, 167 Ill.2d 551, 667 N.E.2d 1056.

5/8-165. Re-entry into service

Cross References

Early retirement incentive, see 40 ILCS 5/8-138.1.

5/8-173. Financing; tax levy

5/8-173. Financing; tax levy.

(a) Except as provided in subsection (f) of this Section, the city council of the city shall levy a tax annually upon all taxable property in the city at a rate that will produce a sum which, when added to the amounts deducted from the salaries of the employees or otherwise contributed by them and the amounts deposited under subsection (f), will be sufficient for the requirements of this Article, but which when extended will produce an amount not to exceed the greater of the following: (a) the sum obtained by the levy of a tax of.1098% of the value, as equalized or assessed by the Department of Revenue, of all taxable property within such city, or (b) the sum of $12,000,000. However any city in which a Fund has been established and in operation under this Article for more than 3 years prior to 1970 shall levy for the year 1970 a tax at a rate on the dollar of assessed valuation of all taxable property that will produce, when extended, an amount not to exceed 1.2 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar year 1968, and, for the year 1971 and 1972 such levy that will produce, when extended, an amount not to exceed 1.3 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar years 1969 and 1970, respectively; and for the year 1973 an amount not to

11TH SECTION of Level 1 printed in FULL format.

*** THIS SECTION IS CURRENT THROUGH PUBLIC ACT 91-712 ***
*** ANNOTATIONS CURRENT THROUGH 721 N.E.2d 1118 ***

CHAPTER 40. PENSIONS
ILLINOIS PENSION CODE
:CLE 11. LABORERS' AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT FUND
-- CITIES OVER 500,000 INHABITANTS

40 ILCS 5/11-160.1 (2000)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 108 1/2, para. 11-160.1]

) ILCS 5/11-160.1. Group health benefit

Sec. 11-160.1. Group health benefit. (a) For the purposes of this Section: "annuitant" means a person receiving an age and service annuity, a prior ...ice annuity, a widow's annuity, a widow's prior service annuity, or a ...mum annuity, under Article 5, 6, 8 or 11, by reason of previous employment the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare ... annuitant" means an annuitant described in item (1) who is eligible for ...icare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant ...cribed in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their ...gible dependents through June 30, 2002. The basic city health care plan ...ilable as of June 30, 1988 (hereinafter called the basic city plan) shall ... to be a plan offered by the city, except as specified in subparagraphs (4) ... below, and shall be closed to new enrollment or transfer of coverage for ...-Medicare Plan annuitant as of the effective date of this amendatory Act ...997. The city shall offer non-Medicare Plan annuitants and their eligible ...endents the option of enrolling in its Annuitant Preferred Provider Plan and ... offer additional plans for any annuitant. The city may amend, modify, or ...minate any of its additional plans at its sole discretion. If the city offers ... than one annuitant plan, the city shall allow annuitants to convert ...erage from one city annuitant plan to another, except the basic city plan, ...ing times designated by the city, which periods of time shall occur at least ...ually. For the period dating from the effective date of this amendatory Act 1997 through June 30, 2002, monthly premium rates may be increased for ...uitants during the time of their participation in non-Medicare plans, except ...provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, ... annuitant's share of monthly premium for non-Medicare Plan coverage only ...ll not exceed the highest premium rate chargeable under any city non-Medicare ... annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, ... annuitant's share of monthly premium for non-Medicare Plan coverage only ...ll be the rate in effect on December 1, 1996, with monthly premium increases ...take effect no sooner than April 1, 1998 at the lower of (i) the premium

determined pursuant to subsection (g) or (ii) 10% of the immediately ious month's rate for similar coverage.

In no event shall any non-Medicare Plan annuitant's share of monthly m for non-Medicare Plan coverage exceed 10% of the annuitant's monthly ity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as July 1, 1998 may remain in the basic city plan, if they so choose, on the dition that they are not entitled to the caps on rates set forth in paragraphs (1) through (3), and their premium rate shall be the rate ermined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city n for Medicare eligible annuitants may remain in that plan, if they so ose, through June 30, 2002. Annuitants shall not be allowed to enroll in or nsfer into the basic city plan for Medicare eligible annuitants on or after y 1, 1999. The city shall continue to offer annuitants a supplemental dicare Plan for Medicare eligible annuitants through June 30, 2002, and the y may offer additional plans to Medicare eligible annuitants in its sole cretion. All Medicare Plan annuitant monthly rates shall be determined in ordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whever is applicable, as determined in accordance with subsection (g), of nuitants and their dependents under all health care plans offered by the city. city may reduce its obligation by application of price reductions obtained n result of financial arrangements with providers or plan administrators.

(d) From January 1, 1993 until June 30, 2002, the board shall pay to the city behalf of each of the board's annuitants who chooses to participate in any of ity's plans the following amounts: up to a maximum of $75 per month for ch annuitant who is not qualified to receive medicare benefits, and up to mum of $45 per month for each such annuitant who is qualified to receive dicare benefits.

The payments described in this subsection shall be paid from the tax levy thorized under Section 11-178 [40 ILCS 5/11-178]; such amounts shall be dited to the reserve for group hospital care and group medical and surgical n benefits, and all payments to the city required under this subsection shall charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on e 30, 2002, except with regard to covered expenses incurred but not paid as that date. This subsection shall not affect other obligations that may be posed by law.

(f) The group coverage plans described in this Section are not and shall not construed to be pension or retirement benefits for purposes of Section 5 of ticle XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of ims, as reflected in the claim records of the plan administrator, shall be timated by the city, based upon a written determination by a qualified dependent actuary to be appointed and paid by the city and the board. If the

imated annual cost for each annuitant plan offered by the city is more than estimated amount to be contributed by the city for that plan pursuant to tions (b) and (c) during that year plus the estimated amounts to be paid nt to subsection (d) and by the other pension boards on behalf of other ...cipating annuitants, the difference shall be paid by all annuitants ticipating in the plan, except as provided in subsection (b). The city, based on the determination of the independent actuary, shall set the monthly amounts be paid by the participating annuitants. The board may deduct the amounts to paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience 's, that the total amount paid by all participating annuitants was more or s than the difference between (1) the cost of providing the group health care ns, and (2) the sum of the amount to be paid by the city as determined under ...section (c) and the amounts paid by all the pension boards, then the 'ependent actuary and the city shall account for the excess or shortfall in next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any th, which election shall terminate the annuitant's obligation to contribute ard payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for lth care at least 75 days prior to the effective date of the change, and any rease shall be prospective only.

'TORY:
rce; P.A. 86-273; 90-32, @ 5.

'ES:
'E.
This section was Ill.Rev.Stat., Ch. 108 1/2, para. 11-160.1.

OF AMENDMENTS.
The 1997 amendment by P.A. 90-32, effective June 27, 1997, added the division (a)(1) designation; in subdivision (a)(1) deleted "on or after uary 1, 1988" preceding "under Article 5"; added subdivisions (a)(2) and (3)"; rewrote subsections (b) and (c); in subsection (d), in the first agraph, deleted the former first sentence regarding payments from January 1, 8 until December 31, 1992 and substituted "June 30,2002" for "December 31, 7" and deleted the former second paragraph which read "For the period January 1988 through the effective date of this amendatory Act of 1989, payments er this Section shall be reduced by the amounts paid by or on behalf of the rd's annuitants covered during that period"; in subsection (e) substituted ne 30, 2002" for "December 31, 1997"; rewrote subsection (g); in subsection substituted "the end of any month" for "any time"; and added subsection (i).

E NOTES

'Y NOT INSURER.
The Illinois Pension Code, which specifically provides that a city must tribute a specified amount for an annuitant's health care coverage, focuses n a governmental purpose and plainly does not place the city in the insurance iness as contemplated by the Code. City of Chicago v. Korshack, 276 Ill. App. 597, 213 Ill. Dec. 144, 658 N.E.2d 1165 (1 Dist. 1995), appeal denied, 167

ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 93-42
EFFECTIVE JULY 1, 2003

5/11–160.1. Payments to city

§ 11–160.1. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) From July 1, 2008 through June 30, 2013, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 11–169; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 11–160.1, added by P.A. 84–159, § 1, eff. Aug. 16, 1985. Amended by P.A. 86–278, § 1, eff. Aug. 23, 1989; P.A. 90–32, § 5, eff. June 27, 1997; P.A. 92–599, § 10, eff. June 28, 2002; P.A. 93–42, § 5, eff. July 1, 2003.

Formerly Ill.Rev.Stat.1991, ch. 108 2/3, ¶ 11–160.1.

5/5–167.5. Payments to city

§ 5–167.5. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) From July 1, 2008 through June 30, 2013, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5–168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 5–167.5, added by P.A. 82–1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86–273, § 1, eff. Aug. 23, 1989; P.A. 90–32, § 5, eff. June 27, 1997; P.A. 92–599, § 10, eff. June 28, 2002; P.A. 93–42, § 5, eff. July 1, 2003.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 5–167.5.

5/6-164.2. Payments to city

§ 6-164.2. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

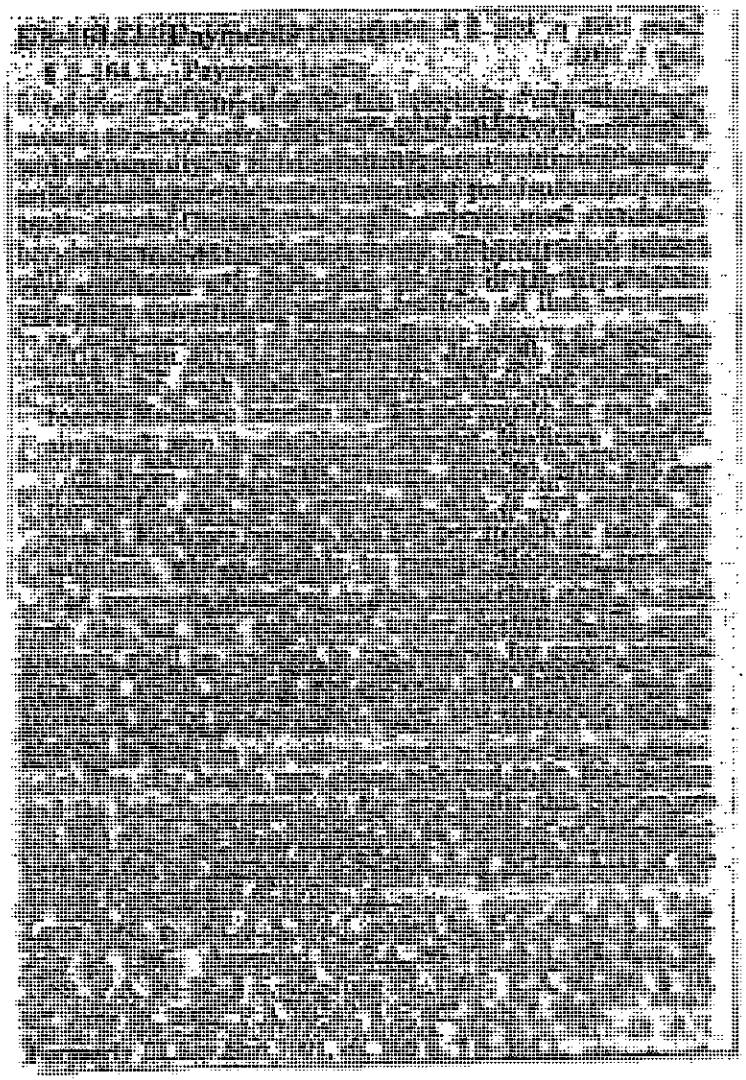
(2) From July 1, 2008 through June 30, 2013, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989; P.A. 90-32, § 5, eff. June 27, 1997; P.A. 92-599, § 10, eff. June 28, 2002; P.A. 93-42, § 5, eff. July 1, 2003.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6-164.2.



40 ILCS 5/5-167.5) (from Ch. 108 1/2, par. 5-167.5)

Sec. 5-167.5. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)

(40 ILCS 5/6-164.2) (from Ch. 108 1/2, par. 6-164.2)

Sec. 6-164.2. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)

(40 ILCS 5/11-160.1) (from Ch. 108 1/2, par. 11-160.1)

Sec. 11-160.1. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, $85 per month for each such annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, $95 per month for each such annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 11-169; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)

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

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 338 other Named Plaintiffs listed in Exhibit 1 to Complaint, Plaintiffs,

v.

CITY OF CHICAGO, a Municipal Corporation,
Defendant,

and

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

Defendants.

No. 13-CH-17450
Cal. 2

NOTICE OF INTERLOCUTORY APPEAL

Please take notice that Petitioner-Appellant Michael W. Underwood, et al., hereby appeals to the Appellate Court of Illinois, First District (an Interlocutory Appeal as of Right), the December 23, 2015 Order of the Circuit Court, Cook County, Illinois, Chancery Division, entered on December 24, 2015, denying plaintiffs' motion for a Preliminary Injunction to enjoin the City from raising rates for Retiree/Annuitant Health Benefits, *pendente lite.*

Date: December 29, 2015

By: s/Kenneth T. Goldstein
Attorney for Plaintiff

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Kenneth T. Goldstein
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CERTIFICATE OF SERVICE

I, Kenneth T. Goldstein, an attorney, state that on December 29, 2015, I caused a copy of the foregoing Notice of Interlocutory Appeal, to be served upon the parties listed below on the Service List, via E-Mail and/or U.S. Mail, postage prepaid and properly addressed, by depositing same in the mailbox located at 20 N. Wacker Drive, Chicago, Illinois.

s/ Kenneth T. Goldstein

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EXHIBIT 2

No. 15- 2183
IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

CITY OF CHICAGO, a municipal corporation,
Plaintiff-Counterdefendant-Appellee,

v.

MARSHALL KORSHAK, et al.

(Police, Fire, Municipal and Laborers Funds Trustees)
Defendants-Counterplaintiffs-Appellees

and

MARTIN RYAN, et al.

(Participants Class)
Intervening-Plaintiffs-Appellants.

Appeal From
the Circuit Court of
Cook County
Chancery Division

No. 01 CH 4962
(Originally
87CH10134)

Calendar No. 5
Hon. Judge Neil H.
Cohen

Notice of Appeal
filed: 7/31/15

APPELLANTS' BRIEF

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(312) 606-0500

ORAL ARGUMENT IS REQUESTED

POINTS AND AUTHORITIES

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Introductory Statement

In this long-running retiree healthcare litigation, the City of Chicago unilaterally declared that it was extending the coverage and benefits of the 2003 Settlement (specifically allocating healthcare cost among the City, the Retirement Funds, and the participants, with an audit and reconciliation provision) beyond the Settlement's June 30, 2013 expiration, and through the end of the 2013 Plan Year, but then refused to comply with the Agreements' obligations to audit and reconcile the retiree health care charges for the second half of 2013.

Despite the Agreements' provisions explicitly retaining jurisdiction to interpret and enforce (which themselves are a term and benefit of the settlement), the Circuit Court on July 1, 2015 denied Class Counsel's motion to enforce, and granted the City's motion to strike and dismiss, declaring that it lacked jurisdiction, because the Agreement's term had been reached.

In short, the retiree healthcare participants are entitled to be accurately charged.

Issue Presented

Whether the Settlement Agreement and Reconciliation Orders' retention of jurisdiction provisions provided jurisdiction for the Circuit Court to enforce the audit and reconciliation provisions of the 2008 Order, based upon the City's unilateral extension of the Settlement's coverage and benefits?

Jurisdiction

Pursuant to Illinois Supreme Court Rule 301, Plaintiff-Appellant appeals to the Appellate Court of Illinois, First District, from the Memorandum and Order Entered on July 1, 2015, (A1, C187) and final judgment of the Circuit Court, Cook County, Illinois,

Chancery Division, entered on July 14, 2015 (C190). Pursuant to Illinois Supreme Court Rule 303, Plaintiff-Appellant timely filed a Notice of Appeal on July 31, 2015. A4, C191.

Statement of Facts

A. Audit and Refund Requested

As relevant to this appeal, Class Counsel for the two certified classes of retirees, Korshak (pre-1988 retirees) and Window (post 1987 -pre August 23, 1989 retirees) classes, seeks to enforce and obtain relief under the 2003 Settlement Agreement, C4, C14, Ex. 1, and the October 1, 2008 Agreed Order to Approve Reconciliation and Administrative Procedures Order ("Reconciliation Order"), which by its own terms apply to audit a *plan year*, C30, Ex. 2, p.5, and in which benefits were further explicitly reiterated and extended by the City's May 15, 2013 letter (C42, Ex.3) through the end of 2013.

B. Background

This action was originally filed as case number 87 CH 10134, brought by the City of Chicago ("the City") to determine its obligation to provide health benefits to annuitants of the four City Annuity and Benefit Funds: Police, Firemen, Municipal Employees and Officers, and Laborers (collectively, "the Funds").

Following a trial in June 1988, an original interim ten-year settlement between the City and the Funds' trustees was approved over the participant class' objection, albeit subject to the participants' explicit rights to revive the litigation if no permanent resolution was reached by the end of 1997. (The first "Korshak" Settlement; *City v. Korshak*, 206 Ill. App. 3d 968 (1st Dist. 1990)) *PLA denied*, 139 Ill. 2d 594 (1991), Cert. *denied*, 503 U.S. 918. Since no permanent resolution had been reached by the end of 1997, Class Counsel, Krislov, sought and ultimately obtained the Appellate Court's Order reviving the

participants claim to lifetime coverage. A12, *Ryan v. City of Chicago and Korshak* (June 15, 2000). Thereafter, the case was restored, and negotiations mediated by Circuit Judge Lester Foreman eventually resulted in the 2003 Settlement Agreement. C14, Ex. 1, as approved and entered by the Circuit Court on June 16, 2003, covering a Class "consisting of: all [then] current annuitants of the Funds, who are receiving an annuity based on City Service and who are enrolled in City healthcare plans, and their eligible dependents; and all current and former City employees who will become one of the Funds' Future Annuitants on or before June 30, 2013, and their eligible dependents." C14, Ex. 1, Settlement Agreement at II.H. The Settlement Period in this case began July 1, 2003 and lapsed June 30, 2013. C14, Ex. 1, Settlement Agreement II.J.

C. The Settlement Terms

The 2003 Settlement Agreement, in relevant part, provides that during the Settlement Period, the City will make healthcare coverage available to all Class Members and the City will pay *at least* the following percentages of Defined Costs[1:]

A. 55% of the Defined Costs of that coverage for all Class Members: (1) who are annuitants of the Funds based on City Service as of the effective date of the Settlement Agreement and their eligible dependents; or (2) who becomes Future Annuitants on or before June 30, 2005, and their eligible dependents.

B. 50% of the Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 20 or more Years of City Service, and their eligible dependents.

C. 45% of the aggregate Defined Costs of that coverage, for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 15 to 19 Years of City Service, and their eligible dependents.

[1] C14, Ex 1, Settlement Agreement, IV. A.

D. 40% of the aggregate Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 10 to 14 Years of City Service, and their eligible dependents.

E. 0% of the aggregate Defined Costs of that coverage for all Class Members who leave the employ of the City after June 30, 2005, and before June 30, 2013, and who have less than 10 Years of City Service. These persons may participate in the City's Settlement Healthcare Plans, but at their own cost.

However, it turned out that the estimation on which the City prospectively set rates to annuitants was much higher than the actual costs were for each and every year of the settlement period.

D. Reconciliation Audit and Refund Order

In monitoring the Settlement's operation, Class Counsel discovered that the (Segal) projections used to set retirees healthcare rates had substantially overestimated the costs, meaning that the charges imposed on participants were substantially greater than their share of the actual costs experienced, such that the City had actually paid less than the applicable "at least" percentage of actual Defined Costs.

Following negotiations between the parties, the court, on October 1, 2008, entered an Agreed Order to Approve Reconciliation and Administrative Procedures Under the 2003 Approved Settlement Agreement, R.30, Ex. 2, providing an annual audit and reconciliation of each year's charges to the costs actually experienced, and the appropriate allocation of healthcare costs between the City and the annuitant/participants.

The results of this process have been substantial. Over the course of the ten year, 2003 settlement period through June 30, 2013, the Audit and Reconciliation process (every year) resulted in identifying and refunding to participants – more than $50 million ($50,437,665) in overcharged premiums, (C8) including the first six months of 2013:

Reconciliation Year	City's Overcharges Refund To Retiree Healthcare Participant Annuitants
Settlement -2005	$10,152,289
2006	$2,652,584
2007	$1,466,381
2008	$5,775,483
2009	$4,775,545
2010	$7,285,910
2011	$9,779,423
2012	$5,443,117
6 Months, January to June 2013	$3,216,933
Total Refunds Through June, 2013	**$50,547,665**

The Reconciliation Order thus *is* a substantial benefit term under the Settlement, ensuring charge accuracy, and correction of overcharges. The audit determines the correct healthcare cost shares assessed to retiree/annuitants, and in the process has *returned* tens of millions of dollars over the projected rate to retiree/annuitants who have been overcharged. The periodic/yearly audit, reconciliation and refund is thus a major benefit of the Settlement. C44, Ex. 4 Reconciliation for Post-2005 Plan Years.

E. The City's Declaration Extending The Settlement's Benefits To 12/31/2013.

On May 15, 2013, the City wrote all of the participant class members, and unilaterally announced it was continuing the coverage and benefits under the Settlement Agreement going forward through December 31, 2013, allowing retirees to maintain coverage "for a *full plan year*." The City's letter, C42, Ex. 3, by then-City Comptroller, Amer Ahmad,[2] declared:

[2] Petzler, Cleveland.com, December 14, 2014 ("A federal judge has sentenced disgraced ex-Ohio Deputy Treasurer Amer Ahmad to 15 years in prison for his role in a kickback scheme") after being a fugitive Ahmad is now serving his sentence. http://www.cleveland.com/open/index.ssf/2014/12/amer_ahmad_sentenced_to_15_yea.html).

> After reviewing the findings of the report, and after hearing many of the concerns expressed by retirees, employee representatives and industry experts, the City has decided the following:
>
> The City will extend current coverage and benefit levels through December 31, 2013. This additional time will allow retirees to maintain coverage for a full plan year…"

C43.

Subsequently, in the 2013 audit and reconciliation, the City submitted only the data for the first six months of 2013, asserting that it was not required to submit the post-June 30, 2013 expenditures to the audit and reconciliation process. (C54, Ex. 5, Emails between Class Counsel Krislov and City Attorney Jennifer Naber, in which Class Counsel Krislov requested the City to subject the 2d-half-2013 expenditures to the audit and reconciliation process, Ms. Naber's advice that the City refused, and Mr. Krislov's approval to send out the reconciliation refunds for the first half, while reserving the right to bring the matter before the court on the post-6/30/2013 charges.)

This first 6 months of 2013 alone showed overcharges of $3,216,933 and reconciliation refund checks for that period were issued on or about February 2, 2015. Despite the announcement to maintain "coverage and benefit levels through December 31, 2013," for a full plan year, the City refused to provide an audit, reconciliation and refund for the time period of June through December 31, 2013.

Based on the fact that the Settlement audit and reconciliation process produced millions of dollars in every single year ($3 million for just the first half of 2013), there is every reason to believe that an actual computation of the actual costs for the last half of 2013 will similarly result in millions in additional overcharge refunds to annuitants.

F. Motion For Audit And Reconciliation For The Rest Of 2013 – Relief Requested.

On multiple occasions, Class Counsel requested the City provide the relief requested, an audit, reconciliation and refund. Despite Class Counsel's requests, the City refused to audit and reconcile the second half of 2013 benefits due the retiree/annuitant class. C54.

Accordingly, Class Counsel requested relief to require the City to audit and reconcile the last half of 2013, since the benefits of the Korshak settlement, the Reconciliation Order, which the City agreed to provide for each Plan Year, and which the City also reiterated that extended for a "full plan year" to the end of 2013, includes an audit, reconciliation, and refund and may account to several million dollars in refund overpayments.

G. The Circuit Court Retained Jurisdiction was Itself an Important Benefit Of The Settlement Agreement and Reconciliation Order.

The Reconciliation Order, (as did the Settlement Agreement), expressly provides that "The Court retains jurisdiction relating to the enforcement of this Order, only upon petition from the City or Counsel for one of the Funds or Counsel for the Subclasses." C30, Ex. 2, p. 11 (C40).

Similarly, the Settlement Agreement provides the Circuit Court "retains jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Agreement," upon petition from the City or counsel for one of the Funds or counsel for intervenor Korshak or Window Classes (i.e. Krislov & Associates, Ltd.) C14, Ex. 1 Settlement Agreement, V.B.7, p. 13 (C27).

H. The Circuit Court Dismissal

The Circuit Court's dismissal as lacking jurisdiction wrongly rested solely on the Settlement's June 30, 2013 term. The Court stated, the Settlement Agreement terminated June 30, 2013 and cited that on June 16, 2003, the court approved the settlement and dismissed the case with prejudice, noting "[j]urisidction was retained for the sole purpose of enforcing the Settlement Agreement." A1-2, C188.

The Court further stated that with the entering of an Agreed Order, on October 1, 2008, providing for "Reconciliation Procedures" through the end of the Settlement Agreement, "the court retained jurisdiction for enforcement of the Agreed Order." A1-2, C188. But, then the Court held that at the conclusion of the Settlement Agreement in July 2013, when the Plaintiffs, sought to "reactivate" the case, the court found the case had been dismissed with prejudice with the expiration of the Settlement Agreement, "even though the class members had reserved the right to reassert certain claims after the expiration of the Settlement Agreement." A1-2, C187-188.

Thus, the court dismissed the case, and denied the motion at issue, viewing it as not one for "enforcement" of terms of the Settlement Agreement, A1-2, C188, and characterizing it as Class Counsel seeking to "impose new obligations on the City which were not part of the Settlement Agreement." A1-2, C188.

Summary of the Argument

Participants are entitled to an audit and reconciliation of the retiree healthcare charges for the last half of 2013 because: 1) the Settlement Agreement explicitly imposes it for "a plan year", 2) the City extended it, and the retirees have a right to accurate charges especially in light of every prior years' overcharges, and 3) the court's holding that it

lacked jurisdiction ignored both the Agreements' provisions and the court's inherent authority.

Argument

I. The Court is required to review this issue de novo, and liberally in favor of the Retirees.

We begin in context with the Supreme Court's declaration in *Kanerva v. Weems*, 2014 IL 115811, ¶ 55 that retirees' health benefits are pension rights that must be liberally construed in favor of the rights of the pensioner as protected by our Constitution's pension protection clause. The Court below incorrectly read the Settlement and the extension letter narrowly, and concluded that the letter did not extend the settlement, and the City could not unilaterally amend, modify or supplement the Settlement.

The issue here involves the interpretation (administration, implementation, effectuation, and enforcement) of the Settlement Agreement and Reconciliation Order. "Contract interpretation is a question of law, to be reviewed *de novo* on appeal." *Cambridge Eng'g, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 450 (2007), citing, *K's Merchandise Mart, Inc. v. Northgate Ltd. Partnership*, 359 Ill. App. 3d 1137, 1142 (2005). "In doing so, the court seeks to determine and give effect to the parties' intent, as evidenced by the language of the contract itself." *Cambridge Eng'g, Inc.*, 378 Ill. App. 3d at 450.

The audit and reconciliation process is a benefit of the Settlement. The City's refusal contradicts the plain language of the Reconciliation Order requiring audit and reconciliation of *each plan year*:

> 3. Reconciliation for Post-2005 *Plan Years*. The following Reconciliation procedures are proposed for Post-2005 *Plan Years*:

> a. Reconciliation Procedures. For each *plan year* after 2005, the City will initiate its analysis by the following June 30, and will prepare a Reconciliation Statement…

C34 (emphasis added).

Accordingly, the Participant Classes are entitled to enforce the audit and reconciliation procedures for the full year 2013, including the last six months of 2013, which is a benefit of the Settlement and Reconciliation Order.

The retained jurisdiction provision, to bring the motion below, as enforcement, likewise was a benefit of the Settlement Agreement and Reconciliation Order. The court here had jurisdiction to order the audit and reconciliation by the terms of the Settlements and the Court's inherent authority jurisdiction.

II. The Participants are entitled to an audit and reconciliation of the second half of 2013, both by the City's Agreement and their fundamental right to accurate allocation of charges under the Agreement, extended by the City.

The Circuit Court had jurisdiction to interpret and enforce the Settlement Agreement and Reconciliation Orders' terms, as explicitly extended by the City, and should have proceeded to order the City to comply with the Audit and Reconciliation Procedures, both because the Agreement so provided, and because the City's calculation of premiums had produced overcharges in every one of the years of the 2003-2013 settlement.

This is the third time that the Circuit Court has frustrated the Retirees' explicit protections under the Settlement Agreements imposed on (the original Korshak settlement) or agreed to (the 1997 extension and the 2003 Settlement and Audit and Reconciliation Agreements) by the participants in the City's four retirement systems.[3]

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3 *Ryan v. City of Chicago and Korshak*, 98-3465 and 98-3667 consl. June 15, 2000 Order, A12, (Illinois appellate court, restoring the participants' rights to assert their claims as they existed on October 19, 1987). Subsequently, the lower Circuit Court required the post-2013 restoration of participants claims to be done by a new complaint which we did, which sidetracked the participants' claims for two years following the City's removal to federal court, eventually vacated, remanded and proceeding again before Judge Cohen, sub nom, *Underwood v. City of Chicago*, 779 F.3d 461 (7th Cir. 2015).

This time, the Circuit Court's reading ignores the fact that the City *unilaterally* extended the "coverage and benefit levels" of the settlement, and cannot complain about its being enforced against itself.

A. Enforcement of the Settlement Based Upon the City's Own Declaration Unilaterally Extending the Settlement Agreement's and Reconciliation Order's Benefits.

This was an enforcement of the Settlement. Plaintiffs' Motion to Enforce the terms of the Settlement Agreement and Reconciliation Order is based upon the City's unilateral extension of their benefits to the retirees to the end of the 2013 Plan Year. In short, the Settlement obligates the City to certain percentages and the audit/reconciliation for each plan year ensures that the charges are correct.

The City's May 15, 2013, letter simply commits itself to extending the benefits of the Settlement through the end of 2013, writing:

> I am writing to update you of developments regarding retiree healthcare benefits. Under the Korshak Settlement Agreement, the City of Chicago agreed to provide support for healthcare coverage to annuitants through June 30, 2013…the City has decided the following:
>
> 1. The City will *extend current coverage and benefit levels through December 31, 2013*. This additional time will allow retirees to *maintain coverage for a full plan year*, recognizing what we heard from many retirees who have planned deductible and out of pocket expenditures based on an expectation of full year coverage. …

C42, Ex. 3.

Having used the words "extend current coverage and benefit" along with "maintain coverage for a full plan year" the City did extend the coverage and benefit levels for the whole 2013 plan year. Benefits and coverage includes the minimum "at least" 55% contribution share by the City and to ensure that percentage, the City is obligated to perform the agreed audit and reconciliation for the whole 2013 plan year. The City cannot

later limit what parts of those benefits are extended.

The City's argument that it is not obligated to perform an audit for the rest of 2013 thus ignores the City's 2008 Agreed Order to Approve Reconciliation and Administrative Procedures Order ("Reconciliation Order"), which by its own terms covers a plan year, (C30, Motion, at Ex. 2, p. 5), and in which benefits were further explicitly reiterated and extended by the City's May 15, 2013 letter (C42, Motion at Ex.3) through the end of 2013. In short, the Settlement sets specific cost allocations, the rates are charged based on an estimate, and the audit reconciles the charges to the actual costs for each plan year (i.e., not just a portion).

B. The Audit and Reconciliation are also appropriate because every past year of the settlement showed substantial overcharges.

Nor is there a legitimate basis for the City to charge wrong amounts. That is, the City might have a concern about having an audit if the previous ten years not shown overcharges in *every single* year, including overcharges of $3.2 million in the first six months of 2013 alone. C8. Plaintiffs' Motion detailed the fact of over charges in *every single year*, with the Audit/Reconciliation producing over $50 million in refunds over the course of the Settlement. C8, C44.

Plaintiffs' seek to enforce, to require the City to do what it announced it would do – extend the benefits to the retirees for the 2013 "Plan Year."

C. Jurisdiction Explicitly Exists For The Court To Enforce The Settlement Agreement.

The Settlement Agreement squarely preserves this Court's jurisdiction to interpret and enforce its terms[4], especially when it is the City who has extended it.

[4] Both the Reconciliation Order and Settlement Agreement *expressly* provides for retained

The City's citation below to *Dir. of Ins. v. A & A Midwest Rebuilders, Inc.*, 891 N.E.2d 500, 505, 383 Ill. App. 3d 721, 726 (2nd Dist. 2008) supports Plaintiffs' motion, declaring "it is quite clear that the trial court intended to retain jurisdiction to enforce the settlement agreement between the parties."

Although the trial court loses jurisdiction to amend a judgment after 30 days from entry, it retains indefinite jurisdiction to enforce the judgment. *A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d at 723.

A trial court may retain jurisdiction to enforce a settlement agreement, after an agreed dismissal, where its dismissal order specifically retains jurisdiction to enforce the underlying agreement. *A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d at 725 (the trial court retained jurisdiction to enforce the settlement agreement where the dismissal order expressly stated "the [c]ourt retains jurisdiction to enforce said agreement").

Also, "a court retains the inherent authority to enforce its own orders." *A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d at 723, noting whether the trial court's order conforms to prior judgment or imposes new obligations is at issue, contemplated future conduct is a "significant" consideration. *Id*., at 723 ("It is significant that the cases cited

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jurisdiction.

Reconciliation Order:
"The Court retains jurisdiction relating to the enforcement of this Order, only upon petition from the City or Counsel for one of the Funds or Counsel for the Subclasses." C14, Motion at, Ex. 2, p. 11.

Settlement Agreement:
"retaining jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement, only upon petition from the City or counsel for one of the Funds or counsel for intervenor Korshak or Window Classes." (i.e. Krislov & Associates, Ltd.). C30, Motion at, Ex. 1 Settlement Agreement, V.B.7, p. 13.

in the preceding paragraph involved judgments that contemplated future conduct").

Thus, this case is not a "modification", but an enforcement of a key provision under the Settlement Agreement and Reconciliation Order. The trigger is the City's own use of the word "extended" and its use of the defined term, "plan year." The extension, rather than modification, is further supported because the "benefit" at issue is the minimum, "at least 55%"cost share owed by the City, and the enforcement of the provision is via the Audit and Reconciliation – itself a Settlement Benefit, even if all that it did was confirm the correctness of the estimate-based "rates" charged.

A&A Midwest Rebuilders, Inc. also weighs in favor of retained jurisdiction – where the court considers the distinction between enforcement and modification. *Id.* at 726 (the court "retains indefinite jurisdiction to enforce the judgment"). In this case no new obligation is imposed, the Audit and Reconciliation Benefit was a vital part of the Settlement for many years, recovering some $50 million in reconciliation refunds over paid by the retirees over the ten years of the agreement.

A & A Midwest Rebuilders, Inc. also considers whether future conduct was contemplated. *A & A Midwest Rebuilders, Inc.*, 891 N.E.2d at 505, 383 Ill. App. 3d at 726. In this case, each Plan Year contemplated future conduct, the very actions sought here, a yearly Audit and Reconciliation. *A & A* held, "[s]pecifically, where an order contemplates future conduct, it may be inferred that the court retained jurisdiction to enforce it." Id.

The court below ignored the most compelling factor considered by the Court in *A&A*, that there is an "express statement regarding the retention of jurisdiction." *A & A Midwest Rebuilders, Inc.*, 891 N.E.2d at 504, 383 Ill. App. 3d at 725. The Reconciliation

Order expressly provides for retained jurisdiction, stating, "The Court retains jurisdiction relating to the enforcement of this Order, only upon petition from the City or Counsel for one of the Funds or Counsel for the Subclasses." C30, Motion at, Ex. 2, p. 11. Similarly, the settlement agreement provides that this Court retains jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement, only upon petition from the City or counsel for one of the Funds or counsel for intervenor Korshak or Window Classes (i.e. Krislov & Associates, Ltd.) C4, Motion, Ex. 1 Settlement Agreement, V.B.7, p. 13.

The City's refusal to perform the audit and reconciliation procedures through the full 2013 Plan Year, despite the City's extending the benefits, simply deprives Retirees of the important aspect of *accuracy*: the assurance that the Reconciliation Order's procedures — to audit and reconcile the charges annuitants paid versus their actual cost-based obligation share and, to correct and refund any overcharges to participants for the last half of the year 2013—have been carried out, and the City cannot ensure that the City has actually paid the "at least" percentages required by the Settlement Agreement for the 2013 Plan Year which is the Agreement and Settlement.

The results of the Audit and Reconciliation process have been substantial. Over the course of the settlement period through June 30, 2013, the Audit and Reconciliation process has identified and refunded to participants over $50 million ($50,437,665) in overcharged premiums in each and every one of the 10 years that have been audited and reconciled ($3.2 million for the first six months of 2013 alone). The Reconciliation Order is a substantial benefit under the Settlement.

The City is thus obligated to perform an Audit and Reconciliation for the full 2013

Plan Years, by its own *extension*, and the Court has explicit retained jurisdiction to order the City to do so under the Settlement Agreement and the context that future conduct was annually contemplated.

D. The Court's Holding That The Extension Should Not Be Viewed As An Enforceable Extension (Because The City Did Not Have The Power To Modify Or Amend The Agreement Unilaterally) Ignores That The City Is Estopped From Asserting That It Lacked Authority To Do What It Did.

The City argued, and the Court agreed, that the City did not have authority to unilaterally extend the agreement, because the City lacked the explicit power to modify or amend the Agreement. C187-188. Nonetheless, (1) the City in actuality *did* extend the agreement and carried it out in reality, and (2) cannot escape the accountability provisions of its *de facto*, if arguably not *de jure* extension, and must live by the result. The City is the party that labeled its own action as an extension for a "plan year." Indeed, Class Counsel did not object, and at the time of the extension there was no notice as to any limitation to particular benefits that would be extended; the City described the action as an extension, not a modification or amendment and Class Counsel did not have notice as to a limitation of the extension of any particular benefits, since the City did not qualify which benefits the City was not agreeing to extend.

* * *

WHEREFORE, Class Counsel respectfully requests this Court to reverse the dismissal below and Order the City to Enforce the Settlement Agreement's obligations to audit, reconcile and refund any cost overcharges in the annuitant healthcare premium "rates" for the second half of 2013.

Respectfully Submitted,

s/Clinton A. Krislov
Attorney for Participating Class
Intervening-Plaintiffs-Appellants

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Kenneth T. Goldstein
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Firm Atty. No. 91198

PROOF OF SERVICE

I, Kenneth T. Goldstein, an attorney, on oath state that on Nov. 13, 2015, I caused three copies the foregoing **Appellate Brief** to be served on Defendant and upon the Illinois Appellate Court, at the addresses below on by U.S. Mail, (as indicated below) with proper postage paid, deposited from the U.S. Mail box located in the Civic Opera House, 20. N. Wacker Drive, properly addressed, and before 5:00 p.m.

s/Kenneth T. Goldstein

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Certification of Compliance

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of point and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under rule Rule 342(a), is 16 pages.

s/Kenneth T. Goldstein

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INDEX OF THE APPENDIX

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

CITY OF CHICAGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	01 CH 4962
	)	
MARSHALL KORSHAK, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Class Counsel has filed a Motion to Enforce Extended Benefits Under Settlement Agreement; Specifically, to Order City to Audit and Reconcile Healthcare Charges for the Second Half of 2013 Plan Year ("Motion to Enforce"). The City of Chicago has filed a Motion to Strike and/or in Opposition to Class Counsel's Motion to Enforce Settlement Agreement and Order Reconciliation.

I. Background

The instant lawsuit was filed to resolve a controversy as to whether and to what extent the City of Chicago is obligated to provide annuitant health benefits. On June 16, 2003, the parties entered a ten-year health care settlement providing health care coverage to the Funds' annuitants through June 30, 2013. The Settlement Agreement terminated on June 30, 2013.

Judge Deborah M. Dooling approved the settlement and dismissed the case with prejudice on June 16, 2003. Jurisdiction was retained for the sole purpose of enforcing the Settlement Agreement.

On October 1, 2008, Judge Mary K. Rochford entered an Agreed Order approving the Parties' Reconciliation Procedures under the Settlement Agreement. The Agree Order provided for Reconciliation Procedures through June 30, 2013, the end of the Settlement Agreement. The court retained jurisdiction for enforcement of the Agreed Order.

In July 2013, Class Counsel filed a motion to "reactivate" this case. That motion was denied on July 17, 2013. This court found that the case had been dismissed with prejudice and, even though the class members had reserved the right to reassert certain claims after the expiration of the Settlement Agreement, any such claims would have to be asserted by filing a new action.

II. Class Counsel's Motion to Enforce the Settlement Agreement

Class Counsel has filed a Motion to Enforce the Settlement Agreement. In its motion, Class Counsel seeks an order directing the City to audit and reconcile the class members' healthcare charges for the second-half of 2013.

This case was dismissed with prejudice on June 30, 2013. That dismissal became final thirty days later. At that point, this court's jurisdiction ended except for enforcement of the Settlement Agreement. Director of Ins. v. A & A Midwest Rebuilders, Inc., 383 Ill. App. 3d 721, 723 (2nd Dist. 2008)(a trial court loses jurisdiction to amend a judgment after 30 days from entry and retains jurisdiction only for purposes of enforcement of the judgment). This court has no jurisdiction to modify the Settlement Agreement.

Despite characterizing its motion as one for "enforcement," Class Counsel is not seeking enforcement of any term of the Settlement Agreement. Instead, Class Counsel is seeking to impose new obligations on the City which are not part of the Settlement Agreement. The Settlement Agreement terminated on June 30, 2013 and all the City's obligations to the Class Members under the Settlement Agreement terminated on that date. The Settlement Agreement is devoid of any language requiring the City to provide any audit or reconciliation for July 1, 2013 to December 31, 2013. To find the existence of any such obligation, this court would have to modify the Settlement Agreement. This court has no jurisdiction to do so.

Class Counsel argues that the City has an obligation to provide the requested audit and reconciliation for the second-half of 2013 based on a letter sent by the City to the Class Members on May 13, 2013. In this letter, the City informed the Class Members that it had decided to extend coverage and current benefit levels through December 31, 2013 to allow the retirees to maintain coverage for a full plan year. This letter does not state that the Settlement Agreement has been extended, nor could it. Under the terms of the Settlement Agreement, it could not be amended, modified or supplemented without written agreement by the respective attorneys for all the Parties. The City could not unilaterally amend, modify or supplement the Settlement Agreement.

This case was dismissed with prejudice in 2003. The Settlement Agreement terminated on June 30, 2013. Class Counsel seeks no enforcement of the actual terms of the Settlement Agreement. If Class Counsel believes that the May 13, 2013 letter created additional obligations for the City, it should file a new action. Class Counsel cannot obtain the relief it seeks in this dismissed action.

III. Conclusion

Class Counsel's Motion to Enforce is denied. The City's Motion to Strike is granted. The date of July 14, 2015 stands.

Enter: July 1, 2015

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
JUL 01 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Appeal to the Illinois Appellate Court, 1st District
From the Circuit Court Of Cook County, Illinois
County Department, Chancery Division

CITY OF CHICAGO, a municipal corporation,
Plaintiff-Counterdefendant-Appellee,

v.

No. 01 CH 4962

MARSHALL KORSHAK, et al.
(Police, Fire, Municipal and Laborers Funds Trustees)
Defendants-Counterplaintiffs-Appellees

Calendar No. 5
Hon. Judge Neil H. Cohen

and

MARTIN RYAN, et al.
(Participants Class)
Intervening-Plaintiffs-Appellants.

Notice of Appeal

Class Counsel for the Participants Classes, appeals the attached July 1, 2015 Memorandum And Order (Denying Class Counsel's Motion to Enforce, and Granting the City's Motion to Strike).

Respectfully Submitted,

s/Clinton A. Krislov
Krislov & Associates, Ltd., Class Counsel

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CERTIFICATE OF SERVICE

I, Clinton A. Krislov, an attorney, state that on **July 31, 2015**, I caused a courtesy copy of the foregoing **Notice of Appeal** to be served upon the parties listed below on the Service List via U.S. Mail, postage prepaid and properly addressed, by depositing same in the mailbox located at 20 N. Wacker Drive, Chicago, Illinois.

s/Clinton A. Krislov

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DATE: July 1, 2015	FROM: Chambers of Judge Neil H. Cohen
TO: Clinton Krislov	FAX NUMBER: 312-739-1098
RE: **City of Chicago v. Korshak 01-CH-4962**	NUMBER OF PAGES (INCLUDING COVER PAGE): 4

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE CONFIRM ☐ PLEASE RECYCLE

NOTES/COMMENTS:

If any of this message is not clear please call 312/603-6052

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

CITY OF CHICAGO, Plaintiff,	)	
v.	)	01 CH 4962
MARSHALL KORSHAK, et al., Defendants.	)	

MEMORANDUM AND ORDER

Class Counsel has filed a Motion to Enforce Extended Benefits Under Settlement Agreement; Specifically, to Order City to Audit and Reconcile Healthcare Charges for the Second Half of 2013 Plan Year ("Motion to Enforce"). The City of Chicago has filed a Motion to Strike and/or in Opposition to Class Counsel's Motion to Enforce Settlement Agreement and Order Reconciliation.

I. Background

The instant lawsuit was filed to resolve a controversy as to whether and to what extent the City of Chicago is obligated to provide annuitant health benefits. On June 16, 2003, the parties entered a ten-year health care settlement providing health care coverage to the Funds' annuitants through June 30, 2013. The Settlement Agreement terminated on June 30, 2013.

Judge Deborah M. Dooling approved the settlement and dismissed the case with prejudice on June 16, 2003. Jurisdiction was retained for the sole purpose of enforcing the Settlement Agreement.

On October 1, 2008, Judge Mary K. Rochford entered an Agreed Order approving the Parties' Reconciliation Procedures under the Settlement Agreement. The Agree Order provided for Reconciliation Procedures through June 30, 2013, the end of the Settlement Agreement. The court retained jurisdiction for enforcement of the Agreed Order.

In July 2013, Class Counsel filed a motion to "reactivate" this case. That motion was denied on July 17, 2013. This court found that the case had been dismissed with prejudice and, even though the class members had reserved the right to reassert certain claims after the expiration of the Settlement Agreement, any such claims would have to be asserted by filing a new action.

II. Class Counsel's Motion to Enforce the Settlement Agreement

Class Counsel has filed a Motion to Enforce the Settlement Agreement. In its motion, Class Counsel seeks an order directing the City to audit and reconcile the class members' healthcare charges for the second-half of 2013.

This case was dismissed with prejudice on June 30, 2013. That dismissal became final thirty days later. At that point, this court's jurisdiction ended except for enforcement of the Settlement Agreement. Director of Ins. v. A & A Midwest Rebuilders, Inc., 383 Ill. App. 3d 721, 723 (2nd Dist. 2008)(a trial court loses jurisdiction to amend a judgment after 30 days from entry and retains jurisdiction only for purposes of enforcement of the judgment). This court has no jurisdiction to modify the Settlement Agreement.

Despite characterizing its motion as one for "enforcement," Class Counsel is not seeking enforcement of any term of the Settlement Agreement. Instead, Class Counsel is seeking to impose new obligations on the City which are not part of the Settlement Agreement. The Settlement Agreement terminated on June 30, 2013 and all the City's obligations to the Class Members under the Settlement Agreement terminated on that date. The Settlement Agreement is devoid of any language requiring the City to provide any audit or reconciliation for July 1, 2013 to December 31, 2013. To find the existence of any such obligation, this court would have to modify the Settlement Agreement. This court has no jurisdiction to do so.

Class Counsel argues that the City has an obligation to provide the requested audit and reconciliation for the second-half of 2013 based on a letter sent by the City to the Class Members on May 13, 2013. In this letter, the City informed the Class Members that it had decided to extend coverage and current benefit levels through December 31, 2013 to allow the retirees to maintain coverage for a full plan year. This letter does not state that the Settlement Agreement has been extended, nor could it. Under the terms of the Settlement Agreement, it could not be amended, modified or supplemented without written agreement by the respective attorneys for all the Parties. The City could not unilaterally amend, modify or supplement the Settlement Agreement.

This case was dismissed with prejudice in 2003. The Settlement Agreement terminated on June 30, 2013. Class Counsel seeks no enforcement of the actual terms of the Settlement Agreement. If Class Counsel believes that the May 13, 2013 letter created additional obligations for the City, it should file a new action. Class Counsel cannot obtain the relief it seeks in this dismissed action.

III. Conclusion

Class Counsel's Motion to Enforce is denied. The City's Motion to Strike is granted. The date of July 14, 2015 stands.

Enter: July 1, 2015

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
JUL 01 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Appeal to the Illinois Appellate Court, 1st District
From the Circuit Court Of Cook County, Illinois
County Department, Chancery Division

CITY OF CHICAGO, a municipal corporation,
Plaintiff-Counterdefendant-Appellee,

v.

No. 01 CH 4962

MARSHALL KORSHAK, et al.
(Police, Fire, Municipal and Laborers Funds Trustees)
Defendants-Counterplaintiffs-Appellees

Calendar No. 5
Hon. Judge Neil H. Cohen

and

MARTIN RYAN, et al.
(Participants Class)
Intervening-Plaintiffs-Appellants.

Notice of Filing Appeal

To: The Appellate Court, First District

Clerk of the Court

160 N. LaSalle

Chicago, IL 60601

Be advised that on July 31, 2015, a Notice of Appeal, a copy of which is attached, was filed with the Clerk of the Circuit Court, Cook County, Chancery Division, Illinois. On August 6, 2015, the Notice of Appeal was filed with the Appellate Court pursuant to Rule 303(c).

Respectfully Submitted,

s/Clinton A. Krislov
Krislov & Associates, Ltd., Class Counsel

Clinton A. Krislov (Cook Co. ID: 26711)
Kenneth T. Goldstein

CERTIFICATE OF SERVICE

I, Clinton A. Krislov, an attorney, state that on August 6, 2015, I caused a courtesy copy of the foregoing **Notice of Filing and Notice of Appeal** to be served upon the parties listed below on the Service List via U.S. Mail, postage prepaid and properly addressed, by depositing same in the mailbox located at 20 N. Wacker Drive, Chicago, Illinois.

s/Clinton A. Krislov

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FOURTH DIVISION
June 15, 2000

No. 1-98-3465 & 1-98-3667, consol.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARTIN RYAN, et al,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
Intervening Plaintiffs-Appellants,	)	
v.	)	No. 87 CH 10134
THE CITY OF CHICAGO,	)	
Plaintiff-Counter defendant-Appellee,	)	
and	)	
MARSHALL KORSHAK, ET AL.,	)	Honorable Albert E. Green, Judge Presiding.
Defendants-Counter plaintiffs-Appellees.	)	

ORDER

The intervening plaintiffs, class representatives of the participants in the City of Chicago's annuitant health care program (plaintiffs), appeal from the circuit court's September 1, 1998, order denying their motion to restore this case to the active calendar, add intervenors, file an amended complaint, and schedule this case for a

decision on the merits and dismissing this case. The proposed intervenors, Olsen, Walsh, and Sweeney, appeal from the trial court's September 1, 1998, order denying their petition to intervene as class members. These actions arose from a prior settlement in this case which guaranteed the participants a right to have the case restored and their claims decided if they had not reached a "permanent solution" to their healthcare coverage dispute with the City by December 1, 1997. The trial court found that because a "permanent solution" was reached, it lacked subject matter jurisdiction to consider plaintiffs' claims. Plaintiffs filed a timely notice of appeal on September 15, 1998. The proposed intervenors, also filed a timely notice of appeal on September 25, 1998. For the following reasons we affirm in part and reverse in part.

BACKGROUND:

The City's retired employees are covered by four annuity and benefit funds, the Policemen's Annuity and Benefit Fund, the Firemen's Annuity and Benefit Fund, the Municipal Employees' Officers' and Officials' Annuity Fund, and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (collectively the Funds), which are governed by the Illinois Pension Code. In October 1987, the City provided health care coverage for annuitants in the Funds at a fixed monthly rate of $12 for Medicare qualified participants and $55 for non-medicare qualified participants.

On October 19, 1987, the City sued the trustees of the Funds for mandamus and restitution. The City sought to compel the Funds to pay for annuitants' health care benefits and to recover $58 million it had previously spent for health insurance for the

Funds' annuitants. The City also informed the Funds that it intended to cease payment of the annuitants' health care benefit costs as of December 31, 1987. The City's basis for these actions was that it had provided retiree healthcare coverage under an appropriation that, for most years, did not explicitly mention annuitants. The Funds counterclaimed on behalf of their annuitants to prevent the City from terminating the annuitants coverage under the City's plan and to compel the City to continue paying for a portion of the coverage. Certain individual annuitants, who are the plaintiffs in this matter, were granted leave to intervene in the trial court proceedings.

On May 16, 1988, the trial court dismissed the City's complaint with prejudice, finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. In June 1988 a bench trial was held on the Funds' counterclaims. Before the trial court issued its decision, however, the City and the Funds agreed to support legislation amending the Pension Code and to enter into a settlement agreement consistent with the legislation. Following a fairness hearing on December 12, 1989, the trial court approved the settlement, over the objection of the intervenors. According to the terms of the settlement, the City paid at least 50% of the cost of the claims of annuitants and dependants participating in the City's plan..

On December 15, 1989, the trial court entered an agreed order memorializing the settlement agreement. The Order stated in relevant part:

> "The City and the Funds have agreed that at the conclusion of the 10 years covered by the settlement the parties will return to the same

> positions they were in before the proposed settlement was negotiated. In the words of the stipulation between the City and the Funds, which was read into the record before this Court on November 27, 1989:
>
> On January 1, 1998, the parties will be in the same legal positions they were in as of June of 1988. To the extent the City had any obligation in June of 1988, they will have that same obligation or obligations on January 1, 1998.
>
> Consequently, the annuitants have not "given up" anything through this settlement. (Other than the claimed right to have the City pay more than 50% of the costs between March of 1990 and December of 1997.) On January 1, 1998, if some "permanent solution" has not been achieved, the annuitants will be permitted to reargue the claims which were asserted in the Funds' Counterclaim as well as the Intervenors' initial pleading."

On November 28, 1990, this court affirmed the settlement agreement. City of Chicago v. Korshak, 206 Ill. App. 3d 968, 565 N.E.2d 68 (1990).

On June 27, 1997, the General Assembly enacted P.A. 90-32, extending the City's obligation to pay some of the costs of the annuitants' health benefits through June 30, 2002.

In June 1998, arguing that no "permanent solution" had been reached, plaintiffs filed a motion seeking to return the case to the active calendar, add or substitute additional intervenors, file an amended complaint, and set a schedule for a resolution of their claims on the merits. Additional annuitants, Olsen, Walsh, and Sweeney, moved for leave to intervene as class members on July 24, 1998. On September 1, 1998, the trial court denied the plaintiffs' motion, denied the proposed intervenors petition to intervene, and dismissed this case. The trial court held that with the legislature's adoption of a "permanent solution" for annuitant health care coverage, the

1989 consent decree had expired and the court lacked subject matter jurisdiction.

On appeal, the intervening plaintiffs and the proposed intervenors contend: (1) that the circuit court erred in finding that it lacked subject matter jurisdiction to consider plaintiff's claims; (2) that the 1997 amendments to the Pension Code unconstitutionally impair vested contractual rights; (3) that the 1997 amendments to the Pension Code were unconstitutional special legislation; and (4) that the circuit court abused its discretion in denying the proposed intervenors leave to intervene in this case.

Discussion:

At issue in this case is whether the circuit court had subject matter jurisdiction to address the plaintiffs' claims. Under the express terms of the consent decree, the circuit court's jurisdiction lasted until December 31, 1997. The agreement further provided that the circuit court's jurisdiction could continue after January 1, 1998, if no "permanent solution" to the annuitant health care problem had been reached. In dismissing plaintiffs' claims, the circuit court held that it had no jurisdiction over those claims because the General Assembly had achieved such a "permanent solution" through P.A. 90-32. The parties disagree as to whether P.A. 90-32 amounted to a "permanent solution" under the terms of the 1989 settlement agreement.

The Funds and the City argue that the intervening plaintiffs are bound by the 1997 settlement and the Funds' decision to treat the 1997 Amendments to the Pension Code as a "permanent solution." However, the intervening plaintiffs were made full parties to this action when they were allowed to intervene. See Redmond v. Devine,

152 Ill. App. 3d 68, 504 N.E.2d 138 (1987)(holding that Intervenor is entitled to all the rights of an original party). The settlement agreement reaffirmed the intervening plaintiffs' position in the case by expressly providing that if a "permanent solution" is not achieved by January 1, 1998, "the annuitants will be permitted to reargue the claims which were asserted in the Funds' counterclaim as well as the intervenors' initial pleading."

The sole issue before this court then, is whether the 1997 amendment to the Pension Code was a "permanent solution" within the meaning of the settlement agreement. We find that it was not.

The 1997 amendment by its very terms states that the City's responsibility to pay for annuitant health benefits ends on June 30, 2002. Anything bounded in time cannot possibly be considered permanent. Webster's defines permanent as "lasting indefinitely." Webster's II New Riverside Dictionary 509 (1996). The Supreme Court has defined "permanent" as "a relationship of continuing or lasting nature, as distinguished from temporary." Castillo v. Jackson, 149 Ill. 2d 165, 180, 594 N.E.2d 323 (1992), quoting, Holley v. Lavine, 553 F.2d 845, 850 (2nd Cir. 1977). A 5 year plan clearly does not last indefinitely.

In Castillo, the Supreme Court also recognized that "permanent" does not equal "perpetual", stating "a relationship may be permanent even though it is one that may be dissolved eventually at the insistence either of the [State] or of the individual, in accordance with law." Castillo, 149 Ill. 2d at 180. The Funds argue that the 1997

Amendments fall within this definition because pursuant to the Amendments, the City can discontinue or amend annuitants' health care benefits at any time, as long as they act subject to and in accordance with the law. However, this ability to discontinue or amend annuitant's health care benefits does not change the fact that the legislation expires after 5 years. It simply does not create the continuing or lasting relationship necessary to make it permanent.

We find that the 1997 Amendments to the Pension Code do not constitute a "permanent solution" within the meaning of the settlement agreement. Therefore, under the express terms of the settlement agreement, the intervening plaintiffs are entitled to reargue the claims originally asserted in the Funds' counterclaims as well as the Intervenors' initial pleading.

II Proposed - Intervenors

The proposed intervenors contend that the circuit court abused its discretion in denying their petition for leave to intervene in this case. The proposed intervenors sought to intervene as of right pursuant to section 5/2-408(a) of the Code of Civil Procedure (735 ILCS 5/2-408(a) (West 1996)) because "representation by the existing parties may be inadequate and the applicants may be bound by an Order and Judgement in this action." The decision whether to grant a petition to intervene as of right lies within the trial court's discretion, however, that discretion is limited to determining timeliness of the petition, the inadequacy of the representation by existing parties, and the sufficiency of interest of the potential intervenors. Joyce v. Explosives

Technologies Int'l, 253 Ill. App. 3d 613, 625 N.E.2d 446 (1993). Once these requirements are met, the party must be allowed to intervene.

A petitioner seeking to intervene may establish inadequate representation by the existing parties by demonstrating that his interests are different from those of the existing parties. Redmond v. Devine, 152 Ill. App. 3d 68, 504 N.E.2d 138 (1987). The proposed intervenors have failed to demonstrate how their interests are any different from the annuitants who have already intervened in this matter.

In Warbucks Inv. Ltd. Partnership v. Rosewell, 241 Ill. App. 3d 814, 609 N.E.2d 832 (1993), the court noted "[a]lthough it is well settled that the intervention statute is remedial and should be liberally construed (citation omitted), the petitioner is nevertheless required to allege specific facts that demonstrate that he has a right to intervene. Allegations that are conclusory in nature and merely recite statutory language are insufficient to meet the requirements of section 2-408." 241 Ill. App. 3d at 817. In the present case, the prospective intervenors allege no specific facts to demonstrate their right to intervene. Their petition to intervene merely recites the statutory language in a conclusory fashion.

The proposed intervenors also make an argument based on section 2-804(a) of the Code of Civil Procedure (735 ILCS 5/2-804(a) (West 1996). This argument, however, has been waived. The proposed intervenors admit that they never raised this argument below in their petition for leave to intervene. Arguments not raised in the trial court are waived and may not be raised for the first time on appeal. E&E Hauling, Inc.

v. Ryan, 306 Ill. App. 3d 131, 713 N.E.2d 178 (1999).

We find that the proposed intervenors petition to intervene was properly denied.

Accordingly, for the reasons set forth above the judgment of the Circuit Court of Cook County is affirmed in part and reversed in part, and the cause is remanded to the Circuit Court.

Affirmed in part and Reversed in part, Cause Remanded.

HALL, J,, with HOFFMAN, P.J. and BARTH, J., concurring.

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EXHIBIT 3

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

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff Michael W. Underwood and 349 other named Plaintiffs, as participants in the Annuity & Benefit Funds covering the City of Chicago's employees, have filed an Amended Class Action Complaint seeking declaratory and other relief regarding their contention that they are entitled to lifetime subsidized health care.

Defendants are the City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago.

They have all filed Motions to Dismiss the Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code ("Pension Code"), the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) the Firemen's Annuity and Benefit Fund ("Fire");
(3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to their annuitants under the Pension Code are actually financed by the taxpayers of the City through a tax levy.[1]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

The Pension Code was amended from time to time, as new collective bargaining agreements were negotiated.

A discussion of the salient provisions of the amendments which are relevant to the disposition of these Motions to Dismiss follows.

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7] While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Pension Code specifies that the City's tax levy finances all of the Funds' financial obligations under the Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.[9]

The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

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[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

[6] Id.

[7] Id.

[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.

[9] Id.

[10] Id.

C. *The Korshak Litigation, and the 1989, 1997 and 2003 Amendments to the Illinois Pension Code*

In 1987, the City notified the Funds that it intended to terminate retiree health care by the beginning of 1988.

The City soon thereafter filed suit in the Chancery Division of the Circuit Court of Cook County, City of Chicago v. Korshak, 87 CH 10134, seeking a declaration that it had no obligation to provide healthcare to retirees ("the Korshak litigation"). (Am. Compl. ¶89). In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds' retirees. (Am. Compl. at ¶¶93-94).

Employees who retired on or before December 31, 1987 were allowed to intervene as a group. This group was certified as the "the Korshak sub-class." (Id. at ¶92).

Employees who retired after December 31, 1987, but before August 23, 1989, were permitted to intervene as a group, which was certified as the "Window sub-class." (Id.).

In 1988, the parties entered into a settlement agreement. This agreement was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.[12]

Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement which extended the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.[14]

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.
[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).

the City to pay 50% of the costs of the annuitants' health care coverage.[15] The amendments stated that the obligations set forth would terminate on June 30, 2002.

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013 and, again, the Pension Code was amended to codify the terms of the settlement.[17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10 per month for all annuitants.[21]

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

D. *2013: The RHBC Report and the City's Decision to Phase-Out Health Care Support*

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees, other than those who retired before August 23, 1989, e.g., the Korshak and Window subclasses. (Am. Compl. ¶98).

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[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.

To that end, the City sent annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and to ultimately phase-out its healthcare subsidies and plans by the beginning of 2017. (Id.).

E. Proceedings in this Case

In July 2013, Plaintiffs filed a motion before this court seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003.

On July 23, 2013, Plaintiffs filed this new action against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal district court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

Count II of the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract.

Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits.

Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision. As only the state law claims were remanded, only Counts I, II and III are currently pending before this court.

II. Motions to Dismiss

The City and the Funds have filed motions to dismiss Counts I, II and III of the Amended Complaint pursuant to 735 ILCS 5/2-619.1.

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

A. *Judge Albert Green's Rulings in the Korshak Litigation*

During the Korshak litigation, the trial judge, Judge Albert Green, denied the City's motion to dismiss the Funds' counterclaim. Now, in the present litigation, Plaintiffs initially contend that Judge Albert Green's order denying the City's motion to dismiss in the Korshak litigation disposes of virtually all of the bases for dismissal raised by City and Funds' current Motion to Dismiss. Plaintiffs are incorrect.

First, Judge Green did not address many of the issues currently pending before this court. Second, a denial of a motion to dismiss is not a final judgment as required for the application of collateral estoppel. State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007). Nor does Judge Green's denial of the City's motion to dismiss in the Korshak litigation constitute the law of *this* case. Only final and appealable orders which are left undisturbed by the appellate court become the law of the case. Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1st Dist. 1997). A denial of a motion to dismiss is not a final and appealable order.

B. *Capacity to Be Sued*

The trustees of Fire and Municipal Funds contend that dismissal is proper since they do not have the capacity to be sued.

The court finds this argument to be wholly unconvincing given the existence of the Korshak litigation and the Funds' active participation in it. The trustees of the Fire and Municipal Funds were defendants in that suit, filed counterclaims in that suit, and were parties to the settlement agreements in that suit. They have now waived any right to claim that they lack the capacity to be sued. Aurora Bank FSB v. Perry, 2015 IL App (3d) 130673 (lack of standing to be sued can be waived); People ex rel. Illinois State Dental Soc. v. Vinci, 35 Ill. App. 3d 474 (1st Dist. 1976)(same).

C. *Statute of Limitations*

The Laborers, Municipal and Fire Funds all contend that Plaintiffs' claims are time-barred because they were not filed within 10 years of 1987. Plaintiffs contend that the settlement agreements entered into during the course of the Korshak litigation reserved Plaintiffs' rights to assert the claims raised in the Amended Complaint. Plaintiffs are correct.

The 1989 settlement agreement provided that if the parties failed to reach a permanent resolution of their dispute by December 31, 1997, the parties would be restored to the same legal status which existed as of October 19, 1997. (Response at Ex. 10). The 1989 settlement agreement further provided that the court's jurisdiction would continue after January 1998 if no permanent solution was reached. (Id.). And, the 2003 settlement agreement expressly provided that after its expiration the class members would retain any right they then had "to assert any claims with regard to the provision of annuitant healthcare benefits" other than claims arising under the prior settlement agreements or amendments to the Pension Code.

The court finds that the 1989 and 2003 settlement agreements defeat any statute of limitations claims.

Moreover, "a statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting, Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999). This action was triggered by the City's letter of May 15, 2013 informing the Funds' annuitants of the City's plan to modify and ultimately phase-out its healthcare subsidies and annuities by 2017. Arguably, the statute of limitations did not begin to run until May 15, 2013.

D. *Motion to Dismiss Count I (§2-615)*

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

The City and the Funds argue that Count I should be dismissed with prejudice because a reduction in the annuitants' healthcare benefits does not constitute a violation of §5, Art. XIII of the Illinois Constitution of 1970.

Article XIII, §5 of the Illinois Constitution of 1970 ("the Pension Clause") provides that:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Ill. Const. 1970, art. XIII, §5.

1. Kanerva v. Weems

Plaintiffs contend that Kanerva v. Weems, 2014 IL 115811, definitively establishes that Plaintiffs' healthcare benefits cannot be reduced.

In Kanerva, the plaintiffs in four consolidated cases filed suit challenging the validity of Public Act 97-695 which amended §10 of the State Employees Group Insurance Act of 1971 by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems. Id. at ¶¶1, 16. The plaintiffs argued that by amending the law to require annuitants to contribute additional amounts toward the cost of their health care, where the amounts were previously paid by the State, Public Act 97-695 diminished or impaired a membership benefit in violation of the Pension Clause. Id. at ¶20.

Our supreme court identified the central issue of Kanerva as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Id. at ¶35.

The supreme court found that currently, and prior to the approval of the Pension Clause, most state employees were provided with a package of benefits including subsidized healthcare, disability and life insurance coverage and eligibility to receive a retirement annuity and survivor benefits. Id. at ¶39. Eligibility for all these benefits, including healthcare, is conditioned on, and flows directly from, membership in a public pension system. Id. at ¶40. Therefore, subsidized healthcare must be considered a benefit of membership in a pension or retirement system protected by the Pension Clause. Id.

Our supreme court found that although it is true that healthcare costs and benefits are governed by a different set of calculations than retirement annuities, this fact is legally irrelevant. Id. at ¶54. If a benefit is derived from membership in a public pension system, it is protected under the Pension Clause. Id.

Finally, our supreme court reiterated the fundamental principle that "[u]nder settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule

of construction applies with equal force to our interpretation of the pension protection provisions set forth in article XIII, section 5." Id. at ¶55.

2. Application of Kanerva v. Weems

Kanerva is clear that healthcare benefits are covered by the Pension Clause and, therefore, cannot be diminished or impaired. The question is whether the healthcare benefits of Plaintiffs and the putative class members will be diminished or impaired by the City's plan to gradually phase out healthcare coverage for annuitants retiring on or after August 23, 1989.

a. Whether the Legislature Could Validly Disclaim the Pension Clause's Application to the 1985, 1989, 1997 and 2003 Amendments to the Pension Code

The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause. Defendants do not cite to any authority holding that the General Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.

Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

b. Whether Kanerva Applies to the Funds

At oral argument, the Funds asserted that Kanerva applies only to public *employers* and, therefore, has no application to the Funds. It is true that the Funds are not public employers. It is also true that the Kanerva court framed the central issue as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Kanerva, 2014 IL 115811 at ¶35. That being said, however, it does not follow under the circumstances of this case that Kanerva has no application to the Funds.

The Pension Clause protects, "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency ***or instrumentality thereof.***" Ill. Const. 1970, art. XIII, §5 (emphasis added).

Under Kanerva, healthcare benefits fall within the scope of the Pension Clause. Nothing in the language of the Pension Clause limits its scope to benefits provided *directly* by public employers.

The Illinois Pension Code provided for the creation of the Funds, by the city council, for the specific purpose of establishing, funding and administering pension funds for the City's employees. E.g., 40 ILCS 5/5-101; 40 ILCS 5/6-101; 40 ILCS 5/8-101; 40 ILCS 5/11-101.

Accordingly, in a very real and practical sense, the Pension Code designed a scheme by which the Funds were created as an instrumentality of the City. Since the Pension Clause protects the benefits of membership in the retirement system of any "unit of local government" or "any agency or instrumentality, thereof," Ill. Const. 1970, art. XIII, §5, Kanerva applies to the Funds.

c. The 1983 and 1985 Amendments: No Time Limitations

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak sub-class, the Window sub-class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes. The court notes that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its Memorandum in support of its Motion to Dismiss.

Therefore, Count I clearly states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

The exact nature of those obligations, however, is not properly decided on a §2-615 motion to dismiss.

d. The Effect of the Time Limitations of the 1989, 1997 and 2003 Amendments

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the settlement agreements in Korshak were all time-limited. The 1989, 1997 and 2003 amendments did not provide that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, these amendments were clear that the obligations set forth expired with the settlement agreements the amendments codified.

Plaintiffs contend that there is an argument that the rates set forth in the 1989, 1997 and 2003 amendments cannot be diminished or impaired. Plaintiffs, however, fail to develop this argument. Furthermore, the court disagrees that such an argument is valid.

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. The Pension Clause, however, does not by itself confer benefits. The nature and extent of any health benefits to be conferred is the subject of the legislative power. In this case, the 1989, 1997 and 2003 amendments to the Illinois Pension Code were time-limited at creation, and for good reason. They were enacted solely to codify the time-limited settlement agreements between the parties. By their express terms, these amendments specifically did *not* provide the annuitants with "lifetime" or "permanent" healthcare benefits. Since any obligations under these amendments expired by the specific terms of those amendments, there is nothing to diminish or impair.

Plaintiffs cite to In re Pension Reform Litigation (Heaton v. Quinn), 2015 IL 118585, to argue that the General Assembly cannot impose a time limit on a grant of pension benefits. Heaton, however, nowhere addresses whether the General Assembly can enact pension statutes with time limitations. Indeed, the General Assembly generally has the right to impose conditions, including time limitations, on statutorily created rights. E.g., In re Petition for Detachment of Land from Morrison Community Hosp., 318 Ill. App. 3d 922, 930 (3d Dist. 2000); Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 831 (1st Dist. 1988).

The Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

E. ***Motion to Dismiss Count II (§2-615 and §2-619)***

Count II asserts a common law breach of contract claim against the City based on a contractual right the Plaintiffs and the putative class members have alleged they have under the Pension Clause "to the fixed-for-life subsidized healthcare premiums in effect on their retirement date." (Am. Compl. ¶116).

Count II also alleges that, independent of the Pension Clause, "Plaintiffs and the pre-August, 23, 1989 retirement or hire date putative class members have a contractual right to the plan in effect during the period of October 1, 1987 to August 23, 1989, at the $55/$21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction." (Id. at ¶117).

Plaintiffs allege that the City "has breached its contractual obligation by unilaterally requiring the plaintiffs and [putative] class members to pay increased healthcare premiums." (Id. at ¶119).

The City and the Funds argue that any breach of contract claim would be barred by the Statute of Frauds. The City and the Funds further argue that Count II alleges no facts supporting the existence of any contract between themselves and Plaintiffs providing for life-time subsidies for healthcare benefits.

1. Statute of Frauds

Illinois law is clear that any "lifetime" contract must be in writing or the contract is barred by the Statute of Frauds. McInerey v. Charter Golf, Inc., 176 Ill. 2d 482 (1997).

Plaintiffs argue that Dell v. Streator, 193 Ill. App. 3d 810 (3d Dist. 1990), provides otherwise, but that case did not address a Statute of Frauds defense. Plaintiffs further contend that written contracts *do* exist. But, as discussed below, the Amended Complaint fails to allege sufficient facts to establish the existence of such written contracts.

2. Section 2-615

"In order to state a cause of action for breach of contract, a plaintiff must allege (1) an offer and acceptance; (2) consideration; (3) definite and certain terms of the contract; (4) plaintiff's performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach." Weis v. State Farm Mut. Auto. Ins. Co., 333 Ill. App. 3d 402, 407 (2d Dist. 2002).

Illinois is a fact-pleading jurisdiction. Simpkins v. Csx Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Count II fails to allege specific facts showing the existence of any written contracts between Plaintiffs, the City, or the Funds. While Plaintiffs attempt to cure this deficiency in their Response, this court can only consider those facts actually pled in the Amended Complaint.

During oral argument, Plaintiffs argued at length that the City's handbook constituted a contract for lifetime healthcare, and that a "three-way" contract to provide lifetime healthcare somehow existed between the City, the Funds, and the annuitants. But, regardless of Plaintiffs' assertions during oral argument, the existence of a contract relied upon by them for relief must be actually pled in order to be considered by this court. Count II does not plead that the handbook is the contract at issue or contain any allegations regarding any supposed "three-way" contract. Furthermore, Plaintiffs failed to attach the handbook to the Amended Complaint, as required by 735 ILCS 5/2-606.

The court further notes that Count II does not allege any breach of contract by the Funds. While their Response makes it clear that Plaintiffs believe they have a breach of contract claim against the Funds, Count II only alleges a purported breach by the City and only seeks relief from the City.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

F. *Motion to Dismiss Count III (§2-615)*

Count III asserts that Defendants are, as a matter of common law, estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Though Count III fails to allege whether Plaintiffs are asserting a claim for promissory or equitable estoppel, Plaintiff's Response confirms that they are asserting a claim for equitable estoppel.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1st Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the *express authority* to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials, *and* upon his or her own inquiry into the official's authority. Id.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (Am. Compl. ¶¶121-122). Count III, however, fails to set forth any specific facts supporting the application of equitable estoppel.

Plaintiffs allege that between 1984 and 1987, the City held a series of "Pre-Retirement" seminars at which unidentified City officials informed the attendees that they would be able to participate in the City's health plan for life with no cost for their own coverage. (Id. at ¶¶46-47). This allegation does not show an affirmative act by a City official with *express authority* to bind the City. Furthermore, Plaintiffs have failed to allege that they undertook any inquiry into the

unidentified City officials' actual authority to bind the City. Without such factual allegations, Count III does not state a claim against the City.

Count III is even more deficient in factual support as to the Funds. The Amended Complaint does not contain a single allegation of any affirmative act by any of the Funds, much less an affirmative act by an official with the express authority to bind the Funds.

At oral argument, Plaintiffs' counsel asserted that the City representatives at the "Pre-Retirement" seminars had "apparent authority" to bind the City. "Apparent authority," however, is not a basis for equitable estoppel against a public body:

> Because apparent authority is not actual, but only ostensible, an apparent agent may make representations the specifics of which the principal is unaware, and still bind the principal. **'If the unauthorized acts of a governmental employee are allowed to bind a municipality ***, the municipality would remain helpless to correct errors'** (*City of Chicago v. Unit One Corp.*, 218 Ill. App. 3d 242, 246, 578 N.E.2d 194, 161 Ill. Dec. 67 (1991)) or, worse, to escape the financial effects of frauds and thefts by unscrupulous public servants (*D.S.A. Finance Corp.*, 345 Ill. App. 3d at 563). **Thus, we have required, 'anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and *** this is so even though the agent himself may have been unaware of the limitations on his authority.'**

Patrick Engineering, 2012 IL 113148, ¶36 (emphasis added).

Count III is dismissed, without prejudice, for failure to state a claim.

III. Conclusion

Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

Count III is dismissed, without prejudice, for failure to state a claim for breach of contract under a theory of common law equitable estoppel.

Plaintiffs are given leave to amend Counts II and III.

The status date of December 11, 2015 at 9:30 a.m. stands.

Enter: 12/3/15

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
DEC 03 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

EXHIBIT 4

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

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Defendant City of Chicago has filed a Motion for Clarification or, alternatively, for Reconsideration of this court's December 3, 2015 Memorandum and Order as to Count I.

The Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago and the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago have filed a Motion for Clarification or alternatively, for Reconsideration of this court's December 3, 2015 Memorandum and Order as to Count I.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code, the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) the Firemen's Annuity and Benefit Fund ("Fire");
(3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to its annuitants are financed through a tax levy by the City.[1]

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.
[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Pension Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7] While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Illinois Pension Code specifies that the tax levy finances all of the Funds' financial obligations under the Illinois Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.[9] The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

C. *The Korshak Litigation*

In 1987, the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988. (Am. Compl. ¶89). The City filed suit, City of Chicago v. Korshak, 87 CH 10134, ("the Korshak Litigation"), seeking a declaration that it had no obligation to provide healthcare to retirees. The Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds annuitants. (Id. at ¶¶93-94).

A group of retirees who retired on or before December 31, 1987 were allowed to intervene and certified as the "the Korshak sub-class." (Id. at ¶92).

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[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).
[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.
[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).
[6] Id.
[7] Id.
[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.
[9] Id.
[10] Id.

A second group of employees who retired after December 31, 1987, but before August 23, 1989, was certified as the "Window sub-class."

In 1988, the parties entered into a settlement agreement which was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.[12] Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement extending the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.[14]

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required the City to pay 50% of the costs of the annuitants' health care coverage.[15] The amendments stated that the obligations set forth would terminate on June 30, 2002. The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013, and again, the Pension Code was amended to codify the settlement.[17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.
[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).
[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.

per month for all annuitants.[21] As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees other than those in the Korshak and Window subclasses. (Am. Compl. ¶98). To that end, the City sent the annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and ultimately phase out its healthcare subsidies and plans by 2017. (Id.).

D. *Proceedings in this Case*

In July 2013, Plaintiffs filed a motion seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003. Plaintiffs filed this new action on July 23, 2013 against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution. Count II of

[21] Id.
[22] Id.

the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract. Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision.

Following remand, the City and the Funds filed motions to dismiss the Amended Complaint. After extensive briefing and oral argument, this court issued its Memorandum and Order denying the motions as to Count I, granting dismissal of Count II with leave to amend and granting dismissal of Count III with prejudice.

II. Motions for Clarification or Reconsideration

The City and the Fire and Municipal Funds have filed motions for clarification or reconsideration as to the denial of their motions to dismiss Count I. "The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." Chelkova v. Southland Corp., 331 Ill. App. 3d 716, 729-30 (1st Dist. 2002).

A. ***The City's Obligations under the 1983 and 1985 Amendments***

The City seeks clarification as to the City's obligations to the Funds' annuitants under the 1983 and 1985 amendments. The Funds also seek clarification on this issue. While the court believes its Memorandum and Order was clear on this issue, the court will restate its findings for the parties.

The City is correct that it does not have any obligation under the 1983 or 1985 amendments to subsidize or provide healthcare for the Funds' annuitants. That obligation is placed on the Funds. However, the City does have a obligation to contribute, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare for the Funds' annuitants. Therefore, both the Funds and the City have certain obligations under the 1983 and 1985 amendments and both the City and the Funds are proper parties to Count I.

The court notes that Plaintiffs' Response challenges this court's prior findings regarding the extent and nature of the City's obligations under the 1983 and 1985 amendments. If Plaintiffs believed the court's ruling was in error, they should have filed their own motion to reconsider.

The court further notes that Plaintiffs once again make numerous references to alleged contracts with the City which have not been actually pled leading to the dismissal of Count II with leave to amend.

B. *The Fire and Municipal Funds' Motion for Reconsideration*

The Fire and Municipal Funds' motion to reconsider repeats the same arguments made by these Funds in the prior briefing and oral argument. "A motion to reconsider is not an opportunity to simply reargue the case and present the same arguments and authority already considered." People v. Teran, 376 Ill. App. 3d 1, 4-5 (2d Dist. 2007). The Fire and Municipal Funds submit nothing other than their disagreement with this court's decision. Disagreement with a court's decision is not a basis for reconsideration.

III. Conclusion

The December 3, 2015 Memorandum and Order is clarified as set forth above. The motions to reconsider are denied.

Enter: 3/3/16

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
MAR 03 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK