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

MICHAEL W. UNDERWOOD, *et al.*,

Plaintiffs

-vs-

CITY OF CHICAGO,
a Municipal Corporation,

and

TRUSTEES OF THE POLICEMEN'S
ANNUITY AND BENEFIT FUND OF
CHICAGO, *et al.*,

Defendants.

2013 CH 17450

Honorable Neil H. Cohen

**TRUSTEES OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO
REPLY TO THE CITY OF CHICAGO'S MEMORANDUM CONCERNING THE
RESPONSIBLE PARTY FOR THE PAYMENT OF THE SUBSIDIES PURSUANT TO
THE 1983 AND 1985 AMENDMENTS TO THE ILLINOIS PENSION CODE**

Defendant, THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO (the "PABF"), filed no opening brief in regard to the sole issue addressing whether the City of Chicago (the "City") or the PABF, and the other named funds, the Firemen's Annuity and Benefit Fund of Chicago (the "FABF"), the Municipal Employees' Annuity and Benefit Fund of Chicago ("MEABF"), and the Laborers & Retirement Board Employees' Annuity and Benefit Fund of Chicago ("LABF") (collectively, the "Fund(s)") are responsible for the payment of the subsidies provided for in the applicable 1983/1985 pension provisions of the Illinois Pension Code.

With that said, the PABF elected to, and does now formally, adopt the arguments made in

the brief filed by the FABF on June 15, 2018, as it addressed the Appellate Court's decision in *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, in support of the position that the healthcare coverage and payments were prior to 1983/1985 the sole obligation of the City and after the Appellate Court order it remains the obligation of the City to provide and pay.

The PABF, while adopting the arguments and conclusion of the FABF since the issues and pension provisions affecting the FABF and the PABF are the same, after review of the memorandum filed by the City has elected to and does offer and files this reply to the City.

Well known both to this Court and the Appellate Court from prior court filings, and not disputed by the City, dating back to 1980 and prior thereto, the City, without any subsidy from the Funds, provided and paid for healthcare coverage to its annuitants. The City's payment of healthcare coverage for annuitants continued without any Fund subsidy/contribution until the passage of the 1983 legislation, as it affected the PABF and FABF, and the 1985 legislation, as it affected the MEABF and LABF.

Following the passage of the 1983 legislation, 40 ILCS 5/5-167.5, the PABF for the first time was now required, from the tax levy it received from the City, to subsidize/contribute to the healthcare payments the City had and continued to pay on behalf of annuitants. The City, while seeking in *Korshak* to recover funds paid for annuitant healthcare, did not then assert the 1983 legislation in any way relieved them from their obligation to provide and pay healthcare for annuitants, and in point of fact the City continued to provide and pay healthcare costs for annuitants.

The City in *Underwood* now in part asserts: (1) by virtue of the 1983/1985 legislation, since it did not address the City's payment of healthcare benefits but only addressed the Funds' payment of a subsidy, that the City therefore was under no further obligation to continue to provide

their annuitants with continued healthcare coverage; and (2) it was only by virtue of agreements and amendments to the statute that they continued to provide coverage and pay healthcare costs until December 31, 2016, when the City elected to no longer engage in further extensions of legislative healthcare provisions and payments toward such coverage. One needs to ask if the City believed, as it now asserts, that the 1983/1985 legislation truly relieved them of any obligation to provide and pay for healthcare, why did they wait more than 30 years to raise that argument?

The 1983 legislation did not reference the City as there was no need to, as the legislators were fully aware the City was the party providing and paying, without any annuitant objection, for healthcare. The 1983 legislation was enacted not to change that, but was rather enacted for one purpose, and that was to require the PABF (and the FABF) to contribute, from the tax levy it received from the City, a defined subsidy toward the City provided and paid for healthcare insurance.

The Appellate Court, with all of the facts and history before it, remanded this case back to the Circuit Court for one purpose only, not to address the issue of providing healthcare coverage for annuitants, as that issue was resolved with a finding that continued healthcare coverage was not a protected benefit, but for the single purpose of providing a workable solution to address how healthcare subsidies for annuitants not covered by the City's recognized obligation to provide healthcare funding for the Korshak and Window subclasses, would be funded.

The Appellate Court, aware of the history concerning healthcare coverage, specifically (1) the City's payment of healthcare coverage from at least 1980 without contributions and/or subsidies from the Funds and (2) the 1983/1985 legislation which first provided for a Fund subsidy, by its decision and remand to this Court was returning the City to the position it had in 1980 and before as the sole provider and payer of healthcare benefits for covered annuitants. In

effect, all annuitants covered by the courts order, and not just the Korshak and Window subclasses, which the City agreed to cover, were entitled to a continuation of the City’s obligation to pay for healthcare coverage.

The City, in its memorandum, states, “the Appellate Court’s 2017 Opinion cannot and should not be used to overcome the plain language of the statute and...” that the Appellate Court’s phrase “[u]nder the 1983 amendment, **the City is obligated to pay** toward its retirees’ healthcare \$55 per month for non-Medicare-eligible retirees and \$21 per month for Medicare-eligible retirees,” (*Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 40 (emphasis added)) is not what the Appellate Court truly meant. However, in the Appellate Court’s review of the entire history of the healthcare coverage, it was clear that: (1) they were aware that prior to 1983/1985 the City was the provider and payer of healthcare coverage; (2) the 1983/1985 legislation was not intended to remove the City of its obligation; and (3) its only intent was to have the Funds now contribute toward that obligation by returning to the City a certain portion of funds the Funds received from the tax levy.

The Appellate Court remand noted this Court “will have to find a workable solution to address how the subsidy will be funded...” *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 64. Had the Appellate Court, as the City contends, intended to limit its review only to the language of the 1983/1985 legislation, and close its eyes to the history concerning the healthcare issue, it would have so said, **and it would not have been necessary to remand the case to this Court to find a “workable solution” on the funding issue.**

CONCLUSION

For all the above reasons, this Court should rule that the City is the responsible party for the payment of the subsidies pursuant to the 1983 and 1985 amendments to the Illinois Pension Code.

Respectfully submitted,

TRUSTEES OF THE POLICEMEN'S ANNUITY
AND BENEFIT FUND OF CHICAGO

/s/ David R. Kugler
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