

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

MICHAEL W. UNDERWOOD, et al., )  
)  
Plaintiffs,)

vs. ) No. 13 CH 17450  
) Calendar 13

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 and Benefit )  
Fund of Chicago, et al., )  
)  
Defendants.)

Record of proceedings had at the  
hearing of the above-entitled cause, before the  
Honorable NEIL H. COHEN, one of the Judges of said  
Court, on March 18, 2016, in Room 2308, Richard J.  
Daley Center, Chicago, Illinois, commencing at 9:45  
a.m.

## A P P E A R A N C E S

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1           A P P E A R A N C E S (Continued)

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1 MR. PRENDERGAST: Good morning, Your  
2 Honor. Richard Prendergast on behalf of the City.

3 THE COURT: Richard.

4 MR. KRISLOV: Good morning, Your  
5 Honor. Clint Krislov with Ken Goldstein on behalf of  
6 Mr. Underwood and the other 300 employees.

7 THE COURT: Clint.

8 MS. BOECKMAN: Good morning, Your  
9 Honor. Sarah Boeckman on behalf of Defendants Fire  
10 Fund and Municipal Fund.

11 MR. DONHAM: Good morning, Your Honor.  
12 Cary Donham on behalf of the Laborer's Fund.

13 THE COURT: Cary.

14 MR. KUGLER: David Kugler on behalf of  
15 Policemen's Fund.

16 THE COURT: David. Hello, everybody.

17 First I have a motion to dismiss  
18 that's been filed by you, Cary.

19 MR. DONHAM: Yes, sir. Yes, Your  
20 Honor.

21 MS. BOECKMAN: And, Your Honor,  
22 Fireman's Fund and Municipal Fund also filed a motion  
23 to dismiss yesterday.

24 THE COURT: I don't have a copy of it.

1 MS. BOECKMAN: I have a copy for you  
2 right here.

3 (Document tendered.)

4 MR. KUGLER: The Policemen's Fund also  
5 filed a motion. I filed it back on March 8th.

6 THE COURT: How would I know? How  
7 would I know, David? You never gave me a copy of it.

8 MR. KUGLER: Your Honor --

9 THE COURT: You never gave me a copy  
10 of it.

11 MR. KUGLER: I apologize for that,  
12 Your Honor.

13 THE COURT: It's okay.

14 All right. So I have three motions to  
15 dismiss by the Funds.

16 MR. KRISLOV: You're supposed to have  
17 another one from the City today.

18 MR. PRENDERGAST: Our motion to  
19 dismiss is due today. I've spent the last three days  
20 in Los Angeles in a mediation. We figured we'd  
21 finally get it together on the laptops. The laptops  
22 weren't working.

23 Here's my point. If I can file it  
24 Monday, I'd appreciate it.

1 THE COURT: Of course you can.

2 MR. KRISLOV: We would object, Your  
3 Honor. And I'll tell you why.

4 THE COURT: Your objection is noted  
5 and overruled.

6 MR. KRISLOV: Can I explain why?

7 THE COURT: Do I have the discretion  
8 to allow them to file a motion to dismiss in an  
9 untimely fashion when I set the time to begin with?  
10 You know the law.

11 MR. KRISLOV: This wasn't set to begin  
12 with this way.

13 Mr. Prendergast asked me a week ago,  
14 maybe two weeks ago, for an extension because he had  
15 a --

16 THE COURT: Well, he asked the wrong  
17 person since you don't have control over it. I do.

18 MR. KRISLOV: Your Honor, we agreed to  
19 -- we wanted to have their motion before we were  
20 here. Regardless, I think we can address the whole  
21 thing today, and I --

22 THE COURT: Well, regardless of your  
23 position, whatever it is, because I don't understand  
24 what your objection is --

1                   MR. KRISLOV: I'm on vacation all next  
2 week. Mr. Prendergast --

3                   THE COURT: He's just filing it,  
4 Clint. I'm just giving him leave to file it.  
5 Today's Friday. I'm going to give him leave to file  
6 it Monday, over your objection, the basis of which I  
7 still don't understand. And I guess it's that you  
8 gave him an extension until today, and he didn't meet  
9 it because he was working.

10                  MR. KRISLOV: We wanted to be in a  
11 position to address the Court on -- to be able to  
12 address the court on all the motions before we came  
13 here. But we'll deal with that.

14                  MR. PRENDERGAST: Let's be clear on  
15 one thing, Judge.

16                  THE COURT: We don't have to be clear  
17 on anything. The motion is directed towards me.  
18 It's nice that he asked you for it. It's the  
19 appropriate thing. It's nice that you gave it to  
20 him, and that's great.

21                  But in the end, I have the final say,  
22 even when I'm wrong, as pointed out to me, which I  
23 have, you know, the ability to be.

24                  But in this case, he's asking for two

1 days. He's asking for the weekend to file it. I  
2 don't see any prejudice to you, other than your  
3 vacation. And we'll survive that.

4 So your request is granted, Richard.  
5 You'll file it on Monday.

6 Would you like to engage in a briefing  
7 schedule on this and set it now, assuming his word  
8 can be trusted, which I think it can, so that we can  
9 deal with all of these?

10 Do you want to do that?

11 MR. KRISLOV: Is it my turn yet?

12 THE COURT: Let me tell you something.

13 MR. KRISLOV: I don't want to deal  
14 with just --

15 THE COURT: I don't like being talked  
16 to that way. I don't like facetiousness.

17 MR. KRISLOV: I'm not being facetious.

18 THE COURT: I don't like it. I don't  
19 deserve it. The court doesn't deserve it.

20 MR. KRISLOV: Your Honor, I have the  
21 greatest respect for this Court, but --

22 THE COURT: Well, I think you were  
23 being facetious, and I don't like it.

24 MR. KRISLOV: The defendants have --



1                   THE COURT:  It's your turn when it's  
2    your turn.

3                   MR. KRISLOV:  I'll wait for my turn.

4                   THE COURT:  I asked you a question.

5                   Do you want to enter into a briefing  
6    schedule today?  Yes or no?

7                   MR. KRISLOV:  I would like to propose  
8    a manner of dealing with this that is  
9    all-encompassing.  There are five pending motions.

10                  THE COURT:  What are the other  
11    motions?

12                  MR. KRISLOV:  One motion is our motion  
13    to vacate your clarification --

14                  THE COURT:  It's denied.

15                  MR. KRISLOV:  We filed it.  We filed  
16    it.

17                  THE COURT:  It's denied.  I read it.  
18    You said I'm wrong.  You disagree with me.

19                  The gist of it is that you think I  
20    flipped my original opinion.  I say I didn't.  I said  
21    it was pretty clear.  The motion for clarification  
22    was not made by you.  It was made by the City.  I  
23    made it pretty clear.

24                  I did read what you had to say in the

1 press. I disagreed with you when you said it. I  
2 thought you got it wrong. But then it was an  
3 interesting situation. Does the court have the  
4 obligation to let someone who's talking to the press  
5 about a case to tell him he's gotten it wrong or not.

6 I came down on the side of you're  
7 entitled to say anything you want to anyone about the  
8 case, at any time you want, for whatever purpose you  
9 want, and it's not my obligation to tell you you're  
10 wrong when you talk to the press about what you're  
11 saying.

12 So you think I'm wrong, that's fine.  
13 I disagree with you.

14 MR. KRISLOV: Okay. That's the  
15 current motion. That's the recent --

16 THE COURT: Your motion to --

17 MR. KRISLOV: Vacate clarification --

18 THE COURT: Yes.

19 MR. KRISLOV: -- and to certify the  
20 question.

21 THE COURT: Yes, it's denied.

22 I'm sorry?

23 MR. KRISLOV: The motion has --

24 THE COURT: The other part of it about

1 the certification?

2 MR. KRISLOV: Yes.

3 THE COURT: It's denied too.

4 MR. KRISLOV: Okay.

5 THE COURT: Now what else is there?

6 MR. KRISLOV: Our motion for summary

7 judgment.

8 THE COURT: Yes, that's fine.

9 MR. KRISLOV: That's fine. We'd like  
10 them to respond. If we do a briefing schedule on the  
11 motion to dismiss --

12 THE COURT: No, I'm not going to do a  
13 motion for summary judgment until I'm done with the  
14 motions to dismiss, because it may not be necessary.

15 MR. KRISLOV: Your Honor, you have  
16 already upheld Count 1.

17 THE COURT: It may not be necessary.  
18 I'm going to deal the with motions to dismiss. I'm  
19 going to deal with that.

20 MR. KRISLOV: You're holding the --

21 THE COURT: It's entered and  
22 continued.

23 MR. KRISLOV: Okay. Our renewed  
24 motion for class certification.

1 THE COURT: Yes. That's something --

2 MR. KRISLOV: That's been pending for  
3 a long time.

4 THE COURT: So the question again is,  
5 do I deal with the motion to dismiss first, or --  
6 which is my inclination, for the same reason, just in  
7 terms of efficiency. If it's unnecessary, then I  
8 don't have to deal with the motion for class  
9 certification.

10 Based upon the recent case with the  
11 Supreme Court, which upheld me, you have your motion  
12 for certification in. No one can claim otherwise.  
13 No one can undercut about that in terms of procedure.

14 So my question to you, Clint, is why  
15 deal with the motion for certification, class  
16 certification, before it's necessary, as long as  
17 you're not prejudiced thereby?

18 MR. KRISLOV: Well, the question is  
19 who we're representing, and, you know, it's been  
20 pending for a long time, and --

21 THE COURT: I know it has, but we've  
22 been dealing with other things for a long time, and  
23 we've probably got those to the side of us.

24 MR. KRISLOV: Well, it may never get

1       there, it seems like.

2                       Here's what I would propose. I would  
3 propose that -- and I've read the Funds' motions to  
4 dismiss, read all of them.

5                       THE COURT: I haven't because I didn't  
6 get them.

7                       MR. KRISLOV: I read all of them, and  
8 I got them yesterday, as the agreement was.

9                       MR. PRENDERGAST: All but one.

10                      MR. KRISLOV: Pardon?

11                      MR. PRENDERGAST: All but one.

12                      MR. KRISLOV: No.

13                      THE COURT: You didn't get the City's.

14                      MR. KRISLOV: I said all the Funds'  
15 motions were filed yesterday, and I reviewed those.  
16 They're different. And we'll see -- though we had  
17 hoped to see the City's motion today so that we could  
18 figure out how long it will take to deal with it.

19                      Here's what I suggest is the most  
20 efficient way to deal with this is that when the  
21 City's motion comes in, we think, because most of the  
22 Funds are rehashing arguments that they made to you  
23 before, most of which were rejected, I suspect the  
24 City's motion is not going to differ substantially

1 from what it did the first time.

2 What I would suggest is that, barring  
3 some -- I guess we wait until we see the City's  
4 motion, but presuming it's going to be essentially  
5 what it was before --

6 THE COURT: What's your suggestion?

7 MR. KRISLOV: My suggestion is that  
8 you, over our disagreement -- I know we disagree  
9 fundamentally on this case -- but that after  
10 reviewing their motion, you would rule, likely, that  
11 you would still dismiss the third amended complaint,  
12 the Counts 2 and 3 now with prejudice, and you would  
13 uphold Count 1 the way that you had ruled and made  
14 findings there was no just cause to delay enforcement  
15 or appeal. Because at that point, the most efficient  
16 way to deal with it is to get that case up on appeal.

17 THE COURT: Before we deal with  
18 summary judgment?

19 MR. KRISLOV: Yes. You can -- I mean,  
20 otherwise, we're going to spend another three to four  
21 months --

22 THE COURT: And before we deal with  
23 class certification?

24 MR. KRISLOV: You know, it's --

1 getting the legal question decided is the most  
2 important thing. And people -- because there's no  
3 injunction --

4 THE COURT: I understand what you're  
5 saying. And I wanted to -- what is the Funds' and  
6 the City's point of view on 308 certification? I'm  
7 not sure what the certified question would be as to  
8 how you would like to phrase it or I would like to  
9 phrase it.

10 MR. KRISLOV: So you don't have to  
11 certify the question for this purpose. All you have  
12 to do -- because you'd be dismissing --

13 THE COURT: 304 language.

14 MR. KRISLOV: Yes.

15 THE COURT: So Clint would like to, as  
16 good trial lawyers do, look ahead three steps, figure  
17 out what's probable and what's going to happen, and  
18 we don't know what's going to happen. And I'm not  
19 going to make any ruling today until I've already  
20 ruled on the motions to dismiss.

21 But assuming your motions to dismiss  
22 are handled in the way that Mr. Krislov suggests is  
23 likely, I guess the question is, you don't have to  
24 make a decision today, are you all going to be

1       agreeing to 304(a) language or not? That's something  
2       for you to think about.

3                       And I do take your point that on the  
4       legal issue, it would be nice to have that subject to  
5       review as soon as possible for obvious reasons.

6                       It does seem to be the most efficient  
7       way. I agree with you on that. Prior to dealing  
8       with class certification, prior to dealing with  
9       summary judgment, it would be nice to get a somewhat  
10      definitive ruling from whichever higher court it's  
11      going to go to.

12                      MR. KRISLOV: You and I will probably  
13      get along probably lots better after we know where  
14      we're going.

15                      THE COURT: Mr. Krislov, you keep  
16      saying that, you know. I guess you like to think of  
17      yourself as being a person who's a target. But I  
18      told you this on the record. It's the way I feel  
19      about you off the record and on the record. I'll say  
20      it again.

21                      I don't have any problem with you  
22      personally or professionally. In fact, I have said  
23      on the record how much I admire what you do and who  
24      you do it for and the people you do it for, which is



1 the people from whence I came. And the motivation  
2 and the intent, it's something I admire and always  
3 have.

4 So I wish you'd stop telling me, or at  
5 least give me a basis for why you think that you and  
6 I have problems, because I don't see them.

7 MR. KRISLOV: We just fundamentally  
8 disagree on the law governing this case.

9 THE COURT: Okay. Well, that's going  
10 to happen, and that's going to happen in life. But  
11 it's not personal. It's just a disagreement on  
12 that --

13 MR. KRISLOV: Agreed.

14 THE COURT: -- at this point, so --  
15 regardless of what I want. So I don't -- I can't  
16 lead with my heart. I have to lead with my mind,  
17 such it is. So there you are.

18 So my suggestion is, in response to  
19 what you say, Clint, is that we do deal would the  
20 motions to dismiss. I can't deal with it any other  
21 way. We have to deal with it in a linear fashion.

22 And assuming it ends up that way,  
23 we'll take it up, and I will entertain 304(a)  
24 language, and I'll listen to objections from others.

1                   Why don't you all talk about it at the  
2 appropriate time. If you're all behind it, it's  
3 even -- this is much stronger than this, as every  
4 good union person knows.

5                   MR. KRISLOV: Here's why I raise it  
6 this way, because what's going to happen otherwise,  
7 I'd like to see the City's motion to dismiss, and  
8 then I think we will all probably agree that you're  
9 going to come out the same way that you did --

10                  THE COURT: But one still has to fight  
11 the fight before you know.

12                  MR. KRISLOV: Except that if we have  
13 to do full briefing on both sides on this issue, it's  
14 going to consume huge resources --

15                  THE COURT: Oh, that's where you're  
16 coming from.

17                  MR. KRISLOV: And the other part is  
18 that it takes -- we're looking at three to five  
19 months of doing this before we get to the point that  
20 we put it up on appeal.

21                  And during that time, the healthcare  
22 premiums are still at that much higher level.

23                  THE COURT: Sure. I understand.

24                  MR. KRISLOV: And so the people are --

1                   THE COURT: So what's the way around  
2 this? You're trying to cut out the middleman, to  
3 wit, an opinion, on the motion to dismiss that I'm  
4 sure the Funds and the City feels does avoid 137  
5 ramifications because it's legitimate, and it has to  
6 be heard, and it has to be ruled upon, and there has  
7 to be a definitive ruling from me without cutting out  
8 the middleman.

9                   How does one do that?

10                  MR. KRISLOV: We do that by -- when we  
11 see the City's motion, we would say, based on your  
12 most recent rulings, the March 4th and the  
13 December --

14                  THE COURT: Both of them.

15                  MR. KRISLOV: And the November 3rd  
16 ruling, three of them, based on those, you would hold  
17 the first -- the third amended complaint, that you  
18 would uphold the Count 1, as you've described, the  
19 rights; that you would dismiss Counts 2 and 3, now  
20 with prejudice.

21                  And I've learned from Mr. Prendergast  
22 that you have to do -- at least one cause of action  
23 has to be denied with prejudice in order to support  
24 304 findings, but then you do that in a very summary

1 fashion, and then we have an appealable order.

2 THE COURT: Well, I'll tell you what.

3 My inclination, my strong inclination,  
4 is to not do it that way. However, I will listen to  
5 what the other side has to do. I don't want to --  
6 the reason for it is because, (a) I think there has  
7 to be a definitive ruling from me on their definitive  
8 motions. I think they're entitled to my  
9 consideration of it in the same way you were, and I'd  
10 like to give them that, and I'd like the record to  
11 reflect that.

12 However, if the parties agree, I will  
13 certainly consider a shortcut that meets everyone's  
14 agenda, legal agenda.

15 MR. PRENDERGAST: Your Honor, I would  
16 like to point out, just for the record, that the  
17 third amended complaint is almost 50 pages long. It  
18 adds three new causes of action. You haven't yet  
19 ruled on that, and we don't have a briefing schedule  
20 on it, which I think is the point that you made  
21 starting out, that that's where we ought to start.  
22 That's what we ought to get done today.

23 The motion for reconsideration of your  
24 second order has been denied. Your motion -- I

1       assume the motion for class certification is entered  
2       and continued.

3                       THE COURT:   Yes.

4                       MR. PRENDERGAST:   And so we don't  
5       really know where we're going to be until we get  
6       there.  If you deny -- if you granted our motion with  
7       respect to all of the counts that we filed, and  
8       that's the reason they're running late, because we  
9       are not just rehashing old arguments.  We have new  
10      arguments because they have new claims, if you were  
11      to grant our motion completely, he wouldn't need  
12      304(a).  His case would be dismissed.  It's an  
13      appeal.

14                      So I think we're a little bit ahead of  
15      ourselves.  I think your inclination is correct.  We  
16      need a briefing schedule on the only motion that's  
17      now before you, which is -- the motions are all  
18      before you, which are the motions to dismiss.  I  
19      assure you I will not be asking for any more time.  I  
20      appreciate the extension.

21                      And we can work out Monday's date for  
22      a briefing schedule.  All Mr. Krislov has to tell us  
23      is how long he'll need to respond.

24                      THE COURT:   Mr. Donham?

1                   MR. DONHAM: We agree with what Rich  
2 said.

3                   MS. BOECKMAN: The Funds would like  
4 the benefit of the Court's ruling on our motion to  
5 dismiss. We definitely wouldn't be opposed to an  
6 expedited briefing schedule, but I think it is  
7 important. Like Rich points out, there are new  
8 counts on the third amended complaint. We'd like the  
9 benefit of the Court's ruling on those.

10                  MR. KUGLER: Likewise, Your Honor.

11                  THE COURT: All right. I think that's  
12 the appropriate way to go, Clint. I do understand  
13 your urgency and your desire to not expend resources,  
14 precious resources, financial resources and time  
15 because of the premiums. I understand that.

16                  But other than -- I will take up your  
17 offer. I'm sure Mr. Krislov would like this to be  
18 expedited, if possible, which I'll grant.

19                  Other than that, they're entitled to  
20 have their day and to have the Court consider their  
21 motions on their own, especially in light of the  
22 three additional counts, something I haven't thought  
23 of but makes sense.

24                  So your motion to -- your suggestion

1 is it takes two to tango -- it's denied because they  
2 don't want to and because I don't really want to do  
3 it that way. I'm going to do it the right way, in a  
4 linear way, and give them a ruling. I think they're  
5 entitled to that.

6 So can we enter a briefing schedule  
7 today so we don't have to wait until Monday? I won't  
8 be here next week.

9 MR. KRISLOV: I won't be here next  
10 week either, but I'm not -- sorry. I won't  
11 voluntarily do it in the blind. I would like to see  
12 that --

13 THE COURT: Great. I'll be gone. I'm  
14 going with my wife. She's telling me I'm going out  
15 of town next week.

16 MR. KRISLOV: We're both going out of  
17 town next week.

18 THE COURT: And if you don't want to  
19 enter into a briefing schedule, that's fine.

20 When are you back from your trip?

21 MR. KRISLOV: I'll be back the  
22 following week. So if we're in the following Monday  
23 or Tuesday, that should be fine.

24 THE COURT: Let me check. The week

1 after Easter. I will not -- I have to go to EdCon  
2 for teaching and to be taught the week of  
3 April 4th.

4 Is April 8th filled?

5 THE CLERK: Yeah. But you're also --  
6 the week of the 28th -- you're gone next week, but  
7 you're back --

8 THE COURT: Oh, very good. How about  
9 any day the week of the 28th, including April 1st?

10 What day is best for you, Clint?

11 MR. KRISLOV: Why don't we do it  
12 March 29th?

13 THE COURT: Mr. Goldstein, is that a  
14 good day for you? Mr. Prendergast?

15 MR. PRENDERGAST: March 29th.

16 THE COURT: Mr. Donham?

17 MR. DONHAM: Works, Your Honor.

18 THE COURT: I don't remember your  
19 name.

20 MS. BOECKMAN: Sarah.

21 THE COURT: What's your last name?

22 MS. BOECKMAN: Boeckman.

23 MR. PRENDERGAST: She takes Ed Burke's  
24 place.



1                   THE COURT: Well, thank you. You're  
2 doing the Court a great favor.

3                   David, is that all right with you?

4                   MR. KRISLOV: Can we do it the  
5 28th instead -- we'll do it the 29th.

6                   THE COURT: It's just to set a  
7 briefing schedule. I'll get you in and out of here,  
8 I promise. And you if you all e-mail each other and  
9 talk, you can agree upon a briefing schedule and give  
10 me an agreed-upon order. As long as you set the  
11 clerk's status date for a Monday, you can do that.

12                   So, Mr. Goldstein, will you be out of  
13 town?

14                   MR. GOLDSTEIN: No, I'm around.

15                   THE COURT: Did he give you the right  
16 to agree upon a briefing schedule?

17                   MR. GOLDSTEIN: Maybe.

18                   THE COURT: Okay. I know. So if you  
19 all want to do that and bring it in, it will be  
20 signed by me or Judge Allen in my absence, and we can  
21 get that done.

22                   Otherwise, we'll put it for the 29th  
23 until we hear otherwise, at 9:30, get you in and out  
24 of here.

1 MR. PRENDERGAST: Thank you very much.

2 THE COURT: You're welcome. Wish you

3 all well.

4 (Proceedings adjourned at 9:58 a.m.,

5 March 18, 2016.)

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## 1 REPORTER'S CERTIFICATE

2  
3 I, JERRI ESTELLE, CSR, RPR, doing  
4 business in the City of Chicago, State of Illinois,  
5 do hereby certify that I reported in computerized  
6 shorthand the foregoing proceedings as appears from  
7 my stenographic notes.

8 I further certify that the foregoing  
9 is a true and accurate transcription of my shorthand  
10 notes and contains all the testimony had at said  
11 proceedings.

12 IN WITNESS WHEREOF, I hereunto set my  
13 hand as Certified Shorthand Reporter in and for the  
14 State of Illinois on March 18, 2016.

15  
16 \_\_\_\_\_  
Jerri Estelle, CSR, RPR

17 License Number: 084-003284  
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