STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ST. LOUIS | SIXTH JUDICIAL DISTRICT

Paula Savela,

Plaintiff,

vs.

City of Duluth,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND MEMORANDUM

File No. 69DU-CV-08-1793

The above entitled matter came before the Honorable Kenneth A. Sandvik, Judge of District Court, on August 8, 2009 at the St. Louis County Courthouse, Duluth, Minnesota for the purpose of a hearing on the parties' cross motions for summary judgment. Paula Savela, the Class Representative, appeared personally and through counsel, Don L. Bye and Shelly M. Marquardt of Duluth, Minnesota. The City of Duluth was represented by attorney John M. LeFevre, Jr. of Minneapolis, Minnesota. Duluth Mayor Don Ness and Gunnar Johnson, the Duluth City Attorney, were also present on behalf of the City of Duluth.

The Court, having taken this matter under advisement, makes the following:

FINDINGS OF FACT:

For purposes of this Order, the Court finds the following facts to be true:

1. Three (3) individual Plaintiffs commenced this action in April of 2008, alleging that the City of Duluth had breached contractual obligations that were set forth in the Collective Bargaining Agreements (hereinafter "CBAs") between the City and the collective bargaining units.

2. On May 12, 2009, this Court approved and signed, pursuant to the parties' stipulation, an Order for Class Certification and Amended Scheduling Order.
3. The Class Definition is "all Duluth retirees who are former bargaining unit members and who retired from January 1, 1983 through December 31, 2006, and their spouses/dependents who are presently entitled to the retiree health care benefits, under the collective bargaining agreements ("CBAs") for the following bargaining units: Local 101 International Association of Fire Fighters; Duluth Police Union, Local 807; Confidential Employees; City of Duluth Supervisory Association; and Local 66 of A.F.S.C.M.E., Council 5 (formerly Council 96) for Basic Unit Employees."
4. The Class satisfied the prerequisites of Minn.R.Civ.P. 23.01 and was certified under Minn.R.Civ.P 23.02(a)(1) and (a)(2).
5. The Class was not certified under Minn.R.Civ.P. 23.02(c).
6. On or about May 26, 2009, Plaintiffs' Amended Complaint was filed with this Court.
7. In the Amended Complaint, the Class Representative and class members (hereinafter "Plaintiffs") allege that they have been damaged or are threatened with damage as a result of the City's breach of its contractual obligations.
8. Plaintiffs seek damages arising from and proximately caused by the City's alleged breach of its contractual obligations.
9. Plaintiffs seek declaratory and injunctive relief.
10. The controversy between the parties concerns the meaning of the CBA language ("to the same extent as active employees") on the following issue:

> As a matter of contract, are the Class members' (Plaintiffs') health benefits fixed and governed by the plan in place on the date of their retirement or may the City of Duluth modify the benefits whenever and however benefits for current employees are modified?

11. The CBAs all the contain the following language with respect to retired employees' hospital-medical insurance coverage:

> Any employee who retires from employment with the City...shall receive hospital-medical insurance coverage to the same extent as active employees, subject to the following conditions and exceptions...

12. Plaintiffs claim that their health benefits, their share of the costs thereof including co-pays and deductibles, are fixed and governed by the plan in place on the date of their retirement.

13. Plaintiffs claim the City promised it would pay insurance benefits in effect at the time of the employees' retirement for the retired employee, the retiree's spouse and dependents for the lifetime of the retiree, the retiree's spouse and dependents, which ever was latest.

14. Plaintiffs seek enforcement of these alleged promises.

15. The City of Duluth claims that Plaintiffs' health benefits may be modified to the same extent that benefits for current employees are modified.

16. The City seeks a determination that it may modify the retiree's benefits, including the costs therefore and the co-pays and deductibles, whenever and however benefits for active employees are modified.

17. The City does not dispute that it is obligated to provide health benefits to Plaintiffs.

18. The City does not dispute that it agreed to pay health-care premiums for Plaintiffs, subject to conditions in the CBAs.

19. The contract language does not vest the Class members' health insurance benefits under the plans existing at the time of retirement but instead provides that coverage shall be "for the life of the retiree" but "to the same extent as active employees."

20. On May 26, 2009, the City of Duluth filed a Notice of Motion and Motion for Summary Judgment, a Memorandum in Support of City's Motion for Summary Judgment, and a Proposed Order.
21. On July 10, 2009, Plaintiffs filed a Notice of Motion and Answer and Counter Motion for Summary Judgment, a Memorandum in Support of Summary Judgment, Affidavits of Paula Savela, Patricia Turchi, Patrick Alexander and Eli Miletich and a Proposed Order.
22. In their Affidavits, Paula Savela and Patricia Turchi state that they changed the dates of their retirement with the "knowledge and belief that whatever coverage [they] had on [the] date of retirement would be the coverage provided by the City without cost to [them] for the rest of [their] li[ves]." Both Affiants state that this belief was "in large part strengthened when [they] retired by verbal assurances of city officials, supervisors and co-employees."
23. Affiants Paula Savela and Patricia Turchi also maintain that they received assurances in writing from the Benefits Plan Administrator that they would be provided the same coverage for life as retirees as they had when they retired. However, the attachment provided as support for her claim does not appear to indicate what Ms. Savela purports.
24. Affiant Paula Savela further claims that after attending many meetings and listening to city officials and retirees, she was "firmly convinced that the retiree insurance provision that was negotiated meant that City retirees were to keep the same coverage..."
25. Affiant Patrick Alexander makes similar assertions in his Affidavit and provides attachments in support of those assertions. One of the attachments to his Affidavit is a document that Mr. Alexander purports was used by the City Administration during the

1990's and given out to people who contemplated retirement or retired from employment. The document provides:

> Retirees and disabled employees who are receiving a pension may retain health insurance coverage as provided under the terms of the current labor agreement under which he/she resigned or retired (see current labor agreement for your bargaining unit).

26. This Court reads the above to mean that Mr. Alexander could receive coverage subject to the terms of the labor agreement under which he retired. The terms of the agreement under which Mr. Alexander retired provided that retirees shall receive hospital-medical insurance coverage to the same extent as active employees.

27. Affiant Eli Miletich states that it was his understanding that "retirees got and kept the same insurance and coverage through life as they had when they retired." He provided the following example:

> For example initially the co-pay for prescription drugs was only $.50 cents. As that co-pay was gradually increased to $3.00 or $5.00 or $7.00 or $12.00 and $20.00 that only applied to new retirees and the older ones stayed at the level they retired under.

28. The July 23, 2009 hearing date for the cross motions for summary judgment was continued until August 7, 2009 per Plaintiffs' request.

29. On August 4, 2009, the City of Duluth filed a Memorandum in Response to Plaintiffs' Motion for Summary Judgment.

30. On August 6, 2009, Plaintiffs filed a Reply to Defendant's Answer to Plaintiffs' Memorandum Regarding Summary Judgment.

31. On August 6, 2009, Plaintiffs filed several Response Affidavits, Supplemental Affidavits and Affidavits.

32. The City objected to the Court's consideration of the Affidavits arguing that the Affidavits were untimely. The City also argued two affidavits which were attached to the Affidavit of Mr. Hall were from the former City Attorney and appeared to be protected by the attorney-client privilege.

33. A hearing on the cross motions for summary judgment was held on August 7, 2009.

34. At the hearing, the Court accepted the Affidavits but allowed the City one week in which to submit in writing its objection to the Affidavit of Mr. Hall based on the attorney-client privilege.

35. On August 14, 2009, the City withdrew its objection based on the attorney-client privilege but continued to object to the Affidavits based on the timeliness of their submissions.

36. The Affidavits provide information regarding the Affiants' understanding of the negotiations concerning the retiree insurance provisions, Affiants' understanding of the intent behind the negotiations, Affiants' understanding of the application of the retiree health insurance provisions and Affiants' reliance on what they believed the insurance provision meant.

37. The Court took into consideration the Affidavits submitted by Plaintiffs on August 6, 2009, in deciding this motion. The Court considers the Affidavits extrinsic evidence, and as such, may not be used to vary the terms of the CBAs because the contract is neither incomplete nor ambiguous. The Affidavits however, give information relevant to the retirees' claims for health benefits under a promissory estoppel theory.

38. While the parties agree that Plaintiffs' claim is a straight contract claim, this Court finds it reasonable and appropriate to analyze the matter under a promissory estoppel theory as well.

39. The parties agree that there is no genuine issue as to any material fact.

CONCLUSIONS OF LAW:

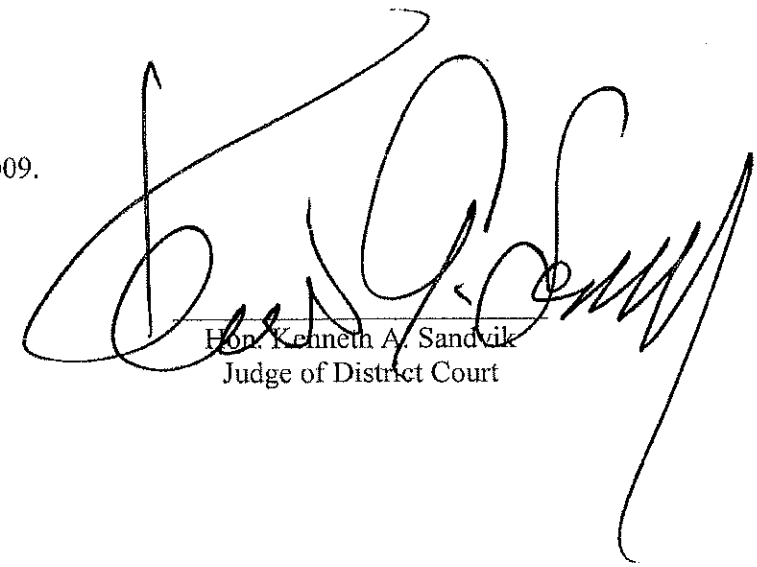
1. The evidence in the record demonstrates that there is no genuine issue as to any material fact and the City of Duluth is entitled to a judgment as a matter of law.
2. The Collective Bargaining Agreements are not ambiguous and the contract language shall be given its plain and ordinary meaning.
3. The Collective Bargaining Agreements require the City of Duluth to provide the same coverage to retirees that it provides to active employees.
4. The Plaintiffs' health benefits are not fixed and governed by the plan in place on the dates of their retirements. The CBAs, in effect on the retirements dates, do not prohibit the City from changing or modifying the health insurance plan provided to the Plaintiffs.
5. To support a promissory estoppel claim, the Plaintiffs would have to show that any promise or promises made to them by the City of Duluth must be enforced to prevent injustice. Judicial determinations of injustice involve a number of considerations, including the reasonableness of a promisee's reliance. The record does not contain facts that would support the conclusion that reliance was reasonable, and therefore the City of Duluth is entitled to summary judgment.

ORDER:

1. Plaintiffs' Motion for Summary Judgment and Request for Declaratory Relief is hereby DENIED.
2. The City's Motion for Summary Judgment and Request for Declaratory Relief is hereby GRANTED.
3. The City may modify the Plaintiffs' benefits whenever and however benefits for active employees are modified.
4. The attached memorandum is incorporated herein.

IT IS FURTHER ORDERED that copies of the Order and Memorandum should be directed by mail to counsel of record for the parties, as such are more fully identified in the files and records herein.

Dated this 13th day of October, 2009.



Hon. Kenneth A. Sandvik
Judge of District Court

MEMORANDUM

The parties in this matter have made cross motions seeking summary judgment. Both parties assert that the language in the Collective Bargaining Agreements (CBAs) which relate to the retirees' health benefits is unambiguous as a matter of law and that summary judgment should be awarded in their favor.

Summary judgment is appropriate and shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that either party is entitled to a judgment as a matter of law. Minnesota Rules of Civil Procedure Rule 56.03. In the present case, there are no issues of material fact. A CBA is a contract, and as such, this Court will interpret and enforce the CBAs as other contracts. *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005). "Generally, construction of a written contract is a question of law for the district court and therefore summary judgment is particularly appropriate." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn.App.2003), *review denied* (Minn. Feb. 25, 2004). Interpretation of an unambiguous contract is also a question of law on which summary judgment may be granted. *Iowa Kemper Ins. Co. v. Stone*, 269 N.W.2d 885, 887 (Minn. 1978).

"The construction and effect of a contract is [ ] a question of law unless the contract is ambiguous." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn.2003) (quoting *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn.1979)). If the contract is ambiguous, its interpretation is a question of fact for the fact-finder. *Id.* A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation. *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005).

"Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning and will not be considered ambiguous solely because the parties dispute the proper interpretation of the terms." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn.App.2003), review denied (Minn. Feb. 25, 2004). "[W]hen a contract is unambiguous, a court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent." *Id.* When a contract is unambiguous, the "contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Minneapolis Pub. Hous. Auth. v. Lor,* 591 N.W.2d 700, 704 (Minn.1999)

When "a written agreement is ambiguous or incomplete, evidence of oral agreements tending to establish the intent of the parties is admissible." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn.2003). Only when a contract is ambiguous *on its face*, will courts examine intrinsic evidence of intent. *Norman*, 696 N.W. 2d 329 at 337 (emphasis added). Extrinsic evidence may not be used to vary the terms of a written contract when the contract is neither incomplete nor ambiguous. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312. As the Court finds that the contract is neither incomplete nor ambiguous, the Affidavits submitted by Plaintiffs, which provide information concerning contract negotiations and the City's alleged intent when negotiating the health benefits provisions, cannot be used to vary the terms of contract.

Pursuant to the parties' stipulation and the Court's Order for Class Certification and Amended Scheduling Order, the controversy between the parties concerns the meaning of the CBA language ("to the same extent as active employees") on the following issue:

> As a matter of contract, are the Class members' health benefits fixed and governed by the plan in place on the date of their retirement or may the City of Duluth modify the benefits whenever and however benefits for current employees are modified?

Plaintiffs contend that the language in dispute should be read to mean that the Class members' health benefits are fixed and governed by the plan in place on the date of their retirement. The City asserts that Class members' health benefits are the same benefits that current employees have.

Plaintiffs rely on *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005) and *Adams v. Independent School Dist. No. 316*, 2008 WL 2573660 (Minn. App. 2008) in support of their argument that the City is obligated to continue to provide health benefits at the level in effect under the CBAs at the time of Plaintiffs' respective retirement. In *Norman*, the Minnesota Supreme Court reviewed the question of whether Chisholm Housing and Redevelopment Authority (CHRA) was obligated to continue to pay health insurance premiums for the benefit of Carolee E. Norman, a retired former employee, beyond the expiration of the collective bargaining agreement after CHRA had terminated Norman's health insurance coverage altogether, including payment of the premiums.

CHRA argued that Minn. Stat. §179A.20, subd. 2a, enacted in 1988, deprived a public employer of authority to contract to pay retiree healthcare benefits beyond the term of the CBA that contained those benefits relying on the language "[a] contract may not obligate an employer to fund all or part of the cost of health care benefits for a former employee beyond the duration of the contract." Norman countered that the limitations set forth in §179A.20, subd. 2a, were overridden by Minn. Stat. §471.61 which was enacted four years later. The applicable provisions of §471.61 provide:

> Subd. 2b. A unit of local government must allow a former employee and the employee's dependents to continue to participate indefinitely in the employer-

> sponsored hospital, medical, and dental insurance group that the employee participated in immediately before retirement, under the following conditions:
>
> (e) The former employee must pay the entire premium for continuation coverage, except as otherwise provided in a collective bargaining agreement or personnel policy. A unit of local government may discontinue coverage if a former employee fails to pay the premium within the deadline provided for payment of premiums under federal law governing insurance continuation.
>
> (k) Notwithstanding section 179A.20, subdivision 2a, insurance continuation under this subdivision may be provided for in a collective bargaining agreement or personnel policy.

The Court in *Norman* read §179A.20, subd. 2a to have a much more narrow purpose than what CHRA argued and concluded that the subdivision "was intended only to relieve public employers from any obligation to appropriate or set aside current resources to 'fund' these future liabilities to retirees." The purpose of 2a, the Court went on to say, was to relieve the employer from any obligation to set aside current resources to secure this future liability beyond the duration of the CBA." The Court also stated that Minn. Stat. §471.61, subd.2b(e) authorizes public employers to contract in a CBA to pay insurance premiums on behalf of retirees as it provides that "[t]he former employee must pay the entire premium for continuation coverage, except as otherwise provided in a collective bargaining agreement or personnel policy."

The Court held that CHRA was authorized to include retiree healthcare benefits in the CBA since a public employer is statutorily authorized to obligate itself in a collective bargaining agreement to pay retiree healthcare premiums indefinitely beyond the term of the agreement. It then considered what rights accrued to Norman when the CHRA included healthcare benefits in the CBA.

In *Norman*, the parties, the District Court and the Court of Appeals analyzed the case under a promissory estoppel theory, relying on the Minnesota Supreme Court's decision in *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W2d 740 (Minn.

1983). In *Christensen*, the Supreme Court followed the principles of promissory estoppel, rejecting a conventional contract approach because "with its strict rules of offer and acceptance, (it) tends to deprive the analysis of the relationship between the state and its employees of a needed flexibility." *Christensen* at 747. In the later *Norman* decision, the Supreme Court analyzed the matter under both a promissory estoppel theory and a traditional contract theory. The Supreme Court noted that *Christensen* had been decided before the Public Employment Labor Relations Act (PERLA) was amended, at a time when public employers had no authority to include any pension benefits in a CBA. Furthermore, the Court stated "the employee in *Christensen* did not rely on a CBA, but rather on a statutory pension that the legislature attempted to reduce by amendment after the employee retired" and thus the case could not proceed under conventional contract law. Noting that "[a]lthough promissory estoppel may remain proper for analyzing noncontractual promises of retirement benefits to public employees, the statutory authority granted to a public employer to contract in a CBA to pay retiree health insurance premiums obviates the need to resort to promissory estoppel when a CBA includes this benefit," the Court held that "a promise by a public employer, embodied in a CBA, to pay health insurance premiums for an employee who retires during the term of the CBA is enforceable on contract grounds." Notwithstanding the Norman decision, this Court finds it reasonable and appropriate to analyze the matter under a promissory estoppel theory as well as under a contract theory in light of the affidavits submitted by Plaintiffs. While the parties assured the Court that Plaintiffs' claim is a straight contract claim, the affidavits submitted by Plaintiff tend to provide information relevant to a promissory estoppel and reliance argument.

In *Norman*, the collective bargaining agreement in place when Norman retired provided that all qualified retirees who had at least 10 years of service "shall continue to be covered

under… the existing hospital medical, surgical, drug and dental programs covering employees of the CHRA ..." and CHRA "shall pay all insurance premiums in full, to include single coverage and disability retirement." The language did not limit the promise to pay the premiums to the duration of the CBAs and the language did not provide that coverage would be only "to the same extent as active employees." The Court held that Norman's right to the payment of health insurance premiums vested at the time she retired and CHRA could not later unilaterally terminate those benefits.

The language in the collective bargaining agreements in this case differs significantly from that found in *Norman*. In *Norman*, the CBA provided that qualified retirees shall be covered under "the *existing* hospital medical, surgical, drug and dental programs…" The plain and ordinary meaning of that language is that the retirees' insurance coverage would continue as it existed at the time the employee retired. No similar language is found in the CBAs in this case. In fact, the language used in the CBA's here limits the retirees' coverage "to the same extent as active employees."

Following *Norman*, the Minnesota Court of Appeals in *Adams v. Independent School Dist. No. 316*, 2008 WL 2573660 (Minn. App. 2008), again examined the terms of CBAs in effect at the time of retirees' retirement to determine their entitlement to healthcare benefits. The applicable CBA language in *Adams* provided that the retirees "shall continue to be insured under the then existing hospital and medical insurance program covering teachers of Independent School District No. 316…" In *Adams*, the Court held:

> We conclude, as did the court in *Norman*, that, in particular, the use of the term "*then existing* medical and hospital insurance program" in the CBAs is unambiguous and expresses the parties' intent that appellant would continue to provide healthcare benefits to a retiring teacher under the provision expressed in the CBA at the time of that teacher's retirement, including the level of coverage and the percent of coverage paid by appellant.

Again, no comparable language is found in the CBAs in this case which would entitle Plaintiffs to coverage under the same health plan that was in place at the time of their retirements.

This Court has examined the terms of the CBAs in effect at the time of Plaintiffs' retirement in order to determine their entitlement to healthcare benefits and finds that the language "to the same extent as active employees," is unambiguous and therefore must be given its plain and ordinary meaning. This Court finds that the plain and ordinary meaning of that language is that Plaintiffs' health benefits are not fixed by the plan in place of the date of their retirement and that the City of Duluth may modify the benefits to the same extent that benefits for active employees are modified.

For the foregoing reasons, Plaintiffs' motion for summary judgment is denied and the City's motion for summary judgment is granted.

As previously noted, this Court finds it reasonable and necessary to analyze the matter under a promissory estoppel theory as well. To support a promissory estoppel claim, the party seeking relief must show (1) a clear and definite promise, (2) intended to induce reliance, (3) on which the promisee relied to his or her detriment, and (4) that must be enforced to prevent injustice. *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005); *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn.1992). This Court takes issue with the fourth prong.

Judicial determinations of injustice involve a number of considerations, "including the reasonableness of a promisee's reliance." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 (Minn.App.1995), *review denied* (Minn. Feb. 9, 1996). "[E]stablishing the reasonableness of the reliance is essential to any cause of action in which detrimental reliance is an element." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn.1995). If the record does not

contain facts that would support the conclusion that reliance was reasonable, the promisor is entitled to summary judgment. *Id.*

This Court finds the record does not contain facts that would support the conclusion that Plaintiffs' reliance on the alleged assurances of city officials, supervisors and co-employees that whatever coverage they had on the date of retirement would be provided to them by the City, without cost, for the rest of their lives, was reasonable in light of the contract language and in light of rising healthcare costs.

The contract language provides that retirees "shall receive hospital-medical insurance coverage to the same extent as active employees." As former employees of the City, the retirees were aware, at the time of their respective retirement dates, that the City often modified the healthcare benefits of active employees. Under the included language in the hospital-medical insurance coverage provisions in the CBAs, it is not reasonable for the retirees to assume that their benefits were fixed by the plans in place on the dates of their retirements. Furthermore, healthcare costs have been consistently increasing since before the earliest dates of Plaintiffs' retirements. Using the figures provided by affiant Eli Miletich as an example, promises of lifetime .50 cents co-pays for prescription medications, are not reasonable to rely on. For these reasons, the City of Duluth is also entitled to a summary judgment under a promissory estoppel theory.

9/10/2009

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