

APPELLATE COURT CASE NUMBER A09-2093

STATE OF MINNESOTA
IN THE SUPREME COURT

CASE TITLE:

PAULA SAVELA, individually
and as representative of the class

Appellant,

vs.

CITY OF DULUTH,

Respondent.

APPELLANT'S REPLY BRIEF

Don L. Bye
Attorney Registration Number 13924
Attorneys for Appellant
314 West Superior Street, Suite 1000
Duluth, Minnesota 55802
(218) 733-0745

Shelly M. Marquardt
Attorney Registration Number 21193X
Attorney for Appellant
314 West Superior Street, Suite 1000
Duluth, Minnesota 55802
(218) 726-0707

Mr. John (Mac) LeFevre
Attorney Registration Number 61852
Attorney for Respondent
KENNEDY & GRAVEN, CHARTERED
470 U.S. Bank Plaza
200 South 6th Street
Minneapolis MN 55402
(612) 360-0294

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

LEGAL ISSUES 1

ARGUMENT 2

**I. CLASS MEMBERS HEALTH INSURANCE BENEFITS
VESTED AT THE LEVEL SPECIFIED IN THE APPLICABLE
CONTRACTS IN EFFECT ON THE DATE OF THE RESPECTIVE
EMPLOYEE'S RETIREMENT. 2**

CONCLUSION 6

TABLE OF AUTHORITIES

CASE LAW

Minnesota

Adams, et al. v. ISD No. 316,
2008 WL 2573660 (Minn. App.2008) 4, 5

Housing and Redevelopment Authority of Chisholm v. Norman,
696 N.W.2d 329 (Minn. 2005) 3, 4, 5

STATUTES

State

Minn. Stat. sec. 471.61, subd. 2b (1992) 5

LEGAL ISSUES

**I. WHETHER CLASS MEMBERS HEALTH INSURANCE
BENEFITS VESTED AT THE LEVEL SPECIFIED IN THE
APPLICABLE CONTRACTS IN EFFECT ON THE DATE
OF THE RESPECTIVE EMPLOYEE'S RETIREMENT?**

The District Court held that the defendant did not have to continue to pay the retirees' and other class members health insurance at the contract level in effect on the date of the retirees' respective retirement dates.

Housing and Redevelopment Authority of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005);
Adams, et al. v. ISD No. 316, 2008 WL 2573660 (Minn. App.2008).

ARGUMENT

I. CLASS MEMBERS HEALTH INSURANCE BENEFITS VESTED AT THE LEVEL SPECIFIED IN THE APPLICABLE CONTRACTS IN EFFECT ON THE DATE OF THE RESPECTIVE EMPLOYEE'S RETIREMENT.

The provisions of the various subject CBAs define the health benefits available to the Class Members. The CBAs covering January 1, 1983 through December 31, 2006, required the Defendant to pay the class members hospital and medical insurance in effect on the date of the respective employee's retirement if they were eligible, to continue under the then available health insurance plans. App. pp. 181-334, 337 -375. Various CBAs reference that the retiree must be receiving retirement benefits (A-265, A309, A312 and others) or have applied for retirement benefits (A-273, A-282, A-285 and others) in order to receive retiree health benefits. The plaintiffs do not dispute the fact that a Class Member had to meet the eligibility requirements in place at the time of retirement in order to receive retiree health insurance. If an individual separating from service with the City did not meet the eligibility requirements on the date of separation, they did not qualify, nor receive, at that time or in the future, retiree health benefits. Non-covered retirees are not a part of this action. Reference to non-covered persons who have separated from service with the City is an attempt by the Respondent to confuse the issue before this Court which is, **"Whether Class Member's health insurance benefits vested at the time of retirement and at the level in effect on their respective retirement dates."**

The Appellants have never disputed the fact that when the Appellant's health insurance costs vested at the time of retirement, their benefits under the applicable plan vested also. Trial Transcript pp. 51-51, 71-72. The Respondent can complain that it has, in the past been too

generous by giving the Class Members additional services for the same dollars. However, that does not change the vesting date of the Class Members' rights - their respective retirement dates. For twenty-five (25) years, the Respondent City of Duluth agreed with and implemented Retiree Health Insurance Benefits in accordance with the position of the Class Members. App. pp. 450-452. It is only the current administration of Mayor Don Ness that after 2007 has violated the meaning and the intent of the 1983- 2006 Collective Bargaining Agreements. For more about twenty-five (25) years, the City Administration understood and administered all health plans for current employees and retired employees covered by the five (5) bargaining units in the manner contended by the Plaintiff in this case. App. pp. 450-452. This Administration's newly asserted opinion does not change the historical meaning of the subject contract language.

The Respondent misinterprets *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005). *Norman* determined that the employee's health benefits vested under the Collective Bargaining Agreement in effect on the employee's retirement date and could not subsequently be unilaterally changed by the employer. Thus in *Norman*, the employer was obligated to continue to pay the Plaintiff's health insurance premiums because the disputed contract required the employer to: "pay all insurance premiums in full. . ." for qualified retirees under ". . . the existing hospital, medical, surgical, drug and dental programs covering the employees of that [Chisholm Housing and Redevelopment Authority] . . ." *Id* at 331. Chisholm Housing and Redevelopment Authority (hereinafter "CHRA") never addressed what "existing . . . programs covering employees of CHRA . . ." meant because the issue was not raised by either party.

In its brief, the Respondent attempts to boot-strap an argument that *Norman* requires the current Class Members to receive the same benefits as current employees by citing language pulled from a proposed order draft by Ms. Norman's attorney's but never signed by any Court. *Norman* at 331-332. Pleadings and arguments of counsel in *Norman* and other actions do not have precedential effect. It is the ruling of the Minnesota Appellate and Supreme Courts on the issue in controversy that are binding. *Norman* Court held that CHRA could not change Ms. Norman's contractual benefits by eliminating her entitlement to have her insurance premiums paid. The Court of Appeals did not address benefit levels because it was not in controversy before the Court. *Norman* specifically does require that employer continue to provide the retired employee with health benefits pursuant to the contract language. Later, in *Adams, et al. v. ISD No. 316*, 2008 WL 2573660 (Minn. App.2008), the Court of Appeals for the State of Minnesota addressed the issue of the right of the employer to change retiree health benefits in subsequent contracts. The *Adams* Court specifically held that the retired employees health benefits vested at the time of retirement as defined by the contract in effect on the respective retirement date. *Id.* Thereafter, the employer could not change or reduce the retirees' benefits through subsequent CBAs to which the retirees are not a party. *Norman* at p.7. Thus, in the current action, pursuant to the applicable CBAs, the Respondent must provide the Class Members with health benefits at the same level they previously enjoyed pursuant to the terms of the CBA under which the respective Class Members retired.

Respondent's arguments regarding *Adams* is inapposite because while the *Adams* case provided for coverage under "then existing plans" and in the current action the term "active" is not preceded by the word "then". *Adams* at p. 2. This distinction is not determinative. The

current action is the first where a Respondent contends that the omission of a term such as “existing” or as here, “active”, can control and change the whole bargaining relationship which covered a twenty-four (24) year span and the contractual entitlement of thousands of Class Members. Such contention is groundless because *Norman*, which was the controlling precedent in *Adams* did not contain the magic word “then existing” either. The *Norman* Court reach a clear, emphatic result without requiring the disputed CBA to contain the term “then existing” coverage versus “now existing” coverage as the Respondent would require in the current action.

The Respondent is wrong in its contention that Minnesota Statute Section 471.61 precludes the Class Members from securing relief in this matter because the statute requires the employer to include retirees in the same group as current employees for purposes of insurance. The provisions of Minn. Stat. Section 471.61 requires the employer to include the retirees in the same underwriting group as active employees. Minnesota Statute Section 471.61 does not define the vesting dates of the retirees benefits nor does it grant the employer the right to force retirees onto a medical plan not in effect at the date of employee’s retirement. The School District in *Adams* attempted the same argument and was specifically denied relief under that theory.

CONCLUSION

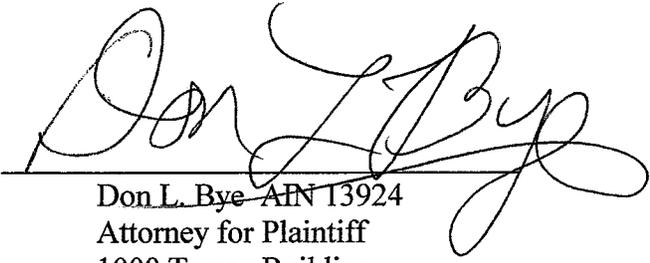
For the foregoing reasons, the Summary Judgment must be reversed and summary judgment in favor of the Class Members be granted, or, in the alternative, the matter remanded for trial.

Date: 3/3/11



Shelly M. Marquardt AIN 21193X
Attorney for Plaintiff
314 West Superior Street
Suite 1000
Duluth, Minnesota 55802
(218) 726-0707

Date: 3-3-11



Don L. Bye AIN 13924
Attorney for Plaintiff
1000 Torrey Building
314 West Superior Street
Duluth, Minnesota 55802
(218) 733-0745