

NO. A09-2093

State of Minnesota
In Supreme Court

Paula Savela,

Appellant,

v.

City of Duluth,

Respondent.

BRIEF AND ADDENDUM OF RESPONDENT
CITY OF DULUTH

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

I. 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 modify the benefits whenever and however benefits for current employees are modified?

How Raised Below: Cross-motions for summary judgment. (R.Add. 4.)

District Court Holding: The District Court held that the collective bargaining agreements are not ambiguous and the contract language shall be given its plain and ordinary meaning: 1) the CBAs require the City to provide the same coverage to retirees that it provides active employees; 2) the Class members' health benefits are not fixed and governed by the plan in place on the dates of their retirements; and 3) the CBAs do not prohibit the City from changing or modifying the health insurance plan provided to the Class members. (R.Add. 10.)

How Preserved for Appeal: Appellant's timely notice of appeal and petition for review. (A-524; A-559.)

Apposite Law: *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005)
Minn. Stat. § 471.61, Subd. 2b (2010)

STATEMENT OF THE CASE

In April 2008, three retirees¹ commenced this action against their former employer, the City of Duluth (“City”), alleging that the City breached contractual obligations set forth in certain collective bargaining agreements (“CBAs”) to provide health insurance benefits. On July 24, 2008, the district court issued a temporary restraining order, enjoining the City from making any changes in the health insurance benefit levels of retirees and their spouses without prior reasonable notice and further order of the court. On May 5, 2009, the parties entered into a stipulation for class certification and an amended scheduling order. On May 12, 2009, the district court issued an order pursuant to that stipulation. (R.Add. 1-3.) That order defined the Class as “all Duluth retirees who are former bargaining unit members and who retired from January 1, 1983 through December 31, 2006, and their spouses/dependents . . .” Paula Savela was named the Class Representative. (*Id.*) The stipulated order identified the Class Claim as follows:

3. Class Claim: There is a live controversy between the City and the Class as to 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 modify the benefits whenever and however benefits for current employees are modified?

The Class claims that the Class members’ health benefits are fixed and governed by the plan in place on the date of their retirement.

¹ The three original Plaintiffs were Hartley Conrad, Carol Griak, and Paula Savela. Paula Savela was later named the representative of the Class Members. Thus, for purposes of this brief, the City will refer to the Plaintiffs/Class as “Savela.”

The City claims that Class members' health benefits may be modified to the same extent that benefits for current employees are modified.

(Id., 1-2.)

On May 21, 2009, Savela filed an Amended Complaint, again requesting injunctive and declaratory relief. On June 2, 2009, the City served and filed an answer and counterclaim. The City denied that it had breached any contractual obligations to the Class and requested a declaratory judgment that the Class had no greater rights to health benefits than active employees of the City. Both parties moved for summary judgment. On October 13, 2009, the district court issued its Findings of Fact, Conclusions of Law, Order and Memorandum granting summary judgment in favor of the City. *(Id., 4-19.)* The court concluded that the CBAs are not ambiguous and that the City is required to give retirees the same health coverage it provides active employees. *(Id.)* On October 26, 2009, the district court dissolved the temporary restraining order. Judgment was entered on October 27, 2009. *(Id., 20.)*

On review, the court of appeals affirmed in part and reversed in part. In its September 21, 2010 opinion, the court of appeals affirmed that the CBA's are not ambiguous, that the level of health-insurance coverage for retirees is not fixed on their retirement dates, and that the City may modify coverage to the same extent that it modifies the coverage provided to active employees. The court of appeals reversed the district court's sua sponte ruling that Savela could not support a promissory estoppel claim, a claim that was not before the district court.

On October 20, 2010, Savela petitioned this Court for review. This Court granted

the petition by order dated December 22, 2010.

STATEMENT OF FACTS

The Class members include former City employees who retired between January 1, 1983 and December 31, 2006, who were members of the several bargaining units in the City, and their spouses and dependents.² The applicable Collective Bargaining Agreements (“CBAs”) all contain substantially the following language with respect to retiree medical insurance: “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: ...” (*See, e.g.,* A-329, A-332 (emphasis added).) The parties stipulated that a live controversy exists as to the meaning of the phrase “to the same extent as active employees.”³ (A-108.)

The operative language in every CBA – the promise retirees “shall receive hospital-medical insurance coverage” – is subject to two qualifications. First, retirees receive coverage “to the same extent as active employees[.]” (*See, e.g.,* A-329, A-332.) Second, retirees receive coverage “subject to the following conditions and exceptions[.]” (*Id.*) Consistent with the first qualifier that retirees receive coverage only “to the same extent as active employees,” in every CBA, the conditions and exceptions limit the coverage to a plan or plans “provided active employees.” (*See, e.g.,* A-329-30, A-332-

² 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. (A-108.)

³ The CBAs also provide that “coverage shall be for the life of the retiree.” (*See, e.g.,* A-266.) This contract language is not in dispute and the City agrees that retirees are entitled to coverage “for life.”

33.) While the various conditions and exceptions are modified over time through the various contract cycles, without exception, the terms and conditions relate to a plan or plans “provided active employees.” (*See id.*)

The cycle of CBAs for the Supervisory Employees set forth at pages 263 through 298 of Appellant’s Appendix is illustrative. In 1983, the first applicable CBA for Supervisory Employees provides:

[Retirees] shall receive hospital-medical insurance coverage *to the same extent as active employees*, subject to the following conditions and exceptions:

1. The City will provide any such eligible retired employee without claimed dependents the following coverage without cost to such retiree:

(a) The approved fee-for-service coverage *provided active employees*.

2. For any such eligible retired employee with claimed dependents, the City will provide, without cost to such retiree, the approved fee-for-service coverage *provided active employees*; however, the approved fee-for-service coverage shall be subject to an annual deductible amount of \$650 for such claimed dependents. .

..

3. Such coverage shall be for the life of the retiree, but if the retiree dies before his or her spouse, such coverage shall be continued for such spouse until he or she dies or re-marries, but any such coverage for such surviving spouse shall not include coverage for any dependent of such surviving spouse.

(A-265-66 (emphasis added).) Thus, in 1983, active employees only had one plan available (a fee-for-service plan). (*Id.*) Retirees without dependents received that plan without cost (condition 1), and retirees with dependents received that plan without cost, but subject to the additional condition of a deductible (condition 2). (*Id.*) The language

added further limitations to coverage for the retirees' dependents (condition 3). (*Id.*) In sum, the retirees are never eligible for a plan that is not "provided active employees," and that plan eligibility is further limited by additional conditions and exceptions. (*See id.*)

Moving forward through the years, without exception, the Supervisory Employee CBA limits the promise of insurance coverage only "to the same extent as active employees." (*See* A-268 (1984-85), A-270 (1986-87), A-273 (1988-90), A-276 (1991-93), A-279 (1994), A-282 (1995-96), A-285 (1997-98), A-288-89 (2000-02), A-292 (2003), A-296 (2004-06).) Over the years, additional requirements are added to the list of conditions and exceptions, and additional plans become available to active employees. For example, beginning in 1984, the conditions and exceptions add the requirement that retirees who are eligible for Medicare Coverage "B" must obtain it. (*See, e.g.,* A-268, A-285, A-296.) Beginning in 2000, additional plans were "provided active employees" and available to the retirees. (*See* A-289 ("the Employer will provide, without cost to such retiree, the approved fee-for-service, or H.M.P. (Plan 2) or Comprehensive Plan (Plan 3) dependent coverage *provided active employees*" (emphasis added).) At the end of the day, the CBA never promises that retirees will receive coverage under a plan that is not available to active employees. (*See* A-268 (1984-85), A-270 (1986-87), A-273 (1988-90), A-276 (1991-93), A-279 (1994), A-282 (1995-96), A-285 (1997-98), A-288-89 (2000-02), A-292 (2003), A-296 (2004-06).)

Ruling on cross-motions for summary judgment, the district court found that the City did not dispute that it is obligated to provide health benefits to the Class for life, nor

did the City dispute that it agreed to pay health-care premiums subject to conditions in the CBAs. (R.Add. 6.) The district court found:

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."

(*Id.*) The district court concluded that the CBAs were not ambiguous and held: "The [Appellants'] health benefits are not fixed and governed by the plan in place on the dates of their retirements." (*Id.*, 7.) Therefore, the district court held that the CBAs do not prohibit the City from modifying the retirees' health insurance plan, but rather, the City must provide "the same coverage to retirees that it provides to active employees." (*Id.*)

The court of appeals agreed.⁴ The court of appeals concluded that no ambiguity existed in the contract language. (R.Add. 23.) The court of appeals held that "[t]he plain and ordinary meaning of 'active employees' is employees who are currently working – as opposed to employees who have retired." (*Id.*) Having found no ambiguity in the language, the court of appeals declined to consider extrinsic evidence. (*Id.*) Rejecting Savela's "strained" interpretation of the contract language, the court of appeals held:

And we cannot reach appellant's interpretation without relying on extrinsic evidence or unduly straining the plain and ordinary meaning of the language of the provision. According to the plain and ordinary meaning of the phrase "to the same extent as active employees," the city may modify the level of health-insurance coverage provided to retirees to the same extent that it modifies the level of coverage provided to active employees.

(R.Add. 23-24.)

⁴ The court of appeals affirmed on the contract issue. It reversed on the promissory estoppel issue which is not before this Court.

SUMMARY OF THE ARGUMENT

Based upon the plain language of the CBAs, this Court should affirm the district court's ruling in favor of the City. The contractual promise to provide coverage "to the same extent as active employees" is unambiguous. Retirees are not entitled to keep their former benefit plan if the City no longer offers that plan to active employees. This contract language is consistent with the modern statutory regime, Minn. Stat. § 471.61, Subd. 2b (2010), requiring public employers to offer retirees the same coverage available to the group from which they retired.

Savela's reliance on *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005) is misplaced. The City has always agreed that, under *Norman*, a promise of retiree benefits in a CBA is enforceable as a contract. The interpretation of the contract language was not at issue in *Norman*. Rather, *Norman* dealt only with the enforceability of an unambiguous promise to pay premiums. Likewise, Savela's reliance on an unpublished court of appeals decision, construing different contract language, only serves to emphasize the City's point. Where parties bargain for health benefits that are fixed and immutable as of the retirement date, there is simple "then existing" language to accomplish that. By contrast, here, the CBAs do not promise "then existing" coverage but, rather, promise coverage "to the same extent as active employees."

Because the CBAs are unambiguous, this Court should not resort to extrinsic evidence to contradict the plain meaning of the contract language. Further, Savela's extrinsic evidence deals with the alleged administration or mis-administration of one

particular plan. This evidence does not show that the City ever provided retiree benefits under a plan that was not available to active employees.

ARGUMENT

I. Standard of Review.

This Court reviews a district court's summary judgment ruling to determine: 1) if any issues of material fact exist, and 2) if the district court misapplied the law to the facts. *Business Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). The Court performs this review de novo. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

II. The CBAs Entitle Retirees to Participate in Health Insurance Plans Only to the Same Extent As Active Employees.

A. The CBAs are unambiguous and do not require the City to provide to retirees a health plan that is not provided active employees.

A collective bargaining agreement is a contract and is to be interpreted and enforced as other contracts. *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005). The construction 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). The determination of whether a contract is ambiguous is a question of law. *Id.* "A contract is ambiguous if, *based upon its language alone*, it is reasonably susceptible of more than one interpretation." *Id.* (emphasis added). The plain and ordinary meaning of the contract language controls, unless the language is ambiguous. *Hanson*, 769 N.W.2d at 288. "If 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.” *Denelsbeck*, 666 N.W.2d at 346-347 (internal quotes omitted).

The CBAs at issue in this case provide that the Class “shall receive hospital-medical insurance coverage to the same extent as active employees.” This language is unambiguous and susceptible to only one interpretation. The phrase “to the same extent as active employees” qualifies and limits the promise to provide “hospital-medical insurance coverage.” The plain and ordinary meaning of this language is that retirees are entitled to the same health benefits as active employees. The promise to provide health benefits is then further modified by a second qualifier: “subject to the following conditions and exceptions.” These conditions and exceptions uniformly require that the retiree receive benefits under a “plan provided active employees.” In short, under the plain language of the contract, retirees are not entitled to receive health plans that are not available to active employees.

While several of the CBAs pre-date the current statutory regime, they are all consistent with the mandates of Minnesota Statutes section 471.61. This statute requires local governments to allow retirees to participate in the health insurance group⁵ that they participated in before retirement. Minn. Stat. § 471.61, Subd. 2b (2010); *see also Norman*, 696 N.W.2d at 332 (“The latter provisions [i.e., Minn. Stat. 471.61, subd. 2b] require public employers to include retirees in the same insurance group as current employees and authorizes public employers to pay the premiums if a CBA provides that the employer must do so.”). In a number of the statutory conditions, retirees must be

⁵ For a self-insured city, the law provides: “Any self-insurance plan shall provide all benefits which are required by law to be provided by group health insurance policies.” Minn. Stat. § 471.617, Subd. 1 (2010)

pooled with and treated the same as “active employees.” *See, e.g.*, Minn. Stat. § 471.61, Subd. 2b(b) (“Until the former employee reaches the age of 65, the former employee and dependents must be pooled in the *same group as active employees* for purposes of establishing premiums and coverage[.]” (emphasis added)); *id.*, Subd.2b(d) (“Coverage for a former employee and dependents may not discriminate on the basis of evidence of insurability or preexisting conditions unless identical conditions are imposed on *active employees in the group that the employee left.*” (emphasis added)). In the context of this statute, there is no question that the legislature means *currently* active employees, not certain employees who were active on a given date in history. Consistent with the statutory mandate, all the CBAs at issue provide health benefits to retirees under a “plan provided active employees” in their respective bargaining units. Essentially, both the statute and the CBAs require that the employer offer retirees the same health benefits as active employees. They do not require that retirees receive the same health benefits existing on their retirement dates.

This contract language will be operative for the life of the retiree (perhaps 20 or 30+ years) – any time a retiree seeks health benefits. Nevertheless, Savela argues that the parties must look backward to the date of retirement and provide the coverage that *certain* active employees received, i.e., those employees active on the retirement date. The unqualified term “active employees” bears no such limitation. Notably, the eligibility requirements in many of the CBAs demonstrate that the date of retirement is *not* the triggering event for benefit entitlement and, thus, benefits are not frozen on that date:

Any employee who retires from employment with the City . . . after having been employed by the City for such total time as to be qualified by such employment to receive retirement benefits from the Public Employees Retirement Association, the Duluth Firemen's Relief Association, or the Duluth Police Pension Association, and *who is currently receiving a retirement or disability pension* from any such fund, . . .

(A-265 (emphasis added); *see also, e.g.,* A-309, A-312.)⁶ One could never be “currently receiving” PERA benefits, for example, on the retirement date. *See* Minn. Stat. § 353.01, Subd. 28(a) (2010) (“A right to retirement [i.e., commencement of payment of an annuity] requires a complete and continuous separation for 30 days from employment as a public employee[.]”); *see also, id.*, Subd. 11(a). If an employee retires in the last months of the CBA, by the time he or she is “currently receiving” a pension, the “active employees” may be receiving health benefits under a different CBA (with potentially different plans). At bottom, the contract language contemplates two categories of people, retirees and active employees. The contract language does not qualify the definition of active employees to mean only certain employees who were active at the moment an individual retired.

If the parties had meant to freeze the benefits at the level existing on the date of retirement, they could have easily expressed that idea in a few simple words. *See, e.g., Adams v. Independent School District No. 316*, 2008 WL 2573660 *1 (Minn. Ct. App., July 1, 2008; copy at A-146-154) (retirees “continue to be insured on the *then existing* hospital and medical insurance programs covering teachers” (emphasis supplied by

⁶ In several other iterations, the language requires that the retiree “is receiving, or has applied for and will, within sixty (60) days of retirement, receive retirement pension benefits from the Public Employees Retirement Association, or the Duluth Firemen's Relief Association. . .” (*See, e.g.,* A-273, A-282, A-285.)

court)). They did not do so. To the contrary, they bargained for language providing health benefits “to the same extent as active employees” under a “plan provided active employees.” Savela’s proposed interpretation of the contract language is, as the court of appeals noted, “unduly strained.” If the goal were to simply freeze benefits on the date of retirement, the actual CBA language would make for an inexplicably bad choice. If, instead, the goal is to provide retirees the same benefits as active employees, the CBA language is unambiguous and effective.

Further, this Court must interpret the CBAs in a way that gives all of their provisions meaning. *Current Technology Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539, 543 (Minn. 1995); *see also Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990) (“Because of the presumption that the parties intended the language to have effect, we will attempt to avoid an interpretation of the contract that would render a provision meaningless.”). If health benefits were fixed on the date of retirement, then the parties’ bargained-for inclusion of the “to the same extent as” language, as well as the reference to “active employees,” would be rendered meaningless.

Savela contends that certain language in the CBAs following the phrase “to the same extent as active employees” shows that their health benefits became fixed at the time of retirement. The promise to provide benefits, however, is first qualified by the “to the same extent as active employees” language, and then further qualified by “conditions and exceptions.” The language that Savela relies upon is listed in these subordinate “conditions and exceptions.” Consistent with that primary governing language, these

subordinate provisions all relate, without exception, to plans “provided active employees.” Therefore, the provisions to which Savela refers are subordinate to and consistent with the promise to provide health benefits only “to the same extent as active employees.”

Moreover, Savela’s reading of the contract language is implausible. Indeed, Savela has never sought a contract interpretation in which the health *benefits* were static and frozen on the retirement date. Rather, Savlela argues for a have-your-cake-and-eat-it-too application of the contract language. She argues that “active employees” means those employees active on the retirement date, yet she seeks to freeze only the co-pay and deductible components of the plan. She does not argue that a 1984 retiree should receive a vintage-1984 health plan for the rest of his or her life. It would be absurd to freeze the medical services and drugs available to retirees, and thus, Savela appears to ignore the ramifications of her argument. Savela can offer no plausible reading of the language (“hospital-medical insurance coverage to the same extent as active employees”) whereby the health benefits are not fixed, but the co-pays and deductibles are fixed.

The phrase “to the same extent as active employees” has only one reasonable interpretation. The retirees are not entitled to health benefits under a plan that the City no longer provides active employees. Therefore, this Court should apply the plain language of the CBAs and affirm the district court’s grant of summary judgment.

B. Savela's reliance on *Norman* and an unpublished court of appeals decision is misplaced.

Savela argues that *Norman* stands for the proposition that, regardless of the contract language, retirement health benefits must be fixed immutably on the date of retirement. *Norman* says no such thing.

Norman involved an employee of the Chisholm Housing and Redevelopment Authority (CHRA) from May 23, 1983, to February 24, 1995. *Norman*, 696 N.W.2d at 331. The collective bargaining agreement in effect when she retired provided that all employees with at least ten years of service who retire “shall continue to be covered under...the existing hospital medical, surgical, drug and dental programs covering employees of the CHRA” *Id.* The collective bargaining agreement further provided that CHRA “shall pay all insurance premiums in full. . .” *Id.* (emphasis added). In September 1995, about seven months after Norman’s retirement, the union was decertified and the collective bargaining agreement expired. *Id.* The CHRA continued to pay Norman’s health insurance premiums under health and dental plans covering CHRA employees until November 2002. *Id.* At that time, CHRA notified Norman that it would no longer pay her premiums due to rising costs and denied Norman's requests to recommence paying her premiums. *Id.* This Court held that “Norman’s right to the payment of health insurance premiums vested [on the terms set forth in the CBA] at the time she retired and CHRA cannot now unilaterally terminate those benefits.” *Id.* at 338 (emphasis added).

In short, *Norman* enforced, on contract grounds, an unambiguous promise to pay

health insurance premiums. This Court granted review in *Norman* of the following issue: “[W]hether a promise contained in a CBA may bind a public employer to pay retiree health insurance premiums beyond the term of the CBA.” *Id.* at 332. There is no dispute in this case about the City’s obligation to pay premiums. Conversely, in *Norman* there was no dispute about the type of health plan the CHRA should be required to provide. *Id.* at 331-32. In her proposed order, the plaintiff in *Norman* requested an order requiring the CHRA “to fulfill its promise to Norman by making back payments to her equal to the cost of insurance she lost from December 1, 2002, until the CHRA again provides her coverage on the same basis it does for current employees of the CHRA.” *Id.* (emphasis added). Thus, *Norman* provides no authority for Savela’s demand for a perpetually static health plan.

Similarly, Savela’s reliance on an unpublished decision of the court of appeals is misplaced. *See Adams*, 2008 WL 2573660. The retirees in *Adams* were 67 teachers who retired between 1988 and 2005 from the school district. *Id.* at *1. The retirees were covered by a series of collective bargaining agreements providing that teachers retiring on or after July 1, 1966, would “continue to be insured on the *then existing* hospital and medical insurance programs covering teachers of [the school district] except that if the retiree is eligible for Federal Medicare, he/she shall be covered by the existing supplemental medical plans....” *Id.* (emphasis supplied by court). In order to reduce costs, the 2005-2007 CBA no longer provided benefits to retired teachers under a “then-existing” health insurance plan or “existing supplemental medical plans.” *Id.* Applying *Norman*, the court of appeals held that the school district was bound by the contract

language. *Id.* at *6-7. The language in the CBAs provided retirees would be covered by the “then-existing” hospital and medical plans “covering teachers of [the school district.]” The court of appeals concluded this “then-existing” language fixed the benefits in place and bound the school district to provide them indefinitely. *Id.* at *7.

Adams, as with all contract cases, turned on the unique language of the disputed contract before that court. It does not control the outcome in this case, where the CBAs employ different language. Here, the CBAs do not vest retirees’ health benefits under a plan “then-existing” at the time of retirement. Instead, the CBAs provide that retirees are eligible for medical insurance, but only “to the same extent as active employees.” Rather than pegging the benefits promise to a historical point in time, the CBAs peg it to a category of people – active employees. Thus, the district court correctly held that *Adams* was inapposite.

C. Savela’s extrinsic evidence should not be considered.

Extrinsic evidence may not be used to vary the terms of a written contract that is neither incomplete nor ambiguous. *Alpha Real Estate Co. v Delta Dental Plan*, 664 N.W.2d 303, 312 (Minn. 2003); *Norman*, 696 N.W.2d at 337 (“Under a contract analysis, we first look to the language of the contract and examine extrinsic evidence of intent only if the contract is ambiguous on its face.”). Savela goes to great lengths in Appellant’s Brief to describe extrinsic evidence of the retirees’ alleged “understanding” that they would be entitled to maintain the identical health benefits in place on the date of retirement. Savela’s extrinsic evidence describes the City’s alleged past practices in implementing the fee-for-service plan and hearsay evidence of the parties’ alleged

intentions some 28 years ago. None of these allegations are material because the contract language is unambiguous and therefore the Court must not resort to extrinsic evidence.

If the Court should consider the extrinsic evidence at all in this case, the City offers three important observations. First, notably absent is any evidence that the City ever provided the retirees, contrary to the plain language of the CBAs, a health insurance plan that was not “provided active employees.” Historically the City provided a fee-for-service plan to its active employees. The Class claims, essentially, that the City must continue to provide retirees with the fee-for-service plan in effect on the date of retirement. In every CBA in the record, however, the fee-for-service plan *is* one of the *plans* provided to active employees. Thus, the City’s past practices did not contradict the plain language of the CBAs: providing health benefits under a plan “provided active employees.” While Savela may regret the City’s intention to stop providing the fee-for-service plan to active employees, under the plain language of the CBAs, Savela has no contract right to require the City to continue to provide that plan.

Second, Savela’s arguments attack the manner in which the fee-for-service plan was administered, alleging that earlier retirees received more favorable implementation of that plan (e.g., lower co-pays) than later employees. Nevertheless, the City’s actions were consistent with the plain language of the CBAs: providing insurance coverage under a *plan* provided active employees. The contract promise at issue is stated at a level of detail no greater than the *plan* level. And that is as it should be. The contents of every health plan must evolve over any appreciable period of time. For example, Savela offered no evidence to suggest that the “services” provided under the fee-for-service

plan were frozen on the date of retirement (e.g., that a 1984 retiree was limited to 1984 medical technology, medications, and services). Nor would it make sense as a matter of policy or practicality – in an age of rapid medical advances and ever changing delivery systems – to freeze the contents of a health plan for decades. If the City still offered the fee-for-service plan to its active employees, and demanded uniform administration of that plan, the parties might argue about the significance of Savela’s extrinsic evidence. Since the City no longer offers the fee-for-service plan to its active employees, however, the manner in which staff administered or mis-administered that plan historically is irrelevant. In sum, it is undisputed that City has always provided its retirees insurance coverage under a *plan* provided active employees.

Third, if this Court does not affirm the district court, the case must be remanded for trial. Savela filed the untimely affidavits after the City’s response memorandum and over its objection, and the affidavits are rife with hearsay and foundation defects. At best, the affidavits could create a fact dispute if, and only if, this Court were to find ambiguity in the contract language. Savela had the burden to make and support her motion, and if relying on affidavits, to supply affidavits from competent witnesses based on personal knowledge. *See* Minn.R.Civ.P. 56.05; Minn.R.Gen.Prac. 115.03(a). The City opposed Savela’s summary judgment motion on the grounds stated in her opening brief – the plain language of the contracts and the caselaw discussed above. (*See* A-164-180 (Savela’s summary judgment memorandum).) The City did not have an opportunity to refute this extrinsic evidence, to oppose Savela’s motion with its own evidence about the parties’ past practices. Therefore, this Court must not reverse the district court’s

denial of Savela's summary judgment motion. If the district court is not affirmed, the case must be remanded for trial.

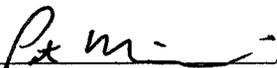
CONCLUSION

Based upon the plain language of the CBAs, the district court's grant of summary judgment to the City must be affirmed. The CBAs do not freeze the Class members' health benefits under a plan that was existing at the time they retired. Instead, the CBAs allow the City to modify retiree health benefits to the same extent that benefits for active employees are modified. Therefore, the City respectfully requests that this Court affirm. In no event should this Court reverse the denial of Savela's summary judgment motion. If this Court finds the contract language to be ambiguous, the City respectfully submits that the case must be remanded for trial.

Respectfully submitted,

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