

Nos. A10-1244 and A10-1331

State of Minnesota
In Court of Appeals

9

City of Minneapolis, a municipal corporation,

Respondent,

vs.

Minneapolis Police Relief Association and
Minneapolis Firefighters Relief Association,

Appellants.

APPELLANTS' BRIEF AND ADDENDUM

John M. LeFevre, Jr. (#61852)
Peter G. Mikhail (#249907)
Mary D. Tietjen (#279833)
KENNEDY AND GRAVEN
CHARTERED
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

Susan L. Segal (#127157)
City Attorney
Peter Ginder (#35099)
Deputy City Attorney
CITY OF MINNEAPOLIS
City Attorney's Office
350 South Fifth Street
City Hall, Room 210
Minneapolis, MN 55415
(612) 676-2010

Attorneys for Respondent

Charles E. Lundberg (#6502X)
Nicole A. Delaney (#0390102)
BASSFORD REMELE
A Professional Association
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
(612) 333-3000

Karin E. Peterson (#185048)
Ann E. Walther (#21369X)
RICE, MICHELS & WALTHER, LLP
206 East Bridge – Riverplace
10 Second Street N.E.
Minneapolis, MN 55413
(612) 676-2300

Robert D. Klausner (FL #244082), (admitted
pro hac vice)
KLAUSNER & KAUFMAN, P.A.
10059 N.W. 1st Court
Plantation, FL 33324
(954) 916-1202

Attorneys for Appellants

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).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
LEGAL ISSUES	1
INTRODUCTION.....	4
STATEMENT OF THE CASE	5
STATEMENT OF THE FACTS.....	6
The Associations Were Created By The Minnesota Legislature And Are Governed By Applicable Statutes And Bylaws	6
Benefits Change Each Year Based Upon <i>Current</i> Salaries Of Active Police Officers And Firefighters	7
Several Sources Fund The Pension Funds	8
The Guidelines Act, Minn. Stat. § 69.77, Governs The City’s Contribution To The Pension Funds.....	9
1995 - City’s Lawsuit Against The MPRA and MFRA.....	10
The 1995 Settlement Agreement Defined “Salary”	11
Associations Amended Their Bylaws, In Accordance With The Settlement Agreement And Its Definition Of “Salary”	13
The Same Methodology Has Been Used For Calculating Salary And Unit Value Since 1995	13
2004 and 2005 - Office of State Auditor Issued Audit Letters	14
2006 – City Sues the Associations	15
City’s declaratory action against Associations for breach of the 1995 Agreement.....	15
Associations’ Motion to Dismiss For Failure to Join Members	15

Summary Judgment Proceedings	16
November 20, 2009 Order Regarding Incorrect Calculations And Denying Recoupment.....	17
District Court Grants City’s Post-Trial Motion for Recoupment	17
ARGUMENT	18
<i>STANDARD OF REVIEW</i>	19
I. THE DISTRICT COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF MINN. STAT. § 69.77, SUBD. 11	19
A. The district court effectively rewrote the plain language of Minn. Stat. § 69.77, subd. 11.....	20
B. Even if this Court were to find the statutory language in Minn. Stat. § 69.77, subd. 11 to be ambiguous, the legislative intent favors the Associations’ interpretation.	22
1. The object to be attained and contemporaneous legislative history show that bylaw amendments were not required.	23
2. Administrative interpretation of Minn. Stat. § 69.77, subd. 11 shows that bylaw amendments are not required.....	24
3. Consequences of the district court’s interpretation does not support its holding.	26
C. The district court’s interpretation of subdivision 11 was incorrect because bylaw amendments have never previously been required .	27
D. As to items of compensation added before 2000, the City’s claims are barred by the statute of limitations.....	29
II. THE CITY DID NOT PLEAD LACK OF BYLAW AMENDMENTS UNDER SUBD. 11	31
III. IF THE CITY CONTRIBUTED MORE THAN THE MINIMUM CONTRIBUTION REQUIRED UNDER MINN. STAT. § 69.77, THE CITY’S EXCLUSIVE REMEDY WAS AMORTIZATION UNDER SUBD. 8 OF THE STATUTE	32

IV.	THE DISTRICT COURT ERRED IN HOLDING THAT THE CITY’S CLAIMS WERE NOT BARRED BY THE DOCTRINE OF LACHES, WAIVER, AND ESTOPPEL.....	33
A.	Laches, waiver, and estoppel standards	34
B.	The City has stated that it knew as early as 1999 that bylaw amendments were required but failed to act	35
C.	Each year from 1999 on, the City signed off on the total financial requirements for the Associations.....	36
D.	The City has a statutory duty to ensure that the calculations are correct.....	37
E.	The Associations and members have suffered prejudice as a result of the City’s unreasonable delay	38
V.	The District Court erred in ruling that the Associations’ calculations of salary were contrary to their bylaws	39
VI.	The District Court erred as a matter of law in ordering the Associations to recoup the alleged overpayments from members, non-parties to the action	42
A.	The District Court’s November 20, 2009 order and its May 17, 2010 order conflict, where the Associations cannot represent member interests and, at the same time, seek recoupment from their members.....	43
B.	The District Court violated due process when it ordered a reduction in member benefits and when it ordered recoupment from nonparties to the action.....	45
C.	The statutes governing the MPRA and the MFRA do not permit recoupment for alleged overpayments to members	47
	CONCLUSION	48
	CERTIFICATION OF BRIEF LENGTH	49

TABLE OF AUTHORITIES

	Page
<u>Cases:</u>	
<i>Adelman v. Onischuk</i> , 135 N.W.2d 670, 678 (Minn. 1965)	32
<i>Beardsley v. Garcia</i> , 753 N.W.2d 735 (Minn. 2008)	1, 21
<i>Borom v. City of St. Paul</i> , 184 N.W.2d 595, 598 (Minn. 1971)	32
<i>Brezinka v. Bystrom Bros., Inc.</i> , 403 N.W.2d 841 (Minn. 1987)	3, 44
<i>Brown v. Minnesota Dept. of Public Welfare</i> , 368 N.W.2d 906, 910 (Minn. 1985)	35
<i>Brown v. State</i> , 617 N.W.2d 421 (Minn. App. 2000)	1
<i>Burkstrand v. Burkstrand</i> , 632 N.W.2d 206, 210 (Minn. 2001)	20
<i>Christensen v. Minneapolis Mun. Employees Retirement Bd.</i> , 331 N.W.2d 740 (Minn. 1983)	3, 45
<i>Cincinnati Ins. Co. v. Franck</i> , 621 N.W.2d 270, 275 (Minn. App. 2001)	46
<i>City of Crystal Police Relief Ass'n v. City of Crystal</i> , 477 N.W.2d 728, 731 (Minn. App. 1991)	26
<i>City of Minneapolis v. Meldahl</i> , 607 N.W.2d 168 (Minn. App. 2000)	1, 31
<i>City of Minneapolis v. Minneapolis Police Relief Ass'n</i> , No. A07-420, 2008 WL 1747923, at *4 (Minn. App. 2008).....	15, 43, 45, 46
<i>Clark v. Pawlenty</i> , 755 N.W.2d 293, 299 (Minn. 2008)	34

<i>DHL, Inc. v. Russ,</i> 566 N.W.2d 60, 69 (Minn. 1997)	41
<i>Department of Human Services of State of Minn. v. Muriel Humphrey Residences,</i> 436 N.W.2d 110 (Minn. App. 1989)	2, 35
<i>Everett v. O'Leary,</i> 95 N.W. 901, 902-03 (Minn. 1903)	29
<i>Fassbinder v. Minneapolis Fire Department Relief Ass'n,</i> 254 N.W.2d 363 (Minn. 1977)	3, 45
<i>Frisk v. Board of Ed. of City of Duluth,</i> 75 N.W.2d 504, 514 (Minn. 1956)	43
<i>Gale v. Commissioner of Taxation,</i> 37 N.W.2d 711, 714 (Minn. 1949)	20
<i>Genin v. 1996 Mercury Marquis, VIN No. 2MEBP95F9CX644211,</i> <i>License No. MN 225 NSG,</i> 622 N.W.2d 114, 117 (Minn. 2001)	47
<i>Gillett-Herzog Mfg. Co. v. Board of Com'rs of Aitkin County,</i> 72 N.W. 123, 126 (Minn. 1897)	36
<i>Housing and Redevelopment Authority of Chisholm v. Norman,</i> 696 N.W.2d 329 (Minn. 2005)	3, 45
<i>In re Marriage of Opp.,</i> 516 N.W.2d 193,196 (Minn. App. 1994)	34
<i>Jackson v. Mortgage Electronic Registration Systems, Inc.,</i> 770 N.W.2d 487, 496 (Minn. 2009)	19
<i>Jacobson v. Board of Trustees of the Teachers Retirement Assn.,</i> 627 N.W.2d 106 (Minn. App. 2001)	29, 30
<i>Krahl v. Nine Mile Creek Watershed Dist.,</i> 283 N.W.2d 538, 544 (Minn. 1979)	32
<i>Land O'Lakes Dairy Co. v. Village of Sebeka,</i> 31 N.W.2d 660, 665 (Minn. 1948)	32
<i>Lange v. Nelson-Ryan Flight Serv., Inc.,</i> 116 N.W.2d 266, 269 (Minn. 1962)	44

<i>Law Enforcement Labor Services, Inc. v. County of Mower,</i> 483 N.W.2d 696, 701 (Minn. 1992)	45
<i>Local Government Information Systems v. Village of New Hope,</i> 248 N.W.2d 316, 321 (Minn. 1976)	35
<i>M.A. Mortenson Co. v. Minnesota Com'r of Revenue,</i> 470 N.W.2d 126, 131 (Minn. 1991)	32
<i>McNeice v. City of Minneapolis,</i> 84 N.W.2d 232, 236-237 (Minn. 1957)	21
<i>Mead Corp. v. Tilley,</i> 490 U.S. 714, 729 (1989).....	27
<i>Mesaba Aviation Division v. County of Itasca,</i> 258 N.W.2d 877, 880 (Minn.1977)	35
<i>Montgomery Ward & Co. v. County of Hennepin,</i> 450 N.W.2d 299, 304 (Minn.1990)	34
<i>Northern States Power Co. v. Franklin,</i> 122 N.W.2d 26 (Minn. 1963)	1, 31
<i>Owens ex rel. Owens v. Water Gremlin Co.,</i> 605 N.W.2d 733 (Minn. 2000)	1, 19
<i>Porch v. General Motors Acceptance Corp.,</i> 642 N.W.2d 473, 477 (Minn. App. 2002)	18
<i>Reserve Mining Co. v. Herbst,</i> 256 N.W.2d 808, 824 (Minn.1977)	40
<i>Rice Lake Contracting Corp. v. Rust Environment and Infrastructure, Inc.,</i> 549 N.W.2d 96, 98-99 (Minn. App. 1996)	19
<i>Shortridge v. Daubney,</i> 425 N.W.2d 840 (Minn. 1988)	2, 38
<i>Stang v. Minn. Teachers Retirement Assoc. Board of Trustees,</i> 566 N.W.2d 345 (Minn. App. 1997)	2, 40
<i>State by Beaulieu v. RSJ, Inc.,</i> 552 N.W.2d 695, 701 (Minn. 1996)	19

State, City of Eden Prairie v. Liepke,
403 N.W.2d 252, 254 (Minn. App.1987) 34

Stephenson v. Martin,
259 N.W.2d 467, 470 (Minn.1977) 34

Stevens v. Minneapolis Fire Dept. Relief Ass'n,
145 N.W. 35, 36 (Minn. 1914) 46

Village of Edina v. Joseph,
119 N.W. 2d 809, 819 (Minn. 1962) 32

Statutes:

Laws 1971, c. 11, S.F.145 23

Minn. Stat. § 6, *et. seq.* 15, 25

Minn. Stat. § 69.051 36

Minn. Stat. § 69.77 *passim*

Minn. Stat. § 179A.03 8

Minn. Stat. § 179A.20 8

Minn. Stat. § 317A.237 22, 26

Minn. Stat. § 317A.239 22, 26

Minn. Stat. § 317A.241 22, 26

Minn. Stat. § 354A.12 47

Minn. Stat. § 356 6, 47

Minn. Stat. § 423B., *et. seq.* 6, 7, 8, 9, 22, 26, 47

Minn. Stat. § 423C., *et. seq.* 6, 7, 8, 9, 22, 26, 47

Minn. Stat. § 541.01 29

Minn. Stat. § 541.05 1, 29

Minn. Stat. § 555, <i>et. seq.</i>	3, 32, 43
Minn. Stat. § 645.08(1)	20
Minn. Stat. § 645.16	1, 19, 20, 22, 23, 24, 26
Minn. Stat. § 645.17	27

Rules:

Minn. R. Civ. P. 8.01.....	1, 31
Minn. R. Civ. P. 52.01.....	19
Minn. R. Civ. P. 56.....	2, 41

Other:

Minn. Const. art. I, §	3, 45
U.S. Const. amends. V, XIV	3, 45

LEGAL ISSUES

I. Did the district court err as a matter of law in interpreting Minn. Stat. § 69.77, subd. 11 to require a new bylaw amendment each time new items of compensation were added to “salary?”

- a. This legal issue was raised in the parties’ summary judgment submissions. (Memo. in Support of Pl. City’s Mot. for Partial S.J at p.24-28 (June 1, 2009); Defs.’ Memo. in Opp. to Pl.’s Mot. for Partial S.J. at p.20-24 (June 17, 2009); Reply Memo. in Support of City’s Mot. for Partial S.J. at p.8-10 (June 23, 2009).)
- b. The district court ruled that Minn. Stat. § 69.77 required a new bylaw amendment every time new items of compensation were added to “salary.” (ADD.20-22, 25.)

Authorities: Minn. Stat. § 69.77; Laws 1971, c. 11, S.F.145; Minn. Stat. § 541.05; Minn. Stat. § 645.16; *Beardsley v. Garcia*, 753 N.W.2d 735 (Minn. 2008); *Owens ex rel. Owens v. Water Gremlin Co.*, 605 N.W.2d 733 (Minn. 2000).

II. Did the district court err in allowing the City to pursue its claim of violation of Minn. Stat. § 69.77, subd. 11 when the claim had not been pleaded?

- a. This legal issue was raised in the parties’ summary judgment submissions. (Defs.’ Memo. in Opp. to Pl.’s Mot. for Partial S.J. at p.12-14 (June 17, 2009); Reply Memo. in Support of City’s Mot. for Partial S.J. at p.2-5 (June 23, 2009).) (Defs.’ Reply Memo. in Support for S.J. at p.6-14 (June 23, 2009).)
- b. The district court did not address the issue of pleading but ruled that the Associations had violated Minn. Stat. § 69.77, subd. 11. (ADD.20-22, 25.)

Authorities: Minn. R. Civ. P. 8.01; *Northern States Power Co. v. Franklin*, 122 N.W.2d 26 (Minn. 1963); *Brown v. State*, 617 N.W.2d 421 (Minn. App. 2000); *City of Minneapolis v. Meldahl*, 607 N.W.2d 168 (Minn. App. 2000).

III. Did the district court err in holding that the City’s claims were not barred by the equitable doctrines of laches, waiver, and estoppel?

- a. This legal issue was raised in the parties’ summary judgment submissions. (Defs.’ Memo. in Support for S.J. at p.17-20 (June 1, 2009); City’s Memo. in

Opp. to Defs.' Mot. for S.J. at p.12-18 (June 17, 2009); Defs.' Reply Memo. in Support for S.J. at p.14-15 (June 23, 2009).)

- b. The district court held that laches, waiver, and estoppel did not apply. (ADD.13-15.)

Authorities: Minn. Stat. § 69.77, subds. 1, 5; *Department of Human Services of State of Minn. v. Muriel Humphrey Residences*, 436 N.W.2d 110 (Minn. App. 1989); *Shortridge v. Daubney*, 425 N.W.2d 840 (Minn. 1988).

IV. Did the district court err by holding that the Associations had miscalculated salary contrary to its bylaws?

- a. This legal issue was raised in the parties' summary judgment submissions and at trial. (Memo. in Support of Pl. City's Mot. for Partial S.J at p.17-24 (June 1, 2009); Defs.' Memo. in Opp. to Pl.'s Mot. for Partial S.J. at p.16-18 (June 17, 2009).)
- b. The district court held that the following calculations were improper:
- MFRA - calculation of salary using 136 hours of non-FSLA overtime (ADD.22);
 - MPRA - including selection premium in the calculation of sick-leave buy back (ADD.24);
 - MFRA - including selection premium in the calculation of sick-leave buy back (ADD.27-28); and
 - MPRA - including shift differential in the calculation of accrued compensatory time (ADD.28-29.)

Authorities: Minn. R. Civ. P. 56; *Stang v. Minn. Teachers Retirement Assoc. Board of Trustees*, 566 N.W.2d 345 (Minn. App. 1997).

V. Did the district court err by requiring that the Associations to recoup the alleged overpayments from its members?

- a. This legal issue was first raised by the City in its post-trial motion for recoupment, which the Associations opposed. (City's Memo. of Law in Support of Mot. for Amended Findings, Conclusions, and Order at p.10-12 (December 23, 2009); Defs.' Memo of Law in Opp. to Pl.'s Mot. for Amended Findings, Conclusions, and Order at p.5-10 (January 6, 2009); Reply Memo. in Support of Mot. for Amended Findings, Conclusions, and Order at p1-4 (January 8, 2009).)

- b. The district court granted the City's post-trial motion and ordered the Associations to recoup alleged overpayments and oppose all objections to recoupment. (ADD.44-46, 48-50.)

Authorities: U.S. Const. amends. V, XIV; Minn. Const. art. I; Minn. Stat. § 555.11; Minn. Stat. § 69.77, subd. 8; *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329 (Minn. 2005); *Brezinka v. Bystrom Bros., Inc.*, 403 N.W.2d 841 (Minn. 1987); *Christensen v. Minneapolis Mun. Employees Retirement Bd.*, 331 N.W.2d 740 (Minn. 1983); *Fassbinder v. Minneapolis Fire Department Relief Ass'n*, 254 N.W.2d 363 (Minn. 1977).

INTRODUCTION

In return for their years of dedicated, valiant service to the citizens of Minneapolis – including in some cases, the ultimate sacrifice¹ – the City of Minneapolis (“City”) promised its police officers and firefighters a secure retirement. The City is now reneging on that solemn promise and sacrificing the welfare of these retired public servants in the name of political expediency.

The members of the Minneapolis Police Relief Association (“MPRA”) and the Minneapolis Firefighters’ Relief Association (“MFRA”) are retired police officers, firefighters, and their surviving spouses (MPRA and MFRA hereafter jointly referred to as “Associations”). The average age of the pensioners is over 70 and the average age of the widows is nearly 80. These are vulnerable people in the twilight of their lives.

For over a decade, the City approved without question the formulas the Associations used in calculating pension payments to their members. In 2006, the City challenged pension payments by suing the Associations and claiming that the calculations were not in accordance with the 1995 Settlement Agreement (“Settlement Agreement” or “Agreement”) reached in a lawsuit brought by the City against the Associations over a decade earlier. For the first three years of this lawsuit, the City assured the courts and the retirees that the retirees need not be made a party to the action, as the City was not seeking to affect their benefits. The City asserted its claim was only against the Associations for their breach of the 1995 Settlement Agreement.

¹ Since the pension funds were created in the 1800s, forty-seven (47) police officers and sixty (60) firefighters have died in the line of duty, protecting the lives and property of the residents of Minneapolis.

As a result of the district court's rulings, however, as of January 2010, the *current* benefits paid to over 1400 retired public servants were reduced significantly, by over 10% for police and widows and by 4% for firefighters and widows.

Then, in a denouement worthy of Kafka, the City asked the court not only to cut the retiree and widow benefits *but also to make them repay benefits that had previously been approved by the City*. The district court complied with the City's request: it ordered the Associations to recoup from the individual members, despite the fact that they had been repeatedly denied a voice or a place in the court room. This unconstitutional result has exposed these vulnerable former public servants to unconscionable financial distress.² These compound legal errors committed in the district court cannot stand.

STATEMENT OF THE CASE

This is an appeal from the final judgment entered in the Hennepin County District Court after a bench trial before the Honorable Janet N. Poston. (No. 27-CV-06-11454.) In this declaratory judgment action against the MFRA and MPRA, the City claimed that each Association had violated a 1995 Settlement Agreement between the parties in calculating pension benefits for its respective members. (AA.069-AA.078.) The district court ruled in favor of the City and enjoined the Associations to recalculate pension benefits back to 2000 (ADD.35 at ¶ 16; ADD.46 at ¶ 21) and ordered the Associations to recoup the alleged overpayments from their members. (ADD.44-46, 48-50.)

² Most of the members do not qualify for or receive substantially reduced social security benefits.

STATEMENT OF THE FACTS

The Associations Were Created By The Minnesota Legislature And Are Governed By Applicable Statutes And Bylaws.

This appeal is unique in that virtually all of the facts either (1) are legal facts or (2) have been stipulated to and are not in dispute.

Appellants MPRA and MFRA were established by the Minnesota Legislature over 100 years ago for the purpose of creating, maintaining, and administering certain pension funds for the benefit of their members, surviving spouses and beneficiaries/dependents. Minn. Stat. § 423B.04, subd. 2 (2008) and Minn. Stat. § 423C.02, subd. 1 (2008); (AA.178-AA.179 at 11:3-13, 11:24-12:2.) In addition to creating these governmental pension plans, the Minnesota Legislature also enacted an elaborate statutory scheme governing the management of these funds. Minn. Stat. ch. 423B, Minn. Stat. ch. 423C, Minn. Stat. ch. 69, Minn. Stat. ch. 356 and Minn. Stat. ch. 356A. (AA.178 at 11:14-18.) These various statutes, along with each Association's bylaws, control virtually every aspect of the operation of both the MPRA and the MFRA including governance, benefits, expenditures and taxing ability. (AA.178 at 11:19-21.)

The respective Boards of each Association are charged with the exclusive duty of managing the retirement program and making effective the governing statutes as well as their own articles of incorporation and bylaws. *See* Minn. Stat. §§ 423B and 423C.

For over 100 years, these pension funds have provided retirement benefits to Minneapolis police officers, firefighters, and their survivors. (See AA.178-AA.179 at 11:24-12:2.) Both plans were closed to new members on June 15, 1980. Minn. Stat. § 423B.01, subd.2 and Minn. Stat. § 423C.01, subd. 2; (AA.179 at 12:3-4.)

Benefits Change Each Year Based Upon Current Salaries Of Active Police Officers And Firefighters.

Both the MPRA and the MFRA are defined benefit retirement plans. (AA.179 at 12:16-20.) These defined plans are unique because the monthly pension of a retired police officer, retired firefighter or surviving spouse is tied directly to the *salary of an active police officer or firefighter*. (*Id.*; AA.179 at 12:21-24.) This type of pension is referred to as an escalated pension.

The amount of pension benefits is based on a “unit.” First, the number of “units paid” is based on a patrol officer or firefighter with 25 years of service, regardless of an individual’s rank or salary. Minn. Stat. § 423B.01, subd. 20 and Minn. Stat. § 423C.01, subd. 28; Minn. Stat. § 423B.09, subd. 1 and Minn. Stat. § 423C.05, subd. 2; (*see* AA.179-180 at 12:9-13:17.) Thus, each member pays in the same contribution and receives the same pension. (*Id.*)

Second, “unit value” is determined by taking the “current monthly” salary of a first grade patrol officer or the “maximum monthly” salary of a first grade firefighter³ and dividing it by 80. Minn. Stat. § 423B.01, subd. 20; Minn. Stat. § 423C.01, subd. 28; (AA.179-AA.180 at 12:25-13:17.) Therefore, any change in the monthly salary of a current firefighter or police officer will directly change the retirement pension of a member or surviving spouse. (*See* AA.179 at 12:16-24.)

In order for there to be a change in the pension benefits paid to retirees and surviving spouses, the City and the police and fire unions must first negotiate a change in

³ A “first grade patrol officer” or a “first grade firefighter” is a person with 25 years of service. *See* Minn. Stat. § 423B.09 and Minn. Stat. § 423C.05.

compensation for active employees through the collective bargaining process. *See* Minn. Stat. §423B.01, subd. 20 and Minn. Stat. § 423C.01, subd. 28 (providing escalator clauses for unit value calculations) And, under state law, the City must approve the collective bargaining agreement (“CBA”) that results from these negotiations. *See* Minn. Stat. § 179A.03, subd. 15(f) (2006); Minn. Stat. § 179A.20, subds. 1, 5. In sum, what the City approves to pay *active* employees determines the pension payments for *retirees and surviving spouses* of the relief Associations. (*See* AA.179 at 12:16-24.)

Several Sources Fund The Pension Funds.

Several sources fund the financial requirements of the pension benefits. Investment income is the primary source. Minn. Stat. § 423B.06, subd. 1 and Minn. Stat. § 423C.04, subd. 2; (AA.180 at 13:18-19); (AA.224 at 49:5-20.) Additional sources of funding are current assets, various state aid programs, contributions from the City, and contributions from active members. (AA.196-AA.199 at 186:8-189:1); (AA.212-AA.214 at 52:10-54:8); (AA.224 at 49:5-20.)

At issue in this case is the amount of the City’s municipal contribution. (AA.180-AA.181 at 13:20-14:4.) The amount of the City’s contribution from year to year may vary dramatically depending on investment returns and other factors. For example, there have been years where the City’s contribution to the Associations was \$0. (AA.82 at 61:6-17); (AA.195-AA.196 at 185:24-186:7.) In 2008, however, each fund lost about \$100 million dollars due to the collapse of the stock market. (AA.225-AA.227 at 50:3-52:20.)

The Guidelines Act, Minn. Stat. § 69.77, Governs The City's Contribution To The Pension Funds.

Minn. Stat. § 69.77 (“Guidelines Act” or “Guidelines”) governs how a municipality “must” contribute public funds or levy property taxes for the support of a police or firefighters’ relief association. Minn. Stat. § 69.77, subds. 1(a), 5 (2005); (*see* AA.180-AA.181 at 13:20-14:7.)

The Act sets forth a procedure for determining the City’s minimum financial obligation, if any, to either the MPRA or MFRA for the following year. Minn. Stat. § 69.77.

Each year the Associations must determine the amount of the payment of benefits to retired members and surviving spouses for the following year. Minn. Stat. § 69.77, subd. 4.⁴ Then, the Associations must provide to their respective actuaries the following data: 1) the “unit value” derived from the salary calculation; 2) the Association’s respective year-end financial data; and 3) the membership data. *Id.* Using this data, the actuaries prepare a year-end Actuarial Valuation for each Association which projects, among other things, the value of benefits and actuarial accrued liability. *See id.* These numbers are based, in part, on each Association’s calculation of *current* salary for a police officer or a firefighter with 25 years of service. Minn. Stat. § 423B.01, subd. 20 and Minn. Stat. § 423C.01, subd. 28; Minn. Stat. § 423B.09, subd. 1 and Minn. Stat. § 423C.05, subd. 2; (*see* AA.179-180 at 12:9-13:17.)

⁴ Again, these benefits are based on the “current monthly salary” of a first grade patrol officer or the “maximum monthly salary of a first grade firefighter.” This fact is critically important to this appeal and cannot be overemphasized.

The Associations provide a copy of the Actuarial Valuation reports to the City. (AA.084 at 81:7-82:5, AA.085-AA.087 at 84:19-89:4.) The City's own actuary reviews the Associations' actuarial reports. (AA.079 at 18:7-21, 20:4-10.) Then, the Associations and the City communicate with each other to determine the financial requirements of the Associations and the minimum obligation of the City. (AA.085-AA.087 at 84:19-89:4.) The Associations' Boards certify the financial requirements and minimum municipal obligation and send the determinations to the City. Minn. Stat. § 69.77, subd. 5.

The City cannot contribute public funds unless the City and the Associations comply with 69.77. Minn. Stat. § 69.77, subs. 1(a), subd. 5. If the City finds that the calculations were not prepared in accordance with the law, the City cannot contribute public funds and may refuse to levy taxes. *Id.*, subs. 1, 7. If this should occur, then the Associations can certify the amount of the deficiency to the county auditor (i.e. a "forced levy"). *Id.*, subd. 7(c). Indeed, it was this forced levy situation that led to the 1995 litigation between the parties. (AA.004-AA.005 at XIV-XX); (AA.012-AA.013 at XIV-XX); (City's Memo. in Opp. to Defs.' Mot. for S.J. at p.10); (AA.188 at 68:21-25.)

1995 - City's Lawsuit Against The MPRA and MFRA.

In 1994, the City – for the first time - asserted that the MPRA and the MFRA had improperly included certain elements of compensation in their computations of "salary." (AA.001-AA.016); (AA.181 at 14:8-11.)

This, the City alleged, resulted in the miscalculation of the "minimum municipal contribution" that the City was required to make to each pension fund. (AA.010-AA.011

at ¶¶ XXIV.) During the 1995 suit, the City never asserted that the Associations were violating Minn. Stat. § 69.77, subd. 11. (AA.019-AA.016.)

The 1995 Settlement Agreement Defined “Salary.”

In September 1995, the parties settled the litigation by entering into a Settlement Agreement, which resolved, among other things, how the City’s contribution to each benefit plan would be determined going forward. (AA.181 at 14:12-16; AA.017-AA.022.)

Under the terms of the 1995 Agreement, a formula was devised for determining the bi-weekly salary for pension purposes for both the MPRA and the MFRA for the years 1996 through 1998.⁵ (AA.181 at 14:17-22); (AA.018-AA.019) The parties also agreed on a definition of salary. (AA.019-AA.020.) The Agreement specifically stated, “The purpose of defining the term [“salary”] by amendment to the by-laws is to prevent future differences of opinion on the elements of compensation to be included in salary.” (AA.019.) Prior to 1995, neither Association’s bylaws included a definition of “salary.”

The Agreement and subsequent amended bylaws provided the following definition of salary:

The term “salary” shall include the following elements of compensation, *to the extent they are payable* under a collective bargaining agreement:

For the MFDRA [MFRA]:

- (a) base wages, including FLSA overtime attributable to the regularly scheduled work period;
- (b) selection premium;
- (c) the uniform and professional allowance paid to firefighters;

⁵ The Agreement specifically provided that for the years 1995 through 1998, “the method of determining salary specified by paragraph 1 of the settlement agreement supersedes any definition of salary in the association’s by-laws.” (AA.020.)

- (d) longevity payments;
- (e) an average of overtime actually worked in excess of FLSA overtime amounts by firefighters with 25 years or more of service up to a maximum of 136 hours in the immediately preceding year;
- (f) the maximum sick leave buy-back benefit available to first grade firefighters.

⁶

...
Any new item of compensation granted to first grade firefighters in the collective bargaining process after April 15, 1995, may be included in salary by action of the MFDRA [MFRA], provided that at least 50 percent of all first grade firefighters are eligible to receive the new compensation item. The amount to be included in salary for any such new compensation item shall be the average amount paid to those first grade firefighters who received the compensation item.

For the MPRA:

- (a) base wages;
- (b) shift differential;
- (c) the uniform and professional allowance paid to patrol officers;
- (d) longevity payments;
- (e) 60 hours of accumulated compensatory time;
- (f) work-out program payments; and
- (g) the maximum sick leave buy-back benefit available to top grade patrol officers

⁷

...
Any new item of compensation granted to top grade patrol officers in the collective bargaining process after April 15, 1995, may be included in salary by action of the MPRA, provided that at least 50 percent of all top grade patrol officers are eligible to receive the new compensation item. The amount to be included in salary for any such new compensation item shall be the average amount paid to those top grade patrol officers who received the compensation item.

⁶ Pursuant to the Settlement Agreement, certain items of compensation were specifically excluded from the definition of salary. For the MFRA, these items were severance payments, workers' compensation payments, and employer paid amounts used by employees toward health and medical insurance coverage. For the MPRA, these items were severance payments, workers' compensation payments, employer-paid amounts used by employees toward the cost of health and medical insurance coverage and canine maintenance fees. (AA.019-AA.20); (AA.182-AA.183 at 15:3-16:25.)

⁷ See footnote 6.

(AA.182-AA.183 at 15:3-16:25) (emphasis added); (see AA.019-AA.020.) In addition, the MPRA and the MFRA were required to “amend its bylaws to define the term ‘salary’ and each bylaw amendment was to be approved by the City.” (AA.181 at 14:17-22.).

Associations Amended Their Bylaws, In Accordance With The Settlement Agreement And Its Definition Of “Salary.”

Pursuant to their obligations under the Agreement, in late 1995 both the MPRA and the MFRA, by a vote of their entire respective memberships, amended their bylaws to include the definition of “salary” contained in the Agreement. (AA.023); (AA.024); (AA.181 at 14:23-25.) The bylaw amendments following the Agreement were the *first time* that either Association’s bylaws included a definition of “salary.” On November 22, 1995, the City approved both the MPRA’s and the MFRA’s bylaw amendments, thereby accepting both of the Associations’ definitions of “salary” to be used when calculating the City’s contribution to pension benefits. (*Id.*) At the point that the amended bylaws of the MPRA and the MFRA were accepted and approved by the City, both the MPRA and the MFRA had completely fulfilled all of their respective obligations under the Agreement. (*See id.*)

The Same Methodology Has Been Used For Calculating Salary And Unit Value Since 1995.

Beginning in 1995, both the MPRA and the MFRA began using the definition of “salary” contained in the Agreement and thereafter in the respective amended bylaws of each Association in order to compute members’ pension benefits. (*See* AA.184 at 17:13-15; AA.209-AA.210 at 45:13-46:12.) These definitions included items that the respective

Boards of each Association had previously determined constituted “salary.”⁸ (AA.201-AA.207 at 25:22- 31:20.)

Since 1995, the same methodology has been used for calculating salary and unit value. (AA.184 at 17:13-15.) From 1995 forward, the City did not object to the calculations and approved the City’s minimum contribution each year. (See AA.184 at 17:3-6, 17:10-12.) The City does not challenge the salary calculations for the years 1996 to 1998. (AA.182 at 15:1-2.)

2004 and 2005 - Office of State Auditor Issued Audit Letters.

The Office of the State Auditor (“OSA” or “Auditor”) is charged with auditing both the MPRA and MFRA. Minn. Stat. § 69.77, subd. 1(c). In 2004 and 2005, the OSA issued audit Management Letters to each Association that questioned some of the calculations of “salary” by each Association. (AA.184 at 17:7-9; AA.089-AA.152.) The basis for the OSA’s inquiry was the 1995 Settlement Agreement. (AA.090, AA.101, AA.104; AA.110, AA.116-118; AA.125-AA.126, AA.129; AA.138-AA.139, AA.145-AA.146.) The State Auditor did not find that either Association had improperly included any new items of compensation in their annual determinations of “salary;” instead, the Auditor simply questioned the way in which the Associations calculated their determination of benefits. (See AA.184 at 17:7-9.) Moreover, the State Auditor did not find that either Association was in non-compliance and did not recommend the

⁸ Prior to the 1994 lawsuit, the following were included in the respective Association’s computation of “salary”: base wages; longevity payments; uniform and professional allowances, shift differential and work out payments for the MPRA and selection premium pay for the MFRA by action of the Boards. And, in the case of some items of compensation, after the Associations had consulted with the Minnesota Attorney General. (AA.201-AA.207 at 25:22-31:20.)

withholding of state revenue sharing aid. Minn. Stat. § 69.77, subd. 1(b); Minn. Stat. ch. 6 (2005) (State Auditor); (AA.089-AA.152.) Instead, these audits were deemed clean or unqualified. (*See id.*)

2006 – City Sues the Associations.

City’s declaratory action against Associations for breach of the 1995 Agreement.

Based on the OSA’s 2004 and 2005 audits of the Associations, in June 2006, the City brought this declaratory judgment action against the Associations claiming that the Associations were violating the 1995 Settlement Agreement and breaching their fiduciary duties to the City. (AA.069-AA.077.)

Associations’ Motion to Dismiss For Failure to Join Members.

The Associations moved to dismiss the Complaint on the several grounds including the non-joinder of indispensable parties, i.e. members and beneficiaries. The City responded that it was not seeking to reduce the retirement benefits of the individual participants. (AA.159); (AA.172 at 34:23-25.) The district court denied the Associations’ Motion to Dismiss, and the Associations appealed. This Court affirmed the district court’s decision. *City of Minneapolis v. Minneapolis Police Relief Ass’n*, No. A07-420, 2008 WL 1747923, at *4 (Minn. App. 2008) (unpublished). With respect to the issue of joinder, the court of appeals agreed with the district court’s observation that the case was primarily ““a dispute between the contributor to and the administrators of the pension funds about the proper method of calculating the contributor’s minimum obligation”” and that “[a]ll the individuals whose interests could be affected by a declaratory judgment action are represented by the associations.” *Id.* This would later prove not to be the case.

Summary Judgment Proceedings.

At the close of discovery in 2009, the Associations moved for summary judgment on all of the City's claims. The City also moved for partial summary judgment. The City abandoned its claim that the Associations had violated the 1995 Settlement Agreement and instead claimed - for the first time - that the Associations had violated Minn. Stat. §69.77, subd. 11 by not amending their respective bylaws each and every time a new item of compensation was included in their calculation of "salary." (*Compare* AA.069-AA.077 at ¶¶ 7-18, 20, 21, 26, A, C *with* AA.163-AA.165.) The City now claimed that each Association's "salary" calculations had violated its own bylaws. (*Id.*)

On September 21, 2009, the district court ruled on the cross motions for summary judgment. (ADD.11-25.) The court granted the Associations' motion for summary judgment on the City's claim that the Associations' were in breach of the 1995 Settlement Agreement but denied their motions in all other respects. (ADD.25.) The court also granted the City's motion for partial summary judgment holding that:

- 1) The addition of new items of compensation included in calculation of salary was contrary to each Association's bylaws and a violation of Minn. Stat. §69.77 (ADD.20-22,25);⁹
- 2) MFRA's computation of non-FLSA overtime was incorrect (ADD.22); and
- 3) MPRA's inclusion of shift differential in the calculation of sick leave credit pay was incorrect (ADD.24).

⁹ Based on the district court's summary judgment order on September 21, 2009, the Associations were enjoined and ordered to eliminate the following items of compensation from their respective calculations of "salary" for unit value purposes for the years 2000-2009: MPRA: overtime, vacation credit pay, performance premium pay, holiday pay, and corporal pay; MFRA: health club dues, vacation cash out, work out of grade pay, performance pay and holiday pay. All of these benefits were the product of collective bargaining agreements approved by the City.

November 20, 2009 Order Regarding Incorrect Calculations And Denying Recoupment.

The case proceeded to a bench trial on October 5, 2009. The parties stipulated to certain facts. At trial, the City voluntarily dismissed its breach of fiduciary duty claim. (AA.187 at 21:14-20.)

On November 20, 2009, the district court issued its Order for Judgment which incorporated by reference its prior orders as well as the decision of this Court in case A07-420. (ADD.26.) The court awarded the City permanent injunctive relief by requiring the Associations to recalculate unit value calculations going back to June 2000 (ADD.34-36.) The court also required the Associations to recalculate and resubmit their 2010 levy request, holding as follows:

- 1) The MFRA had improperly included selection premium in calculation of sick leave buy back (ADD.27-28);
- 2) The MPRA had improperly included shift differential in accumulated compensatory time (ADD.28-29);
- 3) The MPRA had correctly calculated unit value by applying shift differential to 2088 hours (ADD.29); and
- 4) The City was not entitled to recoup overpayments made by the Associations to their members and beneficiaries because Minn. Stat. §69.77, subd. 8 provided for “an *explicit, precise, and unambiguous* remedy” of amortizing the amount of overpayment. (ADD.34 at ¶ 10.) And, that there was a “direct statutory mandate regarding the overpayment of funds.” (ADD. 34 at ¶ 11.) Thus, the court concluded the City had an adequate remedy at law. (ADD.34 at ¶ 10.)

District Court Grants City’s Post-Trial Motion for Recoupment.

The Associations filed an appeal from the November 20, 2009 order. Thereafter, the City filed a post-trial motion. This Court therefore found the appeal premature and

dismissed it. (*City of Minneapolis v. MPRA and MFRA*, No. A09-2148 (January 20, 2010) (order dismissing appeal.)

In a motion for amended findings, the City asked the court to require the Associations to seek recoupment from their members and beneficiaries. (City's Memo. of Law in Support of Mot. for Amended Findings, Conclusions, and Order at p.10-12, (December 23, 2009).)

On May 17, 2010, the district court issued its Amended Findings of Fact, Conclusions of Law and Order for Judgment. The district court found that the City had no adequate remedy at law for the Associations' alleged overpayments to members. (ADD.44 at ¶ 9, ADD.49.) The court held that the Associations have a fiduciary duty to recoup from the members (ADD.45 at ¶ 11, 49-50), and that the Associations must oppose any and all challenges to the recoupment. (ADD.47 at ¶ 3.) The court also ordered the Associations to present a recoupment plan to the court by June 4, 2010 and to begin recoupment by July 1, 2010. (ADD.47-48 at ¶¶ 4, 5.) Pursuant to the stipulation of the parties, on May 28, 2010, the court issued an order staying the commencement of recoupment pending the outcome of this appeal. On July 15, 2010 judgment was entered. This appeal followed.

ARGUMENT

STANDARD OF REVIEW

Virtually all of the issues in this appeal are legal issues. This Court is not bound by nor does it give deference to the district court's decision on a purely legal issue. *Porch v. General Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002). Instead, the Court reviews the district court's determination of questions of law *de novo*.

Rice Lake Contracting Corp. v. Rust Environment and Infrastructure, Inc., 549 N.W.2d 96, 98-99 (Minn. App. 1996). To the extent that any findings of fact are in issue, they will not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

I. THE DISTRICT COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF MINN. STAT. § 69.77, SUBD. 11.

In its ruling on cross motions for summary judgment, the district court held that Minn. Stat. § 69.77, subd. 11 required a bylaw amendment each and every time a new item of compensation was included or eliminated from “salary” for unit value purposes. As a result, the Associations were enjoined and ordered to eliminate a number of items of compensation from their respective calculations of “salary” for the years 2000-2009.¹⁰ The district court’s holding misconstrues the plain language of Minn. Stat. § 69.77, subd. 11.

Statutory interpretation begins with the plain language of the statute. *Jackson v. Mortgage Electronic Registration Systems, Inc.*, 770 N.W.2d 487, 496 (Minn. 2009). “If the words of the statute are ‘clear and free from all ambiguity,’ further construction is neither necessary nor permitted.” *Owens ex rel. Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736 (Minn. 2000) (citing Minn. Stat. § 645.16); *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996) (holding when statute is unambiguous, court must apply its plain meaning and not engage in any further construction or interpretation).

¹⁰ Items of compensation eliminated for the MPRA: overtime, vacation credit pay, performance premium pay, holiday pay, and corporal pay (*see* ADD.20-22, 25). Items of compensation eliminated for the MFRA: health club dues, vacation cash out, work out of grade pay, performance pay and holiday pay. (*Id.*) All of these benefits were the product of collective bargaining agreements approved by the City.

A. The district court effectively rewrote the plain language of Minn. Stat. § 69.77, subd. 11.

Minn. Stat. § 69.77, subd. 11 provides that any amendment to the bylaws which increases the retirement coverage is not effective until ratified by the City:

Any amendment to the bylaws or articles of incorporation of a relief association which increases or otherwise affects the retirement coverage...is not effective until it is ratified by the municipality in which the relief association is located.

This statute's plain language does not require the Associations to amend their bylaws each and every time a new item of compensation is added to the definition of "salary." And, there is no ambiguity in this provision that allows any interpretation by a court. Minn. Stat. § 645.08(1) (1947) (words and phrases are construed according to rules of grammar and according to their common and approved usage); Minn. Stat. § 645.16 (1947) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001) (stating that when the language of a statute is plain and unambiguous, that plain language must be followed).

Nonetheless, the district court interpreted the statute as requiring a new bylaw amendment each and every time that a new item of compensation was attained through the collective bargaining process between the City and its police and fire unions. (ADD.20-22, 25.) The district court thus transposed and added words to a statute that was clear and had meaning as written. Minn. Stat. §645.16; *Gale v. Commissioner of Taxation*, 37 N.W.2d 711, 714 (Minn. 1949) (finding no justification for transposition

where natural import of words was to convey a specific meaning). It had no justification for doing so.

The district court rewrote the statute, instead of applying the plain language of the statute. The court had no authority to do so. *See e.g., Beardsley v. Garcia*, 753 N.W.2d 735, 740 (Minn. 2008) (declining to interpret the statute so as to “effectively rewrite” it because that prerogative belongs to the legislature rather than to the court); *McNeice v. City of Minneapolis*, 84 N.W.2d 232, 236-237 (Minn. 1957) (“It is not for the court to encroach upon the legislative field by an interpretation which would in effect rewrite a statute so as to accomplish a result which might be desirable and at the same time conflict with the expressed will of the legislature.”).

In order for the district court’s interpretation to stand, the statute would have to read as follows:

Each increase or other change that affects retirement coverage requires a new amendment to the bylaws or articles of incorporation of a relief association which increases or otherwise affects the retirement coverage...and is not effective until it is ratified by the municipality in which the relief association is located.

Obviously, this is not the way in which this statute is written. The district court’s interpretation incorrectly rewrites the statute, so that an increase in pension benefits required a new bylaw amendment each and every time benefits increase. This is contrary to how an escalated benefit that is tied to active salaries works.

Here, by its plain language, the statute states that any amendment to the bylaws which increases or affects retirement coverage *is not effective until ratified by the City*. But it is undisputed that the City did ratify these bylaw amendments on November 22, 1995. (AA.181 at 23-25.) And, the bylaw amendments approved by the City set forth a

standard to determine in the future which new items of compensation would be included in the definition of “salary” for unit value purposes.¹¹ Thus, in accordance with the plain language of subdivision 11, the Associations did comply with the statute and upon ratification of the bylaw amendments by the City, the bylaw amendments went into effect.

B. Even if this Court were to find the statutory language in Minn. Stat. § 69.77, subd. 11 to be ambiguous, the legislative intent favors the Associations’ interpretation.

Even if this Court were to go beyond the plain language of the statute by finding it ambiguous, the legislative intent shows that a bylaw amendment was merely one way, not the only way, to establish benefits. Minn. Stat. § 645.16 (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”); *see* Minn. Stat. § 423B.01, subd. 20 and Minn. Stat. § 423C.01, subd. 28) (providing escalator clauses for unit value calculations); *see also* Minn. Stat. §§ 317A.237, 317A.239, and 317A.241 (an action of the Board does not require a change in the bylaws).

¹¹ The new items of compensation could be included in “salary” provided that at least 50 percent of all top grade patrol officers or first grade firefighters were eligible to receive the new compensation item. This is the only limit on whether or not a new item of compensation was to be included. (*See* AA.019-AA.020.)

1. The object to be attained and contemporaneous legislative history show that bylaw amendments were not required.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering the object to be attained and the contemporaneous legislative history. Minn. Stat. § 645.16 (4) and (7).

In 1971, subdivision 2a (i.e. what is now subd. 11) was first added to the law, relating to the ratification of bylaws and articles. The actual language was:

“After January 1, 1971, all bylaws or articles of incorporation amendments *affecting benefits paid* for any police or fire association governed by this section, shall not be effective until ratified by the local governmental subdivision.”

Laws 1971, c. 11, S.F.145 (emphasis added). The Legislative Commission on Pensions & Retirement (“LCPR”) studies and investigates state public pension plans, and makes recommendations to the legislature. <http://www.lcpr.leg.mn/> (last accessed Oct. 21, 2010). The LCPR stated that the phrase “affecting benefit levels” could be incorporated into the 1969 Guidelines Act to give municipalities “*some voice* in the determination of pensions which they are required to finance.” (AA.167) (LCRP Memo to Legislative Committees Considering Pension Bills, S.F.145 & H.F.272 (January 26, 1971).)

And, the Senate Committee on Pensions & Retirement stated that the Guidelines Act “did not include provisions regulating the *setting up of benefits* by local chapters by means of their by-laws or articles of incorporation; this bill provides that all benefits bestowed *in this manner* must be ratified by the local governmental subdivision...” (AA.168-AA.170) (Senate Pensions & Retirement Committee Minutes, S.F.145 (January 28, 1971).)

Nothing in the legislative history indicates that a bylaw amendment must be executed every time benefits are increased or decreased, or that the City has unilateral authority to approve or deny benefits, or that bylaw amendments are the only way to set up benefits. Instead, the legislative history shows that a bylaw amendment is merely one way, not the exclusive way, in which to establish benefits. In this case, the City approved the Associations bylaws, bylaws that established a standard to address how all future new items of compensation would be included within the definition of "salary." Thus, the bylaw amendment ratified by the City pursuant to the 1995 Settlement Agreement fully complied with subdivision 11.

2. Administrative interpretation of Minn. Stat. § 69.77, subd. 11 shows that bylaw amendments are not required.

The intention of the legislature can also be ascertained by considering administrative interpretations of the statute. Minn. Stat. § 645.16(8). In this case, the administrative interpretation of Minn. Stat. § 69.77, subd. 11 also favors the Associations.

The State Auditor is charged with determining whether a relief association complies with the provisions of the Guidelines Act. *See* Minn. Stat. § 69.77, subd. 1(c). The State Auditor, however, has never interpreted Minn. Stat. § 69.77, subd. 11 to require a bylaw amendment each and every time a new item of compensation has been included in the definition of "salary" for unit value purposes.¹² Perhaps this can be best

¹² In all of the audits of the Associations from 1971 to the present, the State Auditor has never required a bylaw amendment when either Association added new items of compensation to their calculations of "salary" for unit value purposes. (*See* Pl.'s Trial Exs. 21-43.)

demonstrated in a correspondence between the OSA and the City, as well as in the 2003 and 2004 OSA Management Letters to the Associations.

In a June 8, 2004 correspondence to the City addressing legislation that would increase the benefit level of members of the MPRA, the State Auditor concluded her letter with the following advice:

The City should consider the following issues as they relate to the funding dilemma it faces with the MPRA while at the same time protecting the City taxpayers: (1) renegotiate the 1995 Settlement Agreement; (2) freeze benefits by agreement or legislation; and (3) develop a comprehensive future pension funding plan.

(AA.153-AA.155.) Notably absent from this correspondence is any reference to or mention of the requirement of a bylaw amendment under Minn. Stat. § 69.77, subd. 11.

(*Id.*)

Similarly, there is nothing in any of the Management Letters that were the genesis of this lawsuit that indicates that the Associations' inclusion of certain items of compensation in their calculations of salary required a bylaw amendment. Instead, these Management Letters merely questioned the calculations that were performed by each Association, not the items of compensation included therein. (AA.089-AA.152.)

More important, the State Auditor did not withhold any state aid, which it is obligated to do if the financial determination of the Association are incorrect. *See* Minn. Stat. § 69.77, subd. 1(b); Minn. Stat. ch. 6; (AA.089-AA.152.) Thus, the administrative agency mandated to oversee the provisions of the Guidelines Act has never interpreted subdivision 11 the way the district court did in this case.

3. Consequences of the district court's interpretation does not support its holding.

A court can consider the consequences of an interpretation of a statute when ascertaining legislative intent. Minn. Stat. § 654.16(6). This canon of statutory interpretation allows a court to “look to the reasonableness of the interpretations proposed by each party.” *City of Crystal Police Relief Ass'n v. City of Crystal*, 477 N.W.2d 728, 731 (Minn. App. 1991). In this case, not only is the interpretation of subdivision 11 proposed by the City and adopted by the district court unreasonable because it is unprecedented, but the consequences created by the district court's interpretation are grave.

Prior to the district court's ruling, bylaw amendments have never been required for salary changes. Indeed, from 1969 when the Guidelines were enacted to 1995, neither Association's bylaws contained a definition of “salary.” Instead, the Boards of each Association by board action determined what constituted salary. *See also* Minn. Stat. §§ 317A.237, 317A.239, and 317A.241 (2004) (an action of the Board does not require a change in the bylaws); Minn. Stat. § 423B.01, subd. 20 and Minn. Stat. § 423C.01, subd. 28) (providing escalator clauses unit value calculations). In the 40 year period from 1969 to 2009 when the City first raised this issue, no one accepted or believed that Minn. Stat. § 69.77, subd. 11 required by a bylaw amendment each and every time benefits were increased or decreased through the collective bargaining process. Not even the judge presiding over the 1994 litigation between these parties interpreted the statute in this way. If the judge had, the judicially approved 1995 Settlement Agreement would have been

void *ab initio*. Yet, the district court below took a statute that had been in existence for 40 years and created a requirement that had never before existed.

Moreover, the consequences of accepting the district court's interpretation is grave, overturning years of pension benefit determinations and thereby ignoring the principles of actuarial standards. *Mead Corp. v. Tilley*, 490 U.S. 714, 729 (1989). These determinations cannot be undone in such a cavalier manner. To do so would require a recalculation of the amount of contributions collected from active members as well as benefits paid to retired members and surviving spouses. Every financial aspect of the plans will be affected.

And, even more egregiously, the district court directed that its interpretation of this statute be applied retroactively. The purpose of these pensions is to provide secure retirement income for people who can no longer work. The consequences of reducing a person's pension retroactively are extraordinary. The district court's holding produces an absurd result, and in effect creates an invalid *ex post facto* law. Minn. Stat. § 645.17 (6). The district court's interpretation of Minn. Stat. §69.77, subd. 11 cannot stand.

C. The district court's interpretation of subdivision 11 was incorrect because bylaw amendments have never previously been required.

The district court erred in its interpretation of subdivision 11 because bylaw amendments were not sought or required during the period governing the Settlement Agreement, 1995 to 1998.

In resolving the 1995 litigation, a formula was set out for determining the bi-weekly salary and specifically provided, "For the years 1995 through 1998, the method of determining salary specified by paragraph 1 of this settlement agreement *supersedes any*

definition of salary in the association by-laws.” (AA.020) (emphasis added.) Paragraph 1 of the Agreement specifically addressed computation of the following items of compensation: overtime and sick leave buy-back for the MFRA; and compensatory time and sick leave buy-back for the MPRA. (AA.017-AA.019.) No bylaw amendment was either sought or required, even though these calculations increased or otherwise affected the retirement benefits each year.¹³ (AA.017-AA.022.) If the district court’s holding below were correct, then the Settlement Agreement would have been illegal.

In further support that bylaw amendments are not required, Appellants note that the Associations have been in existence since the 1800s and the Guidelines were enacted in 1969. Minn. Stat. § 69.77; (AA.178-AA.179 at 11:24-12:2.) Thus, from at least 1969 to 1995, new items of compensation were added including: longevity pay, clothing allowance, and shift differential. (AA.201-AA.207 at 25:22-31:20.) As these items of compensation were included in the taxable income of a top grade patrol officer and a first grade firefighter, they were “salary.” Equally important, these items of compensation are not really “new,” as they have been consistently covered by all of the other retirement systems in this state. Yet, bylaw amendments have historically never previously been required each time benefits increased or were affected, through the collective bargaining agreements or otherwise. (AA.193 at 174:10-24) (stating that in the 23 years on the Board, Walter Schirmer was not aware of a bylaw amendment ever being required when items of compensation were added); (AA.207 at 31:2-13); (AA.219-AA.220 at 99:24-100:3).

¹³ The court presiding over the 1995 litigation, and approving the Settlement Agreement, also did not require a bylaw amendment for the years 1995 through 1998.

Bylaw amendments were not adopted in 2008 when the Associations removed items of compensations from the computation of "salary." (AA.189-AA.192 at 101:23-102:24, 116:17-117:14); (AA.211 at 51:5-13); (AA.219-AA.222 at 99:17-102:1.) And, the City has never objected to the removal of these items without a bylaw amendment."

Therefore, the absence of bylaw amendments during the years after enactment of the Guidelines, during the governing period of the Settlement Agreement, and when items of compensation were removed shows that the district court's interpretation of subdivision 11 was incorrect.

D. As to items of compensation added before 2000, the City's claims are barred by the statute of limitations.

Even if this Court affirms the lower court's interpretation of Minn. Stat. § 69.77, subd. 11, the City's claims are still barred by the statute of limitations because certain items of compensation were added more than six years before the City brought its suit. Therefore, the district court erred in holding that the Associations violated Minn. Stat. § 69.77 each and every year they calculated benefits and that the City's claims were not barred by the statute of limitations. (ADD.15-17; ADD.32-33.)

Minn. Stat. § 541.05 provides a six year statute of limitations period for any liability created by statute, which begins to run when "the cause of action accrues." Minn. Stat. § 541.01 (2010). A cause of action accrues when the holder of the right to bring the action can apply to the court for relief and is able to commence proceedings to enforce his rights. *Jacobson v. Board of Trustees of the Teachers Retirement Assn.*, 627 N.W.2d 106, 110 (Minn. App. 2001) (citing *Everett v. O'Leary*, 95 N.W. 901, 902-03 (Minn. 1903)). In *Jacobson*, the court held that the claim accrued when retired teachers could

have brought suit -- the date the fund change was made. 627 N.W.2d at 112. The court did not find a continuing violation or installments, even though the retirement fund was statutorily created and authorized. *Id.*

Here, the following disputed items of compensation were added to “salary” before 2000: overtime pay, vacation credit pay, selection premium pay, and holiday pay for police; and vacation cash out and holiday pay for fire. The undisputed evidence showed this:

- In the Police collective bargaining agreement (“CBA”) effective from October 15, 1995 through October 14, 1998, the following items of compensation were granted to top grade patrol officers: the ability to sell up to 40 hours of accrued vacation (i.e. vacation cash out pay) (AA.0.33 at § 12.3(D)); and the ability to elect to receive cash payment for overtime worked (i.e. overtime) (AA.031 at § 10.2 (C).)
- In the Police CBA effective from October 15, 1999 through October 14, 2002, the following items of compensation were granted: premium pay for worked performed on five designated holidays (i.e. holiday pay) (AA.036 at § 10.7); performance premium pay was granted as an item of compensation to top grade patrol officers (AA.035 at § 7.8.)
- In the Fire CBA effective from October 15, 1995 through October 14, 1998, the following new items of compensation were granted to first grade firefighters: premium pay for work performed on five designated holidays (i.e. holiday pay) (AA.039-040) ;and the ability to sell up to 48 hours of accrued vacation (i.e. vacation cash out pay) (*Id.*)

The City Council approved all of these CBAs. Like *Jacobson*, at the time when these items of compensation were added, the City could have brought suit. Because more than six years passed between the time these items of compensation were added to “salary” and when the City brought suit in 2006, the statute of limitations had run. Therefore, this Court should hold that the City’s claim for addition of certain items of compensation in violation of Minn. Stat. § 69.77, subd. 11 is barred.

II. THE CITY DID NOT PLEAD LACK OF BYLAW AMENDMENTS UNDER SUBD. 11.

Minnesota requires notice pleading. Minn. R. Civ. P. 8.01; *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171-172 (Minn. App. 2000). Indeed, a major purpose of pleading is to give fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the theory upon which the pleader's claim for relief is based. *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

Here, the City pleaded breach of the Settlement Agreement. It did not plead lack of bylaw amendments in violation of Minn. Stat. § 69.77, subd. 11 or violation of bylaws. (AA.069-AA.77.) The City set forth the alleged improper salary calculations by the Associations as follows: in excess of the collective bargaining agreement, inconsistency with the City's payroll practices, and inconsistency with amounts actually paid. (AA.071-AA.0074 at ¶¶ 12a-i and 18 a-h.) In fact, the City's Complaint only references Minn. Stat. § 69.77 once, in paragraph 24 - and never references subd. 11 - stating generally that the Associations have acted contrary to the Guidelines and other applicable laws. (AA.075.) It simply cannot be sufficient notice pleading to later claim *bylaw amendment* violations when the City alleged *calculation* violations against governing law. (Compare AA.069-AA.077 at ¶¶ 7-18, 20, 21, 26, A, C with AA.163-AA.165.) In fact, nowhere in the City's complaint does the City allege, or even mention, "bylaw" or "amendments." (AA.069-AA.077.)

Thus, because the City did not plead the issue of bylaw amendments under subdivision 11, the issue was not properly before the district court.

III. IF THE CITY CONTRIBUTED MORE THAN THE MINIMUM CONTRIBUTION REQUIRED UNDER MINN. STAT. § 69.77, THE CITY'S EXCLUSIVE REMEDY WAS AMORTIZATION UNDER SUDB. 8 OF THE STATUTE.

The City's main contention is that it contributed more than it was required to contribute. The district court's summary judgment order held that new items of compensation were added contrary to subdivision 11 and the court's post-trial orders granted equitable relief, enjoining the Associations to recalculate unit values to correct the City's alleged over contribution. (ADD.35 at ¶ 16; ADD.46 at ¶ 21, 47 at ¶ 3.)

It is black letter law that equitable remedies are not invoked when there is an adequate remedy at law. *Borom v. City of St. Paul*, 184 N.W.2d 595, 598 (Minn. 1971) (holding equitable powers of a court may not be invoked when a plaintiff has an adequate remedy at law); *Adelman v. Onischuk*, 135 N.W.2d 670, 678 (Minn. 1965) (involving the Watershed Act and stating the rule that statutory remedies must be exhausted).

The Minnesota Supreme Court has expressly rejected the notion that Minn. Stat. § 555, Minnesota's Uniform Declaratory Judgments Act, provides a court with authority to fashion remedies different from those provided by statute. *M.A. Mortenson Co. v. Minnesota Com'r of Revenue*, 470 N.W.2d 126, 131 (Minn. 1991) (analyzing a tax assessment matter and finding that comprehensive statutory procedures provided an adequate remedy at law and that declaratory judgment action was not an alternative remedy); *Krahl v. Nine Mile Creek Watershed Dist*, 283 N.W.2d 538, 544 (Minn. 1979) (citing *Land O'Lakes Dairy Co. v. Village of Sebeka*, 31 N.W.2d 660, 665 (Minn. 1948) and holding that chapter 555 does not provide an alternative remedy to chapter 278's provision for appeal of real estate taxes); see *Village of Edina v. Joseph*, 119 N.W. 2d

809, 819 (Minn. 1962) (where a statute permits a remedy, such remedy is generally exclusive and will preclude any resort to equity).

Here, subdivision 8 is clear - the exclusive remedy to correct an “overpayment” of a municipal contribution in excess of the minimum obligation is an accelerated amortization:

Any sums of money paid by the municipality to the relief association in excess of the minimum obligation of the municipality in any year must be used to amortize any unfunded actuarial accrued liabilities of the relief association.

Minn. Stat. § 69.77, subd. 8.

The district court expressly held that “there is an adequate remedy at law provided in Minnesota Statute § 69.77 [subd. 8 - amortization].” (ADD.34 at ¶ 10; ADD.45 at ¶ 15) (emphasis added.) The court also held that there was a “direct statutory mandate regarding the overpayment of funds.” (ADD. 34 at ¶ 11; ADD.45 at ¶ 16.) In sum, as to the disputed over contribution at issue in this case, the City’s exclusive remedy - if at all - is its remedy at law under subdivision 8 (i.e. amortization).

IV. THE DISTRICT COURT ERRED IN HOLDING THAT THE CITY’S CLAIMS WERE NOT BARRED BY THE DOCTRINE OF LACHES, WAIVER, AND ESTOPPEL.

The district court held that the City had “discovered the miscalculations in 2004, upon receipt of the State Auditor’s Management Letters,” and therefore that the City’s claims filed in 2006 were not barred. (See ADD.32 at ¶¶ 4, 6-8.) This holding was in error. Assuming arguendo that the district court’s holdings were correct, the City admitted that it knew bylaw amendments were “required” since at least 1999 but waited until 2006 (i.e. more than 7 years) to raise the issue. Moreover, every year since 1995,

the City has reviewed and approved the calculations that determine the City's annual minimum contribution. Because of the City's relinquishment and assurances through its review and signature each year and because of the City's unreasonable delay, the Associations and individual members have suffered undue prejudice.

A. Laches, waiver, and estoppel standards.

The court of appeals reviews the district court's decision whether to apply the doctrine of laches for an abuse of discretion. *In re Marriage of Opp.*, 516 N.W.2d 193,196 (Minn. App. 1994). Laches is an equitable doctrine applied to "prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay...[t]he practical question in each case is whether there has been such an *unreasonable delay in asserting a known right, resulting in prejudice to others*, as it would make it inequitable to grant the relief prayed for." *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (internal citations omitted). This is such as case.

Where the material facts are not in dispute, a court may decide the question of waiver as a matter of law. *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 304 (Minn.1990). Waiver is the "intentional relinquishment of a known right, and while both knowledge and intention are essential elements, the knowledge may be actual or constructive and the intention can be inferred from conduct." *Stephenson v. Martin*, 259 N.W.2d 467, 470 (Minn.1977).

The application of equitable estoppel is a question of law. *State, City of Eden Prairie v. Liepke*, 403 N.W.2d 252, 254 (Minn. App.1987). When deciding whether estoppel will be applied against the government, the court must weigh the public interest

frustrated by the estoppel against the equities of the case. *Mesaba Aviation Division v. County of Itasca*, 258 N.W.2d 877, 880 (Minn.1977). While the government may be estopped as justice requires, estoppel is not freely applied against the government. *Brown v. Minnesota Dept. of Public Welfare*, 368 N.W.2d 906, 910 (Minn. 1985). However, one governmental entity may assert an estoppel against another governmental entity through application of the general principles of estoppel. *E. g., Local Government Information Systems v. Village of New Hope*, 248 N.W.2d 316, 321 (Minn. 1976); *Department of Human Services of State of Minn. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 118 (Minn. App. 1989) (stating that when estoppel is raised to gain access to government benefits which could have been obtained had a government official provided correct information, the rationales that justify a restrictive application of estoppel are inapplicable). To establish estoppel, a party must show representations or inducements, reasonable reliance, and harm if estoppel is not allowed. *Muriel Humphrey Residences*, 436 N.W.2d at 117, 120 (holding that the Dept. of Human Services was estopped from recovering payments previously made to non-profit care facility).

B. The City has stated that it knew as early as 1999 that bylaw amendments were required but failed to act.

Assuming for the sake of argument that a bylaw amendment was needed every time benefits were affected, the City knew that “fact” as early as 1999:

At all times relevant herein, it was and continues to be my understanding that any change in benefits for the Minneapolis Police Relief Association or the Minneapolis Fire Relief Association must be approved by bylaw amendments subject to the approval by the Minneapolis City Council.

(John Moir Aff. to City’s S.J. memo. at ¶ 3.) John Moir was the City’s former Chief Financial Officer who took part in the negotiations for the 1995 Settlement Agreement

and also signed the Settlement Agreement. (AA.022); *see Gillett-Herzog Mfg. Co. v. Board of Com'rs of Aitkin County*, 72 N.W. 123, 126 (Minn. 1897) (stating that it is presumed when government officials enter into a contract, it is done with knowledge that the actions were in conformance with the law).

Despite the City's assertion that it knew a bylaw amendment was required from at least 1999, and thus that the Associations were thereby allegedly in violation of subdivision 11, the City never asserted this claim until 2006. Therefore, the City lacked diligence and unreasonably delayed in commencing this lawsuit until 2006, almost seven years after it knew that it had a duty to act.

C. Each year from 1999 on, the City signed off on the total financial requirements for the Associations.

Importantly, the CFO for the City is also the statutorily designated treasurer of the MPRA, and thus certified and signed off on all of the MPRA's reporting forms for the State Auditor. *See* Minn. Stat. § 69.051 (2005); (AA.041-AA.068); (AA.215-AA.217 at 93:15-95:18.) On this form, the MPRA informed the City of the MPRA's financial requirements for the coming year. *See* Minn. Stat. § 69.77, subd. 5. Then, Mr. Moir was required to certify that "the facts presented in [the] report are true and correct." *See* Minn. Stat. §69.051; (AA.41-AA.68). This form contains, among other things, a section labeled "Approvals." *Id.* This section provides:

- Did you amend your bylaws in [specific year]?
(If yes, you must attach a copy of the relief association resolution to this form)
- Did the amendment increase or otherwise affect the retirement benefit for members?
(If yes, did you furnish an updated actuarial estimate to the municipality?
You must attach a copy of the municipal ratification to this form).

Id. Mr. Moir signed this form in 1999.¹⁴ (*Id.*) Mr. Moir, the City's Chief Financial Officer and chief negotiator for the 1995 Settlement Agreement, signed off on these forms, even though he admittedly knew that a bylaw amendment was required.

D. The City has a statutory duty to ensure that the calculations are correct.

The City had and has a duty to ensure that determinations are correct, and signed off on those determinations each year. The system is set up in such as to require multiple checks to ensure that the determinations are correct, with the City bearing an equal portion of that responsibility. Minn. Stat. § 69.77, subs. 1, 5; (AA.229-AA.230 at 141:24-142:11) (stating that there are checks and balances, that the City review the actuarial valuations, and the LCPR also reviews the submission each year.)

Each year, the City receives the year-end Actuarial Valuation and a representative from each Association works with the City to determine the financial requirements of the Association and the City's minimum contribution. (*Id.*); (AA.080-AA.081 at 29:21-31:1.) Pursuant to Minn. Stat. § 69.77, subd. 4, the Associations certify and send the determinations to the City. The City then "must ascertain whether or not the determination were prepared in accordance with the law." Minn. Stat. § 69.77, subd. 5. If, and only if, the City determines that the salary calculation was done in "accordance with the law" may the City levy taxes to pay its financial obligations. *Id.*, subs. 1, 6, and 7. If the City ascertains that the determinations were not prepared in accordance with the law, it can object to the determinations by refusing to certify the full amount of its

¹⁴ In the years 2000 through 2007, these forms were signed by Mr. Moir's successor, Patrick Born. (AA.041-AA.068.)

obligations to the county auditor. Minn. Stat. § 69.77, subd.7(c). In fact, this very situation led to the 1995 litigation between the parties. (AA.004-AA.005 at ¶¶ XIV-XX); (AA.012-AA.013 at ¶¶ XIV-XX); (City's Memo. in Opp. to Defs.' Mot. for S.J. at p.10); (AA.188 at 68:21-25.)

E. The Associations and members have suffered prejudice as a result of the City's unreasonable delay.

The retirees' and widows' ability to rely on benefit payments made cannot be challenged years after calculation and payment. *See Shortridge v. Daubney*, 425 N.W.2d 840, 842 (Minn. 1988) (stating that there is prejudice if there is no point in time at which assessments become final). The same is true for each Associations' financial determinations. *Id.* This is particularly true given the multiple levels in which the City approved the financial requirements each year. *See* IV(D) above.

The members are beyond working age and not capable of seeking employment: the average age of a retiree is over 70 years old and the average age of a surviving spouse is 78 years old. (AA.232 at ¶ 7); (AA.236 ¶ 8.) Their pension benefit is either the sole or primary source of income. (*Id.*) They are on fixed incomes and rely on their pensions for basic necessities of life, including but not limited to increasing healthcare costs. (AA.232 at ¶ 8); AA.236 at ¶ 9)

Based on the district court's November 20, 2009 order, pensioner pension benefits for a regular MPRA service have been reduced from \$4,155.52 to \$3,728.53 per month – a loss of \$426.99 per month. (AA.236 at ¶ 7.) For a MPRA surviving spouse who had received \$2,222.72 per month, the reduction has been to \$1,994.33 per month – a loss of \$228.39 per month. (*Id.*) This represents a 10% reduction in benefits. For the MFRA, a

retired firefighter's pension has been reduced from \$3,711.96 to \$3,575.46 – a loss of \$136.96 per month. (AA.232 at ¶ 6.) For a MFRA surviving spouse who had received \$1,944.36, the reduction has been to \$1,872.86 – a loss of \$71.06 per month. (*Id.*) This represents a 4% reduction in benefits.

Moreover, the individual members had no notice or means of notice that their pension benefit was incorrect. (AA.228 at 117:11-20.) For over 10 years, these member benefits were paid under the assumption that the benefit amounts were correct. Because of the City's unreasonable delay and the gravity of the financial hardship to the retirees and widows, both the Associations and their members have suffered prejudice.

The City cannot ignore its own duties and absolve itself of its obligations by attempting to shift all fault upon the Associations, thereby holding the Associations unilaterally liable. This Court must invoke the doctrines of laches, waiver, or estoppel in the interests of justice.

V. THE DISTRICT COURT ERRED IN RULING THAT THE ASSOCIATIONS' CALCULATIONS OF SALARY WERE CONTRARY TO THEIR BYLAWS.

The district court found that the following calculations were contrary to the Associations' bylaws and not consistent with the City's payroll practices:

- MFRA: 1) the use of 136 hours when calculating non-FLSA overtime (ADD.22);
- 2) the inclusion of selection premium¹⁵ pay when calculating sick leave buy-back (ADD.27-28);

¹⁵ "Selection premium pay" is an add-on to the compensation of firefighters. It is simply additional compensation for employees with at least 20 years of service whose job title is firefighter. It does not apply to anyone in a promoted position and is payable without regard to any additional duties, responsibilities or inconvenience to the employee. (*See* Transcript of Proceedings, October 5, 2009 at 86:1-10).

- MPRA: 3) the inclusion of shift differential when calculating sick leave buy back (ADD.24); and
- 4) the inclusion of shift differential¹⁶ when calculating compensatory time off (ADD.28-29.).

The district court gave no deference to the Associations' interpretations of their respective bylaws. *Stang v. Minnesota Teachers Retirement Ass'n Bd. of Trustees*, 566 N.W.2d 345, 347 (Minn. App. 1997) (citing *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn.1977) and stating: "[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown" by a reviewing court to the area of the agency's expertise). Instead, the district court substituted its opinion over the Associations' decisions as administrative agencies. It was an error for the district court to do so.

The bylaws of each Association set forth specific items which may or may not be included in the definition of salary. (AA.026-AA.027); (AA.029.) With respect to non-FLSA overtime, the MFRA's bylaw specifically provides that the amount shall be "an average of overtime actually worked in excess of FLSA overtime amounts by firefighters with 25 years or more of service, up to a maximum of 136 hours in the immediately proceeding year." (AA.029.) At summary judgment, the MFRA provided the court with the deposition testimony of Mr. Schirmer which revealed that the parties had agreed that 136 hours would be consistently used for this calculation. (AA.194 at 179:3-21.) In

¹⁶ "Shift Differential" is paid to all police officers of any rank who work a qualifying shift. (See Transcript of Proceedings, October 5, 2009 at 87:24-88:10. It is an incentive for officers to bid for the night shift. *See id.*

addition, the MFRA provided the district court with its responses to the State Auditor's Management Letters which addressed this issue and amply demonstrated that there were genuine issues of material fact on the meaning of this provision. (AA.094-AA.100); (AA.109-AA.111); (AA.125-AA.132); (AA.137-AA.142); (see Exs. F and G to Aff. of Peter Mikhail to Memo. in Support of Pl. City's Mot. for Partial S.J.) (Findings, Conclusions, and Determinations for the MPRA and MFRA.) This factual dispute should have precluded the court from granting summary judgment to the City on this issue. Minn. R. Civ. P. 56.05; *DHL, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (holding non-moving party must offer specific facts to show that there is a genuine issue of material fact for trial.) Nonetheless, the district court ruled against the MFRA.

Moreover, "Selection premium pay" and "the maximum sick leave buy-back benefit available to first grade firefighters" are included in the definition of salary for the MFRA. (AA.029.) Likewise, "shift differential," "the maximum sick leave buy-back benefit available to top grade patrol officers," and "compensatory time" are included in the definition of salary for the MPRA. (AA.026.) Neither Association's bylaw definition of "salary" provides any method for calculating these specific items of compensation. (*See id.*) More important, *neither Association's bylaws includes any reference to the City's payroll practices.*

In addition, since at least 1995 all of these disputed items were included as items of compensation in the respective collective bargaining agreements for police and fire. The inclusion of these items of compensation in these agreements was not based on the City's payroll practices; it was based on the negotiations of the parties, the give and take of the bargaining process. Finally, these calculations have been made in the same manner

since 1995 without any objection from the City prior to 2006. Therefore, the Associations' interpretation of their bylaws and their calculations for these items of compensation enjoy a presumption of correctness. The district court ignored this basic tenet of law. For these reasons, the district court erred, and the judgment below must be reversed.

VI. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN ORDERING THE ASSOCIATIONS TO RECOUP THE ALLEGED OVERPAYMENTS FROM MEMBERS, NON-PARTIES TO THE ACTION.

After the trial, the district court amended its previous ruling and ordered the Associations to recoup the alleged overpayment of benefits directly from the individual members. (ADD.44-46, 48-50.) The district court erred as a matter of law.

First, the court's post-trial order conflicted with its previous order, which held that the Associations could adequately represent the members' interests – a holding previously affirmed by this Court. Second, recoupment violates due process when the members are not parties to this action, and have been held not to be indispensable parties. Third, unlike other statutory frameworks for other Minnesota public pension plans, the statutory framework for these plans does not contain a recoupment provision. Last, as administrators of the pension plans, it is the Associations' duty and only the Associations' duty to determine if recoupment will occur and how and when it will be effectuated. For all these reasons, the district court erred in ordering recoupment from the individual members.

A. The District Court's November 20, 2009 order and its May 17, 2010 order conflict, where the Associations cannot represent member interests and, at the same time, seek recoupment from their members.

Minnesota's Uniform Declaratory Judgments Act provides people that have an interest must be joined and that the declaration cannot prejudice nonparties:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

Minn. Stat. § 555.11 (2010); *see Frisk v. Board of Ed. of City of Duluth*, 75 N.W.2d 504, 514 (Minn. 1956).

Since this litigation began in 2006, both Associations have been consistent in claiming that the individual members of each Association were necessary and indispensable parties to this action and would have to be joined if any reduction in benefits was being sought by the City. (Defs.' Memo. in Support of Mot. to Dismiss at p. 20-22; Defs.' Reply Memo. in Support of Mot to Dismiss at p. 9-11.) The City consistently argued otherwise and represented that it was not seeking a reduction in benefits. (AA.159 at p.20); (AA.172 at 34:23-25.) Based on the City's representation, both the district court and this Court held that the members were not necessary parties:

All of the individuals whose interests could be affected by a declaratory judgment are represented by the associations. And we agree with the district court's observation that this case is primarily "a dispute between the contributor to and the administrators of the pension funds about the **proper method of calculating the contributor's minimum obligation.**" The individual members of the associations are not indispensable parties.

City of Minneapolis v. Minneapolis Police Relief Ass'n, No. A07-420, 2008 WL 1747923, at *4 (Minn. App. April 15, 2008) (unpublished) (emphasis added); (ADD.05-.07.)

Thus, the law of the case is that the pensioners and beneficiaries are not necessary parties to this action. *Brezinka v. Bystrom Bros., Inc.*, 403 N.W.2d 841, 843 (Minn.1987) (explaining that under the doctrine of law of the case, where an appellate court has passed on a legal question and remanded to the court below for further proceedings, the legal question thus determined by the appellate court is final and will not be re-examined); *Lange v. Nelson-Ryan Flight Serv., Inc.*, 116 N.W.2d 266, 269 (Minn. 1962) (same).

This case has always been about the City's contribution to the funds. It has never been about recouping alleged overpayments from retirees and widows.

The district court initially correctly rejected the City's argument on recoupment and found that amortization under Minn. Stat. §69.77, subd. 8 provided the City with "an *explicit, precise, and unambiguous* remedy" and that there was "a direct statutory mandate regarding the overpayment of funds" when the pensioners were not joined parties. (ADD.33-34 at ¶¶ 9-12.) Unsatisfied, the City made a post-trial motion for amended findings, seeking recoupment. (Notice of Mot. and Mot. for Amended Findings, Conclusions, and Order (December 23, 2009).)

Inexplicably, on May 17, 2010, the district court held that the City was not entitled to recoupment from the Association because the City has an adequate remedy at law in amortization under 69.77, subd. 8, but that the Associations must seek recoupment from its members. (ADD.44-46, 48 at ¶ 5, 48-50.) The district court ordered the Associations to recoup the alleged overpayments from members and beneficiaries and oppose any and all challenges to the recoupment. (ADD.47 at ¶ 3.)

The district court's May 17, 2010 order directly conflicted with its November 20, 2009 order. On the one hand, the Associations were to represent the members' interests. *City of Minneapolis*, 2008 WL 1747923, at *4. But if the Associations must recoup the alleged overpayments directly from the members, how can the Associations at the same time adequately represent the members' interests? *Id.*; (ADD.47 at ¶3.) The district court's recoupment order essentially entered judgment against the members as third-party defendants, even though they were not parties to the action.

B. The District Court violated due process when it ordered a reduction in member benefits and when it ordered recoupment from nonparties to the action.

The district court violated the members' due process rights when it ordered a reduction in benefits and ordered the Associations to recoup from the members. U.S. Const. amends. V, XIV; Minn. Const. art. I, § (No person shall be deprived of life, liberty or property without due process of law).

For nearly 100 years, Minnesota courts have steadfastly protected pension benefits under this standard. *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005) (public employer's promise in collective bargaining agreement to pay retiree health care premiums was enforceable on contract grounds); *Law Enforcement Labor Services, Inc. v. County of Mower*, 483 N.W.2d 696, 701 (Minn. 1992 (holding that upon retirement in reliance on the county's promise of pension benefits a retiree's right is vested and cannot be altered absent consent)); *Christensen v. Minneapolis Mun. Employees Retirement Bd.*, 331 N.W.2d 740, 747-748 (Minn. 1983) (finding "right" to pension protected entitlement pursuant to doctrine of promissory estoppel); *Fassbinder v. Minneapolis Fire Dept. Relief Ass'n*, 254 N.W.2d 363, 367- 369

(Minn. 1977) (holding that board did not fulfill its obligations and that awarding member pension benefits was not clearly erroneous); *Stevens v. Minneapolis Fire Dept. Relief Ass'n*, 145 N.W. 35, 36 (Minn. 1914) (holding that pension rights are vested and no person can be deprived of his property rights except by due process of law, which means notice and an opportunity to be heard); *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 275 (Minn. App. 2001) (determining that declaratory judgment cannot bind absent parties).

Here, before trial, the City expressly represented that it was not seeking a reduction in benefits:

The City's claims do not seek to reduce the retirement benefits of the individual participants...Here, the City's action is against Defendants, for their alleged breach of the Settlement Agreement, not against the individual members of the relief associations for a reduction in their benefits.

(AA.159 at p.20.) (emphasis added). The City stated that it was not seeking to reduce the retirement benefits of the individual participants, and thus the individual members were not indispensable parties:

But we are not here to punish the beneficiaries, because they are not responsible for these calculations.

(AA.172 at 34:23-25) (emphasis added.) Based upon these representations, the district court and the court of appeals agreed that the members were not necessary parties. *City of Minneapolis*, 2008 WL 1747923, at *4.

Yet, a reduction in benefits and recoupment are exactly what the City sought and is what in fact occurred. Even now, the members are now suffering significant reduction in benefits, despite the fact that almost all of the members are retired and beyond working age, and their pension benefit is either the sole or primary source of income. (AA.232 at

¶ 7); (AA.236 at ¶ 8.) Further, the members face recoupment of alleged past benefit overpayments. All of this, despite the fact that the individuals members had no notice or opportunity to be heard.

C. The statutes governing the MPRA and the MFRA do not permit recoupment for alleged overpayments to members.

Unlike other Minnesota public pension plans, the governing statutes for the Associations do not allow recoupment. *See* Minn. Stat. § 69.77; Minn. Stat. ch. 423B and Minn. Stat. ch. 432C. For example, in Minn. Stat. ch. 354A, Teachers Retirement, Certain Cities, the legislature specifically provided for the recovery of overpayments by the executive director of the association. *See* Minn. Stat. § 354A.12, subd. 7 (2004). In addition, the legislature provided specific procedures which were to be followed thereby addressing due process concerns. *See id.*, subd. 8. But, even this statutory scheme places the administrative decision to recoup on the executive director of the association. *See id.* If the Minnesota Legislature had intended to allow either Association to recoup overpayments from its members, it would have provided a method for doing so, as it has done with other relief associations. *Genin v. 1996 Mercury Marquis*, VIN No. 2MEBP95F9CX644211, License No. MN 225 NSG, 622 N.W.2d 114, 117 (Minn. 2001) (“The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out.”). Because the legislature did not provide for recoupment, as it has done with other pension plans, recoupment is not legally appropriate. In fact, self-help in the form of reduction of member benefits is expressly prohibited. Minn. Stat. § 356.401 (2006).

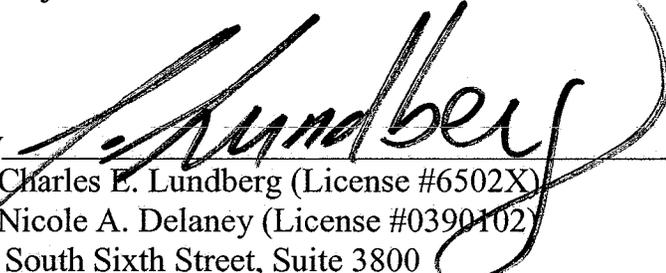
CONCLUSION

For the foregoing reasons, the judgments below should all be reversed so as to set aside the district court's rulings ordering the Associations to recalculate pension benefits from June 2000 forward and ordering the Associations to recoup directly from the members.

BASSFORD REMELE
A Professional Association

Dated: Oct. 25, 2010

By


Charles E. Lundberg (License #6502X)
Nicole A. Delaney (License #0390102)
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

and

Karin E. Peterson (#185048)
Ann E. Walther (#21369X)
RICE, MICHELS & WALTHER, LLP
206 East Bridge- Riverplace
10 Second Street N.E.
Minneapolis, MN 55413
(612) 676-2300

and

Robert D. Klausner (FL. #244082) (admitted *pro hac vice*)
KLAUSNER & KAUFMAN, P.A.
10059 N.W. 1st Court
Plantation, FL 33324
(952) 916-1202

Attorneys for Appellants

STATE OF MINNESOTA
IN COURT OF APPEALS

City of Minneapolis, a municipal
corporation,

Respondent,

vs.

CERTIFICATION OF BRIEF LENGTH

APPELLATE COURT CASE NOS. -
CONSOLIDATED:

Minneapolis Police Relief Association
And Minneapolis Firefighters Relief
Association,

A10-1244

A10-1331

Appellants.

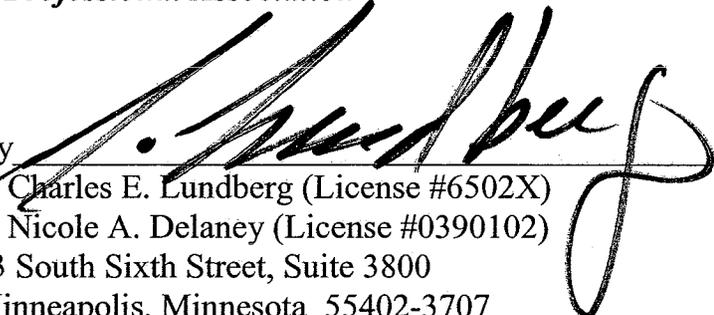
I hereby certify that this brief conforms to the requirement of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional 13-point font. The length of this brief is 13,146 words. This brief was prepared using Microsoft Office Word 2003.

BASSFORD REMELE
A Professional Association

Dated: ..

10/25/10

By


Charles E. Lundberg (License #6502X)

Nicole A. Delaney (License #0390102)

33 South Sixth Street, Suite 3800

Minneapolis, Minnesota 55402-3707

(612) 333-3000