

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of In the Matter of the Pensioners
and Beneficiaries of the Former Minneapolis
Police Relief Association

**RECOMMENDATION ON MOTION
FOR SUMMARY DISPOSITION**

This matter came on before Chief Administrative Law Judge Raymond R. Krause as a fact-finding conference pursuant to Minn. Stat. §356.96 and subsequently on Motions for Summary Disposition by the Public Employees Retirement Association of Minnesota (PERA) and Intervenor City of Minneapolis (the City). On October 24, 2012, oral argument was held on the motions at the Office of Administrative Hearings, 600 N. Robert Street, St. Paul, MN.

Trevor S. Oliver and Patrick Kelly, Kelly & Lemmons, P.A. appeared on behalf of the Pensioners and Beneficiaries of the Former Minneapolis Police Relief Association (the Pensioners). Julie A. Leppink, Assistant Attorney General, appeared on behalf of PERA. Peter G. Mikhail, Kennedy & Graven, appeared on behalf of the City.

RECOMMENDATION

Based on the record and arguments presented, the Administrative Law Judge respectfully recommends;

The Motion for Summary Disposition be GRANTED.

Dated: November 2, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

NOTICE

This is not a final decision. This is a recommendation to the Board of the Public Employees Retirement Association based upon the record presented. Within 60 days of the date of the mailing of the notice of the governing board's decision, the petitioner may appeal the decision by filing a writ of certiorari with the Court of Appeals under section 606.01 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure. Failure by a person to appeal to the Court of Appeals within the 60-day period precludes the person from later raising, in any subsequent administrative hearing or court proceeding, those substantive and procedural issues that reasonably should have been raised upon a timely appeal.

MEMORANDUM

Issues

- I. Are the Pensioners collaterally estopped from claiming a post-retirement benefit for 2011 and increases to the MPRA pension unit value?
- II. Are Pensioners bound by the legislation consolidating MPRA and PERA and the settlement agreement executed by MPRA and the City?
- III. Is the claim by Pensioners an unfunded liability that PERA P&F cannot be used to satisfy?
- IV. Does the doctrine of accord and satisfaction bar Pensioners' claim?

The ALJ finds that the Pensioners are estopped from claiming a post-retirement benefit for 2011, and increases to the MPRA pension unit value. The ALJ finds that the Pensioners are bound by the terms of the legislation consolidating MPRA and PERA and the settlement agreement between MPRA and the City. The ALJ finds that the doctrine of accord and satisfaction bars Pensioners' claims and that a motion for summary disposition is appropriate.

Summary Disposition Standard

Summary disposition, the administrative equivalent of summary judgment in district court, is available where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.¹ A genuine issue is one that is not a sham or frivolous and a material fact is one which will affect the outcome of the case.² The party moving for summary disposition must demonstrate that there are no

¹ *Pietsch v. Bd. of Chiropractic Examiners*, 683 N.W. 2d 303, 306 (Minn. 2004); Minn. R. 1400.5500K (2011).

² *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *Highland Chateau v. Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984) *rev. denied* (Minn. February 6, 1985).

issues of material fact.³ If the moving party is successful, the nonmoving party must present specific facts demonstrating a genuine issue for trial.⁴ Speculation alone, without some concrete evidence, is insufficient to survive summary disposition.⁵ When considering a motion for summary disposition, the Administrative Law Judge must view the facts in the light most favorable to the non-moving party and resolve all doubts and factual inferences in that party's favor.⁶ Summary disposition should not be granted when "reasonable persons might draw different conclusions from the evidence presented."⁷

Background

The Minneapolis Police Relief Association ("MPRA") was a non-profit corporation organized under Minn. Stat. ch. 317 and governed by Minnesota law, including Minn. Stat. ch. 423B. MPRA merged into the Public Employees Retirement Association ("PERA") Police and Fire Plan on December 30, 2011, pursuant to Laws of Minn. 2011, First Special Session chapter 8, article 7.⁸ Pensioners, who are MPRA retirees and beneficiaries, filed a claim for payment from MPRA on December 22, 2011.⁹ PERA Executive Director Mary Most Vanek denied Pensioners' claims by letter dated February 3, 2012.¹⁰ PERA received the Petition for Review ("Petition") on March 19, 2012.¹¹

A. Petitioners' Claims.

Pensioners make two claims for payment from PERA. First, they assert that they are entitled to a post-retirement benefit for 2011 ("13th check") pursuant to Minn. Stat. § 423B.15 (2010).¹² Second, Pensioners assert that they are entitled to compensation from PERA for benefit underpayments for the period from December 1, 2009 through December 31, 2011, claiming that their benefits were not based on a pension unit value equal to 1/80th of a top-grade patrol officer's salary as required by Minn. Stat. § 423B.01 (2010).¹³ Pensioners claim their benefits for this period were underpaid because the MPRA pension unit value did not rise although Minneapolis police officers received two pay increases during that time.¹⁴ The MPRA pension unit value for the disputed period was 1/80th of a top-grade patrol officer's salary at the time.¹⁵

³ *Thiele v. Stich*, 425 N.W. 2d 580, 583 (Minn. 1988).

⁴ Minn. R. Civ. P. 56.05.

⁵ *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

⁶ *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 370 (Minn. 2008).

⁷ *Id.* (citing *DLH- Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn.1997)).

⁸ See also § 353.668 (Supp. 2011).

⁹ Ex. 2, Petition, at Ex. B.

¹⁰ *Id.* at Ex. D.

¹¹ Affidavit of Mary Most Vanek, ¶ 2.

¹² Ex. 2, Petition at Ex. B.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Minn. Stat. § 423B.01, subd. 20 (2010).

B. The District Court Ruling.

The definition of “salary” for the purpose of calculating the MPRA pension unit value was the subject of extensive litigation between the City and MPRA beginning in 2006 (the 2006 Lawsuit). In 2006, the City sued MPRA and the Minneapolis Firefighters Relief Association seeking: “(1) a declaration that the associations’ determinations of salary for pension calculations were and are not calculated according to law, are in breach of the 1995 Settlement Agreement and are declared invalid and should be recalculated; (2) injunctive relief; and (3) recoupment of amounts paid by the City based on improper calculations.”¹⁶ The City alleged that MPRA improperly included certain new items as salary in violation of a 1995 settlement agreement and its bylaws, disputed MPRA’s calculation method regarding existing and new salary items, and challenged MPRA’s unilateral addition of new salary items without a bylaw amendment.

The district court ruled that including the new items in “salary” was not authorized by the MPRA’s bylaws, so the addition of these items was a violation of Minn. Stat. §§ 423B.04, subd. 2 and 69.77, subd. 11. The district court also directed MPRA to seek recoupment from its members. In the course of the case, there were two appeals to the Court of Appeals as well as petitions for review denied by the Minnesota Supreme Court.

C. First Appeal to the Court of Appeals.

In the first appeal, the Court of Appeals upheld the district court’s subject matter jurisdiction, denied the MPRA’s claim of statutory immunity and held that MPRA members were not indispensable parties because MPRA represented their interests.¹⁷

D. Second Appeal to the Court of Appeals.

In the second appeal the Court of Appeals held that although MPRA’s bylaws permit inclusion of new items of compensation in the pension unit value calculation, MPRA must calculate the pension unit value based on the compensation actually paid to current police officers.¹⁸ The Court affirmed the district court’s conclusion that the MPRA’s inclusion of a shift differential in calculating sick-leave payout and compensatory time was unlawful. The Court reiterated its view that the individual pensioners’ and beneficiaries’ interests were represented by MPRA. The Court also affirmed the district court’s order directing MPRA to seek recoupment from its members. The Court remanded the case back to the district court for further proceedings.

¹⁶ See *City of Minneapolis v. Minneapolis Police Relief Ass’n, et al.*, 800 N.W.2d 165, 171 (Minn. Ct. App. 2011), rev. denied, (Aug. 24, 2011); see also Affidavit of Julie A. Leppink, Ex. A.

¹⁷ *City of Minneapolis v. Minneapolis Police Relief Ass’n, et al.*, 2008 WL 1747923, at *4, rev. denied, (Minn. June 25, 2008) (an organization can litigate the interests of its members).

¹⁸ *City of Minneapolis v. Minneapolis Police Relief Ass’n, et al.*, 800 N.W.2d 165, 174-175 (Minn. Ct. App. 2011), rev. denied, (Aug. 24, 2011).

E. The Case on Remand.

On remand, the parties stipulated to a stay providing that MPRA would “freeze benefits at the current (May 28, 2010) levels and will withhold payment of any future PRE [postretirement benefit] payments and unit value increases pending the outcome of the appeal process, regardless of the terms of the recoupment plan;” Judge Janet N. Poston signed the Stipulated Order for the stay on May 28, 2010.¹⁹ In August 2011, Judge Poston considered a motion to clarify the stay and subsequently ruled that the stay would remain in place through the remand process, until a future order of the court, and that there would be no payment of postretirement benefits, 13th checks, benefit increases, back payment of benefits or benefit increases.²⁰ Judge Poston also clarified that on remand, the issues would include calculation of the amount of the new items of salary, determination of whether overtime was a new item, and calculation of the amount to be recouped from MPRA members because of over-calculations of their benefits. Judge Poston confirmed her oral ruling in a written order dated August 26, 2011.²¹

F. The Settlement Agreement.

The parties settled the case and executed a settlement agreement (“Settlement Agreement”) in December 2011, after the passage and approval of legislation consolidating MPRA with PERA’s Police and Fire Plan (“Merger Legislation”).²² The Settlement Agreement was conditioned on the consolidation of MPRA with PERA’s Police and Fire Plan, which occurred on December 30, 2011.²³ The MPRA members voted by over 90% to approve the merger.²⁴

The Settlement Agreement provides that the MPRA “will not make any back payments, use a unit value different from that described in the Consolidation Legislation, or issue or pay any 13th check or Post Retirement Benefit payments or other payments.” In return, the City agreed not to seek recoupment from MPRA or its members. The Settlement Agreement also specifies that the pension unit value for 2010 and 2011, would be \$86.71, the amount that MPRA calculated as the corrected value for 2009, based on Judge Poston’s ruling.²⁵

The Settlement Agreement is consistent with the Merger Legislation that set the 2011 pension unit value at \$86.71 and raised it to \$104.65 for 2012, which was an increase of approximately twenty percent, to \$109.011 for 2013, to \$114.825 for 2014, and to \$124.031 for 2015.²⁶ Upon MPRA’s consolidation with the PERA Police and Fire Plan, PERA assumed liability for payment of MPRA retirement, disability and surviving

¹⁹ Leppink Aff., Ex. B.

²⁰ *Id.*, Ex. A at 30-3133.

²¹ *Id.*, Ex. A.

²² Vanek Aff. ¶J 3, Ex. A; Laws of Minnesota 2011, 1st Spec. Sess. chapter 8, article 7.

²³ Vanek Aff. ¶ 3, Ex. A.

²⁴ Mikhail Aff., Ex.T, p. 2.

²⁵ Vanek Aff., Ex. A; Leppink Aff., Ex. E ¶J 3-4.

²⁶ Minn. Stat. §353.01, subd. 10a (Supp. 2011).

spouse benefits.²⁷ The MPRA records transferred to PERA on December 30, 2011. They are the source and basis for the administration of any PERA Police and Fire Plan payment to the benefit recipients of the former MPRA following consolidation and do not provide for the payments now requested by Pensioners.²⁸

Privity

The City and PERA argue that the Pensioners, who all were members of MPRA, were in privity with MPRA and, therefore, are collaterally estopped from attacking the Settlement Agreement of the 2006 Lawsuit. The Pensioners argue that their interests were not sufficiently similar to those of MPRA for privity to exist and, therefore, collateral estoppel is not applicable.

Privity applies to those who are so closely connected with a party in a previous action that they are identified with them in interest, and consequently affected with them by the litigation.²⁹ If a party's interests are represented by a party to an action, privity exists.³⁰ Another way to convey the same principle is that when a person is so identified with another that the same legal right is represented, privity exists.³¹

The undisputed facts are that all of the current Pensioners were members of MPRA. MPRA was an association created by the legislature to oversee and manage the member's pension program.³² That authorizing legislation states: "[t]he active and retired members of the police department of the City of Minneapolis and their surviving spouses shall maintain the Minneapolis Police Relief Association."³³ It goes on to state that "[t]his association shall create, maintain, and administer a police officer's pension fund for the benefit of its members, and their surviving spouses and beneficiaries."³⁴

Seven of the nine members of the governing board of MPRA were beneficiaries of the fund. The MPRA had no other purpose but the creation, maintenance, and administration of the fund.³⁵ The 2006 Lawsuit was between the City and the MPRA. The suit was not, as alleged by Pensioners, only against the Board of MPRA. Admittedly, the City and the District Court acknowledged that the suit was not against individual members of MPRA. That, however, does not mean that their interests were not at stake, nor that their interests were in any way divergent from the association that represented them.

²⁷ See Minn. Stat. § 353.668 (Supp. 2011).

²⁸ Vanek Aff., ¶ 4.

²⁹ *Rucker v. Schmidt*, 794 N.W. 2d 114, 118 (Minn. 2011).

³⁰ *Id.*

³¹ *Id.*

³² Minn. Stat. § 423B.04 (2010).

³³ Minn. Stat. § 423B.04, subd. 1. (2010).

³⁴ Minn. Stat. § 423B.04, subd. 2. (2010).

³⁵ *Id.*

An association can represent its membership.³⁶ In the 2006 case, the association, MPRA, was defending a claim by the City of overpayment of benefits by MPRA to its members. The City was seeking recoupment of the overpayment. It makes no difference whether the City recouped the overpayments from the association's fund or from the members themselves. If the City were to prevail, the money would have come from the members' current fund or past disbursements of the fund. Either way, it was members' money that was at risk. There was no other issue at stake and the MPRA was indisputably defending the suit on behalf of its members whose money was at risk. The board of MPRA had no other stake in the matter and was representing the members.

Pensioners argue that privity is a question of fact and cite *Miller v. N.W. Mutual National Insurance*³⁷ in support of that proposition. If privity is a matter of disputed fact, a motion for summary disposition must fail. The *Miller* case does not state that privity is always a question of fact. It states that because "there is no generally prevailing definition of privity which can automatically be applied... privity is usually a question of fact requiring a case by case determination".³⁸ Here, by contrast, the undisputed facts demonstrate that privity exists.

The Minnesota Court of Appeals addressed this issue twice during the 2006 Lawsuit. Each time the Court held that MPRA represented the interests of its members.³⁹ The Court of Appeals found that the case did not involve groups of members with different interests, but rather all retirees and beneficiaries were affected in the same way and those interests were represented by MPRA. "From the beginning this case has been about the appropriate items of compensation to include in unit-value calculations used to determine individual retirement and surviving spouse benefits. Both the district court and this court reasoned that the association' interests are aligned with those of their members and beneficiaries and thus that joinder of the individual members was not necessary."⁴⁰

It is true, as Pensioners claim, that the test to an indispensable party is different from that of privity. The court's underlying rationale for denying MPRA's motion to require the members as indispensable parties, however, also is sufficient to establish privity. Because the Court of Appeals has made this finding, not once but twice, the issue is out of the realm of disputed fact and is the law of the case.

Collateral Estoppel

The Minnesota Supreme Court expressed that the conditions for collateral estoppel exist when:

³⁶ *No Power Line, Inc. v. Minnesota Env'tl. Quality Council*, 311 Minn. 330, 334, 250 N.W. 2d 158, 160 (1976).

³⁷ *Miller v. NW Mutl. Natl. Ins.* 354 N.W. 2nd 58, 62 Minn. App. (1984).

³⁸ *Id.*

³⁹ *City of Minneapolis v. Minneapolis Police Relief Ass'n*, 2008 WL 1747923, at *4 (Minn. Ct. App. 2008), review denied (Minn. Sup. Ct. June 25, 2008) and *City of Minneapolis v. Minneapolis Police Relief Ass'n, et al.*, 800 N.W.2d 165, 171 (Minn. Ct. App. 2011) review denied (Aug. 24, 2011).

⁴⁰ *Id.* At 177-178.

- 1) the issue was identical to one in prior adjudication;
- 2) there was a final judgment on the merits;
- 3) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue and;
- 4) the stopped party was a party or in privity with a party to the prior adjudication.⁴¹

The fourth criteria, privity, has been satisfied. The extensive record demonstrates that the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. The next question to resolve is whether the issues adjudicated during the 2006 Lawsuit were identical to the ones presented in this case.

The 2006 Lawsuit was a dispute over the proper method of calculating the benefits previously made to members of the MPRA.⁴² In the instant action, the Pensioners are appealing the decision by PERA to deny their claim for additional benefits based on what the Pensioners believe is the proper method of calculation.⁴³ The same benefits for the same pensioners and beneficiaries were at issue in the 2006 Lawsuit as in this action. This is not a different claim but rather the mirror image of the claim MPRA was defending against on behalf of its members in the 2006 lawsuit. MPRA decided to settle those claims rather than to continue the litigation. It is clear that their claims were addressed in the settlement agreement.⁴⁴ The first criteria for collateral estoppel is, therefore, satisfied.

Pensioners argue that there was no final judgment on the merits in the 2006 Lawsuit so they cannot be collaterally estopped. After approval of the settlement agreement between the City and MPRA and the legislation merging MPRA into PERA, the Hon. Janet N. Poston of the Fourth Judicial District Court signed an order dismissing the action “on the merits, with prejudice...[and] let judgment be accordingly”.⁴⁵ The Order had been stipulated to by the parties. Pensioners cite no authority for the proposition that an order dismissing an action on the merits and with prejudice is not a final judgment on the merits.

On the other hand, the City and PERA cite *Application of Schaefer*, which holds that a dismissal with prejudice can operate as an estoppel to litigate the same issue.⁴⁶ Here, as required by the rationale of *Schaefer*, there was an extensive record of

⁴¹ *Tarutis v. Commissioner of Revenue*, 393 N.W. 2d 667, 669 (Minn. 1986) (citing *Willems v. Commissioner of Public Safety*, 333 N.W. 2d 619, 621 (Minn. 1983).

⁴² See Aff. of Peter G. Mikhail, Ex.B.

⁴³ See Petition for Review dated March 16, 2012.

⁴⁴ Oliver Aff. Ex. D, p.1.

⁴⁵ See Aff. of Peter G. Mikhail, Ex. X. (emphasis added).

⁴⁶ *Application of Schaefer*, 287 Minn. 490, 493-94, 178 N.W.2d 907, 909-91- (1970).

negotiations from which “it may fairly be said that the parties intended that dismissal was to serve as a final determination of the issues in dispute.”⁴⁷

The City and PERA have demonstrated that Pensioners fulfilled the requirements for collateral estoppel and, therefore, should be estopped from re-adjudicating the matter.

Are Pensioners Bound by the Merger Legislation and the Terms of the Settlement?

The City and PERA argue that the Pensioners’ claims with respect to benefit calculations are bound by the Merger Legislation and the Settlement Agreement. Pensioners disagree. Their position is that the Merger Legislation was not meant to be retroactive and the settlement agreement cannot trump the statutory obligation to pay the benefits described by Minn. Stat. § 423B.04 (2010), the statute that was in effect at the time the benefits accrued.

The Merger Legislation states that “Unit value, for a member of the public employee’s police and fire retirement plan who was a member of the former Minneapolis Police Relief Association on the day prior to the effective date of consolidation under section 19, is \$86.71 for calendar year 2011...”⁴⁸ The effective date of the legislation was December 30, 2011. The statute is clear and quite specific. It sets the unit value for calendar year 2011. In order for a statute to have retroactive effect, it must be clear that such was the intent of the legislature.⁴⁹ Here, the plain reading of the sentence does not need to include the word retroactive for it to be clear that the intent was for it to apply to calendar year 2011.

For the years 2009 and 2010, Minn. Stat. § 423B.01, subd. 20 (2010), set the unit value of the pension benefit at 1/80th of a top grade patrol officer’s salary at the time. The benefits that accrued during that period would have been paid at that level but for a stay by the District Court that froze the benefit payments at issue in the 2006 Lawsuit until the lawsuit was concluded. After the Settlement Agreement, Merger Legislation and subsequent Order for Dismissal took effect, PERA was obligated to pay benefits at the levels specified in the Settlement Agreement and the Merger Legislation. That was done and is now the operative standard for calculating the benefits at issue.

The calculations specified in Minn. Stat. § 423B.01, subd. 20, were not ignored. Payments under that statute were held in abeyance until the parties to the 2006 Lawsuit and the Legislature could agree to change the statutory calculation. Once that was done, PERA, standing in the shoes of MPRA, was prohibited by the terms of the agreement from making the payments now claimed.⁵⁰

⁴⁷ *Id.*

⁴⁸ Minn. Laws 2011, First Special Session, chapter 8, article 7, section 16.

⁴⁹ Minn. Stat. § 645.21 (2012).

⁵⁰ Mikhail Aff. Ex. T.

Accord and Satisfaction

Accord and satisfaction can be expressed or implied from the circumstances if those circumstances clearly indicate the intention of the parties.⁵¹ If the accord is a binding contract and is fully performed, the original liability is discharged.⁵² It is undisputed that the City and MPRA agreed to the Settlement Agreement, it is binding and, therefore, the original liability is discharged.

Conclusion

The Pensioners were in privity with MPRA and are collaterally estopped from re-litigating the 2006 Lawsuit issues that were settled. Accord and satisfaction has been established. The issue of an unfunded liability need not be addressed in light of the foregoing. The standards for granting a motion for summary disposition have been met and the PERA Board should grant the motion.

R.R.K.

⁵¹ *Roaderrick v. Lull Engineering Co. Inc.*, 208N.W. 2d 761, 764 (Minn. 1973).

⁵² *Id.* See also, *Total Equipment leasing Corp. v. LaRue Investment Corp.*, 357 N.W.2d 347, 350 (Minn. Ct. App. 1984).