

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

RETIREMENT BOARD OF THE )  
 FIREMEN’S ANNUITY AND BENEFIT )  
 FUND OF CHICAGO and THE )  
 FIREMEN’S ANNUITY AND BENEFIT )  
 FUND OF CHICAGO, )  
 )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF CHICAGO, )  
 )  
 Defendant. )

Case No. 2018 CH 11827

Hon. Sophia H. Hall

**DECISION**

This matter comes on to be heard on the defendant- counter-plaintiff City of Chicago’s Motion for Summary Judgment of its Amended Counterclaim against the plaintiffs-counter-defendants Retirement Board of the Firemen’s Annuity and Benefit Fund of Chicago and the Firemen’s Annuity and Benefit Fund of Chicago. In Count I, the City seeks a declaration that it has fully met its obligations under the Pension Code for its contribution to the Firemen’s Fund for the years 2016, 2017 and 2018. In Count II the City seeks a judgment in the amount of the intercepted State grant funds that the Firemen’s Fund received, along with the entry of an order that the City may apply those funds as a credit against future contribution obligations to the Fund.

Background

The Firemen’s Annuity and Benefit Fund of Chicago is a statutorily created public pension fund governed by the Illinois Pension Code, 40 ILCS 5/1 *et seq.* The two main sources of funding for the Fund are statutorily-required employee contributions and employer contributions from the City of Chicago, which is a municipal corporation existing under Illinois law. The City’s required contributions are governed by Section 6-165 of the Pension Code, 40 ILCS 5/6-165.

From 1972 to 2014, Section 6-165 required the City to contribute to the Fund based on a multiple or total employee contributions. In 2010, Public Act 96-1495 amended Section 6-165 to replace the multiplier as the basis for calculating the required City contributions to the Fund. Instead, the City was required to contribute an amount to the Fund based on actuarial

calculations designed to bring the total assets of the Fund up to 90% of its total actuarial liabilities by the year 2040.

In May of 2016, the legislature again amended Section 6-165 when it passed Public Act 99-506, which required specific contributions for years 2016 through 2020. This amendment required the City to contribute less to the Fund for the years 2016-2020 than the 2010 Amendment required.

Public Act 99-506, also, added a new Section 165.2 which allowed the Fund to file a mandamus action, if it did not receive payment of the entire contribution “guaranteed” by §165(a).

Beginning January 1, 2016, the city shall be obligated to contribute to the Fund in each fiscal year an amount not less than the amount determined annually under subsection (a) of Section 6-165 of this Code. Notwithstanding any other provision of law, if the city fails to pay the amount guaranteed under this Section on or before December 31 of the year which such amount is due, the Fund may bring a mandamus action in the Circuit Court of Cook County to compel the city to make the required payment, irrespective of other remedies that may be available to the Fund.

At issue in the instant case is the interpretation of §§165(a) and (g) of the Code governing the amount of the City’s contributions and the sources of funding.

(a) Beginning in tax levy year 2015, the city council shall levy a tax annually at a rate on the dollar of the assessed valuation of all taxable property that will produce when extended an annual amount that is equal to no less than the amount of the city’s contribution in each of the following payment years; for 2016, \$199,000,000; for 2017, \$208,000,000; for 2018, \$227,000,000; for 2019, \$235,000,000; for 2020, \$245,000,000. ....

(g) in lieu of levying all or a portion of the [property] tax required under this Section in any year, the city may deposit with the city treasurer no later than March 1 of that year for the benefit of the fund ... an amount that, together with the taxes levied under this Section for that year, is not less than the amount of the city contributions for that year as certified by the [pension fund] board to the city council. ... The making of a deposit shall satisfy fully the requirements of this Section for that year to the extent of the amounts so deposited.

In addition, §165(a-5) provides a procedure for the Fund to follow in the event that it does not receive all of the stated contribution amount from the City.

(a-5) If the city fails to transmit to the Fund contributions required of it under this Article for more than 90 days after the payment of those contributions is due, the Fund may, after giving notice, to the city, certify to the State Comptroller the amounts of the delinquent payments, and the Comptroller must, beginning in the fiscal year of 2016, deduct and deposit into the Fund the certified amounts or a portion of those amounts from the following proportion of grants of State funds to the city.

The provision also limits the proportion of the grants of State funds that the state is allowed to deduct in each year for 2016 to 2020.

The facts are not in dispute as to Count I of the City's counterclaim seeking a declaration that the City met its contribution obligation under §165(a). For the statutorily required 2016 contribution of \$199,000,000, the City levied \$179,424,000 in property taxes and deposited \$19,576,000 in non-property tax funds. For the 2017 contribution of \$208,000,000, the City levied \$194,825,000 in property taxes and deposited \$13,175,000 in non-property taxes. For the 2018 year contribution of \$227,000,000, the City levied \$212,622,000<sup>000</sup> in property taxes and deposited 14,378,000 in non-property taxes. *SMA*

As to Count II, seeking judgement for the amount of intercepted State funds received by the Fund, the facts are, also, not in dispute. On September 4, 2018 the Fund filed with a Comptroller a "Pension Fund Collection Request" form for each of contribution years 2016 and 2017. The Fund certified the delinquency in payments to it by the City, and claims ~~\$1,782,419.75~~ <sup>1,783,783.2</sup> owed as of September 1, 2018 for contribution year 2016, and ~~\$157,419.75~~ <sup>157,419.75</sup> owed as of September 1, 2018 for contribution year 2017. The City filed a protest which was denied, and then sought reconsideration that was denied. On March 1, 2019 the Fund filed with a Comptroller a Pension Fund Collection Request form for the contribution year 2018. It certified the delinquency in payments to it by the City and claimed ~~\$7,863,149.89~~ <sup>7,863,149.89</sup> owed as of February 22, 2019. *SMA*

#### Analysis

The City argues that it is entitled to summary judgment on its Amended Counterclaim against the Firemen's Fund. The City argues that it met its yearly contribution obligations as required by §165(a). It did so when, pursuant to the procedures in §165(g), it reached the yearly 165(a) stated contribution by a levy of property taxes for a portion, and then depositing the balance in non-property tax funds. The City argues that if the yield on the property tax levy does not reach the amount levied, the Pension Code does not require it to make a supplemental payment to the Fund after December 31 to make up for any loss in collection resulting from the failure of taxpayers to timely pay their taxes or pay them at all. The parties do not dispute that,

though taxes are levied and extended and placed on property tax bills and sent to taxpayers, some taxpayers pay late or do not pay at all, resulting in a shortfall in collection.

The City argues that the procedure it followed in §165(g) takes the place of §165(a), and thus the language “levy a tax ... that will produce when extended an annual amount that is equal to no less than the amount of the city’s contribution,...” in §165(a) does not apply. In support of its argument the City relies on the language in §165(g) “in lieu of levying all or a portion of the [property] tax required, arguing that “in lieu” means takes the place of.

The Fund argues that the §165(g) permission to meet the stated contribution through the property tax levy and non-property tax deposit to total the stated contribution still must satisfy the requirement in §165(a) that the tax levy “will produce” the stated contribution. This Court agrees.

Section 165(g) offers the City a second source of money, that is non-property tax funds, in addition to a tax levy would be based to pay the stated contribution set forth in §165(a). The “in lieu of” language means in lieu of all of the contribution coming from property taxes. The “will produce” language in §165(a) still applies wherever the money comes from.

The statutory scheme, shown by the sections the legislature passed, demonstrates that the legislature intended that the full amount of the stated contribution in §165(a) would be paid by the City. This Court is required to liberally construe language in pension statutes in a manner favoring the rights of the pensioner. *Carmichael v. Laborer’s & Ret. Bd. Employees’ Annuity and Benefit Fund of Chicago*, 2018 IL 122793, ¶36.

First, the legislature, in §165.2, provided that the Fund could bring a mandamus action to compel the city to pay the entire required contribution which is “guaranteed.” No statutory language modifies the amount of payment to the Fund of the required contribution in §165(a) dependant upon the amount collected by the City from the tax levy.

Second, the legislature provided a second source of money which the City, in its discretion, might use to meet the stated contribution, that is non-property tax money. Under §165(g) the City could meet the total stated contribution through a property tax levy and non-property tax deposit adding up to the total stated contribution in §165(a).

Significantly, the legislature provided a third source of money available to the Fund to make up any remainder the City does not pay to the Fund to meet the §165(a) stated contribution amount. §165(a-5) provides that if the City’s levy and non-property tax funds does not reach the §165(a) stated contribution, the Fund can obtain the unpaid balance from State Funds granted to the City. The Fund certifies the amount of the delinquent payments and the State pays the Fund by deducting money from the State grants up to the maximum percentage of the grant allowed by § 165 (a-5).

Reading these sections together, this Court finds for the Fund and against the City declaring that the City has not met its obligation under the Pension Code to pay the amount of the required contribution for 2016, 2017 and 2018.

Entered: *Sophia H. Hall*  
Judge Sophia H. Hall  
Date: 10 / 10 / 19

ENTERED  
JUDGE SOPHIA H. HALL-0167  
OCT 10 2019 OCT 10 2019  
DOROTHY BROWN  
CLERK OF THE DISTRICT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK