

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 328	DATE	April 7, 2010
CASE TITLE	Marcatante et al vs. City of Chicago		

DOCKET ENTRY TEXT

The Court enters its Findings of Fact and Conclusions of Law. The Plaintiff class is awarded \$1,773,502.62 in retroactive pay. The City shall pay \$6,711.40 in union dues, divided into appropriate amounts for each class member, to the union of which each class was a member at the time of his or her retirement. Class counsel is awarded attorneys' fees in the amount of \$532,050.00. No prejudgment interest is awarded. Postjudgment interest is awarded pursuant to 28 U.S.C. § 1961. Status hearing set for April 8, 2010 at 9:30 a.m. to stand.

■ [For further details see text below.]

Docketing to mail notices.

ORDER

This case involves former employees of Defendant City of Chicago ("the City") who took early retirement in 2004. At that time, the collective bargaining agreements between the City and the unions to which Plaintiffs belong had not been finalized. Once the agreements were finished in July 2005, their terms provided that retroactive pay increases would be given only to employees who were on the City payroll as of July 18, 2005, or who had been laid off with recall rights. Plaintiffs filed the instant suit to challenge the validity of the City's position that they were not entitled to the retroactive pay. On December 21, 2007, a plaintiff class was certified.

On March 31, 2008, the class was granted summary judgment that despite the terms of the July 2005 collective bargaining agreements, the City was obligated to pay the retroactive amounts pursuant to an implied contract with the class members. Because that decision reached only issues of liability, the parties have since worked diligently to resolve the further issue of an appropriate damage award. This order provides findings of fact and conclusions of law with regard to the proper amount of damages to which the class is entitled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Provided that this Court's liability determination and payment of any award is upheld after resolution of any appeal, the City shall pay the Plaintiff class a total of \$1,773,502.62 in retroactive pay.

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2. Union dues were not included in the retroactive pay award.
3. The City shall pay \$6,711.40 in union dues, divided into appropriate amounts for each class member, to the union of which each class was a member at the time of his or her retirement.
4. Of the amount of retroactive pay awarded, \$1,650,487.18 is pensionable.
5. Of the amount of retroactive pay awarded, \$123,015.44 is nonpensionable.
6. The gross amount payable to each class member is set forth in the Audit List produced by Plaintiffs to the City, a summary presentation of which is contained in Exhibit A to the City's proposed findings of fact and conclusions of law, which is filed in the case docket as document number [155].
7. Notice of the class action was mailed by class counsel to class members at their last known address as provided to the City and the appropriate pension funds (Municipal Employees' Annuity and Benefit Fund of Chicago ["MEABF"] and Laborers' Pension Fund ["Laborers"]).
8. After receiving notice of the class action, putative class member Ricardo Codina requested to be excluded from the class.
9. Ricardo Codina is not a member of the class and neither his name nor any retroactive pay amounts to which he may be entitled are included in Exhibit A or awarded in this order.
10. Before any other deductions are made from the gross award, 8.5% of each class member's pensionable retroactive pay shall be deducted.
11. The 8.5% deduction shall be provided to the appropriate pension fund (MEABF or Laborers), depending upon which fund pays an individual class member's pension.
12. The 8.5% deduction shall be provided as determined by the City and MEABF or Laborers in accordance with applicable law.
13. Neither MEABF nor Laborers is a party to this lawsuit.
14. MEABF and Laborers are separate and distinct legal entities from the City.
15. The City's actions in this suit do not bind the MEABF or Laborers.
16. Pension credits and annuity amounts are within the exclusive and original jurisdiction of MEABF and Laborers in accordance with Illinois law.
17. The City shall be responsible for providing MEABF and Laborers with the Audit List and any other information necessary for MEABF and Laborers to calculate pension benefits, retroactive pension benefits, or both for class members.
18. After pension contributions are deducted, the City shall deduct payroll taxes from the retroactive pay award.

ORDER

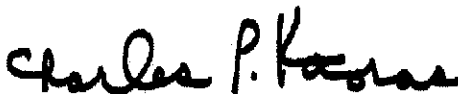
19. Class counsel have recovered a common fund of retroactive pay for the benefit of the class.
20. Class counsel have actively and extensively litigated this case for more than four years.
21. An award of attorneys' fees in the amount of 30% of the gross retroactive pay award is reasonable in light of the result that class counsel has achieved on behalf of the class and its substantial efforts in doing so.
22. Class counsel is awarded attorneys' fees in the amount of \$532,050.
23. Attorneys' fees shall be deducted on a pro rata basis from the amount of each class member's award after deductions for pension contributions and applicable payroll taxes are made.
24. After pro rata amounts of attorneys' fees are deducted, the City shall deduct appropriate health benefits and other applicable deductions.
25. At the appropriate time, the City shall provide each class member with an Internal Revenue Service Form W-2 Wage and Tax Statement.
26. Each class member is responsible for paying all federal and state taxes that they may owe in connection with their retroactive pay award.
27. Payment of the amounts awarded herein shall be made within 120 days of the completion of all proceedings in this case, including appeals.
28. Illinois law supplies the rule of decision in this case with regard to an award of prejudgment interest.
29. Illinois law provides that prejudgment interest is recoverable only in cases where the parties have agreed to, a statute provides for, or equitable grounds support such an award. *Kouzoukas v. Ret. Bd. of Policemen's Annuity and Ben. Fund of Chicago*, 917 N.E.2d 999, 1015 (Ill. 2009).
30. No agreement exists between the parties to this case authorizing an award of prejudgment interest.
31. No statute authorizes an award of prejudgment interest in this case. *See Kozak v. Ret. Bd. of Firemen's Annuity and Ben. Fund of Chicago*, 470 N.E.2d 1293, 1295-96 (Ill. App. Ct. 1984) (Illinois Interest Statute does not apply to municipalities).
32. Prior to the entry of summary judgment by this court, Plaintiffs' entitlement to retroactive pay was in genuine dispute.
33. The City's position in this case consisted solely of a good-faith contesting of Plaintiffs' right to retroactive wage payments; without more, such a position is not sufficient under Illinois law to justify an award of prejudgment interest. *Id.* at 1297.
34. The City's position in this case, while not successful, was not unreasonable.
35. The amounts set forth as owed to the Plaintiff class in this order were not fraudulently or wrongfully

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withheld from class members during the pendency of this litigation.

36. In light of the considerations set out in ¶¶ 32-35, equitable concerns do not require an award of prejudgment interest to the Plaintiff class.
37. No prejudgment interest is awarded.
38. Postjudgment interest is awarded pursuant to 28 U.S.C. § 1961.

Dated: April 7, 2010



CHARLES P. KOCORAS
U.S. District Court Judge