

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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J. EDWARD HANNAN,

Plaintiff/Counterdefendant-Appellant,

v

DETROIT CITY COUNSEL,

Defendant/Counterplaintiff-Appellee,

and

RETIRED DETROIT POLICE AND FIRE  
FIGHTERS ASSOCIATION and DETROIT  
RETIRED CITY EMPLOYEES ASSOCIATION,

Intervening Defendants/Counterplaintiffs-  
Appellees.

UNPUBLISHED  
September 1, 2000

No. 211704  
Wayne Circuit Court  
LC No. 97-722512-CZ

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Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff, the budget director for the city of Detroit, appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. We affirm.

In July 1997, the Detroit City Council (the council) passed two ordinances (the pension enhancement ordinances) dealing with former city employee retirement benefits. The first ordinance (the pension ordinance) increased the pension benefits of “qualified retirees,” who are those retirees that retired prior to July 1, 1992, and served the city for an excess of ten years. Specifically, the pension ordinance increased the pension multiplier for the defined benefit from 1.5 percent to a graduated system wherein 1.5 percent is used for the first ten years of service, and 1.56 percent is used for service years in excess of ten years. The second ordinance (the health benefit ordinance) provided that effective July 1, 1996, fully paid hospitalization was to be provided to widows of police officers and fire fighters who retired between July 1, 1985, and June 30, 1987, or prior to July 1, 1980, and who had

selected a straight line retirement option that did not include fully paid hospitalization for surviving spouses.

The mayor of the city of Detroit vetoed both ordinances; however, the council overrode the mayor's veto on a vote of eight to zero. Plaintiff filed his complaint on July 22, 1997, seeking a declaratory judgment that the pension enhancement ordinances were unlawful. The council answered the complaint and counterclaimed for a declaratory judgment that the ordinances were valid and for an order requiring plaintiff to allocate the appropriate funds for the pension enhancement ordinances. The Detroit Retired City Employees Association (DRCEA) and the Retired Detroit Police and Fire Fighters Association (RDPFFA) were allowed to intervene as party defendants. On April 24, 1998, the trial court granted the council's motion for summary disposition.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). Furthermore, a question of a statute's constitutionality is a question of law that is reviewed de novo. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

Plaintiff first argues that the council violated Const 1963, art 9, § 24, when it passed the pension enhancement ordinances. City ordinances are presumed to be constitutional, and courts have a duty to construe an ordinance as constitutional unless it is clearly apparent that it is unconstitutional. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1997).

Const 1963, art 9, § 24 provides:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

This Court explained in *Halstead v City of Flint*, 127 Mich App 148, 154-155; 338 NW2d 903 (1983), that the purpose of the first paragraph of § 24 was to "obviate the harsh rule that pensions

granted by public authorities were not contractual obligations but were gratuitous allowances revocable at will by the public authority.” This Court has also stated that, “Article 9, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced.” *Seitz v Probate Judges Retirement System*, 189 Mich App 445, 449; 474 NW2d 125 (1991). In this case, the pension enhancement ordinances do not diminish or impair the full payment of accrued financial benefits to plan participants. Rather, the ordinances supplement retiree benefits and are paid for through the general fund.

The second paragraph of Const 1963, art 9, § 24 expressly mandates “townships and municipalities to fund all public employee pension systems to a level which includes unfunded accrued liabilities.” *Shelby Twp Police and Fire Retirement Bd v Shelby Twp*, 438 Mich 247, 255-256; 475 NW2d 249 (1991). In *Musselman v Governor*, 448 Mich 503, 511-512; 533 NW2d 237 (1995), the Supreme Court explained:

The purpose of the provision is, after all, to check legislative bodies, requiring them to fund pension obligations annually, and thereby preventing back door spending. Article 9, § 24 arose out of concern about legislative bodies failing to fund pension obligations at the time they were earned, so that the liabilities of several public pension funds greatly exceeded their assets.

Plaintiff argues that the pension enhancement ordinances increase the current liabilities and, therefore, must be funded immediately. Defendants argue that the enhanced benefits provided by the council’s ordinances are not earned benefits in the year that they were awarded and, therefore, article 9, § 24 does not apply.

The first part of the second paragraph of article 9, § 24 describes what obligations must be funded each fiscal year. The language identifies “[f]inancial benefits arising on account of services rendered in each fiscal year . . . .” Every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used; technical terms are to be accorded their peculiar meanings. MCL 8.3a; MSA 2.212(1), *Western Michigan University Bd of Control v State*, 455 Mich 531, 539; 565 NW2d 828 (1997). The plain meaning of the provision is that funding must take place when an employee’s service earned the benefit. In this case, both pension enhancement ordinances affect retirees and not those that are currently working and accruing financial benefits. The pension ordinance affects only those former city employees that retired prior to July 1, 1992. The health benefit ordinance affects only those widows of police and fire fighters who had retired between July 1, 1985, and June 30, 1987, or prior to July 1, 1980. Both pension enhancement ordinances were passed in 1997, and did not occur during the retirees’ service. Therefore, article 9, § 24 does not apply to the pension enhancement ordinances passed by the council because the ordinances confer a benefit that was not earned during the year the benefit was given.

In *Halstead*, *supra* at 148, this Court examined the constitutionality of a pension enhancement ordinance passed by the Flint City Council. In *Halstead*, the plaintiffs, who were pension beneficiaries that were excluded from the enhancements, argued that the ordinance denied them equal protection and violated Const 1963, art 9, § 24. *Id.* at 152. In examining the argument that the ordinance violated art

9, § 24, this Court held that the ordinance did not burden the Flint retirement system's current service funding with an unfunded liability because the service funding had a surplus and the cost of the enhancement would only require approximately one-third of the surplus. *Id.* at 155-156.

The second portion of the second paragraph of article 9, § 24, requires that the pension funding, otherwise known as current service funding, not be used for unfunded accrued liabilities. Here, the pension increases described by the pension enhancement ordinances are unfunded accrued liabilities because they are liabilities that are not accrued in the current year. The pension enhancement ordinances passed by the council are funded through the general fund and not through current service funding. Therefore, the pension enhancement ordinances do not violate this portion of the constitution.

Next, plaintiff argues that the trial court erred in determining that there was no genuine issue of material fact as to whether the ordinances met the "public interest" test in *Halstead, supra* at 148. Plaintiff claims that *Halstead* requires that the council make a finding of a "public purpose" in enacting the pension enhancement ordinances. An examination of *Halstead* does not support plaintiff's argument. Unlike the present case, the plaintiffs in *Halstead* asserted that the pension increases constituted a gratuity outside the Flint City Council's authority to conduct affairs for the public purpose. *Id.* at 158. This Court disagreed, stating:

We disagree with the claim that the ordinance under scrutiny is not furthering a public purpose. By adopting an ordinance ensuring that its employees will have a pension at least equivalent to the poverty level as established by the United States Department of Labor, defendants have adopted a mechanism that can be characterized as additional compensation for valuable services rendered as opposed to a gratuity. [*Halstead, supra* at 158.]

In this case, plaintiff does not allege that the pension enhancement ordinances were a gratuity. Even if plaintiff argued that the ordinances constituted a gratuity, we find that the council made sufficient findings regarding the public purpose of the ordinances. The council passed the pension enhancement ordinances with the purpose of ensuring that those retirees that were most affected by inflation would not be impoverished, and that those widows of police and fire fighter retirees that did not have hospitalization coverage would not be disparately impacted.

Plaintiff did not raise an equal protection argument in the trial court; however, plaintiff appears to be attempting to indirectly argue equal protection by arguing that the equal protection analysis in *Halstead* should be applied in this case. The appropriate test for equal protection is the reasonable-relationship test. *Halstead, supra* at 156. Under that test, the burden is on the plaintiff to show that the legislative classification is not rationally related to a legitimate government interest. *Id.* See also *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 638; 506 NW2d 920 (1993). Furthermore, when an ordinance is enacted in the interest of the public health, safety, and welfare, it is presumed valid. *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 317-318; 471 NW2d 321 (1991).

In this case, the council made findings that unanticipated inflationary pressures had eroded and impoverished the income level that was intended for city retirees. Plaintiff has the burden to present evidence that the classification of beneficiaries was without reasonable justification. Here, plaintiff has only argued that the council should have considered other classifications. We find that plaintiff has failed to present any evidence that the ordinances were not narrowly tailored to benefit only those retirees and their beneficiaries that were unforeseeably impacted by inflation or disparately impacted from similarly situated widows who were receiving hospitalization benefits.

Last, plaintiff argues that the trial court erred in finding that the pension enhancement ordinances did not violate the Detroit City Charter. Pursuant to the charter, the executive branch, under the direction of the mayor, has the responsibility to negotiate and administer collective bargaining agreements. 1997 Detroit City Charter, § 6-508. All collective bargaining agreements must be ratified by the council before the agreement becomes effective. 1997 Detroit City Charter, § 6-508. Plaintiff contends that the council impermissibly modified current and future collective bargaining agreements by changing pension benefits.

Individuals that have retired are no longer part of the employee bargaining unit, and issues regarding retirees' benefits, are not mandatory subjects of collective bargaining. *Allied Chemical and Alkali Workers of America v Pittsburgh Plate Glass Co*, 404 US 157, 172; 92 S Ct 383; 30 L Ed 2d 341 (1970). In this case, the individuals affected by the pension enhancement ordinances are retirees, not employees, and are not the subjects of collective bargaining agreements.

Here, the pension enhancement ordinances only changed benefits for those retirees and retirees' widows specifically defined by the ordinance. All of the enhanced benefits went to people who were already retired or are widows of retirees. Furthermore, the funding for the increased benefits was provided through the general fund and not the current liability fund. We find that the pension enhancement ordinances do not affect current or future collective bargaining agreements.

We also find that § 9-601 of the charter, which gives retired general city employees the right to be represented in city legislative and budgetary meetings on issues affecting their interests, contemplates the council having authority to enact legislation on behalf of retirees and recognizes the council's power to enact legislation for the benefit of retirees. Therefore, the council's actions in passing the pension enhancement ordinances do not interfere with the ability of the executive branch to negotiate and administer collective bargaining agreements.

Affirmed.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald