Nos. 122793 & 122822 (consol.)

IN THE
SUPREME COURT OF ILLINOIS

ROCHELLE CARMICHAEL; JUNE DAVIS; ZEIDRE FOSTER; OSCAR HALL; ANTHONY LOPEZ; KATHLEEN MAHONEY; JOSEPH NOTARO; MICHAEL SENESE; DAVID TORRES; THE CHICAGO TEACHERS UNION, LOCAL 1, AMERICAN FEDERATION OF TEACHERS, AFL-CIO; LOCAL 1001, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO; and LOCAL 9, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO;

Plaintiffs-
Appellees/Appellants,

v.

LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO; RETIREMENT BOARD OF THE LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO; MUNICIPAL EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO; RETIREMENT BOARD OF THE MUNICIPAL EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO; PUBLIC SCHOOL TEACHERS' PENSION & RETIREMENT FUND OF CHICAGO; and BOARD OF TRUSTEES OF THE PUBLIC SCHOOL TEACHERS' PENSION & RETIREMENT FUND OF CHICAGO,

Defendants-Appellees,

and

STATE OF ILLINOIS, *EX REL.* LISA MADIGAN,
ATTORNEY GENERAL OF THE STATE OF ILLINOIS

Intervenor-Defendant-
Appellant/Appellee.

Direct Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
Pursuant to
Ill. Sup. Ct. R. 302(a) (Case No. 122793) and 302(b) (Case No. 122822)

No. 12 CH 37712
The Honorable Celia G. Gamrath, Mary L. Mikva, Judges Presiding

BRIEF OF DEFENDANTS/APPELLEES THE MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO and THE RETIREMENT BOARD OF THE MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO

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NATURE OF THE CASE

Defendants, the Municipal Employees', Officers', and Officials' Annuity and Benefit Fund of Chicago (the "Fund") and the "Retirement Board" of the Fund,[1] respond to the appeal by the Plaintiffs of a judgment by the Circuit Court of Cook County in a case challenging the constitutionality of P.A. 97-0651 (the "Act"): *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.*, Case No. 2012-CH-37712. Specifically, MEABF responds to the Plaintiffs' appeal of the circuit court's denial of Plaintiffs' motion for summary judgment on Counts X and XII and grant of Defendant MEABF's cross motion for summary judgment on those counts. (Carmichael Brief, pp. 67-79).

The General Assembly enacted P.A. 97-0651 to amend and/or clarify the rights of members of MEABF and the Laborers' Retirement Board Employees Annuity Benefit Fund ("LABF") to contribute to the funds for pension service credit during leaves of absence to work for local labor organizations representing public employees, and the calculations of pensions based on such service credit. The circuit court granted summary judgment to Plaintiffs on certain counts, holding that the Act violated Article XII, § 5 of the 1970 Illinois Constitution (the "pension protection clause"). However, the circuit court dismissed other counts by the Plaintiff on the pleadings, and granted summary judgment to Defendants (denying Plaintiffs' cross-motion) on four declaratory judgment counts. The Intervenor-Defendant State of Illinois is addressing the arguments raised by Plaintiff-Appellees challenging certain rulings of the circuit court on P.A. 97-0651 amendments.

[1] The Fund and the Board will be referred to herein collectively and interchangeably as the "MEABF" unless otherwise specified.

Relevant to this response brief, the Plaintiffs filed two separate counts (X and XII) against MEABF directly seeking declaratory and injunctive relief based on the court's powers of equity. Specifically, unrelated to the P.A. 97-0651 constitutional challenges, Plaintiffs sought a declaration that 40 ILCS 5/8-226(c)(3), which permits MEABF participants to earn union service credit only if the participant does not receive credit in any pension plan established by the local labor organization, does not apply to defined contribution plans. The circuit court denied Plaintiffs' motion for summary judgment on these counts and granted MEABF's cross-motion for summary judgment.

The Plaintiffs and Intervenor-Defendant State of Illinois separately appealed directly to this Court and the appeals were consolidated. No questions are raised on the pleadings. MEABF, therefore, is responding in this brief only to the Plaintiffs' appeal of the circuit court's order denying Plaintiffs' motion for summary judgment on Counts X and XII.

ARGUMENT

The Court should uphold the circuit court's order denying Plaintiffs' motion for summary judgment, and granting MEABF's cross-motion, on Counts X and XII seeking declaratory judgments that 40 ILCS 5/8-226(c)(3) does not apply to defined contribution plans.

MEABF was created and is governed by article 8 of the Pension Code. 40 ILCS 5/8-101, *et seq.* As such, it has no authority to act except as provided in the Pension Code. *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶21. Nowhere in the Pension Code does it require MEABF to issue advisory opinions such as the ones Plaintiffs claim they sought in 2012 regarding whether Section 8-226(c)(3) included defined contribution

plans in its definition of "any pension plan." Nor was MEABF ever asked prior to 2012 to provide specific guidance on the issue. Thus, it should hardly be surprising that "since 1987 neither the MEABF Board nor anyone else at MEABF ever advised members or unions that participation in a defined contribution plan could disqualify them from receiving union service credit." (Carmichael Brief, pg. 71). Undoubtedly, there are countless provisions of the Pension Code that MEABF has not interpreted due to the simple fact that it has never been confronted with an actual case that required such an interpretation.

In this case, Section 8-226(c)(3), the so-called "second pension proviso," provides that a MEABF member may contribute to the Fund for union service credit only if "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3). Plaintiffs acknowledge that the phrase "receive credit in any pension plan" unambiguously applies to a defined benefit pension plan established by the local labor organization. (Carmichael Brief, pg. 67). Plaintiffs argue, however, that it is ambiguous as to whether the legislature intended to include defined contribution plans within the prohibition. For the reasons set forth below, as well as in the circuit court's order, it is clear that the plain language of Section 8-226(c)(3) does not exclude defined contribution plans, and, thus, requires a finding that Plaintiffs' requests for declaratory judgments in Counts X and XII must be denied and MEABF's cross-motion as to those counts must be granted.

A. The Circuit Court Was Correct in Holding That Section 8-226(c)(3) Unambiguously Applies to All Types of "Pension" Plans and Is Not Limited to Defined Benefit Pension Plans (Counts X and XII).

Counts X and XII seek declarations that the second pension proviso does not apply to the CTU Defined Contribution Plan, also known as the Technical and Professional Staff's Retirement Plan (the "TPS Plan") (Count X), or to defined contribution plans generally (Count XII). (C 168-170, C 1739-1740).[2] Section 8-226(c)(3) allows a participant in the MEABF to receive union service credit only if, *inter alia*, "the participant does not receive credit in ***any pension plan*** established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3) (emphasis added). Counts X and XII are premised on a number of limitations to this provision that are not found in its plain language. In their Appellee/Appellants Brief, Plaintiffs ask the Court to impose these arbitrary limitations on the Pension Code.

First, Plaintiffs ask the Court to limit the term "pension plan" to defined benefit plans, excluding defined contribution plans. Plaintiffs argue that this is the most reasonable interpretation of the term. (Carmichael Brief, pp. 67-70). However, nothing in the statute, Illinois law or common usage of the word "pension" supports this limitation. As a primary matter, neither "pension" nor "pension plan" is defined or limited in any way in the Pension Code. "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection Dist.*, 2012 IL 110012, ¶ 56. As the Circuit Court noted in rejecting Plaintiffs' argument, "[T]he plain and ordinary meaning of "any pension plan" is not defined in the Pension Code, and the plain and ordinary meaning of

[2] Citations to the circuit court record are to "C" and the relevant Bates number.

"any pension plan" does not refer exclusively to defined benefit plans. 'Any' means any, and pensions come in all shapes and sizes, ranging from defined benefit to defined contribution to hybrid plans in between." (C 2350-51).

Plaintiffs point out, correctly, that when a term is not defined in a statute, the court will consult a dictionary to ascertain the term's plain and ordinary meaning. *Id.* at ¶ 60. A check of the dictionary, however, shows that the word "pension" is commonly understood to refer broadly to all types of deferred compensation plans. For example, Webster's New World Dictionary (2nd Concise Ed. 1982), defines "pension" as "a regular payment, not wages, to one who has fulfilled certain requirements, as of service, age, disability, etc." Similarly, Merriam-Webster defines "pension" as "a fixed sum paid regularly to a person."[3]

Notably, ERISA, the federal statute applicable to private employer pensions, defines "pension plan" very broadly:[4]

> any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization [that]... provides retirement income to employees, or... results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. 29 U.S.C.A. § 1002 (2)(A).

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[3] Available at http://www.merriam-webster.com/dictionary/pension (*last accessed 6/1/18*).

[4] *See also People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 22 (looking to ERISA for guidance on the Illinois Pension Code), *Bd. of Trustees of Vill. of Barrington Police Pension Fund v. Dep't of Ins.*, 211 Ill. App. 3d 698, 705 (1st Dist. 1991) ("[G]iven the lack of Illinois caselaw construing the relevant portions of the Pension Code, we look for guidance to analogous provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), and the federal caselaw construing ERISA").

"Because ERISA's definition of a pension plan is so broad, ***virtually any contract that provides for some type of deferred compensation will also establish a de facto pension plan...***" *Modzelewski v. Resolution Trust Corp.*, 14 F.3d 1374, 1377 (9th Cir. 1994) (emphasis added). ERISA specifically includes defined benefit, defined contribution, 401(k), and 403(b) plans. 29 U.S.C.A. § 1002(34)-(35).[5] While federal cases interpreting ERISA are obviously not binding on this Court, the ERISA definition illustrates the broad scope of the word "pension."

Consistent with this broad understanding of "pension," several of the defined contribution plans at issue in this case describe themselves as "pension" plans. For example, one such defined contribution plan refers to itself as the "Local Union No. 9, IBEW and Outside Contractors Defined Contribution ***Pension*** Fund." (emphasis added.) (henceforth, the "Local 9 Pension.") (SUP C 1489-90 at ¶¶19, 22) (Notaro Aff). Similarly, the Chicago Teachers Union ("CTU"), a Plaintiff in this case, refers to a defined contribution plan as a "pension." In an employment agreement that pertains to the individual Plaintiffs in this case, the CTU refers to the TPS Plan itself—the plan that is the basis of Count X—as a "pension." (C 1898). Similarly, Plaintiffs' account statements refer to the TPS Plan as a "Pension Plan." (C 1906). Thus, the very plan that Plaintiffs ask this Court to exclude from the definition of "pension" is repeatedly described as a "pension" in Plaintiffs' own documents.

Plaintiffs acknowledge that ERISA and other sources include defined contribution plans within the meaning of a pension plan, but argue that this fact merely creates

[5] Dept. of Labor website: "The Employee Retirement Income Security Act (ERISA) covers two types of pension plans: defined benefit plans and defined contribution plans...Examples of defined contribution plans include 401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans." *Available at* http://www.dol.gov/dol/topic/retirement/typesofplans.htm (last visited 6/1/18).

ambiguity that must be resolved in favor of MEABF members. However, as the Circuit Court noted, Plaintiffs here are not seeking a mere liberal construction of an ambiguous provision, but the outright insertion of limiting terms to the otherwise clear and general phrase "any pension plan." (C 2351). Ultimately, the Circuit Court concluded, this was beyond its powers of construction.

There simply is no basis in law or common usage to limit the term "pension plan" in section 8-226 solely to defined benefit plans. This is further buttressed, as the circuit court recognized, by the use of the word "***any***" before "pension plan." 40 ILCS 5/8-226 (emphasis added). Thus, the Court must find that "***any*** pension plan" in section 8-226 means exactly what it says and includes all types of pension plans.

Moreover, the legislature was aware of the distinction between defined benefit and defined contribution plans when it passed section 8-226(c)(3). The legislature distinguishes between defined benefit and defined contribution plan throughout the Pension Code, but not in section 8-226.[6] The fact that such provisions might have been enacted after Section 8-226(c)(3) is irrelevant to this analysis. As the circuit court noted, "it is a stretch to think the legislature was unaware of defined contribution plans in 2012 or 1987, for that matter." (C 2351). Had the legislature wanted to distinguish between defined benefit and defined contribution plans in section 8-226, it obviously could have. That it did not do so is a clear indication that the legislature had no intention of exempting defined contribution plans from the scope of section 8-226(c)(3).

Plaintiffs also argue that an individual can only earn "credit" in a defined benefit plan. (Carmichael Brief, pg. 72.) They essentially argue that "credit" means "credit for

[6] *See e.g.*, 40 ILCS 5/16-205, 40 ILCS 5/15-200, 40 ILCS 5/14-155, 40 ILCS 5/2-165, 40 ILCS 5/20-124, 40 ILCS 5/2-166, 40 ILCS 5/16-206, 40 ILCS 5/14-156, 40 ILCS 5/15-201 (all distinguishing between defined benefit and defined contribution plans).

years of service." Thus, Plaintiffs' argue, the limitation in section 8-226—"receives credit in any pension plan"—can only refer to defined benefit plans. Once again, however, such a limitation has no basis in the Pension Code, nor in common usage of the term "credit." "Credit" is not limited by the Pension Code to defined benefit plans. It is not defined in the Pension Code at all. Merriam-Webster defines "credit" simply as "the balance in a person's favor in an account."[7] Similarly, Webster's New World Dictionary (2nd Concise Ed. 1982), defines "credit" as "the amount in a bank account, etc... a sum made available by a bank for withdrawal by someone specified...acknowledgment of a payment by entry of the amount in an account..."

The offering materials of the defined contribution plans at issue are consistent with the dictionary definitions of "credit." For example, the Local 9 Pension Summary Plan Description says, on the very first page, that "contributions will be ***credited*** to the individual accounts of the employees who are participants..." (SUP C 1738) (emphasis added). Further:

> Any gain or loss from plan investments is ***credited*** to, or charged against, the individual account of each participant. After the participant terminates his service with the employer and leaves the trade, the vested (or nonforfeitable) amount of the account ***credited*** to the participant will be distributed to him. The amount of the account will be based on all employer contributions ***credited*** to your account... the benefits you will ultimately receive under the plan will depend primarily upon two things: 1. The amount of employer contributions ***credited*** to your account in the plan; and... (C 1911) (emphasis added).

The updated document for the Local 9 Pension similarly contains extensive discussion of the "credit" one receives for participating in the defined contribution "pension." (C

[7] Available at: http://www.merriam-webster.com/dictionary/credit (*last accessed 6/1/18*).

1912). Similarly, the offering materials for the TPS Plan state that the participants receive "credit" in that plan.

> Upon a Participant's Normal Retirement Age or Early Retirement Age, all amounts ***credited*** to such Participant's Account shall become fully vested...Upon a Participant's Retirement Date, or as soon thereafter as is practicable, the Insurer (or Trustee, if applicable) shall distribute all amounts ***credited*** to such Participant's Account...Upon the death of a Participant before his Retirement Date or other termination of his employment, all amounts ***credited*** to such Participant's Account shall become fully vested...On or before the Anniversary Date coinciding with or next following the death of a Former Participant, the Insurer (or Trustee, if applicable)... shall distribute any remaining amounts ***credited*** to the account..." (C 1917, ¶¶ 6.01-6.02) (emphasis added).

Thus, Plaintiffs' argument is contradicted again by the plan documents for the very plan that Plaintiffs seek to exclude from the definition of "pension."

Finally, Plaintiffs' limitation on the term "credit" would not be consistent with the Pension Code. Section 8-226 uses the term "service" in the same way Plaintiffs ask the Court to limit the term "credit"—i.e. entitlement to a particular benefit based on years of employment. For example, section 8-226 is called "Computation of service." Thus, by using the term "credit" in section 8-226(c), the legislature clearly was referring to something other than a participant's entitlement to a particular benefit based on years of employment. Plaintiffs' limitation on the term "credit" is thus inconsistent with the dictionary definition of the word, the offering documents of the defined contribution plans in which they participated, and the language of section 8-226 of the Pension Code.

Plaintiffs' reliance on *Bandak v. Eli Lilly and Co. Retirement Plan*, 587 F.3d 798 (2009), is misplaced. *Bandak* addressed an amendment to a private retirement plan, not an amendment to a statute. *Id.* at 799-800. Judge Posner did, indeed, observe in *dicta*

that the phrase "years of service" logically referred to a defined benefit plan rather than a defined contribution plan. *Id.* at 801. The phrase was used by a director at a board meeting. *Id.* The phrase "years of service," however, is not at issue in this case. In this case, the terms at issue are "credit" and "any pension plan" and they are used in a statute rather than a board meeting. *Bandak* thus sheds no light on this case.

In summary, neither the Pension Code nor the plain meaning of the words in section 8-226 provide a reason to limit the terms "pension plan" and "credit" as Plaintiffs request, and this Court is precluded from doing so by well-settled principles of statutory construction. "[T]his court shall not insert words into legislative enactments when the statute otherwise presents a cogent and justifiable legislative scheme." *Waste Mgmt. of Illinois, Inc. v. Illinois Pollution Control Bd.*, 145 Ill. 2d 345, 348 (1991). It would be contrary to the plain meaning of the statute to do so. Therefore, the Court should uphold the circuit court's denial of Plaintiffs' request for declaratory judgments that the plain language of section 8-226(c)(3) does not apply generally to defined contribution plans and specifically to the two pension plans at issue.

B. The Circuit Court Was Correct in Refusing to Graft Additional Limitations on Section 8-226(c)(3).

Plaintiff next asks the Court to impose additional limitations—couched as "clarifications"—on section 8-226(c)(3) that are not found in the statute's plain text. (Carmichael Brief, pg. 76). As an initial matter, the Court should reject this request on the basis that it violates the pleading requirements of the Code of Civil Procedure ("Code"). The Code requires that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count… shall be separately pleaded." 735 ILCS 5/2-603(b). Here, Plaintiffs

have not pled any counts for this type of relief in the Original or Supplemental Complaint, and, thus, the Court cannot grant them any such relief.

In addition, section 8-226(c)(3) allows a participant in the MEABF to receive union service credit only if, *inter alia*, "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3). However, Plaintiffs do not provide a particular case that has been presented to MEABF. Thus, Plaintiffs essentially request advisory rulings from the Court, rather than a ruling on a claim for relief currently before the Court. The Court cannot accommodate the request as Illinois courts are not empowered to issue advisory opinions. *Mount Carmel High Sch. v. Illinois High Sch. Ass'n*, 279 Ill. App. 3d 122, 126 (1st Dist. 1996). To the extent they are not advisory, each of Plaintiffs' requests should be denied as contrary to the plain language of section 8-226.

First, Plaintiffs requests a ruling that section 8-226 does not bar a Participant from receiving union service credit if the participant subsequently waives credits he or she received in a pension plan created by the local labor organization. (Carmichael Brief, pg. 76). The "waivers" and "forfeitures" come in many different forms. For example, Mr. Notaro's waivers are all revocable. (C 1441). Thus, were the Court to grant Mr. Notaro service credit based on his "waiver," he could subsequently revoke the "waiver" and receive credit in the local union pension—blatantly in violation of section 8-226. Indeed, through discovery, it appears that all of the individual Plaintiffs' "waivers" are revocable. Thus, the Court cannot and should not make rulings on any alleged waiver or forfeiture unless it is directly before the Court.

More importantly, however, the issue of waiver should be irrelevant because the statute is totally silent as to waiver. The prohibition of Section 226(c)(3) is triggered the moment a participant receives credit in any pension plan established by the local labor union—irrespective of whether or not that credit is subsequently waived, forfeited, suspended, etc. There simply is no provision within the statute for a subsequent waiver of the credits, nor any means within the statute to un-do or nullify the prohibition after the fact. The Court may not impose such an exception into the statute. Thus, no matter the terms of the waiver, once a participant "receive[s] credit in any pension plan established by the local labor organization based on his employment by the organization," he or she can no longer receive union service credit in the MEABF.

Second, Plaintiff asks the Court to hold that section 8-226(c)(3) does not bar union service credit during intervals when there are no employer contributions to the pension plan established by the local labor organization. (Carmichael Brief, pp. 77-78). This too is a limitation that is not contained in the plain language of section 8-226(c)(3). Section 8-226(c)(3) bars union service credit for any period during which the participant "receive[s] credit in any pension plan established by the local labor organization" without regard to whether or not the union is making employer contributions. This is merely another attempt by Plaintiff to have the Court redefine the term "credit." As discussed above, the term credit is not limited by the Pension Code and the Court should not create such a limitation when it was not explicitly provided by the legislature. Moreover, this request, like the previous request, does not seem to pertain to any particular Plaintiff or any particular claim for relief before the Court. Rather, it is advisory in nature. The

Court should not issue any blanket ruling, potentially applicable to a multitude of factual scenarios, when those facts or claims are not before the Court.

Third, Plaintiffs ask the Court to rule that section 8-226(c)(3) does not bar union service credit based on participation in funds to which the union makes no employer contributions whatsoever. (Carmichael Brief, pg. 78). Once again, this is a limitation not found in the statute. It is yet another attempt by the Plaintiffs to have the Court impose arbitrary limitations on the terms "pension plan" and "credit." As discussed above, the limitations Plaintiff seeks to impose are not supported by the statute, common usage, or the dictionary definitions of "pension" and "credit." Thus, the Court should deny the Plaintiffs' request.

Furthermore, this request, like the others, does not pertain to any particular Plaintiff or claim for relief before the Court. It is a request for an advisory opinion which the Court cannot provide. Therefore, the Court should deny Plaintiffs' requests for "clarification" in the event it finds that Section 8-226(c)(3) applies to defined contribution plans.

Finally, in the alternative, Plaintiffs request a prospective-only application of Section 8-226(c)(3), should the Court affirm the circuit court's conclusion that Section 8-226(c)(3) includes defined contributions plans (as it should). (Carmichael Brief, pg. 78). For the same reasons that the circuit court rejected Plaintiffs' request for prospective-only application of the statute regarding the "highest average annual salary" in Count XIV, the Court should reject this request. Court decisions are normally applied retroactively. *Larrance v. Illinois Human Rights Com'n*, 166 Ill. App. 3d 224, 230-31 (4th Dist. 1988). "The decision of a court is generally applied retroactively to the case under

consideration." *Id.* Moreover, as the circuit court noted in rejecting Plaintiffs' arguments for a prospective-only application in Count XIV, the court cannot order a statutory pension fund such as MEABF to disburse annuities in a manner contravening the letter of the Pension Code. (C 2356).

In this case, Section 8-226(c)(3) reflects the intent of the legislature to protect MEABF by preventing a participant from receiving credits in MEABF for union service if the participant is already receiving credits in a union pension plan. MEABF does not have authority to contravene the law as articulated in the Pension Code, and the court cannot order it to do so. For that, and the other reasons explained *supra*, the Court should deny the Plaintiffs' request for a prospective-only application of the statute, as well as its other arguments that Section 8-226(c)(3) somehow does not apply to defined contribution plans, and affirm the circuit court's finding that the plain language of Section 8-226(c)(3) means "any pension plan," whether defined benefit plan or defined contribution plan.

CONCLUSION

For the reasons stated herein, this Court should uphold the judgment of the Circuit Court denying Plaintiff's motion for summary judgment on Counts X and XII, and granting Defendant MEABF's cross motion for summary judgment on those counts.

Respectfully submitted,

MUNICIPAL EMPLOYEES', OFFICERS' AND OFFICIALS' ANNUITY & BENEFIT FUND OF CHICAGO and RETIREMENT BOARD OF THE MUNICIPAL EMPLOYEES', OFFICERS' AND OFFICIALS' ANNUITY & BENEFIT FUND OF CHICAGO

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Dated: June 5, 2018

Supreme Court Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a), is 15 pages.

/s/Vincent D. Pinelli