

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES MASTER, JR., and ALFRED PARE', for
themselves and on behalf of all retirants or beneficiaries
of THE POLICE AND FIREMEN RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs-Appellees,

v

CITY OF DETROIT,

Defendant-Appellant,

and

THE BOARD OF TRUSTEES OF THE
POLICEMEN AND FIREMEN'S RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Defendant-Appellee.

CHARLES MASTER, JR., and ALFRED PARE', for
themselves and on behalf of all retirants or beneficiaries
of THE POLICE AND FIREMEN RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs-Appellees,

v

CITY OF DETROIT,

Defendant-Appellee,

UNPUBLISHED
November 14, 1997

Nos. 191421, 191422
Wayne Circuit Court
LC No. 91-100875 AZ

ON REMAND

and

THE BOARD OF TRUSTEES OF THE
POLICEMEN AND FIREMEN'S RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Defendant-Appellant.

Before: Jansen, P.J., and White and Saad, JJ.

PER CURIAM.

This class action is before us following our remand to the circuit court for further development on the record of the issue whether the circuit court's pre-remand ruling that the Act 312¹ arbitration award was a recognition by the arbitration panel of a prior improper practice in computing benefits, by which pension benefits were improperly reduced to pre-1990 retirees, was erroneous. *Master et al v City of Detroit*, unpublished opinion per curiam, issued October 11, 1996 (Docket Nos. 191421, 191422).² We retained jurisdiction. On remand, the circuit court³ issued an opinion that included findings of fact and conclusions of law, and dismissed plaintiffs' claims. None of the parties filed briefs following the circuit court's determination. We affirm.

The circuit court held an evidentiary hearing on February 20, 1997 at which defendant City presented the testimony of Allen Lewis, a Supervisor of Labor Relations Specialists in the City of Detroit's Labor Relations Division, and Mark Ulicny, Deputy Personnel Director of Wayne County. Lewis was a labor relations specialist assigned to the Act 312 proceedings, and Ulicny represented the City of Detroit in the Act 312 proceeding. Defendant Board of Trustees presented the expert testimony of Norman Jones, actuary for the Policemen and Firemen Retirement System, via affidavit.⁴ Plaintiffs presented no witnesses. The parties submitted various exhibits. At the circuit court's request, the parties subsequently provided proposed findings of fact and conclusions of law.

The circuit court issued an opinion on April 30, 1997, first stating its findings of fact and conclusions of law. The court concluded that no facts were demonstrated on the record in support of plaintiffs' argument that the arbitration award was a recognition by the arbitration panel of a prior improper practice, and that the record in fact supported the contrary conclusion. The court pointed to Ulicny's uncontroverted testimony that it was the arbitration panel's intent "to provide a *new* benefit to the employees at *that* time" (emphasis in original); the briefs and presentations of the parties to the Act 312 arbitration; and the absence of factual support for plaintiffs' argument in plaintiffs' suggested findings of fact and conclusions of law. The court further noted that the arbitration award does not indicate that the past practice was incorrect or illegal.

The circuit court then specifically addressed each of the three counts of plaintiffs' amended complaint, granting defendants summary disposition on all counts. Regarding count I, the court

concluded that plaintiffs' claim failed because they stated no law in support of their argument that defendant had a clear legal duty to increase the retirement compensation of plaintiffs' class, all of whom had retired before July 1, 1990, when the active employees who retired after July 1, 1990 received an increase in compensation.

As to count II, the circuit court concluded that defendants were entitled to summary disposition because plaintiffs had failed to establish their claim that the arbitration panel realized and corrected a mistake in 1990, because the award's language did not indicate or recognize a mistake had been made and was being rectified; the change was adopted to give the union an increased benefit that did not previously exist; plaintiff's proposed findings of fact and conclusions of law made no citation to facts in the record from which the circuit court could infer that there was a mistake; and Ulicny testified that no mistake was deemed to have occurred.

Count III alleged that the reduction of the retirement allowance by the interest that accrued on the employer/retiree's withdrawn accumulated contributions was contrary to the 1974 Collective Bargaining Agreement (CBA), and thus illegally reduced the retirement allowance of the class since November 20, 1974. Count III further alleged that the City had a clear legal duty to provide "full financial benefits" under the 1974 CBA, that the Act 312 arbitration panel realized this error and corrected it, and that the City illegally withheld these benefits under the 1974 agreements. The circuit court noted that count III relied entirely on the 1974 Annuity Option Agreement. The court noted that the term "accumulated contributions" is defined in the retirement system provisions as the sum of both the employees' contributions and regular interest, and that the contract regarding the annuity withdrawal option stated that on withdrawal of the accumulated contributions the annuity payable under any retirement allowance "shall be reduced proportionally." The circuit court noted that this language does not say that only "amounts deducted from compensation" are used in calculating the reduction of the annuity, but rather says "accumulated contributions," which is defined as including interest. The circuit court further noted that this interpretation is confirmed by the sentence which reads, "If the total accumulated contributions are withdrawn, no annuity shall be payable," because this sentence states that there is no annuity when the entire accumulated contribution is withdrawn, while plaintiffs argue that they are still entitled to an annuity based on the interest portion of their withdrawal. Finally, the circuit court noted that the language of the documents directly contradicted plaintiffs' interpretation that they are entitled to both withdraw the interest earned by the trust, and to have that interest used in calculating their benefits after it is withdrawn.

We agree with the circuit court that plaintiffs failed to present sufficient facts from which a reasonable fact-finder could find that the prior practice violated the 1974 agreement or that the Act 312 award was a recognition by the arbitration panel of a prior improper practice. We affirm the dismissal of plaintiffs' claims.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Henry William Saad

¹ MCL 423.231 *et seq.*; MSA 17.455(31) *et seq.*

² In our first opinion in this case, *Master et al v City of Detroit*, unpublished opinion per curiam, issued February 23, 1995 (Docket Nos. 154681, 154984), we concluded that this issue was unpreserved. On cross-applications for leave to appeal, the Supreme Court concluded that defendants sufficiently preserved the issue and, by order dated November 17, 1995, remanded the matter to this Court for consideration on the merits, while denying the applications for leave to appeal and cross-appeal in all other respects. Judge Saad was not a member of the original panel, but was assigned to the case after remand to this court and before our remand to the trial court.

³ The proceedings on remand were before a successor circuit judge.

⁴ Plaintiffs objected to the affidavit on relevance grounds alone.