

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

**CIRCUIT COURT
CIVIL COURT BRANCH**

FILED
08-08-2018
John Barrett
Clerk of Circuit Court
2018CV006612
Honorable Timothy
Witkowiak-22
Branch 22

**MILWAUKEE PROFESSIONAL FIREFIGHTERS'
ASSOCIATION LOCAL #215
5625 W. Wisconsin Avenue
Milwaukee, WI 53213,**

**JERRY ALLEN
4849 N. 66th Street
Milwaukee, WI 53218,**

**ROBERT J. BRESETTE
3912 W. Denis Avenue
Milwaukee, WI 53221,**

**BRAD DAVIS
8215 S. 68th Street
Franklin, WI 53212,**

**JAMES ELLIOT
1602 Rivera Street
Cortez, CO 81321,**

**CHRIS GAUTHIER
328 E. Van Norman Avenue
Milwaukee, WI 53207,**

**DEREK GEPPERT
4857 S. 22nd Place
Milwaukee, WI 53221,**

**ROBERT HEHN
7420 W. Ohio Avenue
Milwaukee, WI 53219,**

**SCOTT HOTH
9237 S. 54th Street
Franklin, WI 53132,**

**ALLEN L. JANSEN
2959 S. 43rd Street
Milwaukee, WI 53219,**

STANLEY KAMINSKI
12026 W. Mill Road
Milwaukee, WI 53225,

THOMAS KAMINSKI
12026 W. Mill Road
Milwaukee, WI 53225,

JOHN KIELPINSKI
2432 W. Manchester Avenue
Milwaukee, WI 53221,

ANDREW J. KORDUCKI
3412 S. 81st Street
Milwaukee, WI 53219,

JAMES KRONBERG
5848 N. 114th Street
Milwaukee, WI 53225,

TERRY D. LUCAS
3631 S. Clement Avenue
Milwaukee, WI 53207,

GREG MARRIS
6631 W. Howard Avenue
Milwaukee, WI 53220,

PAT NORTON
6421 N. 118th Street
Milwaukee, WI 53220,

BRUCE RIGHTMYRE
1200 N. 62nd Street, Apt. 218
Wauwatosa, WI 53213,

DAVID STOLTZ
6015 15th Avenue South
Gulfport, FL 33707,

ANDY WIEGEL
3037 S. 45th Street
Milwaukee, WI 53219, and

JAMES YOUNGBLOOD
3912 N. 102nd Street
Wauwatosa, WI 53222,

Plaintiffs,

v.

Case No.:
Case Code: 30301, 30701, 30303
Case Type: Money Judgment,
Declaratory Judgment, Other- Contract

CITY OF MILWAUKEE
200 E. Wells Street
Milwaukee, WI 53202 and

MILWAUKEE EMPLOYEES' RETIREMENT SYSTEM
789 N. Water Street, Suite 300
Milwaukee, WI 53202,

Defendants.

COMPLAINT

NOW COMES Plaintiffs, Milwaukee Professional Firefighters' Association Local #215 and Jerry Allen, et al., by their attorneys MacGillis Wiemer, LLC, by Attorneys Christopher J. MacGillis and Sean E. Lees, who show and allege to the Court as follows:

PARTIES

1. Plaintiff, Milwaukee Professional Firefighters' Association Local #215 ("Local 215"), is a labor organization within the meaning of Wis. Stat. § 111.70(h), and has offices located at 5625 W. Wisconsin Avenue, Milwaukee, Wisconsin 53213. Local 215 has been certified as the sole and exclusive collective bargaining agent for all employees of the City of Milwaukee Fire Department ("MFD") holding the rank of firefighter through captain, all of whom are municipal employees.

2. Plaintiff, Jerry Allen (“Allen”), is an adult resident of Milwaukee County, Wisconsin who currently resides at 4849 N. 66th Street, Milwaukee, Wisconsin 53218, and is a current recipient of Duty Disability Retirement (“DDR”) benefits from the City of Milwaukee (“City”) and the Milwaukee Employees’ Retirement System (“ERS”) at the rate of 75% of the current salary of the position he held at the time of his duty disability.

3. Plaintiff, Robert J. Bresette (“Bresette”), is an adult resident of Milwaukee County, Wisconsin who currently resides at 3912 W. Denis Avenue, Milwaukee, Wisconsin 53221, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

4. Plaintiff, Brad Davis (“Davis”), is an adult resident of Milwaukee County, Wisconsin who currently resides at 8215 S. 68th Street, Franklin, WI 53212, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

5. Plaintiff, James Elliot (“Elliot”), is an adult resident of Montezuma County, Colorado who currently resides at 1602 Rivera Street, Cortez, CO 81321, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

6. Plaintiff, Chris Gauthier (“Gauthier”), is an adult resident of Milwaukee County, Wisconsin who currently resides at 328 E. Van Norman Avenue, Milwaukee, WI 53207, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

7. Plaintiff, Derek Geppert (“Geppert”), is an adult resident of Milwaukee County, Wisconsin who currently resides at 4857 S. 22nd Place, Milwaukee, WI 53221, and is a current

recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

8. Plaintiff, Robert Hehn ("Hehn"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 7420 W. Ohio Avenue, Milwaukee, Wisconsin 53219, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

9. Plaintiff, Scott Hoth ("Hoth"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 9237 S. 54th Street, Franklin, Wisconsin 53132, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

10. Plaintiff, Allen L. Jansen ("Jansen"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 2959 S. 43rd Street, Milwaukee, WI 53219, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

11. Plaintiff, Stanley Kaminski ("S. Kaminski"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 12026 W. Mill Road, Milwaukee, WI 53225, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

12. Plaintiff, Thomas Kaminski ("T. Kaminski"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 12026 W. Mill Road, Milwaukee, WI 53225, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

13. Plaintiff, John Kielpinski ("Kielpinski"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 2432 W. Manchester Avenue, Milwaukee, Wisconsin 53221, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

14. Plaintiff, Andrew J. Korducki ("Korducki"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 3412 S. 81st Street, Milwaukee, Wisconsin 53219, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

15. Plaintiff, James Kronberg ("Kronberg"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 5848 N. 114th Street, Milwaukee, WI 53225, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

16. Plaintiff, Terry D. Lucas ("Lucas"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 3631 S. Clement Avenue, Milwaukee, WI 53207, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

17. Plaintiff, Greg Marris ("Marris"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 6631 W. Howard Avenue, Milwaukee, WI 53220, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

18. Plaintiff, Pat Norton ("Norton"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 6421 N. 118th Street, Milwaukee, WI 53220, and is a current

recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

19. Plaintiff, Bruce Rightmyre ("Rightmyre"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 1200 N. 62nd Street, Apt. 218, Wauwatosa, WI 53213, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

20. Plaintiff, David Stoltz ("Stoltz"), is an adult resident of Pinellas County, Florida who currently resides at 6015 15th Avenue South, Gulfport, Florida, 33707, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

21. Plaintiff, Andy Wiegel, ("Wiegel"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 3037 S. 45th Street, Milwaukee, Wisconsin 53219, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

22. Plaintiff, James Youngblood ("Youngblood"), is an adult resident of Milwaukee County, Wisconsin who currently resides at 3912 N. 102nd Street, Wauwatosa, WI 53222, and is a current recipient of DDR benefits from the City and the ERS at the rate of 75% of the current salary of the position he held at the time of his duty disability.

23. For the purposes of this Complaint, Plaintiffs represent a class consisting of all City of Milwaukee firefighters and members of Local 215 hired before October 3, 2011 that have qualified and received DDR, after January 1, 2015, under Section 36-05-3-c-1-a of the Milwaukee City Charter and the relevant Collective Bargaining Agreement. This class is collectively referred to as "Plaintiffs."

24. Defendant, City of Milwaukee, is a municipal employer, organized and existing under the laws of the State of Wisconsin, with offices located at 200 E. Wells Street, Room 800, Milwaukee, WI 53202.

25. Defendant, City of Milwaukee Employees' Retirement System, ("ERS"), is a municipal organization, organized and existing under the Milwaukee City Charter, with offices located at 789 N. Water Street, Suite 300, Milwaukee, WI 53202. ERS manages the City of Milwaukee pension fund, processes applications for DDR, and disburses DDR benefits on behalf of the City.

FACTS

Duty Disability Retirement **(Milwaukee City Charter)**

26. The City, ERS, Plaintiffs, and all members of Local 215 are subject to the terms of the Milwaukee City Charter ("MCC"). See MCC Chapter 1.

27. In pertinent part, Chapter 36 of the MCC sets forth certain provisions relative to ERS, including certain provisions relative to pension funding and disability benefits.

28. MCC Section 36-08-7 governs Member Contributions for purposes of funding ERS.

29. Pursuant to MCC Section 36-08-7-b, "commencing with the 1st pay period of 2015 until the 1st pay period of 2016, firemen who were enrolled as members in the retirement system before October 3, 2011, shall contribute 3.5% of their earnable compensation; thereafter, commencing with the 1st pay period of 2016, these firemen shall contribute 7% of their earnable compensation." MCC 36-08-7-b.

30. MCC Section 36-05-3-c-1-a governs certain disability benefits, commonly referred to as DDR benefits.

31. Pursuant to MCC Section 36-05-3-c-1-a, “any fireman or policeman who shall become disabled as the direct result of injury incurred in the performance of one or more specific acts of duty shall have a right to receive DDR benefits during the period of such disability of an amount equal to 75% of the current annual salary for such position which he held at the time of such injury.” MCC 36-05-3-c-1-a (emphasis added).

32. The Plaintiffs all received DDR after January 1, 2015.

Collective Bargaining Agreement

33. The City employs members of Local 215 in their capacity as members of the MFD.

34. Historically, the City and Local 215 have engaged in collective bargaining for many years and have entered into contracts known as collective bargaining agreements that set forth agreements regarding wages, hours, conditions of employment, retirement and pension benefits, and disability benefits.

35. These collective bargaining agreements have provided Plaintiffs and Local 215 members contracted benefits. *Inter alia*, the collective bargaining agreements set forth provisions governing the Base Salary and Pension Benefits of Plaintiffs.

36. Local 215 and the City engaged in collective bargaining leading up to the ratification of the Collective Bargaining Agreement Between the City of Milwaukee and Local 215 (2013–2016) (“CBA”).

37. Upon information and belief, during the collective bargaining process, the parties expressed an intention to increase Local 215’s base salary with two (2) separate 2.9% salary increases (“pension offset payment”).

38. Upon information and belief, during the collective bargaining process, the parties expressed an intention to make the pension offset payment a pensionable component of Local 215 members' base salary.

39. The parties ratified the CBA on November 30, 2016.

40. Article 23 of the CBA, *Pension Benefits*, provides in pertinent part:

Effective Pay Period 1, 2015 (December 21, 2014), firemen enrolled as members of the retirement system, and for whom the City had made the member contribution on their behalf, shall contribute 3.5% of their earnable compensation toward the member contribution. Commencing Pay Period 1, 2016 (December 20, 2015), such firemen shall contribute 7.0% of their earnable compensation established as the member contribution.

CBA, Article 23.

41. Article 10 of the CBA, *Base Salary*, provides in pertinent part:

C. Bi-weekly rates for employees hired prior to October 3, 2011:

Commencing Pay Period 1, 2015, employees hired prior to October 3, 2011 who make the member contribution in accordance with the provisions of Article 23 of this Agreement shall receive a 2.9% pension offset payment. The pension offset payment to the employee will continue to be made as long as the employee makes the member contribution. If the employee does not make the member contribution, the 2.9% pension offset payment will no longer be paid to the employee. The pension offset payment made to such eligible employee shall be base building and pensionable.

CBA, Article 10, Section C.

Commencing Pay Period 1, 2016, employees hired prior to October 3, 2011 who make the member contribution in accordance with the provisions of Article 23 of this Agreement shall receive an additional 2.9% pension offset payment. The pension offset payment to the employee will continue to be made as long as the employee makes the member contribution. If the employee does not make the member contribution, the 5.8% pension offset (2015 offset and 2016 offset) payment will no longer be paid to the employee. The pension offset payment made to such eligible employee shall be base building and pensionable.

CBA, Article 10, Section C.

42. Pursuant to Article 10 of the CBA, Plaintiffs make a member pension contribution totaling 7% of their earnable compensation. In turn, members hired prior to October 3, 2011 receive two (2) separate 2.9% salary increases, resulting in a total 5.8% pension offset payment.

43. The pension offset payments are a pensionable component of the Local 215 members' Base Salary as defined in Article 10 of the CBA.

44. Upon information and belief, the parties intended to use the pension offset component of the Local 215 members' base salary in order to calculate the current annual salary for those who received DDR after January 1, 2015.

Plaintiffs' Contributions and Offset Payments

45. Plaintiffs were hired prior to October 3, 2011 and made the pension contribution pursuant to Article 23 of the CBA. In turn, Plaintiffs received the pension offset payment pursuant to Article 10 of the CBA.

46. Specifically, Plaintiffs made the pension contribution payment in the first pay period of 2015 and/or 2016, and, in turn, received the 2.9% offset payment on January 1, 2015, and/or January 1, 2016.

Opinion Letter from the Office of the City Attorney

47. On February 16, 2017, the Office of the City Attorney for the City of Milwaukee ("City Attorney") drafted an opinion letter addressed to Bernard J. Allen, the Executive Director for ERS. This letter was titled "Re: Effect of Pension Offset Payment on Police and Fire Duty Disability Retirement Allowance" ("Opinion Letter"). A true and correct copy of the Opinion Letter is attached as **Exhibit A**.

48. In the Opinion Letter, the City Attorney stated that, in its opinion, “the 5.8% pension offset payment is not includable in ‘current annual salary’ as that phrase is used in Chapter 36 of the City Charter.” Opinion Letter, p. 1.

49. In the Opinion Letter, the City Attorney further stated that:

[I]t is our understanding that seventeen (17) former MPSO members who are currently receiving DDR benefits are receiving the 5.8% pension offset payment included in the calculation of their DDR allowance . . . We believe the increased payments were made in error. Therefore, based on this opinion, pursuant to MCC 36-11-2 the board should correct the error and adjust these beneficiaries’ allowance accordingly.

Opinion Letter, p. 4.

50. Upon information and belief, the Defendants have adopted the City Attorney’s position and as a result, the offset payment set forth in Article 10 of the CBA is excluded from the calculation of “current annual salary” as used in MCC 36-05-3-c-1-a.

51. Therefore the Defendants are unlawfully depriving the Plaintiffs of compensable DDR benefits, which are calculated at “75% of the current annual salary for such position [as] held at the time of such injury.” MCC 36-05-3-c-1-a (emphasis added).

Notice of Injury and Claim for Damages

52. A Notice of Claim and Claim for Damages for each above named Plaintiff were duly served on the City and ERS pursuant to Wis. Stat. § 893.80. At all times material, the Defendants had actual notice of the injuries and damages herein and thoroughly investigated the same.

53. By letter dated July 27, 2018, ERS disallowed the Plaintiffs’ claims pursuant to Wis. Stat. § 893.80(1g).

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

54. Plaintiffs restate and reallege Paragraphs 1 through 53 of this Complaint.
55. The CBA represents a binding contract between Local 215 and the City.
56. The CBA was ratified through the collective bargaining process.
57. Upon information and belief, the parties mutually agreed that Local 215 members would receive the 5.8% pension offset payment in exchange for the members' contribution to the pension system.
58. The Local 215 members' payments into the pension system constitute consideration for the pension offset payment.
59. The CBA states that the pension offset payment is a pensionable component of the Local 215 members' base salary.
60. By excluding the pension offset payment from the calculation of the Local 215 members' DDR benefits, the Defendants have breached the contract.
61. The Defendants' actions have caused damages to the Plaintiffs, including but not limited to, lost retirement, pension, and DDR benefits.

SECOND CAUSE OF ACTION
DECLARATORY RELIEF REGARDING MILWAUKEE CITY
CHARTER SECTION 36-05-3-c-1-a AND THE PARTIES' COLLECTIVE
BARGAINING AGREEMENT

62. Plaintiffs restate and reallege paragraphs 1 through 61 of this Complaint.
63. At all material times, the City and Plaintiffs were subject to the terms of the MCC.
64. At all material times, the City and Plaintiffs were subject to the terms of the CBA.

65. Section 36-05-3-c-1-a of the MCC states that DDR benefits shall be “an amount equal to 75% of the current annual salary for such position which he held at the time of such injury.” MCC 36-05-3-c-1-a (emphasis added).

66. Article 10 of the CBA defines the pension offset payment as a pensionable component of the members’ “Base Salary.”

67. Plaintiffs seek a Declaratory Judgment clarifying their legal rights under MCC 36-05-3-c-1-a and the CBA.

68. Specifically, Plaintiffs seek a Declaratory Judgment that the pension offset payment described in Article 10 of the CBA constitutes “current annual salary” as set forth in Section 36-05-3-c-1-a of the MCC, and must be included in the calculation of Plaintiffs’ DDR benefits.

69. Plaintiffs have a legally protectable interest in receiving the full value of their DDR benefits, as defined in the MCC and bargained for in the CBA.

70. The Opinion Letter clearly sets forth the Office of the City Attorney’s analysis regarding the “Effect of Pension Offset Payment on Police and Fire Duty Disability Retirement Allowance.”

71. Upon information and belief, the Defendants have already withheld the pension offset payment from City DDR recipients, including Plaintiffs.

72. Based on the foregoing, this matter is ripe for judicial determination.

73. Plaintiffs seek a declaration that the reduction of DDR benefits by the Defendants’ refusal to count the 5.8% wage increase in the calculation of the amount of DDR benefits as described herein is a violation of MCC 36-05-3-c-1-a and by derivation the collective bargaining agreements between Local 215 and the City.

THIRD CAUSE OF ACTION
CLAIM FOR VIOLATION OF ORDINANCE

74. Plaintiffs restate and reallege paragraphs 1 through 73 of this Complaint.

75. Plaintiffs have been injured as a result of the reduction to their DDR benefits by the Defendants.

76. The reduction in DDR benefits described herein violates MCC 36-05-3-c-1-a.

77. Plaintiffs have each suffered losses as a direct result of the removal of the 5.8% wage increase from the current calculation of their DDR benefits by the Defendants. These losses are ongoing and unliquidated.

FOURTH CAUSE OF ACTION
INJUNCTIVE RELIEF

78. Plaintiffs restate and reallege paragraphs 1 through 77 of this Complaint.

79. Plaintiffs have a reasonable probability of ultimate success on the merits.

80. Because the Defendants are unlawfully withholding benefits from the Plaintiffs, it is imperative that the Defendants be enjoined from further depriving the Plaintiffs from these benefits.

81. If injunctive relief is not granted, Plaintiffs will suffer irreparable financial harm.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully request orders and judgments against Defendants as follows:

A. Enter a declaratory judgment that the actions of Defendants described above violated the parties' CBA and violated the MCC.

B. Enter an order and judgment that Defendants must compensate Plaintiffs with the unlawfully withheld DDR benefits.

C. Enter permanent injunctive relief enjoining Defendants from breaching its agreements with Plaintiffs by excluding the pension offset payment from calculations of Plaintiffs' DDR benefits and unlawfully withholding these benefits.

D. Award benefits for the full amount of Plaintiffs' damages to be determined by a jury.

E. Award Plaintiffs their reasonable attorney's fees in prosecuting this action.

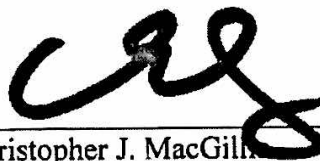
F. Award Plaintiffs their costs and disbursements in prosecuting this action.

G. Such other relief as it may deem just, equitable, or appropriate.

PLEASE TAKE NOTICE THAT PLAINTIFFS DEMAND A TRIAL BY A TWELVE (12) PERSON JURY IN THE ABOVE MATTER.

Dated at Wauwatosa, Wisconsin, this 8th day of August, 2018.

MacGILLIS WIEMER, LLC
Attorneys for Plaintiffs, Local 215, et al.



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