Andy Schor
Mayor

City Hall - 9th Floor
124 W. Michigan Avenue
Lansing, MI 48933-1694
PH: 517.483.4141 – FAX: 517.483.6066
Lansing.Mayor@lansingmi.gov

OFFICE OF THE MAYOR
CITY OF LANSING, MICHIGAN

TO: Ways and Means Committee

FROM: Andy Schor, Mayor

DATE: March 15, 2018

SUBJECT: Teamsters 580/243 retiree Healthcare

I have been asked by the Ways and Means Committee to look into how the City's Finance Department handles retirement healthcare for former employees of the Teamsters 580 (now 243) union.

More specifically, I am told that the committee's impetus for requesting my review has been its investigation into claims made by a retiree, Ms. Denise Estee, and union concerns expressed in support of these and similar retirees' claims. I understand that Ms. Estee has made a number of claims over a number of years regarding how her Teamster 580 benefits are determined for retiree healthcare coverage, including calculations and contributions of her retiree share of health insurance. I also understand that prior to my taking office, these matters have been the subject of extensive review by the City Attorney and that Mr. Smiertka has provided written responses to both this committee and Ms. Estee.

Finally, I understand that the committee's request is for my "fresh look" at the issues and to see if I am willing to reverse prior City administrative responses and actions on them.
In preparation for this review, I have been briefed by the Finance Director on the contents of the Teamsters 580 CBA's retiree healthcare provisions from 2003 to the present. I have also been provided and reviewed correspondence to Ms. Estee and the committee and have discussed the matter at length with the Finance Director and the City Attorney. I have also met with union officials to hear their thoughts and perspectives. Additionally, I have sought the counsel and advice of my new Chief Labor Negotiator, Nicholas Tate.

As I understand the claims of both Ms. Estee and the union, they are focused on the meaning and interpretation of the 2003-2007 Teamsters 580 collective bargaining agreement (CBA) with the City. At its most basic level, Ms. Estee believes she obtained a specific vested healthcare benefit when she retired in 2005 and that the benefit would be the same that she had as an employee immediately before she retired, including insurance coverage and premium costs. It is also her position that she would retain this benefit and it would continue unchanged for her lifetime.

While I know there is a lot of background and CBA history that Ms. Estee has brought up, the City Attorney has provided information, via the July 31, 2017 letter to the Ways and Means

Committee, that the current state of the law regarding CBA's requires that "[w]hen the language of the contract is clear and unambiguous, interpretation is limited to the actual words used, and an unambiguous contract must be enforced according to its terms." I concur with this legal principle, which tells us how we are to read the language in the CBA concerning retiree healthcare. It requires that if the language expresses an understanding clearly and unambiguously, then that expression is to control and my inquiry is to proceed no further. Although I do not have personal knowledge of the contract negotiation that took place in reaching the 2003-2007 CBA, under this legal contract principle, if the CBA language is clear, such unwritten background is legally inappropriate for me to investigate or consider.

The statement of what the retiree healthcare benefits are to be under the 2003-2007 CBA appears to be stated clearly and unambiguously on its face, that is, the language is clear to me that retirees' healthcare benefits are to be the same ones that active Teamsters 580 employees receive and, as such, will change for the retirees if and when they change for the active employees.

In addition to my determination that the healthcare benefits in the CBA for retirees is clear, I am advised by my Chief Labor Negotiator, that healthcare promises in CBA's have very recently been the subject of significant decisions at the federal court level. The recent court decisions involving the 6th federal circuit court of appeals, of which Michigan is a part, and includes one United States Supreme Court case, decided February 20, 2018. The two 6th Circuit US Court of Appeals cases were decided September 1, 2017 and March 8, 2018. Mr. Tate advises me that the common thread in these cases is that promised benefits in CBA's all terminate at the end of the CBA's general duration clause unless there is clear specific language that unequivocally states the benefit was vested or will last longer than the term of the CBA. This was also the conclusion found by all parties, including labor, by the state Responsible Retirement Reform for Local Government Task Force which I served on and issued recommendations last year. Mr. Tate indicated to me that such a clear statement that Ms. Estee's claimed benefit levels are fixed in the CBA and will survive the duration of the CBA is nonexistent. Because such vesting language is lacking, the duration clause of the Teamsters 580 2003-2007 CBA controls. By analogy, the duration clause would also extinguish any claims Ms. Estee makes to extend certain benefit levels beyond the term of the CBA. Mr. Tate also advises me that the unambiguous text of the CBA's prohibit any contract interpretation that relies on outside extrinsic evidence on which Ms. Estee relies to support her arguments.

While I understand the claims of Ms. Estee and other similar Teamsters 580 retirees, and know they are not made in bad faith, I am bound by the law presented to me and the clear statements of the City's obligation contained in the CBA's. Therefore, I consider the proper and responsible course of action for my administration is to follow the opinions of the Finance Director, City Attorney and Chief Labor Negotiator on these issues. I therefore, will not recommend a change in practice regarding Teamster 580 healthcare administration.

I wish to thank the committee for the opportunity to review this important matter.

Sincerely,

Andy Schor
Mayor

Andy Schor, Mayor

City of Lansing
Finance Department

TO: Andy Schor, Mayor

FROM: Angela Bennett, Finance Director

DATE: February 2, 2018

SUBJECT: Teamster 580/243 Retiree Healthcare Questions

For some time now, questions have been raised in the Ways and Means committee meetings regarding administration of retiree healthcare for employees that retired under Teamster 580 (now Teamster 243) collective bargaining agreements (CBAs), most prominently by Ms. Denise Estee. Ms. Estee filed claims with the City Attorney's Office, the claims were subsequently denied, and City Attorney Jim Smiertka provided an explanation of the claims denials to the Ways & Means Committee in a memo dated July 31, 2017. As we have discussed, the Ways and Means Committee is seeking a review and explanation of the events and Ms. Estee's ultimate claim denial. Per your request, this memo serves to provide background on this issue.

Article 8, Section 7H of the 2003-2007 Teamster 580 collective bargaining agreement (CBA) included the following relevant language regarding retiree healthcare (relevant language underlined for reference only):

> Eligible retirees and eligible members of the City's Defined Contribution Money Purchase Plan (DCMPP) shall be covered by the same insurance as active bargaining unit members; However, Blue Cross/Blue Shield Traditional healthcare insurance will remain available as an option to eligible retirees and eligible members of the DCMPP. Any additional costs for Traditional coverage in excess of the base plan will be paid by the retiree.

Ms. Estee retired in 2005, while 2003-2007 CBA was in place.

In 2010, when subsequent healthcare changes were ratified in the subsequent collective bargaining process, it was discovered that the above-referenced provision for retiree healthcare coverage to follow active employee coverage had, by oversight, not been implemented by the City. In light of that information, retirees who had retired after February 20, 2004 were notified that their healthcare would be changed to that of active employees, and the healthcare changes were subsequently made in May, 2010.

As explained in an August 19, 2010 letter to Ms. Estee (attached), it appears the February 20, 2004 date was chosen because February 20, 2004 "began [the City's] new [healthcare] plan year at that time and this was the first February 20th that occurred after ratification of the 2003-2007 agreement."

In addition to some healthcare plan changes, the Teamster 580 agreement ratified in 2010 also included language that capped retiree premium sharing to the lesser of one percent (1%) of a retiree's annual pension benefit or $200/$500/$650 annually and was later changed to the lesser of 1% or $125/$225/$325 in the 2013-2016 agreement and which remains in the 2016-2019 agreement. In Ways & Means meetings, Ms. Estee and others have asserted that all healthcare payments by retirees should be limited by the one-percent (1%) cap. It is important to note, however, that the CBA language is specific in the application of the one percent (1%) cap:

> "...a person who is receiving retirement healthcare, shall pay the same premium share as the active employees by deduction from his or her pension payment, except that the payment shall be capped at one percent [or the lesser of...]"

The 1% cap language does not apply to a retiree's voluntary election of a higher-benefit/more expensive plan, as indicated by the above-stated sentence from the 2003-2007 CBA and continued through the 2016-2019 CBA:

"Any additional costs for Traditional coverage in excess of the base plan will be paid by the retiree."

The concept is further supported by language in the active employee healthcare section:

> Employees may elect to "buy-up" to their choice of certain optional City group insurance plans by selecting and enrolling in the chosen optional plan and paying at the employee's own expense the difference between the optional plan premium cost and the corresponding Option 1 Plan (BCBSM or PHP) City premium cost.

Complicating the issue, from 2010 to 2015, the amounts being used to determine premium sharing and/or buy-up amounts to higher-benefit plans were based on retiree healthcare plan rates. In the course of legal review, then-City Attorney/Interim Human Resources Director Janene McIntyre issued an opinion dated March 18, 2015 that due to the provision that retirees "shall be covered by the same insurance as active bargaining unit members," retiree premium sharing and buy-up amounts should be the same amounts as those charged to active employee (i.e. based on active employee healthcare rates, rather than retiree healthcare rates). Accordingly, those rates were changed in April, 2015, and reimbursements for the difference of costs up to that point were issued to Ms. Estee and other affected Teamster 243 retirees in September, 2015. That refund was for the rate differential only, and had nothing to do with the "one percent cap" provision.

As noted above and explained by City Attorney Smiertka's July 31, 2017 memo, Ms. Estee's claims have been reviewed by the City Attorney's Office and have all been denied. I hope this memo serves to answer questions about the various provisions and timeline of events as they relate to this matter.

CITY OF LANSING
DEPARTMENT OF HUMAN RESOURCES

124 W. Michigan Ave
4th Floor, City Hall
Lansing, Michigan 48933

Benefits/Classifications
Labor Relations/Recruitment
Safety/Selection/Training
Worker's Compensation

(517) 483-4004 (Voice/TDD)
(517) 483-4490 (Jobs Hotline)
(517) 483-6064 (General Fax)
www.lansingmi.gov (Website)

Virg Bernero, Mayor

August 19, 2010

Denise Estee
2923 Greenbriar Avenue
Lansing, MI 48912

Re: Teamster Local 580 Clerical, Technical, Professional Unit (Retiree Healthcare Benefits)

Dear Ms. Estee,

This letter is in response to your correspondence dated April 14, 2010 regarding your Teamster Local 580 Clerical, Technical, Professional Unit retiree healthcare benefits. I apologize for the delay in responding to your inquiry and trust that this letter is responsive to you inquiry after researching the issue. In your correspondence, you inquire why February 20, 2004 was selected as the date to make effective the provision that retirees follow active employees with healthcare benefit changes.

We selected retirees on or after February 20, 2004 as the date to go back to because the 20th of the month of February began our new plan year at that time and this was the first February 20th that occurred after ratification of the 2003 - 2007 agreement. This same agreement provided that no changes would be made to current retirees until February 20, 2006. However, the changes were not made due to an oversight.

Subsequently, negotiations for the 2007 – 2012 agreement resulted in changed in healthcare benefits and the changes that had inadvertently not been made previously were made at that time. So, we made them during the implementation of the changes resulting from negotiation of the most recent contract ratified in January 2010. The changes were effective May 1, 2010 because that was the soonest BCBSM could make the changes effective. Simply put, we selected February 20, 2004 as the date to implement all of these changes to retiree benefits because it was logical to select that date since other changes were required as well.

Thank you for your inquiry. If you have further questions or require additional information, please do not hesitate to contact me directly at (517) 483-4016.

Sincerely,

Susan C. Graham
Labor Relations Manager

Cc: Jerry Ambrose
Terri Singleton
Mark Colby
Lisa Thelen
file

City of Lansing
OFFICE OF THE CITY ATTORNEY
James D. Smiertka, City Attorney

TO: Ways and Means Committee

FROM: James D. Smiertka

DATE: July 31, 2017

SUBJECT: Denise Estee Claims

I have been asked to provide a written response to this committee regarding a series of claims made by Denise Estee about her retirement healthcare insurance premium payments. As I understand Ms. Estee's claims, they all have a common thread. It is her belief that pursuant to the Union (Teamsters 580) 2003-2007 collective bargaining agreement (CBA or the Contract), which was in place when she retired in 2005, that she vested for unalterable healthcare benefits. She also claims that her insurance premium cost in place in 2005, were frozen at the level in place when she retired. To support her claims, Ms. Estee says the City/Employer must look to historical background outside the CBA promises in the 2003-2007 contract.

In evaluating Ms. Estee's claim, the starting point is the actual contract itself. If the CBA language is clear, it controls the interpretation. It is Michigan contract law that a party may only look beyond a contract expressed terms if it is ambiguous.

> A contract must be interpreted according to its plain and ordinary meaning. When the language of the contract is clear and unambiguous, interpretation is limited to the actual words used, and an unambiguous contract must be enforced according to its terms. *Ajax Paving Indus,* 289 Mich App at 644 (internal citations omitted). Therefore, "[w]here a contract is to be construed by its terms alone, it is the duty of the court to interpret it …" *Klapp v United Ins Group Agency, Inc,* 468 Mich 459, 469; 663 NW2d 447 (2003) (internal quotation marks and citation omitted).

These principles of contract law also apply to the CBA. "The foundational principle of our contract jurisprudence is that parties must be able to rely on their agreements, which applies no less strongly to collective bargaining agreements." *Macomb Co v. AFSCME Council* 25, 494 Mich. 65, 80; 833 NW2d 225 (2013).

Here, there is nothing in the CBA language that is unclear. The CBA states unequivocally "eligible retirees…. Shall be covered by the same insurance as active bargaining unit members…" This CBA language starts and ends the discussion. Had the parties to the CBA intended a different meaning –

the meaning Ms. Estee asserts – they could have easily expressed this by limiting the quoted CBA statement. They could have added at the end of the statement qualifying text, such as "under this CBA" or "at the time this contract is ratified" or some similar text that established the limited meaning Ms. Estee wants to advance. However, this is not the case.

Simply put, the clear and unambiguous meaning of "eligible retirees ... shall be covered by the same insurance as active bargaining members" is that retirees are to receive what the active members of the union receive for healthcare. Because the active union members will receive healthcare under current CBAs, the retirees' health care will change from time to time to match the current benefit. For Ms. Estee, this reserves in the contract the ability to change the healthcare she is entitled to receive. There is nothing in the 2003-2007 CBA that says a specific level of healthcare will forever be vested.

Since the ratification of the 2003-2007 CBA, there has been much litigation concerning retirement healthcare provision in collective bargaining agreements. This has resulted in further clarification of the law in this area. The clarification started when the United States Supreme Court decided *M&G Polymers USA, LLC v Tackett,* 574 US __; 135 S CT 926; 190 L Ed 2d 809 (2015).

Since *Tackett,* both Michigan and Federal Courts have cited it and applied its legal principles. In the Michigan case of *Harper Woods Retirees Ass'n v Harper Woods,* 312 Mich App 500 (2015), the court provided a synoptic review of the state of Michigan law. Because it is instructive, *Harper Woods* is quoted here at length:

> In *M&G Polymers USA, LLC v Tackett*, 574 US __; 135 S Ct 926; 190 L Ed 2d, 809 (2015) the United States Supreme Court rejected the Sixth Circuit's decision in *UAW v Yard-Man, Inc.* 716 F2d 1476 (CA 6, 1983), which held that in the absence of contrary extrinsic evidence, courts should presume that retiree benefits provided in a CBA are guaranteed for the lifetime of any employee who retires under the CBA. The *Yard-Man* court "inferred that parties would not leave retiree benefits to the contingencies of future negotiations, and that retiree benefits generally last as long as the recipient remains a retiree ... [which] 'outweigh[ed] any contrary implications derived from a routine duration clause terminating the agreement generally.'" *Tackett*, 574 US at __, quoting *Yard-Man*, 716 F2d at 1482-1483 (second alteration in original). Thus, although the *Yard-Man* court recognized that "traditional rules of contractual interpretation require a clear manifestation of intent before conferring a benefit or obligation," the duration of the conferred benefit was not subject to this conventional restraint. *Tackett,* 574 US at __ (citation and quotation marks omitted).
>
> In *Tackett,* the Supreme Court overruled *Yard-Man,* holding that a presumption of lifetime vesting of retirement benefits violates traditional rules of contract interpretation. The Supreme Court explained that under traditional contract interpretation principles, courts should not construe ambiguous writing to create lifetime promises and that generally, "'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Tackett,* 574 US at __, quoting *Litton Fin Printing Div, Litton Business Sys, Inc v NLRB,* 501 US 190, 207; 111 S Ct 2215 L Ed 2d 177

(1991). The Supreme Court noted that traditional contract principles do not "prelude the conclusion that the parties intended to vest lifetime benefits for retirees" because "a collective-bargaining agreement [may] provid[e] in explicit terms that certain benefits continue after the agreement's expiration." *Tackett,* 574 US at __, (citation and quotation marks omitted; alterations in original). However, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." *Id.* at __. We conclude that the Supreme Court's reasoning in *Tackett* is consistent with Michigan's contract jurisprudence regarding CBAs, which applies with equal force in both the public and private sectors in this regard.

Also, recently the Michigan Supreme Court had the opportunity to review and adopt principles announced in *Tackett,* albeit in a case involving coordination of workers comp. benefits with disability pension benefits involving postretirement changes made because of collective bargaining. In *Arbuckle v Gen Motors, LLC,* 499 Mich 521 (2016), the court chose to quote from *Tackett* and apply as governing its decision the following:

> Indeed, basic principles of contract interpretation instruct that "courts should not construe ambiguous writings to create lifetime promises." For "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life."

The court also included within the footnote to the last sentence above, the following about what it takes to "vest" benefits:

> See also *Bland v Fiatallis North America, Inc,* 401 F3d 779, 784 (CA 7, 2005) ("Upon vesting, benefits become forever unalterable, and because employers are not legally required to vest benefits, the intention to vest must be found in 'clear and express language' in plan documents."), citing *Inter-Modal Rail Employees Ass'n v Atchinson, T & SF R Co,* 520 US 510, 515; 117 S Ct 1513; 137 L Ed 2d 763 (1997); *Vallone v CNA Fin Corp,* 375 F3d 623, 632, (CA 7, 2004) (stating that "a modification that purports to vest welfare benefits must be contained in the plan documents and must be stated in clear and express language"); *Sengpiel v BF Goodrich Co,* 156 F3d 660, 667 (CA 6, 1998) (stating that the intent to vest must be found in the plan documents and stated in clear and express language); *UAW v Skinner Engine Co,* 188 F2d 130, 139 (CA 3, 1999) (stating that an employer's commitment to vest welfare-plan benefits must not be inferred lightly and must be stated in clear and express language).

The principles announced by the courts above are directly applicable to Ms. Estee's claims. She seeks to interpret the CBA as establishing a certain level of retirement healthcare to which she would be entitled for life. She does so without any clear statement to that effect in the CBA language. The CBA text says nothing about any level being "vested" nor does the document state such a benefit level in clear expressed language. Her interpretation cannot be inferred. In fact, the clear expression in the CBA provides exactly the opposite conclusion.

The plain language of the CBA provides that retirees under the 2003-2007 contract will have their healthcare benefit adjusted based upon active bargaining unit employees benefits. The level of

healthcare for retirees becomes that which active bargaining members receive. The CBA language explicitly has left the retiree benefits to the contingencies of future union negations and CBAs. [1] Ms. Estee's CBA claims are, therefore, without merit and are denied.

More recently, Ms. Estee has raised a second claim. She feels she has vested right to retirement healthcare because of a personnel rules pamphlet she received in 1971. This claim also fails for a number of reasons.

First, Ms. Estee did not retire under these rules. She continued in the City's employment and became a member of a union before she retired; thereafter, any claim she may have made to a contract right before union membership was relinquished unless incorporated clearly into the CBA. Nothing in the CBA governing union contracts benefits grandfathered the previously mentioned healthcare. The CBA rights to healthcare are those in place when she retired. Ms. Estee's contract rights are thus limited to those in the CBA in effect at that time. What those rights actually were is the discussion of Ms. Estee's first claim above.

Second, we are not aware that there is anything in the 1971 pamphlet that says it was intended to establish employee contract rights in the benefits described for someone who did not retire at that time. It says nothing about the benefit described being "vested" or that the pamphlet forms a relationship, such as a "contract" or a "covenant." See *Studier v Michigan Public Sch Employees Retirement Bd,* 472 Mich 642, 663-664 (2005). The pamphlet was not intended to create a contract nor did it create any contract rights.

Ms. Estee also raises a third claim that in some way a 1969 resolution describing healthcare benefits could never be altered or changed.

For the reason that Ms. Estee's pamphlet argument fails, her contention that the 1969 resolution provides an unalterable benefit must also fail. In Michigan, there is a strong presumption that statutes do not create contractual rights. *Studier,* 472 Mich at 661. As such, "in order for a statute to form the basis of a contract, the statutory language must be plain and susceptible of no other reasonable construction than that the legislature intended to be bound to a contract." *Id.* at 662.

The aforesaid principle applies equally to ordinances as it does to statutes. But here, Ms. Estee does not even point to an ordinance. Her claim is based on a resolution, which by its very nature is for a short-term purpose and not intended to be lasting. *McKane v City of Lansing,* No. 96-2228, 1998 WL 25002 (6th Cir Jan. 14, 1998).

Neither the pamphlet nor the resolution form a contract that provides a right to retirement healthcare for Ms. Estee.

For the reasons provided in this memo, all Ms. Estee's claims are once and for all denied.

1. The legal contract principles in light of *Tackett* and its progeny also supports the conclusion that the continuing thread of CBA benefits was allowed to be broken by the Union. The 2003-2007 CBA was terminated by the Union and not extended. This resulted in healthcare benefits for retirees being further limited by new CBA provisions.

City of Lansing
OFFICE OF THE CITY ATTORNEY
James D. Smiertka, City Attorney

December 12, 2016

Denise A. Estee
2923 Greenbriar Ave.
Lansing, MI 48912

Re: Claim filed June 16, 2016 related to retiree health care premiums - $4,278.29 as of June 30, 2016

Dear Ms. Estee,

We have reviewed your claim referenced above related to retiree health care premiums being deducted from your monthly pension. Your claim indicates that you retired in August 2005 under a collective bargaining agreement with the term of February 1, 2003 to January 31, 2007. You state in your claim that [the] "City did not reserve the right to change my level of benefits or premium cost to me."

In response to your claim, this office has conducted a thorough review of this matter including material supplied by you, the pertinent collective bargaining agreement and related documents, interviews with appropriate personnel, and legal case decisions.

This review has led us to the conclusion that the language in the applicable collective bargaining agreement is to be construed according to its plain sense and meaning and the City has the right to adjust your benefits in the manner it has; thus, your claim is denied.

Lastly, please find enclosed a copy of the severance/separation agreement and release you signed upon your exit from City Service. This document bars the claim you are asserting.

Sincerely and Best Wishes,

J D Smiertka

James D. Smiertka
City Attorney

Enclosure

Fifth Floor, City Hall • Lansing, Michigan 48933 • (517) 483-4320 • Fax (517) 483-4081 • cityatty@lansingmi.gov