

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE**

Wauwatosa Peace Officers' Association et al vs. City of
Wauwatosa

**Electronic Filing
Notice**

Case No. 2023CV001693
Class Code: Declaratory Judgment

FILED
03-07-2023
Anna Maria Hodges
Clerk of Circuit Court
2023CV001693
Honorable Christopher R.
Foley-14
Branch 14

CITY OF WAUWATOSA
7725 WEST NORTH AVENUE
WAUWATOSA WI 53213

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City Clerk's Office

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If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4140.

Milwaukee County Circuit Court
Date: March 7, 2023

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STATE OF WISCONSIN :: CIRCUIT COURT :: MILWAUKEE COUNTY

**WAUWATOSA PEACE OFFICERS'
ASSOCIATION,**
1700 North 116th Street
Wauwatosa, WI 53213,

JOHN MILOTZKY,
1700 North 116th Street
Wauwatosa, WI 53213,

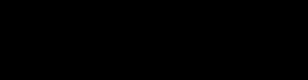
Case Type: Declaratory Judgment

Case Code: 30701

STEVEN MISZEWSKI,
1700 North 116th Street
Wauwatosa, WI 53213,

MARIA ALBITER
1700 North 116th Street
Wauwatosa, WI 53213,

TIMOTHY WARREN,



Plaintiffs,

v.

CITY OF WAUWATOSA
7725 West North Avenue
Wauwatosa, Wisconsin 53213,
Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal

action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to Cermele & Matthews, S.C., plaintiff's attorneys, whose address is 6310 West Bluemound Road, Suite 200, Milwaukee, Wisconsin 53213. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated in Milwaukee, this 7th day of March, 2023.

CERMELE LAW, S.C.

Attorneys for Plaintiffs, Wauwatosa Peace Officers' Association, John Milotzky, Steve Miszewski, Maria Albiter and Timothy Warren

Electronically Signed by Jonathan Cermele

Jonathan Cermele

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STATE OF WISCONSIN :: CIRCUIT COURT :: MILWAUKEE COUNTY

WAUWATOSA PEACE OFFICERS'

ASSOCIATION,

1700 North 116th Street

Wauwatosa, WI 53213,

JOHN MILOTZKY,

1700 North 116th Street

Wauwatosa, WI 53213,

Case Type: Declaratory Judgment

Case Code: 30701

STEVEN MISZEWSKI,

1700 North 116th Street

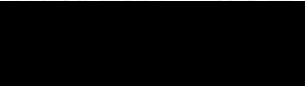
Wauwatosa, WI 53213,

MARIA ALBITER

1700 North 116th Street

Wauwatosa, WI 53213,

TIMOTHY WARREN,



Plaintiffs,

v.

CITY OF WAUWATOSA

7725 West North Avenue

Wauwatosa, Wisconsin 53213,

Defendant.

COMPLAINT

The above-named Plaintiffs, by their attorneys Cermele Law, S.C., and Jonathan Cermele, as and for the claims against the above-named defendant, allege and show to the court as follows:

PARTIES

1. Plaintiff, WAUWATOSA PEACE OFFICERS' ASSOCIATION ("WPOA"), is a labor organization within the meaning of §111.70(1)(h), Stats., with offices located at 1700 North 116th Street, Wauwatosa, Wisconsin and which, pursuant to the Wisconsin Municipal Employment Relations Act ("MERA"), §111.70, Stats., *et seq.*, has been recognized by the City of Wauwatosa as the exclusive bargaining representative for certain non-supervisory law enforcement officers of the Wauwatosa Police Department ("WPD"), all of whom are employees of the City of Wauwatosa.

2. Plaintiff, John Milotzky ("Milotzky") is an adult citizen of the State of Wisconsin, with a work address of 1700 North 116th Street, Wauwatosa, Wisconsin and was, at all times pertinent hereto, employed as a detective with the WPD, and subject to the terms, conditions and bargained for benefits of the 2019-2021 collective bargaining agreement ("labor agreement") between the City of Wauwatosa and the WPOA. Milotzky was hired by the City of Wauwatosa on February 19, 2001.

3. Plaintiff, Steve Miszewski ("Miszewski") is an adult citizen of the State of Wisconsin, with a work address of 1700 North 116th Street, Wauwatosa, Wisconsin and was, at all times pertinent hereto, employed as a police officer with the WPD, and subject to the terms, conditions and bargained for benefits of the 2019-2021 labor agreement. Miszewski was hired by the City of Wauwatosa on July 21, 2011.

4. Plaintiff, Maria Albiter ("Albiter") is an adult citizen of the State of Wisconsin, with a work address of 1700 North 116th Street, Wauwatosa, Wisconsin and was, at all times pertinent hereto, employed as a police officer with the WPD, and subject to the terms, conditions and bargained for benefits of the 2019-2021 labor agreement. Albiter was hired by the City of

Wauwatosa on September 5, 2019.

5. Plaintiff, Timothy Warren ("Warren") is an adult citizen of the State of Wisconsin, with a home address of [REDACTED] and prior to his retirement on July 6, 2022, was at all times pertinent hereto, employed as a detective with the WPD, and subject to the terms, conditions and bargained for benefits of the 2019-2021 labor agreement. Warren was hired by the City of Wauwatosa on July 29, 1998.

6. Defendant, City of Wauwatosa ("City") is a municipal corporation and political subdivision organized and existing under the laws of the State of Wisconsin, with its principal place of business, main offices, and mailing address located at 7725 West North Avenue, Wauwatosa, Wisconsin, 53213. The City is the employer of all law enforcement officers working at the WPD; a group that includes all plaintiffs named herein.

NATURE OF ACTION

7. Plaintiffs re-allege and re-assert paragraphs 1 through 6 above, as though fully set forth herein, and further allege as follows.

8. This action is brought under §806.04, Stats., Wisconsin's Uniform Declaratory Judgment Act, seeking a declaration as to the rights and obligations of the parties under the parties' labor agreement, and the recent decision from the Wisconsin Employment Relations Commission ("WERC"), *In Re City of Racine & Racine Police Association*, Case ID 53.0031, Case Type DR_M, Decision 39446.

9. This action is also brought to establish: a) the continuing contractual obligation of the City to provide deferred compensation in the form of "retirement contributions" related to the payment of health care coverage, as provided in the parties 2019-2021 labor agreement, and; b) that

the City committed a prohibited practice under §111.70(3)(a)5, Stats., by failing to adhere to a collectively bargained agreement, when it unilaterally removed language from the parties 2019-2021 labor agreement that “vested” the right of plaintiffs, and other similarly situated WPOA members, to receive retiree healthcare payments from the City upon retirement.

FACTS

10. Plaintiffs re-allege and re-assert paragraphs 1 through 9 above, as though fully set forth herein, and further allege as follows.

11. The WPOA and the City have been signatories to various collective bargaining agreements since at least 1980.

12. Since 1981, each of those labor agreements provided a bargained for promise for the City to make retiree healthcare payments of various amounts, depending on either when an employee would retire, or when an employee was hired.

13. For employees hired after January 1, 1992, but before January 1, 2008, the 2019-2021 labor agreement provided that “the City shall pay 95% of the health insurance premium in retirement.” Plaintiff Milotzky falls within this classification.

14. For employees hired after January 1, 2008, but before August 8, 2019, the 2019-2021 labor agreement provided that “the City shall provide one-half (50%) the total premium expense each year for the identical standard and major medical health coverage to every employee upon retirement at age 50.” Plaintiff Miszewski falls within this classification.

15. For employees hired after August 7, 2019, the 2019-2021 labor agreement provided that “the City shall provide a \$700 discount monthly to participate in the City’s insurance plan to the extent allowed by the plan or as a reimbursement toward the cost of premiums for another plan . .

.” Plaintiff Albiter falls within this category.

16. When the parties negotiated the 2019-2021 labor agreement, the City proposed to reduce its obligation to provide retiree healthcare payments for “new hires.”

17. In exchange for agreeing to that demand, the WPOA proposed that the labor agreement be modified to include language that expressly “vested” the City’s obligation to make payments to retirees for retiree healthcare.

18. Both proposals were agreed upon. As a result, beginning in the 2019-2021 labor agreement, all of the payments specifically required to be made by the City to retirees for retiree health care costs were expressly “vested.”

19. The issue of retiree healthcare was never addressed between the parties while bargaining the successor to the 2019-2021 labor agreement. Neither party made any proposal with respect to the article entitled “Retirement Contributions” – which contained the requirement to make retiree healthcare payments as well as the “vested” language at issue – nor did the parties discuss modifications to that provision as part of bargaining.

20. While the parties were in the midst of bargaining the successor to the 2019-2021 labor agreement, the WERC issued its decision in *City of Racine and Racine Police Association*. That decision concluded that the Racine contract contained provisions that constituted “prohibited subjects of bargaining” under §111.70(4)(mc)6, Stats., because, *inter alia*, they interfered with Racine’s statutory right to determine the “design and selection of healthcare coverage plans . . . for public safety employees.”

21. The language of the parties 2019-2021 labor agreement is dramatically different from the language in the *Racine* decision, and does not infringe on the City’s right to determine “the

design and selection of health care coverage plans . . . for public safety employees” in any manner.

22. After the City and the WPOA had agreed and approved the successor to the 2019-2021 labor agreement, the City nonetheless submitted a proposed 2022-2023 labor agreement which had completely removed any and all reference to the City’s obligation to make retiree healthcare payments – including the “vested” language contained therein – regardless of the fact that those obligations had been expressly “vested” in the 2019-2021 agreement, and the terms of that agreement did not contain the same provisions that the WERC had concluded were unlawful in the Racine decision.

FIRST CAUSE OF ACTION
“Breach of Contract”

23. Plaintiffs re-allege and re-assert paragraphs 1 through 22 above, as though fully set forth herein, and further allege as follows.

24. WPOA members have had a contractual right to ensure that the City paid retiree healthcare costs, in varying amounts, since at least 1981.

25. Payment of such healthcare costs constitutes deferred compensation.

26. Those specific payments were expressly “vested” in the parties 2019-2021 labor agreement.

27. The City nevertheless unilaterally removed all language requiring the payment of retiree healthcare benefits – including the language that expressly “vested” such payments – without Plaintiffs’ consent, and after the parties had agreed to (and approved) wage modifications in the 2022-2023 labor agreement.

28. By removing the contractual obligation to make retiree healthcare payments – and by removing the language that expressly “vested” such payments – without Plaintiffs’ consent, the City

breached the parties employment contract.

SECOND CAUSE OF ACTION
“Promissory Estoppel”

29. Plaintiffs re-allege and re-assert paragraphs 1 through 28 above, as though fully set forth herein, and further allege as follows.

30. The terms of the 2019-2021 labor agreement, and the benefits identified therein, constitute a promise of both parties. Namely, that WPOA members would perform work for the City in exchange for, *inter alia*, the City’s express “vested” obligation to provide retiree healthcare payments upon retirement.

31. The City reasonably expected that “vested” promise would induce action or forbearance of a definite and substantial character on the part of WPOA members.

32. That “vested” promise did, in fact, induce action or forbearance on behalf of WPOA members, as WPOA members performed services for the City and the WPD.

33. Injustice will be avoided only by enforcement of the express “vested” promise for the City to continue to provide retiree healthcare payments as required under the parties 2019-2021 labor agreement.

THIRD CAUSE OF ACTION
“Prohibited Practice” under §111.70(3)(a)5, Stats.

34. Plaintiffs re-allege and re-assert paragraphs 1 through 33 above, as though fully set forth herein, and further allege as follows.

35. Section 111.70(3)(a)5, Stats., makes it a “prohibited practice” for the City “[t]o violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting public safety employees . . .”

36. That is precisely what the City did when, after agreeing and approving the terms of the 2022-2023 labor agreement – without any bargaining or discussion whatsoever regarding the City’s continued obligation to provide healthcare coverage payment to employees upon retirement – the City unilaterally removed any and all such language from its proposed version of the 2022-2023 labor agreement.

COMPLIANCE WITH §893.80, STATS.

37. Plaintiffs re-assert and re-allege paragraphs 1 through 36 above, as though fully set forth herein, and further allege as follows.

38. On or about August 1, 2022, Plaintiffs adhered to their statutory responsibility by providing proper notice to the City, in that Plaintiffs submitted a written Claim and Notice of Circumstances.

39. The City failed to respond to that Claim and Notice of Circumstances within 120 days.

40. Plaintiffs therefore have statutory authority to proceed with this action.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the defendant as follows:

- A. Declare and enter judgment to the effect that the City breached the parties’ contract by unilaterally removing the language of the 2019-2021 labor agreement that had “vested” WPOA members’ right to receive healthcare payments, when the City drafted the 2022-2023 labor agreement.
- B. Declare and enter judgment to the effect that the doctrine of Promissory Estoppel requires the City to honor the “vested” nature of retiree healthcare payments as identified in the parties 2019-2021 labor agreement.
- C. Declare and enter a judgment to the effect that the City committed a prohibited practice under §111.70(3)(a)5, Stats. when, after the parties had agreed on and approved the terms of the 2022-2023 labor agreement, the City

unilaterally removed language that had “vested” WPOA members’ right to receive healthcare coverage payments upon retirement.

- D. Declare and enter judgment to the effect that: the “vested” right to receive retiree healthcare payments as identified in the parties 2019-2021 labor agreement constitutes a “wage” under §109.01(3), Stats.; the City’s unilateral removal of that language from the parties labor agreement has resulted in a “wage deficiency” under §109.01(4), Stats, and; that Plaintiffs are entitled to attorneys fees under §109.05, Stats., as well as appropriate penalties under §109.11(2), Stats.
- E. Declare and enter judgment to the effect that Plaintiffs are entitled to attorneys fees and the costs associated with this litigation under the Common Fund Doctrine.
- F. For such other relief as may be deemed just, equitable and appropriate by this Court.

Dated in Milwaukee, this 7th day of March, 2023.

CERMELE LAW, S.C.

Attorneys for Plaintiffs, Wauwatosa Peace Officers’ Association, John Milotzky, Steve Miszewski, Maria Albiter and Timothy Warren

Electronically Signed by Jonathan Cermele

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