

COUNCIL BILL NO.282788..... ORDINANCE NO.4653.....

AN ORDINANCE

AMENDING Ordinance No. 4022, in part, which adopted a new retirement plan for the employees of the City of Marietta, by reinstating certain death benefits which were contained in said retirement plan and subsequently deleted and reducing the group life insurance that was originally adopted at the time the death benefits were deleted.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: Ordinance No. 4022 which adopted a new retirement plan for the employees of the City of Marietta, Georgia, is hereby amended by reinstating the following provisions that provided certain death benefits in said retirement plan. These death benefits were deleted by Ordinance No. 4485 adopted July 9, 1986, and following a federal court suit in the United States District Court for the Northern District of Georgia, Atlanta Division, the court has indicated that said death benefits should be reinstated as they originally existed prior to the adoption of Ordinance No. 4485. The purpose of this ordinance is to comply with said federal court order dated April 12, 1988, by the Honorable Charles C. Moye, United States District Judge. Specifically, the following provisions are hereby reinstated:

Article II, Section 34, Section 35 which is attached hereto as Exhibit "A" and by reference made a part hereof; Article VII, Section 1, Section 2 which is attached hereto as Exhibit "B" and by reference made a part hereof; Appendix D which is attached hereto as Exhibit "C" and by reference made a part hereof; and Appendix E which is attached hereto as Exhibit "D" and by reference made a part hereof.

Section 2: The City of Marietta, Georgia, hereby further amends the group life insurance plan that was amended pursuant to Ordinance No. 4485 at the time the above mentioned death benefits were deleted. Said group life insurance plan is to be amended for the employees of the City of Marietta that will be eligible for the death benefits that are being reinstated by this ordinance by amending said group life insurance to the schedule of life insurance coverage that existed prior to the adoption of Ordinance No. 4485. Specifically, the additional coverage that was adopted by Ordinance No. 4485 is to be modified to

the coverage as it existed immediately prior to the passage of Ordinance No. 4485 in light of the fact that the death benefits are being reinstated pursuant to this Ordinance. The life insurance benefits adopted by Ordinance 4485 will not be modified for those employees that are participants in the Consolidated Retirement Plan (Ordinance 4532) since the death benefits reinstated by this Ordinance will not apply to those employees. The Mayor is hereby directed to execute the appropriate documents so as to adopt the modified group life insurance.

It is hereby declared to be the specific intention of this Ordinance that no participant or beneficiary shall be eligible or entitled to receive duplicate benefits from the City of Marietta, Georgia, by virtue of the passage of this Ordinance. Specifically, it is the intention of this Ordinance not to provide both the modified insurance that was enacted by Ordinance No. 4485 and the death benefits that were in place prior to July 9, 1986. Rather, it is the intention of this Ordinance to change the component parts of its retirement plan pursuant to the federal court order so as to reinstate the level of overall benefits that existed immediately prior to the passage of Ordinance No. 4485 in accordance with the Court's order (See page 9 of the federal court order).

Section 3: It is hereby further declared to be the intention of this Ordinance that if a claim is made by any employee or beneficiary for both the modified insurance that was adopted by Ordinance No. 4485 and also the death benefits as they existed prior to July 9, 1986, and a court subsequently determines that the life insurance as modified by Ordinance No. 4485 must be reinstated, then the death benefits adopted by this Ordinance will automatically be modified by an actuary so as to make up the overall benefits as they existed prior to July 9, 1986, using standard actuarial methods.

Section 4: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: This Ordinance shall become effective July 15, 1988

DATE: July 13, 1988

APPROVED: Nicholas Christian
Mayor and Council

ATTEST: Julian C. Harris
City Clerk

04/16
FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

APR 12 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

b6
LUTHER D. THOMAS, Clerk
By: *Alvin W.* Deputy Clerk

TROY D. CALLIHAN, et al., :
Plaintiffs, :
vs. : 1:87-cv-352-CAM
CITY OF MARIETTA, et al., :
Defendants. :

ORDER OF COURT

The above-styled case is before this court on the plaintiffs' motion for summary judgment. For the reasons set forth below, the court GRANTS the plaintiffs' motion.

STATEMENT OF FACTS

The defendant City of Marietta is a municipal corporation chartered by Act of the Georgia General Assembly, most recently by Ga. Laws 1977, p. 3541. Through defendant City Council members, Vicki Chastain, Scott Craddock, Paul Fields, Phillip Goldstein, John Hammond, Betty Hunter, Floyd Northcutt, and Bruce Shaw, acting in their official capacities, the City of Marietta has been a governing authority of Marietta, Georgia at all times relevant to this lawsuit.

At all times relevant to this law suit, plaintiffs Troy D. Callihan, Bobby R. Fuller, and Carey E. Whitlow were salaried employees of the City of Marietta Police Department, and plain-

tiffs Kenneth B. Boyd, Luther Brackett, John E. Garrett, William Hester and Harry G. Smith were salaried employees of the City of Marietta Fire Department.

On February 20, 1976, the City of Marietta contracted with Aetna Life Insurance Company for Group Life Insurance Policy Number GL-359788 (hereinafter "the Group Life Policy"), to take effect January 1, 1976, providing life insurance coverage to employees of the City of Marietta. Riders to the policy were executed December 13, 1976 and August 3, 1983.

The Group Life Policy was funded by the defendant City of Marietta, and employees were not required to contribute toward the premiums. For the death of an employee occurring prior to retirement, the maximum benefit payable under the Group Life Policy was \$40,000. For the death of an employee occurring after retirement, the maximum benefit payable under the Group Life Policy was \$20,000.

On February 8, 1984, the Mayor and Council of the City of Marietta enacted and adopted Ordinance No. 4022, which according to its purpose "constitute[s] the Retirement Plan of the City of Marietta, Georgia for the exclusive benefit of the City employees" Said Ordinance No. 4022 was amended by Ordinances No. 4084 and No. 4332 enacted September 12, 1984 and May 14, 1986, respectively. Ordinance No. 4022, as amended by Ordinances No. 4084 and 4332, is hereinafter referred to as "the Retirement Plan."

The Retirement Plan was funded exclusively by the defendant City of Marietta, and employees were not required to make any contributions thereto. Sections 34 and 35 of Article II and Sections 1 and 2 of Article VII of the Retirement Plan and the accompanying Appendices "D" and "E" thereto (read in the context of the entire Retirement Plan) defined survivor benefits payable to the beneficiary of a Participant in the Retirement Plan who died prior to or after retirement.

For the death of a Participant occurring prior to retirement, the benefit under the Retirement Plan was based upon salary, length of service, and the age of the survivor beneficiary, according to Table D of the Retirement Plan, as more fully described in the entire Retirement Plan. For the death of a Participant occurring after retirement, the benefit under the Retirement Plan was based upon the total benefit the Participant would have been expected to have received less the portion of the benefit the Participant had already actually received before death, according to Table E of the Retirement Plan, as more fully described in the entire Retirement Plan.

On July 9, 1986, the Mayor and Council of the City of Marietta enacted and adopted Ordinance No. 4485, amending the Retirement Plan, which amendment declares, in part: "by deleting Article II, Section 34, Section 35; Article VII, Section 1, Section 2, Appendix D; and Appendix E, in their entirety ... [and] provid[ing] a new schedule for life insurance coverage at

the rate of three times the annual salary, not to exceed \$180,000."

The amendments to the Retirement Plan made by Ordinance No. 4485 terminated all survivor benefits previously provided by the Retirement Plan. The amendments to the Group Life Policy authorized by Ordinance No. 4485 changed benefits thereunder to three times the salary, up to a maximum of \$180,000 for death prior to retirement; the amendments also changed benefits to one-half of three times salary, up to a maximum of \$25,000 for death after retirement. At all times relevant hereto, no plaintiff had a salary higher than \$37,700.

At the above-mentioned July 9, 1986 Council meeting, and before Ordinance No. 4485 was adopted, plaintiff Capt. Troy D. Callihan addressed the Mayor and Council in the public hearing and stated his opinion and cited law that such proposed action would violate the constitutional rights of plaintiffs and others similarly situated and would deprive them of their vested property rights in violation of law. Several of the City Councilmen are themselves lawyers, and the City Attorney was present at the meeting.

On August 13, 1986, the Mayor and Council of the City of Marietta enacted and adopted Ordinance No. 4500, amending the Retirement Plan, which amendment declares, in part: "by adding an optional survivor's benefit for the employees of the City of Marietta The effect of electing this option will cause

the participant to receive a reduced retirement benefit and the beneficiary to receive a monthly death benefit"

The amendments to the Retirement Plan made by Ordinance No. 4500 offered to City employees the option of buying at their own expense a survivor benefit under the Retirement Plan. Such benefit was available only for death after retirement; for death prior to retirement, no benefit was provided, nor was any available as an option under the Retirement Plan. Survivor benefits under the Group Life Policy remained as provided by Ordinance No. 4485 and were not changed by Ordinance No. 4500.

At said meeting of August 13, 1986, plaintiff Capt. Troy D. Callihan and Attorney Edward W. Killorin addressed the Mayor and Council at the first moment that public comment was allowed and again stated their opinion that an such an ordinance, particularly Ordinance No. 4500, has the effect of depriving plaintiffs and others similarly situated of their vested property rights in violation of the Constitutions of the United States and Georgia, and the statutes thereof, and that said Ordinance No. 4500 and previous Ordinance No. 4485 should be reconsidered and repealed.

The actions of the Mayor and Council in adopting and enacting Ordinances No. 4485 and 4500 had the effect of decreasing by \$190,000 the projected cost to the city of providing the Retirement Plan and the Group Life Policy for the current year. See Memo by City Manager, M. Lyle Lacey, III to the Honorable Mayor and Members of City Council dated July 3, 1986, attached as Exhibit E-1 to plaintiffs' complaint.

LEGAL DISCUSSION

The precise issue before this court, as stated by defendants' counsel in oral argument on March 30, 1988, is whether the City's elimination of survivor benefits amounts to an impairment of accrued contractual vested rights of the plaintiffs. This issue consists of two logical parts. First, the court must address the issue of whether the benefits provided by the Retirement Plan and the Group Life Policy as they existed prior to amendment by Ordinances No. 4485 and 4500 amounted to contractual rights. Second, the court must address whether the plaintiffs' rights to survivor benefits under the old plan amount to accrued vested rights. The court will discuss these issues in turn.

A. Benefits as Contractual Rights

The Georgia Supreme Court in Withers v. Register, 246 Ga. 158, 269 S.E.2d 431 (1980), stated the legal nature of employees' rights created by a city's retirement plan. The Court stated:

Long before the rule was recognized generally by the courts of the several states, it was the law of this state that a statute or ordinance establishing a retirement plan for government employees becomes a part of an employee's contract of employment if the employee contributes at any time any amount towards the benefits he is to receive, and if the employee performs services while the law is in effect; and that the impairment clause of our constitution (Art. I, Sec. I, Par. VII, Constitution of Georgia of 1976; Code Ann. § 2-107) [1983 Const. Art. I, Sec. I, Par. X] precludes the application of an amendatory statute or ordinance in the calculation of the employee's retirement benefits if the effect of the amendment is to reduce rather than increase the benefits payable. It is not necessary for an

application of this rule that the rights of the employee shall have become vested under the terms of the retirement plan while the amendment is in effect. Rather, if the employee performs services during the effective dates of the legislation, the benefits are constitutionally vested, precluding their legislative repeal as to the employee, regardless of whether or not the employee would be able to retire on any basis under the plan.

246 Ga. 159, 269 S.E.2d 432 (citations omitted). While it might seem from the court's language in Withers that employee contribution to a retirement plan is necessary to confer vested status, this is not the case. As the Georgia Court of Appeals wrote in Dinnan v. Totis, 159 Ga. App. 352, 354, 283 S.E.2d 321, 323 (1981):

Fringe benefits of numerous sorts have become a substitute for actual direct increases in wages or salaries. They are no longer bonuses in the traditional sense of the term, but part and parcel of the remuneration package....Payments by employers of employees' pension contributions, and insurance policies, both life and health, have all become vital ingredients of employment. Such payments can no longer be considered as gratuities or voluntary since they are essential elements of most compensation agreements in that they benefit both the employer and the employee.

See also City of Athens v. McGahee, 178 Ga. 76, 341 S.E.2d 855 (1986).

On the basis of Withers, Dinnan, and McGahee, the Court has little trouble concluding that the insurance and survivor benefits provided by the city under the "old retirement plan" amounted to contractually enforceable, constitutionally vested

rights in the employees. See, McGahee at 78. ("'[I]f the employee performs services during the effective dates of the legislation, the benefits are constitutionally vested, precluding their legislative repeal as to the employee....'") (quoting Withers v. Register, 246 Ga. 158, 159). The defendants' counsel conceded in oral argument that all plaintiffs were vested at the time the City amended the retirement plan.

B. Constitutional Issues

Having concluded that retirement benefits are not mere gratuities but are part of the employment contract between the City and its employees, the Court must address the issue of whether the elimination of survivor benefits, inasmuch as such elimination caused an overall reduction in the actuarial value of the plaintiffs' total retirement benefits, amounts to an impairment of contract and/or due process violation under the United States and Georgia Constitutions. Again, the Court has little trouble concluding that such a reduction violates both the United States and Georgia Constitutions.

(1) The Impairment of Contract Clause

Article I, Section I, paragraph X of the 1983 Georgia Constitution states:

No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.

Article I, Section 10 of the United States Constitution states in relevant part:

No State shall pass any . . . Law impairing the Obligation of Contracts . . .

The City of Marietta, to the extent that its enactment of Ordinances No. 4485 and 4500 reduced the plaintiffs' overall retirement benefits, has violated the impairment of contract clause of the United States and Georgia Constitutions. While a city is free to change the component parts of its retirement plan for employees, such amendments may not reduce the overall value of benefits provided to any employee. To the extent that Ordinances No. 4485 and 4500 reduced the overall benefits to the plaintiffs, the passage of such ordinances amounts to an impairment of the obligation of contract and is therefore unconstitutional. Swann v. Board of Trustees of Joint Municipal Employees' Retirement System, 257 Ga. 450, 454 (1987) ("Where a statute or ordinance establishes a retirement plan for government employees, and the employee contributes toward the benefits he is to receive and performs services while the ordinance or statute is in effect, the ordinance or statute becomes part of the compensation for the services rendered so that an attempt to amend the statute or ordinance and reduce, or eliminate, the retirement benefits the employee is to receive violates the impairment clause of the state constitution.").

(2) 14th Amendment Violation and Cause of Action Under 42 U.S.C. § 1983

The plaintiffs further contend that the defendants have violated the plaintiffs' rights under Article I, Section 1, Paragraphs 1 & 2 of the Georgia Constitution and the 14th Amendment to the United States Constitution. Article I, Section 1, Paragraphs 1 & 2 of the Georgia Constitution state:

Paragraph I. Life, liberty and property.

No person shall be deprived of life, liberty, or property except by due process of law.

Paragraph II. Protection to person and property; equal protection.

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

The 14th Amendment to the United States Constitution states in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is well-settled that the Fourteenth Amendment to the United States Constitution protects individual against governmental deprivation of property rights without compensation. City of Athens v. McGahee, 178 Ga. App. 76, 79 (1986). It is also well-settled that any action "under color of state law" which has

the effect of depriving an individual of his rights affords a cause of action under 42 U.S.C. § 1983.¹

A municipality is a person within the meaning of § 1983. Monell v. N.Y. Dept. of Social Services, 436 U.S. 658 (1978). "[A] person receiving . . . benefits under statutory and administrative standards defining eligibility for them has an interest in continued receipt of those benefits that is safeguarded by procedural due process . . ." Board of Regents of State Colleges v. Roth, 408 U.S. 564, 576 (citations omitted). The City of Marietta, by virtue of its charter and its governing authority thereunder is a "person" for purposes of § 1983. Monell, supra. The Court, on the basis of Board of Regents of State Colleges v. Roth, supra, finds that the plaintiffs' retirement benefits are of a class of property protected against unilateral reduction by the City. Accordingly, the City's attempt to deprive the plaintiffs of their vested property rights by reducing the total retirement benefits for plaintiffs gives rise to a cause of action under 42 U.S.C. § 1983.

C. Attorney's Fees

42 U.S.C. § 1988 states in relevant part:

¹ 42 U.S.C. § 1983 states in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

The court believes that an award of attorney's fees is appropriate in this case and DIRECTS the plaintiffs' attorney to file within 15 days of the date this order is filed affidavits in compliance with the Eleventh Circuit's recent opinion in Norman v. Housing Authority of City of Montgomery, No. 87-7763, slip op. (11th Cir. Feb. 1, 1988) to document the actual fees incurred in this litigation and the reasonableness of those fees. Defendants' counsel shall have ten (10) days from that date to object to the plaintiffs' counsel's requested fees.

In sum, the court GRANTS the plaintiffs' motion for summary judgment and award of attorney's fees. The court wishes to emphasize that its ruling is no more than a declaratory judgment, that the City of Marietta, through its passage of ordinances decreasing the total actuarial value of the plaintiffs' retirement benefits, violated the plaintiffs' vested rights in violation of the United States and Georgia Constitutions. Any determination by this court of actual damages to the plaintiffs cannot occur until the plaintiffs retire.

IT IS SO ORDERED, this 12 day of April, 1988.

ENTERED ON DOCKET

APR 21 1988

BY L.D.T., CLERK
DEPUTY CLERK


Charles A. May
United States District Judge

United States District Court

NORTHERN

DISTRICT OF

GEORGIA

TROY D. CALLIHAN, ET AL

JUDGMENT IN A CIVIL CASE

v.

CITY OF MARIETTA, ET AL

CASE NUMBER: 1:87-cv-352-CAM

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to ~~trial~~ before the Court. The issues have been ~~tried~~ and a decision has been rendered; GRANTING the plaintiff's motion for summary judgment

IT IS ORDERED AND ADJUDGED that the court issues the declaratory judgment that the City of Marietta, through its passage of ordinances decreasing the total actuarial value of the plaintiffs' retirement benefits, violated the plaintiffs' vested rights in violation of the United States and Georgia Constitution. Any determination by this court of actual damages to the plaintiffs cannot occur until the plaintiffs retire.

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FILED IN THE CLERK'S OFFICE

April 12, 1988

ENTERED ON DOCKET

APRIL 21, 1988

LUTHER D. THOMAS, Clerk

By: *B. Flanigan*
Deputy Clerk

Date April 21, 1988

LUTHER D. THOMAS

Clerk

Brinkley Flanigan
(By) Deputy Clerk

ARTICLE II

Section 34. Beneficiary

shall mean the person designated by the participant from time to time in writing and on prescribed forms, to receive any death benefit. For purposes of this definition "person" shall include only a natural person and shall not include a corporation, estate or other such entity.

Section 35. Beneficiary in Retirement

shall mean the person designated by the participant from time to time in writing and on prescribed forms, to receive any death benefit provided in Article VII, Section 1.

EXHIBIT "A"

ORDINANCE NO. 4022

ARTICLE VII. DEATH OR TERMINATION OF EMPLOYMENTSection 1. Death Prior to Retirement.

a. If the employment or term of elective office of a Participant is terminated by reason of his death prior to his Retirement in accordance with the provisions of Article IV, there shall be payable to his designated Beneficiary a monthly death benefit actuarially equivalent to the Participant's anticipated normal Retirement benefit assuming that his age at the time of his death is fifty-five (55) if he is a Level 1 Employee, or sixty-five (65) if he is a Level 2 Employee, as defined in Article III, Section 2; said benefit shall be computed in accordance with the Tables set forth in Appendix "D".

b. Designation of a Beneficiary Prior to Retirement may be changed by the Participant in writing at any time prior to actual Retirement on a form provided for that purpose. Only the last such designation of a Beneficiary Prior to Retirement will have effect and any new designation of a Beneficiary Prior to Retirement will have effect and any new designation of a Beneficiary Prior to Retirement invalidates, supersedes, and revokes any prior designation.

Section 2. Death After Retirement. Upon the death of a Participant subsequent to his Retirement in accordance with Article IV, Sections 1, 2, 3, 4, 5, or 6, a monthly death benefit shall be paid to his designated beneficiary, said benefit shall be computed in accordance with the Tables set forth in Appendix "E".

EXHIBIT "B"

APPENDIX "D"

CITY OF MANETTA
PRE-RETIREMENT DEATH BENEFITS
GENERAL EMPLOYEES/ELECTED OFFICIALS

BENEFICIARY	FACTOR	AGE OF BENEFICIARY	FACTOR	AGE OF BENEFICIARY	FACTOR	AGE OF BENEFICIARY	FACTOR	AGE OF BENEFICIARY	FACTOR
1	0.40420	4	21	0.44610	41	0.55914	61	0.87818	01
2	0.40557	5	22	0.44622	42	0.56030	62	0.90617	02
3	0.40699	6	23	0.45033	43	0.57794	63	0.93559	03
4	0.40845	7	24	0.45103	44	0.51100	64	0.96603	04
5	0.40997	8	25	0.46033	45	0.57071	65	1.00000	05
6	0.41157	9	26	0.46502	46	0.81003	66	1.03517	06
7	0.41324	10	27	0.46933	47	0.62109	67	1.07240	07
8	0.41499	11	28	0.47110	48	0.63130	68	1.11190	08
9	0.41601	12	29	0.47065	49	0.64754	69	1.15403	09
10	0.41872	13	30	0.40367	50	0.66142	70	1.17923	10
11	0.42071	14	31	0.40195	51	0.67607	71	1.21771	11
12	0.42279	15	32	0.49450	52	0.69154	72	1.21994	12
13	0.42497	16	33	0.50033	53	0.70705	73	1.35607	13
14	0.42724	17	34	0.50640	54	0.72500	74	1.41632	14
15	0.42962	18	35	0.51294	55	0.74331	75	1.48090	15
16	0.43211	19	36	0.51971	56	0.76264	76	1.55031	16
17	0.43471	20	37	0.52603	57	0.78314	77	1.62457	17
18	0.43744	21	38	0.53441	58	0.80400	78	1.70291	18
19	0.44031	22	39	0.54217	59	0.82793	79	1.78922	19
20	0.44332	23	40	0.55044	60	0.85243	80	1.00118	20

* ASSUMED NORMAL RETIREMENT AGE IS 65 AND EMPLOYEE ASSUMED AGE 65 AT DEATH.

EXHIBIT "C"

APPENDIX "D"
POLICE/MEN/FIREMEN

AGE OF BENEFICIARY	FACTOR										
1	0.54370	21	0.60007	41	0.75223	61	1.10103	81	2.66391	91	3.66391
2	0.54563	22	0.60515	42	0.76455	62	1.21910	82	2.66513	92	3.66513
3	0.54753	23	0.60910	43	0.77752	63	1.25060	83	2.69501	93	3.69501
4	0.54950	24	0.61410	44	0.79116	64	1.30071	84	3.12116	94	3.12116
5	0.55154	25	0.62010	45	0.80554	65	1.34533	85	3.30291	95	3.30291
6	0.55370	26	0.62560	46	0.82069	66	1.39263	86	3.43744	96	3.43744
7	0.55595	27	0.63110	47	0.83615	67	1.44713	87	3.70777	97	3.70777
8	0.55830	28	0.63750	48	0.85315	68	1.49507	88	3.94139	98	3.94139
9	0.56075	29	0.64394	49	0.87115	69	1.55253	89	4.19433	99	4.19433
10	0.56331	30	0.65070	50	0.88913	70	1.61337	90	4.47012	100	4.47012
11	0.56599	31	0.65700	51	0.90954	71	1.67668	91	4.77319		4.77319
12	0.56879	32	0.66570	52	0.93015	72	1.74005	92	5.10411		5.10411
13	0.57172	33	0.67312	53	0.95229	73	1.82450	93	5.46533		5.46533
14	0.57478	34	0.68139	54	0.97540	74	1.90517	94	5.83330		5.83330
15	0.57798	35	0.69007	55	1.00000	75	1.93241	95	6.30764		6.30764
16	0.58133	36	0.69919	56	1.02600	76	2.00569	96	6.70010		6.70010
17	0.58403	37	0.70077	57	1.05350	77	2.10559	97	7.32419		7.32419
18	0.58650	38	0.71013	58	1.08203	78	2.29233	98	7.91623		7.91623
19	0.59238	39	0.72910	59	1.11304	79	2.40723	99	8.57561		8.57561
20	0.58864	40	0.74053	60	1.14600	80	2.53080	100	9.31533		9.31533

ASSUMED NORMAL RETIREMENT AGE IS 65 AND EMPLOYEE ASSUMED AGE 55 AT DEATH.

APPENDIX "E"

DEATH BENEFIT FACTORS

<u>RETIREMENT AGE</u>	<u>NUMBER OF MONTHLY PAYMENTS</u>
	<u>EXPECTED TO BE RECEIVED</u>
56	184.53
57	179.70
58	174.85
59	169.98
60	165.09
61	160.10
62	155.30
63	150.42
64	145.56
65	140.73
66	135.95
67	131.23
68	126.57
69	121.95
70	117.35

CALCULATION OF DEATH BENEFITS

The above Table should be used to determine the number of monthly payments any designated beneficiary should receive under Article VII, Section 2.

EXHIBIT "D"

If the Participant is 56 years of age or older at the time of death, and has already received monthly retirement benefits, the number of monthly retirement benefits received prior to death shall be deducted from the total number of monthly payments expected to be received at retirement age. The remaining number will represent the total number of monthly benefits for the designated beneficiary.

For purposes of calculating benefits under this Table, any participant shall be deemed to be not less than 56 years of age at retirement, regardless of when the participant actually retired or became eligible for any retirement benefits. However, in the event the actual age of the participant is less than 56 at retirement, there shall be no deduction for monthly payments actually received by the participant.

Notwithstanding the Table set forth in this Appendix "E", any designated beneficiary shall receive a minimum of 24 monthly death benefits following the death of the retiree.

Example: If a Participant retires at age 61, his expected number of monthly retirement benefits is 160.10. This figure is rounded off to 160 and represents the total number of monthly payments the participant is expected to receive at retirement. If the participant dies after 8 years and 5 months (101 payments), the designated beneficiary would receive the remaining number of monthly benefits, same being 59 months (160-101 = 59).