

NO. A09-1979

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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County of Lyon, et al.,

Appellants,

vs.

Rick Anderson, et al.,

Respondents.

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RESPONDENTS' BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## **CERTIFICATE AS TO BRIEF LENGTH**

This brief complies with the form and length requirements of Minn. R. App. P. 132.01, subds. 1 and 3. Respondent's attorneys prepared this brief using the word processing software Corel WordPerfect Version 12. The brief uses the proportional font "Times New Roman," in 13-point type. According to the software's word count utility feature, this brief contains 5,872 words, thereby satisfying Minn. R. App. P. 132.01.

## STATEMENT OF THE CASE

Respondents do not dispute Appellant's characterization of the procedural posture of this case. Since Appellant submitted its brief, District Court Judge Jeffrey Flynn granted Respondents' motion to amend their complaint to include a count alleging the unconstitutional impairment of contract. Respondents' Addendum, p. 4.

Respondents believe that the Appellant erroneously accuses Judge Flynn of "disregard[ing]" the decisions of this Court in his opinion. Judge Flynn applied the appropriate standard in determining that the County's action bore no resemblance to a quasi-judicial action and that the County did not "'settle' or otherwise affect a specific dispute between the County and a particular employee." ADD, p. 4. Consequently, Judge Flynn was correct to deny Appellant's motion to dismiss this action.

## STATEMENT OF LEGAL ISSUES

Did the District Court err in determining that the County's amendment of its employment policies, which resulted in a material reduction in a retirement benefit offered to employees in 1985, was properly reviewable in District Court as an action seeking asserting promissory estoppel, a remedy for a breach of contract, and declaratory relief?

Bahr v. City of Litchfield, 420 N.W.2d 604, 606 (Minn. 1988)

Christensen v. Minneapolis Municipal Employees Retirement Board, 331 N.W.2d 740, 746 (Minn. 1983)

HRA of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005)

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Minnesota Ctr. for Env'tl. Advocacy v. Metropolitan Council, 587 N.W.2d 838, 842 (Minn. 1999)

Williams v. Board of Regents of University of Minnesota, 763 N.W.2d 646 (Minn. Ct. App. 2008).

## INTRODUCTION

Appellant Lyon County (“Appellant” or “the County”) made an ascertainable and enforceable contract with all of its employees in 1985. It promised that it would provide a health insurance benefit for retired County employees who had devoted many years of service to the County. This promise, contained in an employee handbook in effect when Respondents worked for the County, was also a promise upon which Respondents relied in continuing their employment with the County.

In claiming that Respondents’ complaints should have been reviewed upon a writ of certiorari, Appellant relies almost exclusively upon decisions that arise in the context of employment termination. This situation is materially different - as decisions of this Court have identified as recently as last year. Nevertheless, Appellant repeatedly attempts to obfuscate this issue by referring generically to “employment contracts” and “employment decisions.”

This case involves the Appellant’s application and modification of its own internal policies to a class of County employees. The application of internal policies and procedures to groups of similarly situated County employees is an administrative or quasi-legislative act, and is not “quasi-judicial” in character as Appellant claims. It is therefore no surprise that Minnesota district courts have repeatedly reviewed similar claims of breach of contract relating to promised retirement benefits.

Moreover, the Appellant failed to address the Respondents' concern that literally every County action is now reviewable only upon writ of certiorari if one is to believe its tortured interpretation of Dietz. Appellant fails to cite a single case involving the cessation of promised retirement benefits that was raised upon certiorari. The District Court properly recognized its jurisdiction over this complaint, and Respondents respectfully request that the Court dismiss Appellant's appeal.

### **FACTS**

Respondents are Lyon County employees with significant tenure. AA, pp. 1-6. Respondents' employment was, during the relevant time periods, governed by the terms and conditions set forth in the Lyon County Policy Manual (hereinafter "the Policy Manual"). AA, pp. 6-7.

In 1985, the Lyon County Board of Commissioners modified its Policy Manual. AA, p. 17. At that time, the Appellant added the following language:

Any employee retiring while in active service shall be entitled to 3% per year of service towards their health insurance premium. It shall not exceed amount being currently paid by County on active employees.

AA, p. 22. This language is unambiguous, and obligated the County to make a contribution toward retiree health insurance in the amount of three percent of the premium for each year that county employees served Lyon County.

The County policy manual was intended to be the definitive statement of the County's policies and procedures. AA, pp. 15-16. The Introduction of the manual stated as follows:

This hand book has been prepared to serve as a guide for the effective and efficient operation of County Government and the employees of Lyon County, Minnesota. The Board of County Commissioners believe that it merits a careful reading on the part of every employee and elected official.

Knowledge of the structure and procedures of the operation of Lyon County is essential to good performance of your regularly assigned tasks. Study this hand book now, but from time to time refresh your memory on certain procedures and practices of the organization of Lyon County.

Any deviation from the established policy of operation will be recognized **only** on the authority of the Board of County Commissioners.

**This policy manual shall establish the employment relationship of all employees of Lyon County except elected officials and members of Boards, Commissions, and Committees.**

AA. p. 17 (emphasis added). This manual contained no disclaimer stating that it was not a contract.

The County issued another amended policy manual in 1989. AA, p. 53. This manual included language stating that it "establish[ed] the relationship of all employees of Lyon County" and further provided that deviation from the manual was to take place "only on the authority of the Board of Commissioners." AA, p. 35. The manual provided that "Any employee or elected official retiring while in active service shall be entitled to Three (3) % per year of service towards their health insurance premium." AA, p. 40. This manual contained no disclaimer stating that it was not a contract.

The Policy Manual was amended in 1991. AA, p. 57. At that time, the provision regarding retirement benefits for County employees was altered to increase the promised benefit to four percent. AA, p. 63. This was also the first time since the County began promising retirement benefits to employees and elected officials that it inserted a contract disclaimer in its manual. AA, p. 57. The manual did not, however, contain any language revoking or otherwise modifying any previous contractual relationships the County formed with its employees or elected officials.

In 1997, the Board amended its internal employment policies to cease providing the benefit to any employees hired after May 1, 1997. AA, p. 117. Once again, the manual did not purport to abridge any contractual obligations that arose prior to its issuance. The manual was again amended in 1999 to cap the benefit at the level of active employees. AA, p. 122.

In August of 2008, the Board voted to eliminate the benefit, although it made it available to a class of employees retiring between August 19, 2008 and April 1, 2009. AA, p. 285. In October of 2008, the County asked employees to sign a policy manual receipt acknowledgment stating, among other things that “I understand that these manuals or any other Lyon County policy, practice, or procedure, do not constitute a contract.” AA, p. 392. In other words, the County attempted to secure a waiver of rights from the Respondents under penalty of discipline and potentially termination. Id.

Respondents' counsel contacted the County to advise it that the waivers were not enforceable and that Respondents believed the retirement benefits set forth in the 1985 Lyon County Policy Manual and its subsequent iterations, constituted a contract. AA, p. 392. On November 28, 2008, the County held a meeting to discuss the retirement health insurance issue. AA, p. 308. This meeting was billed as "Public Input regarding Retiree Insurance." AA, p. 308. According to the Board Minutes, Commissioner Goodenow announced that "We are going to run it like an open meeting. . . We will probably have another meeting where we talk back more." AA, p. 308. The Board minutes do not reflect that any witnesses were sworn in, nor that the County took any testimony regarding the cost of the benefits. AA, pp. 308-310.

The Board again discussed this matter on February 3, 2009. AA, p. 314. The minutes of this meeting reflect that the Board and the employees from whom it was stripping a promised benefit exchanged proposals. AA, p. 314. Commissioner Stomberg expressly stated that he would not "try and interpret" the information he received from the Respondents. AA, p. 315. The minutes make reference to a packet that Commissioners had in their possession during the February 3, 2009 meeting. AA, p. 313. It appears that the information in the Commissioners' packets was nothing more than proposals on the modification of the promised retirement health insurance benefit. AA, p. 314.<sup>1</sup>

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<sup>1</sup> If the packets contained any other information, the County declined to include this in its submissions to the District Court and the Court of Appeals.

Finally, the Board voted to provide a fixed contribution to all future retirees. AA, p. 316. In its resolution to modify its policy the Board made no finding regarding whether its 1984, 1985, and 1987 manuals constituted a binding contract between its employees and elected officials. ADD, p. 6. In fact, the resolution does not refer to the earlier versions of the County's handbook at all except to note that the 1985 handbook provided for health insurance benefits for retiring employees. ADD, p. 6. Thereafter, the resolution repeatedly refers to the County's inclusion of contract disclaimer language in its manuals. ADD, p. 6 ("the policies again contained language stating that they were not a contract").

The phrasing of this "finding" is important. There is nothing in the resolution that reflects a finding by the County that the policies are not a binding contract. ADD, p. 6-7. Appellant does not quote or otherwise draw this Court's attention to the language it is relying upon in support of its claim that the Board made a "finding that the policies were not an employment contract." App. Memo. p. 8. Thus, there is no evidence that the Board reached an ultimate conclusion on the issue for which it claims a quasi-judicial ruling.

The Appellant's description of the County's decision making process is relatively scant. The Appellant offers no transcript of a hearing. The Appellant offers no evidence that witnesses were sworn. The Appellant offers no evidence that it reviewed evidence or exhibits.

## ARGUMENT

### **I. APPELLANT HAS FAILED TO DEMONSTRATE THAT ITS ACTIONS MAY ONLY BE REVIEWED UPON A PETITION FOR CERTIORARI.**

#### **A. Claims relating to retirement benefits do not touch upon an area of the County's inherent discretion.**

Claims of breach of contract may be litigated in District Court because they do not implicate an arena of the County's inherent discretion. In Christensen v. Minneapolis Municipal Employees Retirement Board, 331 N.W.2d 740, 746 (Minn. 1983), the Supreme Court disposed of any notion that retirement benefits constituted a "gratuity," payable at the whim of public employers. In Christensen, the Minneapolis Retirement Board unilaterally ceased making pension payments to a retiree after the State of Minnesota adopted a minimum retirement age. Id. at 742. The employer argued that the plaintiff had no contractual right to a promised retirement benefit because it was, in essence, a gift of the employer.

The court found instead that "a public employee's interest in a pension is best characterized in terms of promissory estoppel." Id. at 747. The court further noted that a political subdivision of the state "can make an offer or promise to its employees," thus laying waste to the notion that the setting of the terms of compensation, including retirement benefits, is a discretionary matter on the part of the state's cities, counties, and other jurisdictions. Id. at 748. The parties in that case litigated the matter before a District Court judge. Id. at 743.

Since Christensen, Minnesota district courts have often considered claims of breach of contract against public employers. See e.g., HRA of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005); Adams v. ISD No. 316, A07-0774 (unpub.) (Minn. Ct. App. July 1, 2008); Aderman v. Washington County, C2-88-2348 (Minn. Ct. App. 1989). A recent Supreme Court pronouncement, Norman, includes no holding suggesting that review by certiorari is necessary for cases stemming from a County's abrogation of its contract with an employee.

In point of fact, the Supreme Court has expressly stated that "a common-law cause of action that is not premised on a legal or equitable claim to employment" does not intrude on a public employer's "internal decision-making process." Williams v. Univ. of Minn., 763 N.W.2d 646, 652 (Minn. Ct. App. 2008). In Williams, the plaintiff made, among other things, a negligent-misrepresentation claim that sounded in tort. Id. This Court reversed a district court finding that those claims were subject to certiorari review, and remanded them for further consideration. Id. In doing so, the Court of Appeals plainly distinguished between causes of action premised solely on whether the employer hired or retained a plaintiff, and causes of action related to other aspects of a plaintiff's employment relationship with an employer, stating the following:

"[T]he district court would focus on the representation, appellant's reliance, and whether appellant incurred losses as a result of reliance on the alleged misrepresentation. These are considerations that do not intrude substantially on or challenge the internal decision-making process. Rather, the negligent misrepresentation claim assumes that the university did not employ or discharge appellant. **Because the actual hiring decision is not at issue and is not directly**

**implicated**, we conclude that the district court erred by dismissing appellant's negligent misrepresentation claim. . .”

Id. at 652-653.<sup>2</sup> It is clear that contract claims that relate not to whether Respondents will remain employed but rather to the County's unfair revocation of contractual benefits are excluded from certiorari review.

**B. Appellant's characterization of *Dietz* and similar cases is misleading.**

In *Dietz v. Dodge County*, 487 N.W.2d 237 (Minn. 1992), the Supreme Court expressly limited the scope of its pronouncement, stating that:

“We consider only the question of whether . . . a petition for a writ of certiorari provides the exclusive means by which an employee can secure judicial review of the County's employment termination decision.”

Dietz, 487 N.W.2d at 237 (emphasis added). Given this unambiguous narrowing of the issue, Respondents are unmoved by Appellant's rather liberal reliance on Dietz for a matter that is wholly unrelated to a decision to terminate employment. In other words, the Supreme Court did not determine any of the following questions of law in Dietz that have been attributed to it by Appellant:

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<sup>2</sup> Appellant troublingly states that Respondents did not “cite a single case for the proposition that breach of contract and promissory estoppels cases should not be reviewed by writ of certiorari to the Court of Appeals.” Appellants Memo. at 17. Respondents cited the Williams case and clearly explained its meaning in their original memorandum in opposition to Appellant's motion to dismiss. AA, p. 368. Respondents also cited a number of cases in which district courts had retained jurisdiction over breach of contract and estoppel claims. AA, pp. 367-368. To the extent that Appellant implies that Respondents did not provide case law support for the statement that claims such as Respondents' have been and should be considered by district courts, it is at odds with its own appendix.

1. “Administrative body’s [sic] decisions related to employment contracts are only properly reviewable upon certiorari to the Court of Appeals.” Appellant’s Memo. at 10.
2. “. . .[R]eview of the nature, or even existence, or a contract between [Respondents] and [Appellant] is ‘a question of law that is appropriate for review on certiorari.’” AA, p. 323.
3. “Full, de novo review of [a] County’s employment decision would impermissibly expand the contours of the judicial power at the expense of other branches of government.” AA, p. 324.

Dietz, and its predecessor, Dokmo v. ISD No. 11, 459 N.W.2d 671 (Minn. 1990), concerned the proper avenues for the review of a political subdivision’s decision to terminate an employee. Notably, both cases were decided some time before the Supreme Court issued a clarification of its standard for determining what constitutes a quasi-judicial act. Minnesota Ctr. for Env’tl. Advocacy v. Metropolitan Council, 587 N.W.2d 838, 842 (Minn. 1999).

All of the cases that Appellant relies upon in claiming that its decision is reviewable only upon certiorari are of the type distinguished by this court in Williams. See, e.g., Willis v. County of Sherburne, 555 N.W.2d 277, 278 (Minn. 1996) (“Following *termination* of his employment, Willis sued Sherburne County...”); Shaw v. Board of Regents of the University of Minnesota, 594 N.W.2d 187, 189 (Minn. Ct. App. 1999) *rev. denied* (July 28, 1999) (“The district court concluded that Shaw could challenge his *termination* only by petitioning this court for a writ of certiorari.”); Dokmo v. ISD No. 11, Anoka-Hennepin, 459 N.W.2d 671, 672 (Minn. 1990) (“Appellant Independent School

District No. 11, Anoka-Hennepin, declined to *reinstate* respondent teacher Kristine Dokmo following her return from an extended leave of absence. Dokmo commenced a declaratory judgment action in district court challenging the school district's decision.”);

Michurski v. City of Minneapolis, 2002 WL 1791983 (Minn. Ct. App. Aug. 6, 2002)

(challenging a *failure to hire*). Indeed, Michurski distinguished these cases, as well:

Notably, in Minnesota, certain employment decisions by an administrative body, *such as hiring or termination*, have been subject to review only by writ of certiorari. See, e.g., Willis v. County of Sherburne, 555 N.W.2d 277, 279 (Minn. 1996) (employee's breach-of-contract claim for county's *decision to terminate* his employment must be reviewed by writ of certiorari); Bahr v. City of Litchfield, 420 N.W.2d 604, 606 (Minn. 1988) (proper vehicle for obtaining judicial review of city's and police civil-service commission's *promotion/hiring procedures* is by writ of certiorari).

Id.

Thus, Appellant's memorandum of law inappropriately conflates the notion of an employment dispute stemming from a termination or failure to hire and an employment dispute relating to employment benefits. See, e.g., Appellant's Memo. at 10 (referring to “decisions related to employment contracts”). The review of employment termination decisions involves the review of a decision rendered in a discrete context, the consequences of which bind a single individual. See e.g., Dietz, 487 N.W.2d at 237. The plaintiff in Dietz, in particular, was seeking the enforcement of an oral promise to terminate her for cause. Id. at 240.

The other cases that Appellant cites are of a similar ilk. Willis v. Sherburne County, 555 N.W.2d 277, 278 (Minn. 1996) concerns a plaintiff's claim for wrongful

discharge. Although the plaintiff also raised a breach of contract claim, this arose from a discharge. In deciding Willis, the Court found that Dietz was controlling because that case also centered upon wrongful termination claims. Id. at 279-80.

Similarly, Williams v. Univ. of Minn., 763 N.W.2d 646 (Minn. Ct. App. 2008) is inapposite for precisely the reason Appellant points out in its *own brief*: this case does not “invite[ ] review of the governmental employer’s ultimate decision regarding Plaintiffs’ employment.” Appellant’s Memo. at 25. Respondents are, with few exceptions, still employed with the County. AA, pp. 1-6. Appellant does not allege that any of the Respondents have been terminated or separated involuntarily under any other circumstances. Consequently, the cases upon which Appellant relies are utterly irrelevant to the question of whether certiorari review is required for breach of contract claims stemming from the unfair denial of promised benefits, as is the case here.

Indeed, the logical conclusion of Appellant’s construction of Dietz, the case that informs the entirety of its argument concerning the purported needed for certiorari review, is that any contractual dispute involving a political subdivision within the State of Minnesota would be reviewable only upon certiorari. Given the plentiful nature of political subdivisions in the State of Minnesota, and the relative paucity of Court of Appeals judges, Respondents find it dubious at best that the Supreme Court intended the holding in Dietz to be interpreted in this fashion. More importantly, the Supreme Court

explicitly rejected this probability in Meath v. Harmful Substance Compensation Bd., 550 N.W.2d 275 (Minn. 1996).

## II. APPELLANT'S ACTIONS IN THIS MATTER DO NOT CONSTITUTE A "QUASI-JUDICIAL" ACT UNDER MINNESOTA LAW.

### A. Appellant has failed to identify what a "quasi-judicial" act is.

The Supreme Court has identified clear standards for determining what constitutes a "quasi-judicial process." The Supreme Court has previously found that "[c]ertiorari is an extraordinary remedy only available to review judicial or quasi-judicial proceedings and actions." Honn v. City of Coon Rapids, 313 N.W.2d 409, 414 (Minn. 1981). The Court clarified the definition of "quasi-judicial" action and sounded a note of caution about the narrow scope of its application in Meath v. Harmful Substance Compensation Bd., 550 N.W.2d 275 (Minn. 1996):

"Quasi-judicial conduct is marked by an investigation into a disputed claim and a decision binding on the parties. Even though the phrase "quasi-judicial act" has sometimes been so broadly defined that it can be said to include almost any administrative decision based on evidentiary facts, it seems to us that we would be well-advised today to apply the term only to those administrative decisions which are based on evidentiary facts and which resolve disputed claims of rights.

Id. at 279 (emphasis added). The Court further held that if "every administrative decision which is based on evidentiary facts developed through investigation can for that very reason be characterized as 'quasi-judicial,' then almost every administrative decision is 'quasi-judicial' even though few such decisions adjudicate any right or obligation of contending parties." Id. at 277 (emphasis added).

The Court subsequently adopted three indicia of quasi-judicial actions that must always be present. Minnesota Ctr. for Env'tl. Advocacy v. Metropolitan Council, 587 N.W.2d 838, 842 (Minn. 1999). Those indicia are (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim. Id.

In MCEA, the court found that investigation into and weighing facts regarding a disputed claim involved taking evidence, the formal identification of parties to a dispute, the provision of testimony, and the application of evidentiary rules. MCEA, 587 N.W.2d at 842-843. The Court further found that the application of a prescribed standard involved "strict compliance" with a statutory or administrative framework. Id. at 844. Finally, the Court noted that the third factor involved a final resolution of a particular claim. Id.

**B. There is no evidence of a "quasi-judicial" act in this case.**

Respondents' Complaint centers upon a contractual obligation that the County undertook in its Policy Manual in 1985. AA, p. 7. That Policy Manual was not applicable to a single individual or small group of individuals, it applied to all County employees, past, present and future. AA, p. 7. Respondents' Complaint amply demonstrates that the County acted in its administrative capacity when it voted to unilaterally deny them contractual benefits. Moreover, Appellant submits no

supplementary evidence to suggest otherwise. Consequently, Appellant is in error to suggest that certiorari review is appropriate.

**1. There is no evidence that the County investigated or took evidence concerning a disputed claim.**

There is no evidence, in the Complaint or elsewhere, that the County undertook an investigation into a disputed claim. The Appellant produced no evidence to the District Court or to this Court suggesting that it gathered anything other than entreaties from long time employees not to strip them of long promised benefits and proposals from some of those employees regarding the maintenance of the promised benefits. It therefore follows that the County did not engage in any weighing of evidentiary facts.<sup>3</sup> In fact, none of the actions identified in MCEA as suggestive of a quasi-judicial review process occurred in Lyon County.

While the Appellant describes Board meetings at which the County's obligation to honor its contractual promise to Respondents was under discussion, not even Appellant has attempted to characterize this discussion as a "hearing" in which the Board took testimony or weighed facts. Appellant referred to this as "an open meeting." AA, p. 308. The Court of Appeals has already rejected the implication that such an open meeting constitutes a "hearing":

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<sup>3</sup> The County points to economic conditions that prompted it to revoke long promised retirement benefits, but offered no evidence to the District Court, nor any to this Court, regarding the nature of its economic state.

“It is clear that the research and public comment aspects of respondent's deliberative process is far more typical of a legislative proceeding than of a judicial proceeding.”

Meath v. Harmful Substance Compensation Bd., 550 N.W.2d 275 (Minn. 1996). Thus, the County's argument that certiorari review is warranted is a non-starter given the absence of this crucial indicator.

**2. There is no evidence that the County applied a prescribed standard to any facts.**

The County's argument falters on the balance of the MCEA indicia, as well. The County has not even attempted to adduce any evidence or argument suggesting that the County applied any ascertainable standards or methods of review in making alterations to the Policy Manual. This is because amendments to an employee handbook are at the very core of the County's administrative or quasi-legislative functions. Kmart Corp. v. County of Stearns, 710 N.W.2d 761, 770 (Minn. 2006) (“The decision to make policy, including rules or regulations, is generally a part of the agency's quasi-legislative power.”). Ultimately, Appellant can't have it both ways: It cannot simultaneously assert that it undertook the “formation of [an] employment policy,” (AA, p. 372) and credibly assert that it undertook a quasi-judicial process.

The Maye case, which Appellant also relies upon *firmly establishes* that the MCEA factors are necessary for decisions not related to hiring/firing because it cites that case and relies on the indicia:

“The University created a standard by identifying the qualities required for the position to be filled. Then the University investigated its options by collecting and

reviewing applications and interviewing candidates. It applied the criteria to the information provided by the candidates, and using its discretion, made a binding decision not to promote Maye. The University's promotion process was an administrative function requiring discretion and thus resulted in a quasi-judicial decision. See, e.g., Bahr v. City of Litchfield, 420 N.W.2d 604, 606 (Minn. 1988) (applying other sections of writ-of-certiorari statute to review of promotion decisions); Neitzel, 521 N.W.2d at 75 (holding a decision to deny conditional-use permit is quasi-judicial decision because it required determination of facts and exercise of discretion). Because the University's actions in this case were quasi-judicial, certiorari in this court was the only available method of review.”

Maye v. University of Minnesota, 615 N.W.2d 383, 386 (Minn. Ct. App. 2000) (emphasis added). There is literally no evidence in the record that the Appellant did any of the things that the University, its purported model of quasi-judicial behavior, did in Maye. There is no evidence that it created a standard. There is no evidence that it investigated its options other than receiving pleas not to divest its long-term employees of promised benefits. Importantly, there is no evidence that the Appellant made a binding decision regarding the existence of a contract for retirement benefits. The materials at ADD p. 6 plainly demonstrate that the Appellant merely noted that its policies contained a disclaimer. No language quoted or reproduced in the appendix rises to the level of a finding regarding the existence of a contract. Respondents find the Appellant's repeated assertion to the contrary to be at odds with the record it produced.

**3. There is no evidence that the County rendered a decision binding on ascertainable parties.**

Finally, there is simply no evidence that the County rendered a “decision” that was binding on particular parties. First of all, the County makes no suggestion that it provided

prior notice to any identifiable parties of its intent to make a decision in this matter. Cf. Handicraft Block Ltd. P'ship. v. City of Minneapolis, 611 N.W.2d 16, 20 (Minn. 2000) (finding it relevant that no particular parties were given notice or the right to participate in a public hearing *in advance*). Secondly, the notice that Appellant did provide, appended to its Memorandum, is in the form of a Resolution that identifies the change itself as the implementation of a policy. AA, p. 342.

Appellant does not suggest in its Memorandum that the adoption of a resolution or the implementation of an employment policy is in any way a uniquely judicial act. Indeed, as the Court found in Kmart, it is a uniquely legislative act. Kmart, 710 N.W.2d at 770. Secondly, the resolution applied, by its own terms, not to any particular party, but to all persons within a class: “Any employee or elected official hired on a full-time basis or elected to office prior to May 01, 1997 and retiring while in active service.” AA, p. 339. Therefore, this resolution of the Board was proposed and adopted irrespective of whether any individual had a dispute concerning his or her retirement benefits.

The County has utterly failed to demonstrate the existence of a quasi-judicial act. Its basis for insisting upon the dismissal of Respondents’ Contract Claim, their Estoppel Claim, and their request for declaratory relief rests entirely on this basis. Consequently, the Court should affirm the District Court’s finding that it had jurisdiction over this matter.

### III. THE APPELLANT ERRONEOUSLY REVOKED RESPONDENTS' RETIREMENT BENEFIT.

That benefits included in an employee handbook may become contractual obligations is firmly entrenched in Minnesota's case law. Pine River State Bank v. Mettille, 333 N.W.2d 622 (Minn. 1983) established that, when an offer of benefits or an employment term has been incorporated in a handbook that is distributed to employees, the employees' acceptance of the terms of that offer may be inferred from their remaining employed with the Employer. 333 N.W.2d at 626-627. Those contractual promises may be enforced through a breach of contract action against the employer. Id. at 625.

Even if the Court does not find that a contractual right to the benefits at issue exists in the present case, Respondents relied upon Appellant's promise of these benefits to their detriment. See Norman, 696 N.W.2d at 336. The Supreme Court in Norman found that a similar promise of benefits in retirement was "clear and definite." Id. The Court further found that the employer "should have reasonably expected that this would induce an employee like [plaintiff] to believe that her health insurance needs would be paid after retirement." Id. The Court specifically found that all elements of promissory estoppel had been established in that case.

In the present case, the Policy Manual that the County adopted and reiterated over time created a contractual obligation on the part of the County. Nevertheless, Respondents are also confident that the representations that the County made in the Manual, and their reliance upon those representations, will meet the requisites of a

promissory estoppel claim. Consequently, Respondents believe this matter, which relates solely to the question of the retirement health benefits to which the County has obligated itself, is not susceptible to certiorari review.

**IV. INDIVIDUAL RESPONDENTS' REPRESENTATION BY A UNION DID NOT DIVEST THE COURT OF JURISDICTION OVER THIS MATTER.**

Respondents Gislason, Jensen, Meyer, and Sorenson appear to be members of a newly established bargaining unit, represented by Law Enforcement Labor Services (LELS). Appellant's Memo. at 26. Appellant states in its Memorandum that these individuals had been the subject of a Status Quo Order issued by the BMS. Appellant's Memo. at 26-27. The County does not appear to take the position that it will not change the retirement health insurance benefit for these individuals in the foreseeable future.<sup>4</sup>

The Supreme Court has previously found that promises made to bargaining unit members prior to their representation by an exclusive representative may be enforceable. In Ramsey County v. AFSCME, Council 91, Local 8, 309 N.W.2d 785 (Minn. 1981), plaintiffs had been subject to a vacation accrual system that existed prior to the certification of an exclusive representative. Id. at 787. Respondents' receipt of vacation accruals continued after an exclusive representative was certified, despite the adoption of

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<sup>4</sup> Respondents take issue with Appellant's attempt to "bootstrap" its claim that it properly notified Respondents Gislason, Jensen, Meyer, and Sorenson of its action for the purposes of triggering the statute of limitations for certiorari review. Appellant bears the burden of demonstrating that the notice requirement was met, and to the extent that it fails to make an affirmative showing of this, the Court should presume that it did not meet the requirement.

a collective bargaining agreement that contained a different vacation accrual rate. Id.

The county subsequently attempted to unilaterally modify the vacation accrual rate of the plaintiffs, an action the union successfully grieved, relying in part upon the county's past practice in permitting the accrual rate.

The employer challenged the arbitrator's award, and the Supreme Court upheld it. Id. at 789. The court found that a past practice in the workplace can modify language in a collective bargaining agreement. Id. at 792. To that extent, employees who have worked under the pre-existing practice will have an enforceable right to its continuation.

In the present case, the relevant practice has been embedded in a contractual obligation that predates union representation by twenty-four years. Respondents Gislason, Jensen, Meyer, and Sorenson have relied upon the existence of this promise for years, and understood it to comprise a portion of their total compensation package. Therefore, if the County takes the position that Respondents Gislason, Jensen, Meyer, and Sorenson should be denied the benefit to which the County plainly obligated itself in its unambiguous Policy Manual, Respondents will retain a claim of breach of contract against the Employer with regard to an obligation the County incurred prior to the certification of an exclusive representative.

### **CONCLUSION**

This District Court properly exercised jurisdiction over this matter. The case law upon which the Appellant relies in arguing otherwise is inapposite and inapplicable to this

matter. The Appellant's action in this matter was to amend an employment policy to withhold a promised benefit to long time employees. It did not hold a hearing concerning this matter and it never reached an ultimate conclusion regarding whether retirement benefits promised in a handbook that was intended to "**establish the employment relationship of all employees of Lyon County**" represented a contractual obligation. It only made findings regarding its inclusion of a handbook disclaimer in later iterations of its policy manual.

The cases that Appellant principally relies upon are inapposite. This Court has unambiguously distinguished between plaintiffs' challenges to decisions that cost them employment and decisions that merely related to the conditions of on-going employment. The Dietz case cabined its own relevance to cases involving termination, and the Williams case refined this distinction.

Cases such as the one at bar are properly litigated before the District Court because of the reasons set forth in MCEA. They involve run of the mill decision making, not evidentiary hearings and investigatory activities. They involve a class of plaintiffs, not select individuals who have initiated disputes with the decision-making authority. Finally, these cases involve, as does the case at bar, the unilateral withholding of a contractual benefit. At its core, Appellant's argument represents an effort to insulate the actions of Minnesota's political subdivisions from judicial review in a manner that the

court rejected in Meath. Respondents respectfully request that the Court affirm the decision of the District Court.

Dated: December 29, 2009

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