

NO. A09-1979

State of Minnesota
In Court of Appeals

County of Lyon, et al.,

Appellants,

vs.

Rick Anderson, et al.,

Respondents.

**BRIEF AND APPENDIX, VOLUME I, OF APPELLANT
COUNTY OF LYON AND APPELLANT LYON COUNTY
BOARD OF COMMISSIONERS**

Ann R. Goering (#0210699)
Christian R. Shafer (#0387947)
RATWIK, ROSZAK & MALONEY, P.A.
730 Second Avenue South, Suite 300
Minneapolis, MN 55402
(612) 339-0060

Attorneys for Appellants

Gregg M. Corwin (#0019033)
Margaret A. Luger-Nikolai (#0314630)
GREGG M. CORWIN &
ASSOCIATES LAW OFFICE, P.C.
508 Parkdale Plaza Building
1660 South Highway 100
St. Louis Park, MN 55416
(952) 544-7774

Attorneys for Respondents

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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STATEMENT OF LEGAL ISSUES

1. Did the District Court err in determining that the County's decision that the policies did not constitute an employment contract and to amend the post-retirement healthcare benefits in its employment policies was properly reviewable in a declaratory judgment action in District Court?
2. Did the District Court err in failing to dismiss the promissory estoppel claims of the Plaintiffs?
3. Did the District Court err by refusing to dismiss four Plaintiffs from the case for lack of standing and subject-matter jurisdiction?

MOST APPOSITE CASES

1. Did the District Court err in determining that the County's decision that the policies did not constitute an employment contract and to amend the post-retirement healthcare benefits in its employment policies was properly reviewable in a declaratory judgment action in District Court?

Dead Lake Assoc , Inc. v. Otter Tail County, 695 N.W.2d 129 (Minn. 2005)

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Dokmo v. Independent School District No. 11, Anoka-Hennepin, 459 N.W.2d 671 (Minn. 1990)

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Viet Co. v. Lake County, 707 N.W.2d 725 (Minn. App. 2006)

Willis v. County of Sherburne, 555 N.W.2d 277 (Minn. 1996)

2. Did the District Court err in failing to dismiss the promissory estoppel claims of the Plaintiffs?

Williams v. Board of Regents of University of Minnesota, 763 N.W.2d 646 (Minn. App. 2009)

3. Did the District Court err by refusing to dismiss four Plaintiffs from the case for lack of standing and subject-matter jurisdiction?

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

STATEMENT OF THE CASE

Respondents filed suit against Appellants County of Lyon (County) and the Lyon County Board of Commissioners, collectively referred to herein as the “Appellants” for breach of employment contract and promissory estoppel. Their Complaint also alleges that they are entitled to declaratory judgment on those claims.

Respondents’ claims arise out of a Lyon County employment policy which contains certain post-retirement healthcare benefit, which Respondents allege creates a binding employment contract.

The current policy and numerous prior versions of the policy state that it is not a contract for employment. The post-retirement healthcare benefits contained in the policy have changed over the years since its original enactment in 1985. Specifically at issue in this case, on February 3, 2009, Appellants made findings that the personnel policy did not constitute an employment contract. The Board then voted to amend the post-retirement healthcare benefits contained in its employment policy with respect to employees hired on or before 1997. This amendment resulted in a reduction of those benefits. On June 18, 2009, Respondents initiated this lawsuit.

On September 4, 2009, Appellants moved the District Court to dismiss Respondents’ Complaint for lack of subject matter jurisdiction pursuant to Minnesota Rule of Civil Procedure 12.02(a). Specifically, Appellants asserted that in light of the Minnesota Supreme Court’s holding in *Dietz v. Dodge County*, 487 N.W.2d 237 (Minn. 1992), and subsequent cases, review of the Appellants’ decision that the personnel policies did not constitute an employment contract and decision to alter its employment

policies was only properly obtained through a petition for a writ of certiorari to this Court. The Appellants also moved to dismiss four of the Respondents for lack of standing and subject matter jurisdiction.

On October 13, 2009, District Court Judge Jeffery L. Flynn denied the Appellants' Motion in its entirety. ADD¹. p. 1. Judge Flynn disregarded the language in multiple decisions of this Court and the Minnesota Supreme Court specifically applicable to questions of employment contracts with governmental entities. Instead, he utilized the general standard for a "quasi judicial" decision articulated by the Minnesota Supreme Court in *Meath v. Harmful Substances Compensation Board*, 550 N.W.2d 275 (Minn. 1996) and determined that the Appellants' decision that the policies did not constitute an employment contract and to amend the post-retirement benefits contained in its employment policy was properly reviewable in District Court.

¹ ADD refers to Appellants' Addendum.

STATEMENT OF THE FACTS

Appellant County is a political subdivision of the State of Minnesota. The Lyon County Board of Commissioners (Board or County Board) is its governing body. Respondents are current and former County employees and elected officials bringing suit related to County Personnel Policies and the benefits set forth in those policies.

In 1985 Appellant County Board amended its personnel policies to provide post-retirement health insurance coverage to individuals meeting certain prerequisites. The policies stated that they were a guide and could be deviated from on the authority of the Board. AA². p. 17.

In 1991 Appellant County Board again revised the personnel policies and replaced them. The revised policies specifically stated that they were not an employment contract. The policies retained the same language regarding being a guide and the right of the Board to deviate from them, but added additional language. The language stated that the policies were not an employment contract and that the Board reserved the right to change any of the policies. AA p. 57. The 1991 personnel policies specifically replaced all previous policies. AA. p. 75. This language was also contained in the 1995 personnel policies amendments. AA. pp. 80, 110.

In 1997, Appellants again modified its personnel policies and replaced them. These amendments eliminated retiree health insurance benefits to employees hired after May 1, 1997. AA. p. 117.

² AA refers to Appellants' Appendix

In 1999, Appellants again changed the policies. The revisions again contained language stating that the policies were not an employment contract and that the Board reserved the right to change any of the policies, and that the amended policies replaced all previous policies. AA pp. 122, 159. Also in 1999, Appellants altered the percentage of contribution towards retiree health insurance premiums. AA. p. 131.

The policies were amended again in 2003, 2005 and 2007. ADD. p. 6. These versions again contained language stating that they were not a contract. *Id.* They also contained language stating that they could be revised, modified or revoked by the County Board at any time. AA. p. 170. They also stated that revisions or additions could be adopted from time to time by the County Board and would be distributed within thirty (30) days of their adoption. *Id.* Copies were provided to all employees. These personnel policies specifically replaced all previous policies. *Id.*

In August 2008 Appellant County Board placed current employees and officials on notice that it was considering the elimination of the post-retirement health insurance benefit for those retiring after August 19, 2008.³ This occurred at County Board meeting, which was open to the public. At the meeting, the Board discussed the cost of the retiree benefits. The Board voted to suspend the retiree health insurance benefits until April 1, 2009 in order to gather more information. Eligible employee retiring between the August 19, 2008 meeting and April 1, 2009 would still be eligible. AA. pp 284-285.

³ Only the class of employees hired or elected before 1997 were eligible.

The day after the meeting one of the Respondent's, Rick Maes, gave an interview to the local newspaper regarding a potential lawsuit if the benefits were changed. App. 289.

In October, Lyon County employees were asked to sign an acknowledgment that they had received or had access to the Lyon County Personnel Policies. Complaint, ¶62, AA p. 9; AA p. 290. On October 24, 2008, Respondents' attorney, on behalf of one of the Respondents' wrote to the County Attorney, who is now a Respondent, setting forth legal arguments that the personnel policies were a legally contract and disputing the Board's right to alter the terms of the health insurance contribution for employees and elected officials hired prior to 1997. AA pp. 392-397.

A special meeting of the Lyon County Board of Commissioners was held on November 18, 2008. AA. p. 308. It was a one agenda item meeting, dedicated to the retiree health insurance issue. *Id.* Dean Champine, one of the Respondents, presented and read a letter on behalf of all of the affected employees, the text of which is set forth in the minutes of the meeting. AA p. 308. Within the letter and read by Champine is the statement: "*We are requesting that this Board reconsider the suspension of this benefit and give the employees what they have worked for without having to fight to retain what was so plainly set out for them in the manual.*" During the special Board meeting ten (10) of the current Respondents spoke. *Id.*

On February 3, 2009, at a meeting of the Lyon County Board of Commissioners, the Board approved the minutes of the January 20 Board meeting. AA. pp. 313-314. At the January 20 meeting, the retiree benefits had also been discussed. *Id.* Commissioner

Stensrud commented that he had information in his Board packet from January meeting as well as information from individual board members and employees. Id. The County had four proposals. The affected employees also made a proposal, which included a provision that if the benefits changed, that each affected employee have an individual contract with the County separate from the personnel policies regarding their retiree health insurance. AA, 314. The proposals were discussed and amendments made to proposals.

After weighing the facts presented during the previous meetings, the submissions of the employees and County Administration, considering the modification of the policies eight (8) separate times from 1985 through 2007, the Board adopted a detailed Resolution on February 3, 2009 finding that the policies were not an employment contract and that the Appellant's limited budget mandated a change in benefits. The Board also modified its retiree health insurance benefits policy. ADD. p. 6.

The Respondents, other than those subject to a PELRA status quo order, discussed below, were served with notice of the Board's action between February 4 and March 20, 2009. AA. pp. 342-360. Appellants filed suit on June 18, 2009.

Four Respondents, Mary Gislason, Susan M. Jensen, Robert C. Meyer and Daniel J. Sorenson, are members of a bargaining unit under the Public Employee Labor Relations Act (PELRA), Minn. Stat. § 179A, et seq. AA. p. 332. At the time of the February 3, 2009, Board action, a Bureau of Mediation (BMS) status quo order with respect to these individuals was in effect. AA. p. 336. This status quo order was specifically referenced in the February 3, 2009, Board resolution, noting that the policy

change would not go into effect for these employees while the status quo order was in effect. ADD. p. 6. A PELRA bargaining unit was subsequently certified as an essential employee unit, subject to interest arbitration. AA p. 340. Law Enforcement Labor Services (LELS) is the exclusive bargaining representative for these employees and is currently negotiating with Appellant with respect to the terms and conditions of employment, including the benefits package, for these four employees.

ARGUMENT

I. PROPER METHOD FOR REVIEW OF THE APPELLANTS' FEBRUARY 3, 2009 ACTION IS BY A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS.

Appellant Board, at its February 3, 2009 meeting, adopted a Resolution which specifically addressed and made findings regarding the existence of an employment contract based upon its personnel policies from 1985 through 2007. ADD p. 6. These findings are quasi-judicial in nature.

The District Court held that the Appellant Board did not settle or otherwise affect a specific dispute by its February 3, 2009 Resolution. The District Court ignored the specific findings made by the Board regarding the existence of an employment contract with respect to specific employees. ADD. p. 1. Instead, the District Court focused exclusively on the changes Appellant Board made to contributions to retiree health insurance. These changes, however, were premised on the finding that the policies were not an employment contract. Because it failed to recognize the Board's determination that the policies were not an employment contract, the District Court's decision was in error.

A. The *Dietz* Decision and Subsequent Case Law Are Applicable and Mandated Certiorari Review of Respondents' Claims.

“Writ of Certiorari is the appropriate method of review for an administrative body’s quasi-judicial decisions.” *Shaw v. Board of Regents of the University of Minnesota*, 594 N.W.2d 187, 190 (Minn. Ct. App. 1999) *rev. denied* (July 28, 1999). The Appellant is an administrative body without statewide jurisdiction. *See Dietz v. Dodge Appellant*, 487 N.W.2d 237, 240 (Minn. 1992). Even if an administrative decision is only “arguably” quasi-judicial in nature, review of that decision is appropriately obtained only through certiorari. *Id.*

The Minnesota Supreme Court has held that administrative body’s decisions related to employment contracts are only properly reviewable upon certiorari to the Court of Appeals. *See Id.* It is clear that Respondents failed to petition this Court for a writ of certiorari within sixty days of notice of Appellant Board’s February 3, 2009 action. Affidavit of Stomberg, AA p. 342. Despite this, the District Court denied Appellants’ Motion to dismiss for lack of subject matter of each of Respondents’ claims.

Respondents have asserted a claim for an alleged breach of a “valid and enforceable contract between Respondents and Defendants.” Complaint ¶ 68, AA. p. 11. The crux of Respondents’ claim is that the Appellant, by altering the amount of retiree health insurance premiums, violated the terms of an employee handbook, which Respondents allege created an employment contract with the Respondents. Complaint ¶¶ 71, 72, AA. p. 12. Review of Respondents’ contract claim, or even the existence of an alleged employment contract between Respondents and the Appellants, is appropriately

obtained only through a writ of certiorari from the Minnesota Court of Appeals. Minn. Stat. § 606.01.

Whether an employee has entered into an employment contract, or is an employee at will “is a question of law that is appropriate for review on certiorari.” *Dietz*, 487 N.W.2d at 240 (internal quotation marks omitted). The instant situation is directly analogous to that of the *Dietz* case. In *Dietz*, the Respondent alleged that she had been promised that she would not be terminated, except for cause, on the grounds that she had an employment contract with the Appellant. 487 N.W.2d at 240, n. 4. In the present case, the Respondents allege that they were promised certain retirement benefits under the terms of the Appellant Personnel Policies, which they allege forms a contract.

Complaint ¶¶ 45-48, AA. p. 7.

Just as in the *Dietz* case, review of the nature, or even existence, of a contract between Respondents and Appellants is “a question of law that is appropriate for review on certiorari.” Respondents are seeking to have the District Court review whether or not the Appellants personnel policies and the various amendments to the policies over the course of over twenty years constitute an employment contract. This inquiry was already made by, and decided by, Appellant Board on February 3, 2009. ADD. p. 6. This searching inquiry of Appellants’ decision is specifically precluded from review by the District Court, as enunciated in *Dietz*. Appellant Board’s decision is reviewable only by the Court of Appeals by writ of certiorari.

“Regardless that the claim is cloaked in the mantle of breach of contract, when the alleged breach of the employment contract of a governmental employee results in [harm

to the employee] by an executive body, which does not have statewide jurisdiction – for example, a County – the claimant may contest the employer’s action by *certiorari alone*, absent statutory authority for a different process.” *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996) (emphasis added). There is no Minnesota statute which specifically authorizes Respondents to contest the Appellant’s action. Therefore, Respondents were required to bring their challenge on a writ of certiorari to the Minnesota Court of Appeals. *See, e.g., Willis*, 555 N.W.2d at 282.

The need for narrow judicial review of governmental employers’ employment decisions is grounded in the separation of powers doctrine in the Minnesota Constitution. *Dietz*, 487 N.W.2d at 239-40. “Complete jurisdiction cannot, either directly or indirectly, be conferred upon the courts to review [Appellant board] decisions in view of the constitutional division of the powers of government. Yet a limited jurisdiction by way of *certiorari*, and in some cases by statutory appeal, is conferred upon the courts.” *Dokmo v. Independent School District No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 673 (Minn. 1990) (emphasis in original). “[C]ourts cannot confer subject matter jurisdiction where none exists.” *University of Minnesota v. Wooley*, 659 N.W.2d. 300, 306 (Minn. App. 2003).

Because the “cause of action alleged in [Respondents’] complaint would require the rights and liabilities of the parties to be fixed not by the terms of the [alleged] contract, but by the propriety of the Appellant’s exercise of discretion.” Certiorari review is the only appropriate form of judicial review. *Dietz*, 487 N.W.2d at 240. Full, de novo review of the Appellants’ employment decision would impermissibly expand the

contours of the judicial power at the expense of the other branches of government.

“[W]hen the core discretionary acts of executive bodies are challenged, the continued vitality of fundamental constitutional principles compels the judiciary to exercise limited scrutiny.” *Id.* at 241. Indeed “[t]he issue which [Respondents’] would have the court review demands scrutiny of the manner in which the Appellant has discharged its administrative function; the very type of scrutiny that runs a grave risk of usurping the Appellant’s administrative prerogative.” *Id.* at 240. Thus, review of the Appellants’ decision that its policies did not form an employment contract over the course of a twenty year period and its related decision to alter retirement benefits is reviewable only through certiorari.

While *Dietz* itself involved an employment termination decision, the *Dietz* Court’s reasoning has been applied to a wide variety of matters. *See e.g. Dead Lake Assoc., Inc. v. Otter Tail County*, 695 N.W.2d 129 (Minn. 2005) (review of county zoning decision to grant conditional use permit); *see also Viet Co. v. Lake County*, 707 N.W.2d 725 (Minn. App. 2006) (challenging county planning commission’s denial of request for conditional use permit); *In the Matter of Chisago Lakes Sch. Dist. and J.D.*, 690 N.W.2d 407 (Minn. App. 2005) (review of hearing officer’s decision concerning provision of special education services); *Pierce v. Otter Tail County*, 524 N.W.2d 308 (Minn. App. 1994) (challenging county’s denial of application for solid waste permit); *Nietzel v. County of Redwood*, 521 N.W.2d 73 (Minn. App. 1994) (review of county board’s denial of application for conditional use permit).

The District Court relied on *Minnesota Center for Environmental Advocacy v. Metropolitan Council*, 587 N.W.2d 838 (Minn. 1999) (“*MCEA*”) for the proposition that there must be “strict compliance” with a proscribed standard and held that the Appellants’ decision failed to comply and was therefore administrative rather than quasi-judicial. For several reasons, including the fact that there was no analysis of the Appellants’ findings regarding the non-existence of a contract, the District Court’s analysis was in error. Moreover, *MCEA*, involved a statute. No statute exists in a breach of contract case, as is at issue here.

Application of the three indicia of quasi-judicial actions summarized in *MCEA* is unnecessary where the issue of whether certiorari review of the same type of matter has already been decided. *See* 587 N.W.2d 838; *see also Michurski v. City of Minneapolis*, 2002 WL 1791983 (Minn. App. Aug. 6, 2002). AA p. 411. The *Dietz* decision provides clear guidance on the question of whether certiorari review of Respondents’ claims is mandated. Specifically, the *Dietz* Court expressly held that the question of whether an employee is at will or, alternatively, whether an employment contract exists “is a question of law that is appropriate for review on certiorari.” Respondents’ claims are predicated on their assertion that the Appellants’ personnel policies created a binding contract between the Appellants and the Respondents regarding items in those policies, including retiree health insurance benefits. On the other hand, the Appellants assert that no employment contract exists between the Appellants and the Respondents, and that consequently there can be no breach of contract. This threshold question of whether an employment contract exists relative to the Respondents’ rights to receive retiree health

insurance benefits is a question of law appropriate for review on certiorari. *Dietz*, 487 N.W.2d at 240.

In addition, the Minnesota Court of Appeals more broadly held in *Michurski v. City of Minneapolis* that discretionary employment decisions require review by certiorari. *See* 2002 WL 1791983, *3 (Minn. App. Aug. 6, 2002) AA p. 411. As in the present matter, the *Michurski* decision, which was rendered after the *MCEA* holding, involved a breach of contract claim. *See generally id.* Specifically, the employee in *Michurski* asserted that a breach of contract existed by virtue of the fact that he had previously been told he would be hired for a particular position and then was not hired for that position. *Id.* After referencing the *MCEA* indicia, the *Michurski* Court did not apply them, but instead found that because the employee's claim was related to the city's discretionary employment decisions, review by certiorari was mandated. *Id.* at *3. Similarly, the present matter involves the discretionary employment decision of the type of benefits to be provided to employees of Appellants. Such a decision is reviewable only by writ of certiorari to the Court of Appeals. *Id.*

In light of the *Dietz* and *Michurski* decisions, the *MCEA* indicia need not be applied to the Appellants' actions. This is further supported by the fact that the Minnesota Supreme Court has similarly applied the *Dietz* Court's reasoning without application of the *MCEA* indicia where it has already been established that a particular action is quasi-judicial. *See Dead Lake Association, Inc. v. Otter Tail County*, 695 N.W.2d 129 (Minn. 2005) (applying *Dietz* without application of *MCEA* indicia because

it had already been established by prior decision of the Court that granting conditional use permits are quasi-judicial in nature).

The same reasoning applied in *Dietz* to determine that certiorari review was the only proper method of review is equally applicable to the present matter. See 487 N.W.2d 237, 239. This is despite the fact that the present matter does not involve a termination of employment. As in *Dietz*, no statute entitles the Respondents to appeal the Appellants' decision by traditional means. *Id.* Further, the *Dietz* Court reasoned that "the standard of review on certiorari is more appropriate to a review of the exercise of the board's discretion than would be the standard of review of an independent proceeding." 487 N.W.2d at 239. Likewise, the certiorari standard of review is more appropriate to review the Appellants' exercise of its discretion regarding retiree benefits, and whether or not an employment contract exists, than the standard of review of an independent proceeding. The *Dietz* Court also reasoned that certiorari ensures expedient review of a fresh record. More than a year has passed since the Appellants first considered elimination or modification of certain employee benefits in August 2008, and more than nine months have passed since the Board's February 2009 Resolution.

Lastly, the *Dietz* Court also based its decision that certiorari review was appropriate on the Minnesota Supreme Court's "longstanding recognition that when the core discretionary acts of executive bodies are challenged, the continued vitality of fundamental constitutional principles compels the judiciary to exercise limited scrutiny." 487 N.W.2d at 240-41.

Neither the District Court nor the Respondents cited a single case for the proposition that breach of contract and promissory estoppel cases should not be reviewed by writ of certiorari to the Court of Appeals. In contrast, ample case law establishes that writ of certiorari is mandated. *See Dietz*, 487 N.W.2d 237; *see also Michurski*, 2002 WL 1791983; *Dead Lake Assoc., Inc.*, 695 N.W.2d 129; *Viet Co. v. Lake County*, 707 N.W.2d 725; *In the Matter of Chisago Lakes Sch. Dist. and J.D.*, 690 N.W.2d 407; *Pierce*, 524 N.W.2d 308; *Nietzel*, 521 N.W.2d 73.

The District Court erred in holding that the Appellants' decision was not quasi-judicial and by failing to acknowledge that Appellants made findings regarding the existence of an employment contract. Such decisions are reviewable only by writ of certiorari.

B. Assuming *Arguendo* that the *MCEA* Indicia Must Be Applied to the Present Matter, Appellants Action was Quasi-Judicial and Review by Certiorari Appeal is Required.

The District Court held that the three indicia of a quasi-judicial action, as enunciated in *MCEA*, 587 N.W.2d 838, 842 (Minn. 1999), were applicable to a breach of employment contract and promissory estoppel action, despite the fact that there was no applicable statute. Those indicia were summarized 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.

587 N.W.2d 838, 842 (Minn. 1999). Even applying the *MCEA* indicia, Appellants' actions were quasi-judicial in nature.

1. The Board Clearly Investigated the Disputed Issue of Whether the Policies Constituted an Employment Contract and Whether to Modify Its Retiree Health Insurance Policy, Taking Into Account and Weighing Facts During the Process.

Between August 2008 and February 2009, the Board carefully considered and weighed evidence prior to adopting a resolution determining that the employment policies enacted and replaced repeatedly from 1985 through 2007 did not constitute an employment contract with respect to the specific group of employees and thereafter modifying its contribution towards the retiree health insurance benefits under its policies. The facts in support of this are not in dispute and are largely contained in the Respondents' Complaint itself. AA. 7-9.

Appellant Board, at a public meeting on August 19, 2008, addressed the issue of retiree health insurance benefits. AA. p. 284. The Respondents were placed on notice that it was considering the elimination of the post-retirement health insurance benefit for those retiring after August 19, 2008. Appellant Board discussed the cost of the retiree benefits and voted to suspend the retiree health insurance benefits until April 1, 2009 in order to gather more information. Eligible employees retiring between the August 19, 2008 meeting and April 1, 2009 would still be eligible. AA. p. 285. The day after the meeting one of the Respondents, Rick Maes, gave an interview to the local newspaper regarding a potential lawsuit if the benefits were changed. AA. p. 289.

In October, Lyon County employees were asked to sign an acknowledgment that they had received or had access to the Lyon County Personnel Policies. Complaint, ¶ 62. AA. pp. 9, 296. On October 24, 2008, Respondents' attorney, on behalf of one of the

Respondents' wrote to the County Attorney, who is now a Respondent, setting forth legal arguments that the personnel policies were a legally contract and disputing the Board's right to alter the terms of the health insurance contribution for employees and elected officials hired prior to 1997. AA. pp. 392-397. Both the public comments of County Attorney Maes, who is plaintiff in this action, and the letter from the attorney for the Respondents, clearly show that there was a "disputed issue" which the Board was considering.

A special meeting of the Lyon County Board of Commissioners was held on November 18, 2008. AA. p. 368. It was a one agenda item meeting, dedicated to the retiree health insurance issue. *Id.* Dean Champine, one of the Respondents, presented and read a letter on behalf of all of the affected employees, the text of which is set forth in Exhibit K to the Complaint, AA p. 308. Within the letter, which was read to the Board by Champine is the statement: "*We are requesting that this Board reconsider the suspension of this benefit and give the employees what they have worked for without having to fight to retain what was so plainly set out for them in the manual.*" During the special Board meeting ten (10) of the current Respondents addressed the Board. *Id.* The nature of the testimony and the content of the letter from the affected employees clearly shows that there was a dispute regarding the existence of an employment contract and those employees' entitlement to retiree health insurance benefits, which the Board was investigating through the hearing process.

On February 3, 2009, at a meeting of the Lyon County Board of Commissioners, the Board approved the minutes of the January 20 Board meeting, at which the retiree

benefits had also been discussed. Commissioner Stensrud commented that he had information in his Board packet from January meeting as well as information from individual board members and employees. AA. pp. 313-314. This further establishes that the Board was continuing to gather information from the employees between the November and February Board meetings.

At the February 3, 2009 meeting, the Appellants had four proposals. The affected employees also made a proposal, which included a provision that if the benefits changed, that each affected employee have a contract with the County separate from the personnel policies regarding their retiree health insurance. AA. p. 314. The proposals were discussed and amendments made to proposals. Representatives of the affected employee group also spoke at the meeting. AA. p. 314.

Despite not being made under oath, Respondents' submissions to the Board are legally sufficient evidence on which the Board based its quasi-judicial decision. *See Dietz*, 487 N.W.2d at 239-40. In the *Dietz* case, eight employees appeared at a county board meeting to express dissatisfaction with Ms. Dietz, another employee. *Id.* at 239. Ms. Dietz never obtained an opportunity to respond to the allegations made at the board meeting. *Id.* Nevertheless, the Minnesota Supreme Court held that “[w]hile the record in this case plainly falls short of a record generated in formal judicial proceedings, it is certainly adequate to ascertain the type of employment contract to which [the employee] was a party.” *Id.* at 240. Thus, certiorari, not trial de novo, was appropriate to review the existence of an employment contract. *Id.*

As in *Dietz*, while Respondents' submissions to the County Board, and the other evidence considered by the Board, are not equivalent to the record that a full judicial proceeding would produce, they are appropriate for these proceedings. Unlike Ms. Dietz, Respondents were able to present material to the Board before the Board reached its decision. They had the opportunity to address the Board, which at least ten of them exercised. As in *Dietz*, Respondents' submissions, and the other record evidence, including the policies themselves, are "certainly adequate" to answer the question as to the type of employment arrangement between Appellants and Respondents.

After weighing the facts presented during the previous meetings, the submissions of the affected employees and County Administration, and considering the modification of the policies eight (8) separate times from 1985 through 2007, the Board adopted a detailed Resolution on February 3, 2009. The Board found that the policies were not an employment contract and that the Appellants' limited budget mandated a change in benefits. The Board also modified its retiree health insurance benefits policy. ADD. p. 6.

The facts clearly show that the County engaged in an "investigation into a disputed claim and weighing of evidentiary facts," satisfying the first indicia summarized in *MCEA*. 587 N.W.2d at 842.

2. In Arriving at Its Decision the Board Applied Facts to a Prescribed Standard.

When considering and weighing the facts regarding the existence of an employment contract and the cost of continuing to provide the retiree health insurance benefits at issue, as well as employee testimony about the personal importance of the

benefit to them, the Board applied those facts to a prescribed standard. Specifically, the Board applied the facts before it to the standard it developed regarding what the County could reasonably afford to pay its employees given the tough economic times the County, like so many others, was faced with, as well as whether an employment contract existed. ADD. p. 6. This is consistent with the Minnesota Court of Appeals' decision in *Maye v. University of Minnesota*, 615 N.W.2d 383 (Minn. App. 2000).

In *Maye*, the Court of Appeals, faced with a breach of contract claim, applied the *MCEA* indicia to the University's action regarding employment promotions. *Id.* The *Maye* Court found the second indicia met despite there being no statute specifically prescribing the actions the University must take with regard to promotions. *Id.* Instead, it was enough that "[t]he University created a standard by identifying the qualities required for the position to be filled." *Maye*, 615 N.W.2d at 386.

As in *Maye*, this is a breach of contract claim. The Board carefully weighed and considered whether its prior policies, which were modified eight (8) times over a period from 1985 to 2007, and which the affected employees had notice of and continued employment after notice was received, created a binding and enforceable employment contract. ADD. p. 6. In determining the rights and obligations of the County and the particular employees who would be impacted by its decision, the Appellants developed and applied a standard for implementing the change of retirement benefit to employees. The Appellant Board's careful consideration and application of evidence to the standard satisfies the second indicia set forth in *MCEA*.

Further, the Appellants have a limited budget out of which it must pay salaries and benefits, and provide services to the public. *Id.* The Appellants considered the actuarial assessment data, as well as the employee testimony, in light of its limited budget for 2009. Additionally, the Appellants considered four different options for modification of its retiree health insurance benefits and decided which option best fit within the Appellants' budget. AA. p. 314. The Board considered the employees' proposal that they each be issued an individual contract. The Board determined that the employees had no contractual right to the current benefit and declined to grant the benefit prospectively. Determining it was in the best interests of the County to conserve the limited resources it had for other necessary expenses, namely providing services to the public, the Appellants voted to modify the retiree health insurance benefits by selecting the option that best fit within the developed standard. *Id.* This application of evidence and testimony to the Appellant's standard regarding the amount it could reasonably afford given its limited budget satisfies the second indicia set forth in *MCEA*. See 587 N.W.2d at 842; see also *Maye*, 615 N.W.2d 383.

3. The Board Rendered a Binding Decision Regarding the Disputed Retiree Health Insurance Benefits Issue.

By adopting its February 3, 2009 resolution finding that the personnel policies did not constitute an employment contract and modifying Article 3260, Section D, of the Lyon County Personnel Policies, Appellant Board rendered a binding decision. ADD. p.6. That decision was in regard to an issue that involved a clear dispute between the

Appellants and the specific employees who are Respondents in this matter. Thus, the third indicia summarized in *MCEA* is satisfied. *See* 587 N.W.2d at 842.

The Appellants decision applied to clearly identified parties. *Handicraft v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000). The August 2008 Board meeting made clear what the Board was considering and which specific employees the action would apply to. AA. p 384. Respondents' attorney sent a letter in October stating that he was clearly aware of who would be impacted by the Board's potential actions. A hearing was held in November 2008, at which time the Board took testimony from the potentially affected employees. Those affected employees submitted a letter regarding their claim that the personnel policies gave them a promised benefit that they were going to "fight to retain." AA. p. 308. These employees presented additional information to the Board and even presented the Board with an alternative proposal for consideration at the February meeting and their representative spoke at the meeting. AA. p. 314. The action was taken at the February 3, 2009 Board meeting, for which notice was given pursuant to the Minnesota Open Meeting law, Minn. Stat. Chapter 13D. Following the meeting, Respondents were personally served with copies of the Board's action.

Any contention that the Respondents did not know that the Appellant was making a binding decision which impacted their rights is without merit. The Respondents had notice from August 2008 until February 2009 that the Appellant Board had suspended the benefit and was considering eliminating or modifying it. The Respondents placed the Appellant Board on written notice that they considered the personnel policies to be a contract and that they, as a group, would "fight" to retain their benefits. They made

alternative proposals to the Board and spoke at public meetings regarding their benefits. They were served with written notice of Appellant Board's decision, which is binding.

Appellants have met the three indicia of quasi-judicial action as set forth in *MCEA*, despite the fact that no statute applies in this case. Respondents failed to seek a writ of certiorari within sixty (60) days of receiving notice of Appellant Board's action. Therefore, their complaint should be dismissed.

II. RESPONDENTS' ESTOPPEL CLAIMS MUST ALSO BE REVIEWED BY WRIT OF CERTIORARI

"To decide the estoppel claim[s], the district court must examine the [governmental employer's] alleged promise of employment *and the details of that promise.*" *Williams v. Board of Regents of University of Minnesota*, 763 N.W.2d 646, 652 (Minn. Ct. App. 2009) (emphasis added). Because it invites review of the governmental employer's ultimate decision regarding Respondents employment, appeal of the Appellants decision to the District Court is improper. "A writ of certiorari from the court of appeals pursuant to Minn. Stat. § 606.01 is the only appropriate means for judicial review of [an employee's] estoppel claims." *Id.*

As with Respondents' breach of contract claim, their promissory estoppel claim must also have been brought by writ of certiorari within sixty (60) days. As they failed to do so, this claim must also be dismissed.

III. THE DISTRICT COURT ERRED IN FAILING TO DISMISS THE CLAIMS OF THE PELRA BARGAINING UNIT EMPLOYEES

A. The PELRA Bargaining Unit Employees Lack Standing

Respondents Gislason, Jensen, Meyer and Sorenson, are members of a bargaining unit under the PELRA, Minn. Stat. § 179A, et seq. AA. p.332. Their exclusive bargaining representative is LELS. At the time of the February 3, 2009, Board action, a BMS status quo order with respect to these individuals was in effect. AA p. 336. This status quo order was specifically referenced in the February 3, 2009, Board Resolution, noting that the policy change would not go into effect for these employees while the status quo order was in effect. ADD. p. 6.

LELS was certified as the exclusive bargaining unit for Lyon County corrections employees and dispatchers, including these four Respondents. AA. p. 340. The exclusive representative is the "employee organization which has been certified by the commissioner under section 179A.12 to meet and negotiate with the employer on behalf of all employees in the appropriate unit." Minn. Stat. § 179A.03, subd. 8.

Appellants and LELS are obligated to negotiate all terms and conditions of employment for the unit members, including how any personnel policies impact the unit employees:

"Terms and conditions of employment" means the hours of employment, the compensation therefore including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees.

... "Terms and conditions of employment" is subject to section 179A.07.

Minn. Stat. § 179A.03, subd. 19.

Moreover, these four Respondents are part of a unit comprised of essential employees. Minn. Stat. § 179A.03, subd. 7. If the employer and the exclusive representative of a bargaining unit of essential employees are unable to reach an agreement regarding the terms and conditions of employment, including employee benefits, the matter may be submitted to binding arbitration. Minn. Stat. § 179A.16, subd. 2. While non-essential employees may not voluntarily submit the issue of retiree health insurance benefits to interest arbitration, there is an express exception for essential employees under PELRA. Minn. Stat. § 179A.16, subd. 9.

In the present case, Respondents Gislason, Jensen, Meyer and Sorenson have not been denied any retirement benefits under Appellant County's Personnel Policies. They were specifically excluded from the change in the policy provisions while the status quo order was in effect. Once the unit was certified, Appellant County, as the employer under PELRA, has an obligation to meet and negotiate in good faith the LELS regarding the terms and conditions of these employees' employment, including their benefits. If Appellant County and the exclusive bargaining representative are unable to mutually agree upon terms, the matter will be submitted to binding arbitration pursuant to the terms of PELRA.

PELRA is the exclusive remedy for Respondents Gislason, Jensen, Meyer and Sorenson to seek retirement health insurance benefits from their employer. Their claim

for breach of contract and promissory estoppel should have been dismissed by the District Court. The District Court erred in failing to do so.

B. More than 60 Days Have Passed Since They Have Clearly Had Notice of the Board's Action

On June 18, 2009, these four Respondents filed the present lawsuit. By their actions in filing suit, they acknowledge that they had notice of the Board's February 3, 2009 action. *Bahr v. City of Litchfield*, 420 N.W.2d 604 (1988) (posted notice was successfully communicated to the candidates and constituted "due notice" for the purposes of the writ of certiorari statute, Minn. Stat. § 606.01 resulting in 60-day limitations period being triggered). Here, the Board minutes were published and the four PELRA employees clearly had notice of the Board's action, as evidenced by their participation in the present lawsuit. Therefore, as with the other Respondents, their claims should have been dismissed by the District Court with prejudice as untimely, as more than 60-days have passed since the filing of this lawsuit.

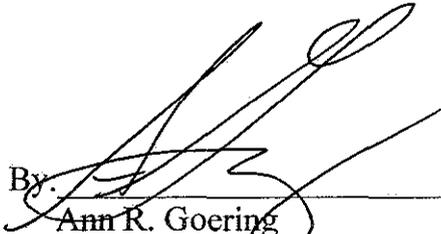
CONCLUSION

For the foregoing reasons, Appellants Lyon County and Defendant Lyon County Board of Commissioners request that the decision of the District Court denying Appellants' motion to dismiss be reversed and that the Respondents Complaint be dismissed with prejudice.

Respectfully submitted,

RATWIK, ROSZAK & MALONEY, P.A.

Dated: November 30, 2009

By. 

Ann R. Goering
Attorney Reg. No. 210699
300 U.S. Trust Building
730 Second Avenue South
Minneapolis, MN 55402
(612) 339-0060

**ATTORNEYS FOR COUNTY OF LYON
AND LYON COUNTY BOARD
OF COMMISSIONERS**

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