

NO. A09-1979

State of Minnesota
In Court of Appeals

County of Lyon, et al.,

Appellants,

vs.

Rick Anderson, et al.,

Respondents.

**REPLY BRIEF OF APPELLANT COUNTY OF LYON
AND APPELLANT LYON COUNTY BOARD OF COMMISSIONERS**

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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

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

Dietz v. Dodge County, 487 N.W.2d 237 (Minn. 1992)

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

Minnesota Center for Environmental Advocacy v. Metropolitan Council, 587 N.W.2d 838 (Minn. 1999)

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. Ct. 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)

ARGUMENT

I. RESPONDENT HAS FAILED TO ESTABLISH THAT THE EXISTENCE OF THE ALLEGED EMPLOYMENT CONTRACT IS NOT REVIEWABLE BY WRIT OF CERTIORARI

A. Respondents Rely on Inapplicable Case Law Based on Legislative Amendments and the Public Employment Labor Relations Act.

Respondents begin by arguing that breach of contract claims involving public retirement benefits may be litigated in the District Court, as such claims are not within the inherent discretion of a governmental entity. *See, generally*, Respondents' Brief, pp. 10-16. They cite *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W.2d 740, 746 (Minn. 1983), regarding whether employee retirement benefits constitute a gratuity. Respondents' Brief p. 10. However, the *Christensen* case is inapplicable to the present matter.

First, the *Christensen* case involves a legislative amendment, not a change in an employment policy. 331 N.W.2d at 744-5. It does not involve a question of whether or not an employment policy, which was amended repeatedly over a period of more than twenty years, constitutes an employment contract. More importantly, the *Christensen* case does not in any way involve the question of whether a breach of contract claim involving a County Board's decision is reviewable by writ of certiorari. That is the issue presently before this Court. Finally, the *Christensen* case was decided in *1983*, long before *Dokmo* and *Deitz* were decided. It is therefore irrelevant to the question at issue here.

Respondents next cite *HRA of Chisolm v. Norman*, 696 N.W.2d 329 (Minn. 2005), for the proposition that writ of certiorari is not necessary in a breach of contract case with an employee. Respondents' Brief p. 11. This contention is grossly misleading. The *Norman* case involved the terms of a collective bargaining agreement entered into by the employer pursuant to the Public Employment Labor Relations Act (PELRA) (Minn. Stat. Ch. 179A). *See, generally*, 696 N.W.2d 329. Respondents purposefully ignore this fact. This case did not involve any quasi-judicial actions on the part of the employer. It does not involve a personnel policy, or an allegation as to the existence of a contract. Respondents' citation of this case is inapposite. The same is true for *Adams v. ISD 316*, A07-0774 (benefits under the terms of a PELRA collective bargaining agreement) and *Aderman v. Washington County*, C2-88-2348 (Minn. Ct. App. 1989) (involving a PELRA collective bargaining agreement and legislative amendments, decided before *Dietz*).

The present matter is entirely different from the cases relied on by Respondents. The benefits at issue are not pursuant to any collective bargaining agreement, nor are they governed by PELRA or any other statute. Instead, the benefits at issue are entirely governed by the terms of the County's personnel policies. *Christensen*, *Norman*, *Adams* and *Aderman*, all cited by Respondents, are inapplicable.

Respondents throughout their brief presume the existence of a contract and argue that the question on appeal is whether that contract was or was not breached. Respondents conflate the ultimate issue with the threshold question: whether there was an employment contract between a governmental entity and its employees. This initial

question, as the Minnesota Supreme Court has said, must be raised through a writ of certiorari. *See, e.g., Dietz v. Dodge Appellant*, 487 N.W.2d 237, 240 (Minn. 1992).

Respondents cite *Williams v. University of Minnesota*, 763 N.W.2d 646, 652 (Minn. Ct. App. 2008) in support of their position. Respondents' Brief p. 11. This case, however, actually supports Appellants' position. As Respondents cited in their own brief, the Minnesota Supreme Court "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'" Respondents' Brief, p. 11, citing *Williams* at 652. (emphasis added). However, Respondents' claims *are all* premised on legal and equitable claims of employment. As the Respondents themselves noted, the *Williams* case plainly distinguished those claims premised on legal claims, which are subject to certiorari review, and those sounding in tort, which are reviewable in District Court. None of Respondents claims are sounded in tort.¹ *See, generally*, Respondents' Complaint.

B. Respondents Mischaracterize the Holding in *Dietz* Regarding the Existence of a Contract Being Reviewable on Certiorari

Respondents argue that because no one has been fired, the County Board's decision in this case cannot be reviewable by writ of certiorari under the *Dietz* line of cases. As is their practice throughout their brief, Respondents assume the existence of a

¹ Respondents argue in a footnote that Appellants improperly stated that they had failed to cite any cases for the proposition that breach of contract cases and promissory estoppel cases should not be reviewable by writ of certiorari. As discussed above, the *Williams* case clearly states that such cases are reviewable by certiorari. The other cases cited by Respondent relate to PELRA claims, and are inapposite.

contract and frame the question as one of review of “breach of contract stemming from the unfair denial of promised benefits.” Respondents’ Brief, p. 15. This is not the question on appeal, nor is it the question which the *Dietz* court held is properly reviewable by writ of certiorari. Instead, the sole question on appeal is whether, in conformity with *Dietz*, the existence of an employment contract is a question only reviewable by certiorari.

The County Board reviewed the personnel policies and modified those policies eight (8) separate times from 1985 through 2007; including numerous instances in which employees acknowledged that the policies were not employment contracts. The Board then adopted a detailed Resolution finding that the policies were not an employment contract. ADD. p. 6. The question is not whether the Board breached an employment contract. The question is whether the Board’s decision that the policies were or were not an employment contract is reviewable by certiorari.

The answer to that question is answered by *Dietz*. “Whether [Dietz] entered into a ‘for cause’ or ‘at will’ employment contract is a question of law that is appropriate for review on certiorari.” *Dietz*, 472 N.W.2d at 240. Respondents’ claim that *Dietz* does not stand for this holding is completely without merit.

Dietz sued for wrongful termination. The District Court denied the County’s motion to dismiss for lack of jurisdiction. The County appealed. The Court of Appeals reversed in part and remanded, holding that the issue was not subject to certiorari review and that there were issues of fact precluding summary judgment. *Dietz*, 472 N.W.2d 237 (Minn. Ct. App. 1991). The County appealed. The Minnesota Supreme Court reversed on

the jurisdictional grounds only. *Dietz*, 487 N.W.2d. 237 (Minn. 1992). Respondents have mischaracterized the first sentence in the Supreme Court's decision² as somehow negating the holdings set out in the body of its decision. This initial sentence was simply to make clear that the Supreme Court was not addressing the substance of Dietz's wrongful termination claim or the Court of Appeals' holding that there were issues of fact precluding summary judgment. To claim that the Court intended to negate holdings set out in the body of its decision is misleading.

The employment cases cited by Appellants, which Respondents attempt to distinguish, are directly on point. They are all premised on the question of the existence of an employment contract. *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996) (alleging the existence of an employment contract based upon county's employee handbook); *Shaw v. Bd. Of Regents*, 594 N.W.2d 187, 190 (Minn. Ct. App. 1999)(alleged breach of an existing employment contract); and *Dokmo v. ISD No. 11*, 459 N.W.2d 671(Minn. 1990) (whether a teacher retained employment contract rights following an extended leave of absence).

Nothing in any of these decisions limit or reverse the Supreme Court's holding in *Dietz* that the existence of an employment contract is reviewable by certiorari. As set forth above, Respondents have clearly mischaracterized *Williams*, which states that tort cases are not reviewable by certiorari, but that "legal or equitable claim[s] to

² Respondents noticeably used ellipses to omit the reference by the Supreme Court to its holding in *Dokmo* as the basis for its holding.

employment” such as the ones brought by Respondents, are subject to certiorari.

Williams at 652.

Moreover, Respondents have not responded to Appellants’ argument that this Court, as well as the Minnesota Supreme Court, has applied *Dietz* and its successors outside of the employment termination context. See Appellants’ Brief, p. 13 (citing *Dead Lake Assoc., Inc. v. Otter Tail County*, 695 N.W.2d 129 (Minn. 2005), *Viet Co. v. Lake County*, 707 N.W.2d 725 (Minn. Ct. App. 2006), *In the Matter of Chisago Lakes Sch. Dist. and J.D.*, 690 N.W.2d 407 (Minn. Ct. App. 2005), *Pierce v. Otter Tail County*, 524 N.W.2d 308 (Minn. Ct. App. 1994), and *Nietzel v. County of Redwood*, 521 N.W.2d 73 (Minn. Ct. App. 1994)). As these decisions confirm, the logic in *Dietz* is applicable to situations other than employment termination matters.

Respondents’ “slippery slope” argument is spurious. The *Dietz* holding and its progeny are limited to the existence of an employment contract, not all contracts which might exist with a political subdivision. Despite Respondents’ contentions, nothing in *Meath v. Harmful Substance Compensation Bd.* 550 N.W.2d 275 (Minn. 1996) altered this holding.

The holding in *Dietz* remains good law. The question of “Whether [the Respondents] entered into a ‘for cause’ or ‘at will’ employment contract is a question of law that is appropriate for review on certiorari.” *Dietz* at 240. As applied to this case, the County Board’s conclusion that the employment policies, amended repeatedly over the course of twenty years and containing disclaimers, did not form an employment contract made the question of whether its employees were “at will” subject to certiorari review.

See also Maye v. University of Minnesota, 615 N.W.2d 383, 385 (Minn. Ct. App. 2000) (holding “petitions for writ of certiorari are appropriate when an employee raises a “pure breach of contract” claim.”) (internal citation omitted) (quotation marks in original).

II. APPELLANTS’ ACTIONS ARE QUASI-JUDICIAL

A. Respondents’ Reliance on *Meath* and *MCEA* is Misplaced

As set forth in Appellants’ principal brief, *Meath* and *MCEA* involved statutory obligations, which is not the case in the matter before this court. More importantly, the decision making body in *Meath* was a body before which the plaintiffs had a choice to bring their dispute, and their decision was not binding. *Meath v. Harmful Substance Compensation Bd.*, 550 N.W.2d 275, 275-276 (Minn. 1996). Because it was not a body with controlling decision making, its decisions were not quasi-judicial. *Id.*

In *MCEA v. Metropolitan Council*, 587 N.W.2d. 838, 842 (Minn. 1999), the Court concluded that the decision was debate and discussion in a political setting, rather than a weighing of evidence, “which could not be declared inconsistent as a matter of law.” *Id.* In contrast, the decision of the County Board regarding the existence of a contract could certainly be declared inconsistent with a standard as a matter of law.

With respect to the second factor, the *MCEA* court held that it was not met because the broad and vague goals of the long range plan did not constitute a proscribed standard. In contrast, the County adopted and applied a clear standard in determining whether the policies constituted an employment contract.

Finally, the *MCEA* court, in applying the third factor, held that the fact that the plans were indeed indefinite “plans” that could and would be altered made it clear that

the decision was not binding. *Id.* at 843-844. In contrast to the non-biding nature of the decisions in *Meath* and *MCEA*, only the County Board has the authority to make the decision in this case. Only the County Board has the decision to make employment contracts and the decisions surrounding them and the benefits for which its employees are entitled. Therefore, *Meath* and *MCEA* are easily distinguished on their facts.

B. To the Extent the *MCEA* Factors Apply, They Were Met by the Board's Actions.

Although Appellants believe that *Dietz* has settled the question of whether an employment contract is reviewable *per certiorari*, even if the *MCEA* factors did apply they have been met.

Respondents mischaracterize the cause of action in this case as applying to "all County employees past, present and future." Respondents Brief, p. 17. They do this in an attempt to overcome the fact that the Board did in fact engage in an investigation of a disputed claim involving the Respondents. In fact, the claims at issue involved not all County employees, past present and future, but indeed a small group of individuals who were the subject of the February 3, 2009 Resolution; those employees who were hired prior to 1991 who were eligible for specific retiree benefits and who had not retired as of the date of the Resolution. ADD. p. 6. Past employees, future employees and employees hired after 1991 were not impacted.

1. The Board clearly investigated the disputed issue

Respondents notably fail to address all of the facts set forth in Appellants' principal brief regarding its investigation into the disputed issues. They instead claim that

the fact that the Board is required, by the Minnesota Open Meeting Law, to conduct business in public board meetings, as evidence that it was not meeting the standard. The Board's actions were not, however, a matter of simply taking "public comment."

The Board addressed the issue of retiree health insurance benefits on August 19, 2008 and placed the Respondents on notice that it was considering the elimination of the post-retirement health insurance benefit for those retiring after August 19, 2008. AA. p. 284. The Board specifically 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. 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.

On November 18, 2008 the Board held a special meeting, as such meetings are called under the Minnesota Open Meeting law.³ This was the hearing in this matter. It was called for the sole purpose of addressing retiree health insurance. AA. p. 368. 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 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.*" This can hardly be characterized, as Respondents now attempt, as simply "public comment." 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.

Respondents simply ignore all of these facts in their brief. Their contention that the repeated opportunities to give testimony before the Board, written statements, evidence gathered from August 2008 through February 2009, alternate proposals from the Respondents, Board minutes establishing that the January Board packet contained

³ Minn. Stat. § 13D.04 Subd. 2.

additional information and that individual board members and employees had submitted information does not meet the standard of investigation into a disputed claim is without merit. The Board reviewed the language of each of these policies and amendments thereto over the more than twenty year period. The Board found that the policies were not an employment contract and that the Appellants' limited budget mandated a change in benefits. 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*.

Respondents attempt to characterize the Board's hearing as not "quasi-judicial," because the Board did not swear in testimony. Respondents' Brief, pp. 17-18. Respondents' contention is without merit. This Court has found that certiorari review is appropriate for employment related questions irrespective of whether witnesses were sworn during a government employer's proceeding. *See, e.g., Maye*, 615 N.W.2d at 385; *see also Williams*, 763 N.W.2d 646; *Dietz*, 487 N.W.2d at 240.

2. The Board applied a prescribed standard

Respondents' argument that the Board did not apply a prescribed standard again ignores the central question in this appeal: Was there a binding employment contract between the affected employees or not?

Instead, Respondents attempt in their brief to characterize the Board's actions as one of altering the personnel policies of the County. They cite case law regarding policy making being a quasi-legislative function. While it is true that the Board did adopt changes to the County's policies, it did so only after concluding that the policies, as they

applied to this specific group of employees, did not constitute an employment contract.

ADD. p. 6.

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, Appellants developed and applied a standard for implementing the change of retirement benefit to employees. The Board's careful consideration and application of evidence to the standard satisfies the second indicia set forth in *MCEA*. The fact that Respondents do not agree with the record upon which the Board made its decision is unavailing and goes more to the merits of the underlying dispute than to the issue of whether or not this issue this matter should have been brought by writ of certiorari.

3. The parties were clearly ascertainable

The parties upon whom the Board's decision was binding were clearly ascertainable since August 2008. The Board voted to suspend the retiree health insurance benefits of employees hired before 1997.⁴ AA. pp 284-285.

Most tellingly, on November 18, 2008 the affected employees presented a letter to the Board requesting that it reconsider and threatening action if it did not. AA p. 308. At the February 2009 meeting, the affected employees made alternative proposals to the

⁴ Only the class of employees hired or elected before 1997 were eligible.

Board. AA. p. 314. To claim that the parties were not identifiable and did not have prior notice is ludicrous.

Respondents allege that Appellants fail to argue that the adoption of a Resolution or policy is not a uniquely judicial act. This is false. The County Board's Resolution in this case did not, as is clear by its text, simply adopt a policy. It made specific findings regarding the nature of its previous employment policies and whether or not those policies formed a binding employment contract with its employees. *See* ADD. p. 6. By doing so, it engaged in a quasi-judicial act. This act is reviewable by writ of certiorari.

III. RESPONDENTS ARGUMENT REGARDING THE UNDERLYING MERITS SHOULD BE STRICKEN

Appellants have appealed the District Court's denial of their motion to dismiss on jurisdictional grounds. In their Brief, Respondents have improperly argued the merits of their underlying claim to contractual benefits. This argument, set forth on pages 22-23 of Respondents' Brief, should be stricken.

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

A. Respondents Gislason, Jensen, Meyer and Sorenson are Similarly Precluded from Bringing Claims of Breach of Contract and Promissory Estoppel.

Although only dealt with in a footnote, Respondents have failed to make any argument that the participation of these four Respondents in this lawsuit does not constitute de facto notice under *Bahr v. City of Litchfield*, 420 N.W.2d 604 (1988). Consequently, their claims should be dismissed on the same grounds as the other Respondents in this suit.

B. The PELRA Respondents Lack Standing.

Respondents mischaracterize the holding in *Ramsey County v. AFSCME, Council 91*, Local 8 309 N.W.2d 785 (Minn. 1981) as providing a cause of action for breach of contract to union members for benefits existing under an employment policy predating a union contract. This is not what the holding stands for.

In *Ramsey County*, the union negotiated a vacation accrual rate for its members that was different from the rate of accrual for those employees prior to certification of the union. *Id.* The union grieved on behalf of six affected employees under the collective bargaining agreement. The grievance proceeded to binding arbitration where the arbitrator concluded that past practice should supplement the agreement negotiated by the union and the employer with regard to the affected employees, and that those employees should accrue vacation at the rate they were used to. *Id.* The district court vacated the arbitrator's award. *Id.* The employees appealed the issue to the Minnesota Supreme Court where the issue was *solely* whether the arbitrator exceeded his powers when issuing the award based on past practice where the practice conflicted with the language of the parties' collective bargaining agreement. *Id.* The Court did not hold, as the Respondents imply, that a separate cause of action under the employment policies of the County survived. This was simply, and solely, a question of the arbitrator's authority, under PELRA, to determine benefits.

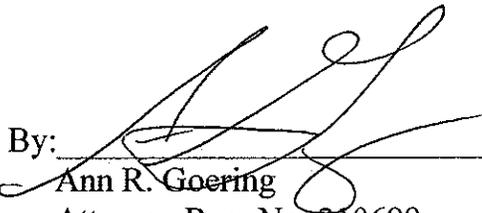
CONCLUSION

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.

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