STATE OF MICHIGAN
IN THE COURT OF APPEALS

AFSCME COUNCIL 25, AND ITS AFFILIATED LOCALS,

Plaintiff-Appellant

Court of Appeals No. 334638
Lower Court Case# 15-011774-CK

v

CHARTER COUNTY OF WAYNE and WARREN EVANS, ITS COUNTY EXECUTIVE

Defendant-Appellee

/

JAMIL AKHTAR (P38597)
Attorneys for Plaintiff-Appellant
7577 US Highway 12, Suite B
(517) 467-7373
jimakhtar@att.net

MILLER, CANFIELD, PADDOCK & STONE, PLLC
Christopher M. Trebilcock P62101
John H. Willems P31861
Attorneys for Defendants-Appellee
150 West Jefferson, Ste 2500
Detroit, MI 48226
Tx. 313-963-6420
trebilcock@millercanfield.com
Willems@millercanfield.com

OFFICE OF WAYNE COUNTY CORPORATE COUNSEL
Bruce A. Campbell P37755
500 Griswold, 30th Floor
Detroit, MI 48226
Tx 313-224-8122
bcampbel@waynecounty.com

/

PLAINTIFF/APPELLANTS' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Other Authorities

Rules

Part I: STATEMENT OF BASIC JURISDICTION OF THE COURT OF APPEALS

This Honorable Court has Jurisdiction pursuant to MCR 7.205 (E) (3) & (4); MCR 7.205 (G). This Honorable Court on August 19, 2016, by way of its Order advising Plaintiff-Appellant to seek to appeal by filing a Delayed Application for Leave to Appeal under the provisions of MCR 7.205(G) (Exhibit 1). On January 24, 2017 the court entered an order grant the Plaintiff-Appellants' Delayed Application for Leave to Appeal.

The Order being appealed from was signed by the Honorable John A. Murphy, Wayne County Circuit Court Judge on June 21, 2016. (Exhibit 2). The Order dated June 21, 2016 adjudicated all claims, rights and liabilities set out in Plaintiff-Appellants' original Complaint and which were also identified and contained in Plaintiff-Appellants' Motion for Rehearing and/or Reconsideration under the provisions of MCR 2.119(F). (Exhibit 3).

PART II: STATEMENT OF QUESTIONS PRESENTED

Issue I: **Did the Court below commit reversible error when it ruled that the Michigan Employment Relations Commission (MERC) Decision and Order dated October 16, 2015 constitute a decision on the merits which would invoke Res Judicata?**

Plaintiff-Appellant Answers: Yes
Defendant-Appellee Answers: No
The Court Below Answered: No

Issue II: **Did the Court below commit reversible error when it ruled that the Doctrine of Promissory Estoppel did not apply to the Michigan Employment Relations Commission and Trial Court's Decision and Order Granting Defendant-Appellees' Motion to Dismiss finding that the Doctrine of Rest Judicata applied?**

Plaintiff-Appellant Answers: Yes
Defendant-Appellee Answers: No
The Court Below Answered: No

PART III: STATEMENT OF FACTS

In the summer of 2014, Plaintiff-Appellant, AFSCME Local 3317 and Defendant-Appellee, Wayne County, and its then County Executive, Robert Ficano, were involved in contract negotiations for the purpose of entering into a new 3-5 year contract.

In September of 2014, after the parties were unable to reach a new Collective Bargaining Agreement and after the August 2014 primary election which determined that Warren Evans would be, the new County Executive. The Plaintiff-Appellant filed for Act 312 arbitration; in August 2014, the MERC appointed C. Barry Ott as the Act 312 chairman (Exhibit 4).

In September of 2015, the Chairman of the Plaintiff-Appellant's bargaining team, Sgt. Daniel Connell and the Plaintiff-Appellant's chief negotiator, Jamil Akhtar, were approached by Kenneth Wilson, the Director of Labor Relations for Wayne County, who told the Plaintiff-Appellant that County Executive Ficano had given him approval to meet with the Plaintiff-Appellant and advise the Plaintiff-Appellant that the incoming County Executive, Warren Evans, wanted the Plaintiff-Appellant to withdraw from Act 312 arbitration. (Exhibit 5- Affidavit of Daniel Connell).

Mr. Kenneth Wilson was advised by the representatives of the Plaintiff-Appellant that under the new provisions of Act 312 arbitration, that the changes mandated that the arbitration process be concluded by March of, 2015. Wilson was also advised by the Plaintiff-Appellant's representative that the Plaintiff-Appellant did not want to be placed in the same position as the

Detroit Police and Fire Plaintiff–Appellants were confronted with when an Emergency Manager was appointed (Exhibit 5– Affidavit of Daniel Connell).

Kenneth Wilson thereafter, on September 30, 2014 stated to the Plaintiff–Appellant that Evans would agree to enter into a contract which would guarantee the County's participation in Act 312 arbitration, if the parties were unable to reach an agreement by the summer of 2015. Wilson put this guarantee in writing (Exhibit 6– Letter dated September 30, 2014).

Thereafter, the parties entered into several Memorandum of Agreements extending the contract and extending the guarantee that if the Plaintiff–Appellant proceeded to Act 312 arbitration that the County would participate irrespective of its financial position (Exhibit 6 – (6) Memorandums of Agreement extending the contract).

On June 20, 2015, after the parties were unable to reach a new contract agreement, the Plaintiff–Appellant gave notice that upon the reappointment of Arbitrator, C. Barry Ott, that the Plaintiff–Appellant would terminate the extensions of the Collective Bargaining Agreement (CBA) (Exhibit 7–letter dated June 20, 2015).

On June 23, 2015, the MERC reappointed C. Barry Ott as the Chairman of the Arbitration Panel (Exhibit 8).

Under the provisions of Sec. 13 of Act 312 of the Public Acts of 1969, as amended, once a petition for Act 312 arbitration is approved by the MERC, all wages, hours and other terms and conditions of employment remained in effect and could not be unilaterally changed.

Section 13 of the Act provides as follows:

> "423.243 Existing conditions; continuance, change.
>
> Sec. 13.
>
> During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act."

On July 2, 2015, the Chairman of the Act 312 panel, pursuant to his statutory duties, held a pre-hearing conference and ordered the parties back to the bargaining table for an additional (21) days (Exhibit 9-letter from C. Barry Ott).

The parties were unable to reach an agreement during the (21) day bargaining remand; on August 27, 2015, the parties were due to exchange their last best offers (Exhibit 10-email dated August 27, 2015 from C. Barry Ott).

On September 24, 2015, the Defendant-Appellee filed a Motion to Dismiss the Act 312 petition and to stop the Plaintiff-Appellant from proceeding to arbitrate the contract, irrespective of the fact that the parties had a binding contract to do so (Exhibit 11-August 24, 2015 Motion).

On September 4, 2015, the Plaintiff-Appellant filed its response to the Motion to Dismiss, stating that it had a binding and irrevocable written contract to proceed to Act 312 and the County, by way of partial performance, was estopped from refusing to arbitrate. (Exhibit 12-Plaintiff-Appellant's response).

On September 16, 2015, the MERC allowed the Plaintiff-Appellant (5) minutes of oral arguments and then dismissed the Act 312 petition by granting the Defendant-Appellee's Motion to Dismiss.

The MERC released its Decision and Order on October 16, 2015. (Exhibit 13).

On September 10, 2015, the Plaintiff-Appellant filed a complaint in the Wayne County Circuit Court, Judge Murphy being assigned (Exhibit 14-Plaintiff-Appellants' Circuit Court Complaint).

On September 14, 2015, Judge Murphy entered an Order preventing the County from changing wages, hours and other conditions of employment finding that §13 of Act 312 provided for the status quo. This Order was entered pursuant to the Plaintiff-Appellant's request for a Writ of Mandamus (Exhibit 15-Order of the Court).

On September 17, 2016, the Court of Appeals reversed the Order entered by Judge Murphy maintaining the status quo (Exhibit 16).

On October 2, 2015 Defendant-Appellee filed a motion to dismiss (Exhibit 17).

On October 17, 2015 Plaintiff-Appellant filed a response to the Defendant-Appellees' Motion to Dismiss (Exhibit 18).

On December15, 2015, Defendant-Appellee filed a Reply Brief (Exhibit 19).

On January 4, 2016 Judge Murphy entered a stay pending the outcome of the Court of Appeals decision relating to Plaintiff-Appellant's appeal of the MERC October 16, 2015 decision.

In October 2016, Plaintiff-Appellant filed an appeal to this Honorable Court as it relates to the October 16, 2015 Decision and Order of the MERC (Exhibit 13- Order dated October 16, 2015 by MERC).

In March 2016, the Plaintiff-Appellant voluntarily dismissed the appeal of the October 16, 2015 MERC Decision and on March 10, 2016. Judge Murphy reopened the case.

On April 21, 2016, Defendant-Appellee filed a Supplemental Brief in support of its' Motion to Dismiss (Exhibit 20).

On April 25, 2016, Plaintiff-Appellant filed a supplemental brief in opposition to Defendant-Appellee Motion to Dismiss (Exhibit 21).

On April 28, 2016 Defendant-Appellee filed its 2nd supplemental Reply Brief in support of its Motion to Dismiss (Exhibit 22).

On May 6, 2016, the Court entered its Decision and Order granting the Defendant-Appellees' Motion to Dismiss based upon the Doctrine of Res Judicata (Exhibit 23).

On May 27, 2016, Plaintiff-Appellant filed a Motion for Re-hearing and/or Reconsideration (Exhibit 24).

On June 21, 2016, the Court denied, without explanation, the Plaintiff-Appellants' Motion for Re-hearing and/or Reconsideration, stating on the

Praecipe no palatable error. The Praecipe Order did not state, as required, under the provisions of MCR 2.602,(A)(3):

> "Each judgment must state, immediately preceding the Judge's signature, whether it resolves the pending claim and closes the case. Such a statement must also appear on any other order that disposes of the last pending claim and closes the case".
>
> (Exhibit 20–Order dated June 21, 2016)

On June 27, 2016, the Plaintiff–Appellant, pursuant to MCR 2.602(B), presented an Order containing the language mandated by MCR 2.602(A). (Exhibit 27).

The Court accepted the June 27, 2016 order, with full knowledge that the Praecipe Order entered on June 21, 2016 was sent to all parties by way of e-filing. (Exhibit 26– Order Denying Plaintiff–Appellants' Motion for Reconsideration and resolves the last pending claim and closes the case).

Pursuant to MCR 2.602(C) the Defendant–Appellee did not object to the Order presented to the Court on June 27, 2016.

On July 5, 2016, the Court entered the "Order Denying Plaintiff–Appellant's Motion for Reconsideration and Resolving the Last Pending Claim and Closing the Case. (Exhibit 27)

Pursuant to local rule 2.119 **MOTION PRAECIPE**:

> "**a) Motion Praecipe Form.** A white form is to be used for a general Motion Praecipe and a yellow form for domestic relations Praecipe."
>
> (Exhibit 28– Third Judicial Circuit Court Local Rule 2.119)

Under the provisions of Local Rule 2.119, a Motion Praecipe is to be used for a "general motion" and does not put the attorneys who practice before the Wayne County Circuit Court on notice that a Praecipe can also be used as an "Final Order" of the Court (Exhibit 28).

On July 17, 2016, the Plaintiff-Appellant, based upon the July 5, 2016 Order of the Court, filed its Claim of Appeal within (21) days of the July 5, 2016 Order.

On August 5,2016, the Defendant-Appellee filed their Motion to Dismiss Plaintiff-Appellant -Appellants' appeal as not being timely filed. (Exhibit 29)

On August 19, 2016, this Honorable Court granted the Motion to Dismiss and advised that Plaintiff-Appellant may seek to appeal only by filing a Delayed Application for Leave to Appeal under MCR 7.205(G) (Exhibit 30).

Part IV: STANDARD OF REVIEW

MCR 2.116 (C) (10:

A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp., 486 Mich. 311, 317, 783 N.W.2d 695 (2010). Summary disposition pursuant to MCR 2.116(C) (10) is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rose v. Nat'l Auction Group,466 Mich. 453, 461, 646 N.W.2d 455 (2002). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. Quinto v. Cross & Peters Co., 451 Mich. 358, 362, 547 N.W.2d 314

(1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of disputed fact exists for trial. Id. The nonmoving party may not rely on mere allegations or denials in the pleadings. Id. Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, the motion are considered only to the extent that the content or substance would be admissible as evidence. Maiden v. Rozwood, 461 Mich. 109, 120–121, 597 N.W.2d 817 (1999).

MCR 2.119 (F); MOTION FOR RECONSIDERATION

A trial court's ruling regarding a motion for reconsideration is reviewed for an abuse of discretion. In re Moukalled Estate, 269 Mich.App. 708, 713, 714 N.W.2d 400 (2006). However, when the issue involves a question of law, the ruling is reviewed de novo.

MCR 2.116 (C) (8):

We review the grant of summary disposition de novo. Maiden v Rozwood, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint," and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." Id. at 119. Furthermore, the motion only should be granted when the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." Id. (quotation marks and citation omitted).

"Whether a party has legal standing to assert a claim constitutes a question of law that we review de novo." **Heltzel v Heltzel,** 248 Mich App 1, 28; 638 NW2d 123 (2001).

Part V: Legal Argument

Issue I: **The Court below erred when it ruled that the October 16, 2015 Decision from the MERC constituted a decision on the merits.**

AND

Issue II: **Did the Court below commit reversible error when it ruled that the Doctrine of Promissory Estoppel did not apply to the Michigan Employment Relations Commission and Trial Court's Decision and Order Granting Defendant-Appellees' Motion to Dismiss finding that the Doctrine of Rest Judicata applied?**

The Court in its May 6th 2016 Opinion and Order made a legal determination that the October 16, 2015 Decision and Order of the MERC constituted an Order covered by Res Judicata (Exhibit 23 and Exhibit 13). The Court, at page (5) of its May 6, 2016 Order stated as follows:

> "Defendant now moves to dismiss AFSCME's breach of contract claim on the basis of various arguments, the dispositive one of which is that the claim is barred by the doctrine of Res Judicata."[1]

The Plaintiff-Appellants' Brief in response to Defendant-Appellees' Motion to Dismiss the Act 312 hearing before the MERC sets forth the (2) principal arguments of the Plaintiff-Appellant. (Exhibit 12). The Plaintiff-Appellant in its argument alleged (1) that there was a binding contract to

[1] In this regard, the Court is also persuaded by Defendants' contention that to the extent the alleged contract requires the County to participate in Act 312 proceedings, there is no relief the Court can grant given the decision of the MERC that has not been appealed.

proceed to Act 312 arbitration and (2) that the Doctrine of Promissory Estoppel applied. (Exhibit 12 at pg. 10–11). The MERC in its Decision of October 16, 2015 (Exhibit 13) did not and legally could not deal with the equitable issue of Promissory Estoppel. The MERC limited authority to allow the County to breach its contractual obligations to the Plaintiff–Appellant by relying upon Act 436, P.A. 2012, which gave the Chief Administrative Officer, operating under a Consent Agreement, the authority to, after (30) days of "good faith" bargaining to impose terms and conditions of employment; the MERC interpreted Act 436, P.A. 2012, to mean that it had no authority to force Wayne County to go to Act 312 arbitration. (Exhibit13, pgs. 7–9). The MERC at page (9) held that once the Consent Agreement was entered into that the contractual obligation of the Defendant–Appellee to proceed to Act 312 arbitration became null and void. (Exhibit 13, pg. 9). The MERC concludes its position that Act 436 trumps any private agreement to arbitrate by stating:

> "While the October 1, 2014 Memorandum of Agreement may be related to collective bargaining, it is not a collective bargaining agreement. It is a contract which the County has the power to 'reject, modify or terminate' pursuant to §12(1)(i)."

At page 10 of its Decision, the MERC deals with the Plaintiff–Appellant's argument that the "Doctrine of Promissory Estoppel applies." The MERC even though it does not have equitable power decided this issue by stating:

> "Even if we were to assume the facts to be as alleged by the petitioner, that would not give us the authority to interfere with the rights and obligations that the County has assumed upon entering Act 436 Consent Agreement for the purpose of taking remedial measures to address the County's financial emergency."

Clearly, the MERC recognizes that it does not have equitable power and that it cannot make a decision based upon the Plaintiff-Appellant's argument of Promissory Estoppel." Therefore, the matter before the MERC is not the same as were the issues before the Court below. The issue before the Court dealt with a breach of contract action and the application of the Doctrine of "Promissory Estoppel" (Exhibit 14).

The Michigan Supreme Court in the matter of State Bank of Standish v Curry, 442 Mich 76 (1993) embraced the Doctrine of Promissory Estoppel as follows:

> **"The doctrine of Promissory Estoppel is set forth in 1 Restatement Contracts, 2d, § 90, p 242:**
>
> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.[4]
>
> Promissory Estoppel developed to protect the ability of individuals to trust promises in circumstances where trust is essential. It is the value of trust that forms the basis of the entitlement to rely. Farber & Matheson, *Beyond promissory estoppel: Contract law and the "Invisible Handshake,"* 52 U Chi LR 903, 928, 942 (1985).[5]However, the reliance interest protected by § 90 is *reasonable reliance,* and "reliance is reasonable only if it is induced by an actual promise." School Dist. No 69 of Maricopa Co v Altherr, 10 Ariz App 333, 340; 458 P2d 537 (1969).
>
> In Williston on Contracts, Professor Lord observes that although the elements required to invoke the doctrine are straightforward, they necessarily involve a threshold inquiry into the circumstances surrounding both the making of the promise and the promisee's reliance as a question of law. The existence and scope of the promise are questions of fact, and "a determination that the promise exists will not be overturned ... unless it

is clearly erroneous." 4 Williston, Contracts (4th ed), § 8:5, pp 84–85, 102–103.[6] Thus, while we agree with the Court of Appeals in the instant case that the sine qua non of the theory of promissory estoppel is that the promise be clear and definite, we cannot agree with its narrow review of the record as evidence that such a promise did not exist.

The term promise is defined in 1 Restatement Contracts, 2d, § 2, p 8:

A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.[7]

Courts are variably strict and flexible in determining whether a manifestation of intent may furnish a basis for promissory estoppel. The strict view, distinguishing promises that are future oriented from statements of belief, holds that a statement that is indefinite, equivocal, or not specifically demonstrative of an intention respecting future conduct, cannot serve as the foundation for an actionable reliance. Feinman, Promissory estoppel and judicial method, 97 Harv LR 678, 690–692 (1984). This is usually determined by finding that the promisor's expression concerning his future conduct is insufficiently certain or defined. McMath v Ford Motor Co, 77 Mich App 721, 725; 259 NW2d 140 (1977). "Similarly, if the expression is made in the course of preliminary negotiations when material terms of the agreement are lacking, the degree of certainty necessary in a promise is absent." Feinman, *supra* at 691–692.

Drawing heavily from the Restatement's definition of promise, it has been suggested that "[a] promise may be stated in words, either orally or in writing, or may be inferred wholly or partly from conduct.... Both language and conduct are to be understood in the light of the circumstances, including course of performance, course of dealing, or usage of trade." Farber & Matheson, *supra* at 932 and n 104. In addition, "[a] promise must [also] be distinguished from a statement of opinion or a mere prediction of future events." *Id.* at 933.[8] Variables such as the nature of the relationship between the parties, the clarity of the representation, as well as the circumstances surrounding the making of the representation, are important to the determination of whether the manifestation rises to the level of a promise. Both traditional contract and promissory estoppel theories of obligation use an objective standard to ascertain whether a voluntary commitment has been made.[9] To determine the existence and

scope of a promise, we look to the words and actions of the transaction as well as the nature of the relationship between the parties and the circumstances surrounding their actions."

[4] essential justification for the doctrine of promissory estoppel is the avoidance of substantial hardship or injustice were the promise not to be enforced. Too liberal an application of the concept will result in an unwitting and unintended undermining of the traditional rule requiring consideration for a contract. This is particularly true where the promise is the loan of money. Such promises, even when unsupported by consideration, do induce borrowers to neglect to secure the needed money elsewhere, and lenders must be held to anticipate such conduct. To hold as enforceable, however, a voluntary promise of a loan made to one who, in reliance thereon, fails to exercise a valueless right to seek the money elsewhere, would be tantamount to rendering all such voluntary promises of a loan enforceable without consideration. A determination declaring such a deviation from presently accepted contract principles should only come from a confrontation with that issue, and not as an unintended consequence of the loose application of promissory estoppel to promises to lend money. [*Malaker Corp,* n 3 *supra* at 484.]
(Curry at 84-85)

The Court, in its decision dated May 6, 2016, held that Res Judicata applies to this case. Plaintiff-Appellants point out to this Honorable Court that for Res Judicata to apply that the following elements must be present:

The applicability of the legal doctrines of Res Judicata and collateral estoppel present a question of law subject to de novo review. Estes v Titus, 481 Mich, 573, 578-579; 751 NW2d 493 (2008). The Estes Court stated:

> The doctrine of Res Judicata "*bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies; and (3) the matter in the second case was, or could have been resolved in the first.*" Adair v Mich, 470 Mich 105 (2004); See Bd of Co Road Comm'rs for Co of Eaton v Schultz, 205 Mich App 371, 376; 521 NW2d 847 (1994). With regard to the third element and summary proceedings, Claims "actually litigated in the summary proceedings" are barred by Res Judicata in subsequent proceedings, MCL 600.5750 notwithstanding. Sewell v Clean Cut Mgt, Inc, 463 Mich 569, 576-577; 621 NW2d 222 (2001).

The Commission at page (9) of its Decision ruled that if there was a contract to go to arbitration that it would be void under Act 436. This is not a decision on the merits; it is a decision that the MERC was without authority to even look at the merits of Plaintiff-Appellants claim.

Most importantly though is the statement that relates to Promissory Estoppel found at page (10) of the Commission's Decision. (Exhibit 13). The Commission unequivocally states that it does not have the authority to make decisions on equitable arguments. The Commission states as follows:

> ***"Even if we were to assume the fact to be as alleged by the petitioner, that would not give us the authority to interfere with the rights and obligations that the County has assumed upon entering into the Act 436 Consent Agreement for the purpose of taking remedial measures to address the County's financial emergency".***

Therefore, the MERC did not make a finding on the merits as to the existence of a contract to go to arbitration and as to the equitable argument relating to Promissory Estoppel. Promissory Estoppel is an action in equity; the MERC as an administrative agency does not possess equitable power.

The question as to whether Res Judicata bars a subsequent action is reviewed de novo by Court. Pierson Sand & Gravel, Inc. v Keeler Brass Co., 460 Mich 372, 379, 596 NW2d 153 (1999).

The question then is, could the issue of the MERC's inability to address the "Promissory Estoppel" argument be considered resolved on the merits in the first (MERC) case; the answer is no; see Sewell v Clean Cut Mgt., Inc. 463 Mich 569, 575, 621 NW2d 222 (2002). The application of Res Judicata fails to meet the three requirements as stated above; the courts May 6, 2016 opinion and order must be reversed.

Plaintiff-Appellants argues that the action before the Employment Relations Commission in August of 2015 (the first cause of action) contain an issue involving equitable relief, i.e. Promissory Estoppel. The MERC was

without authority and admitted as much, to decide Plaintiff-Appellants' request for Act 312 arbitration, because the MERC lacked equitable power, to order the Defendant-Appellee to complete the Act 312 arbitration process. Only the Circuit Court can exercise its equitable powers under the Michigan Constitution. MERC ruled that Act 436 barred it from ordering the parties into Act 312 arbitration.

The irony of this position is the fact that the MERC in its 2013 decision in the matter of the City of Detroit v Detroit Police Officers' Assn. (MERC Case No. D09-F0703) held that the parties who were subject to the provisions of Act 436 could voluntarily agree to submit their contractual disputes to Act 312 arbitration. (Exhibit 31).

The Michigan Employment Relations Commission in the matter of City of Detroit & Police Officers Association of Michigan et al, MERC Case No. D09 F-0703 et al dated June 21, 2013, held that under Sections 8 and 12 of Act 436, the City of Detroit had no statutory imposed obligation to continue with an Act 312 arbitration after the 30 days had expired under Section 8(11) of the Act. (Exhibit 14). However, the MERC at pg. 13 of the City of Detroit decision stated as follows:

> "The findings urged by the employer on this issue, could result in the denial of an employer's right to settle a pending labor dispute through Act 312 proceedings. Even though we agree with the employer that the suspension of its duty to bargain under PA 436 also suspends its obligation to participate in Act 312 proceedings, we cannot agree that such suspension denies the employer the opportunity to participate in Act 312 arbitration should it so choose. Accordingly, we find the suspension of the duty to bargain does not convert mandatory subjects of bargaining to non-mandatory subjects. The underlying nature of subjects of

> bargaining, whether they are mandatory or permissive, does not change under the suspension of an employer's duty to bargain. Indeed, nothing in P.A. 436 declares a change in the nature of subjects of bargaining. It merely suspends the duty to bargain of an employer in receivership. The employer still retains the right to bargain and the right to proceed to Act 312 arbitration if it determines that to be appropriate under the circumstances....."
>
> (Exhibit 31)

It is clear that only Judge Murphy and not the MERC had the authority to submit the issue as to whether there was a breach of contract to a jury to decide. A jury in deciding this issue could also hear evidence as it relates to Promissory Estoppel.

Wherefore, Plaintiff-Appellant respectfully requests that this Honorable Court reverse the decision of the Court below and remand this matter back to the Circuit Court for a trial on the merits.

Part VI - Conclusion

Plaintiff-Appellants request that this Honorable Court reverse the findings of the Court below and remand this matter for a Jury Trial as requested by the Plaintiff-Appellant. Finding that Plaintiff-Appellant, under Michigan Statutory and Common law has proven its' entitlement for the relief requested.

Respectfully submitted,

JAMIL AKHTAR, P.C.

/s/ Jamil Akhtar
JAMIL AKHTAR (P38597)
Attorney for Plaintiff/Appellant
7577 U.S. Highway 12, Suite B
Onsted, MI 49265
(517) 467-7373
jimakhtar@att.net

Dated: February 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on, February 13, 2017, I electronically filed the APPELLANT'S BRIEF with the Clerk of the Court using the E-filing system which will send notification of such filing to attorney for Defendant-Appellee-appellees. I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF Participants: None.

/s/ Jamil Akhtar