

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AFSCME COUNCIL 25, AND ITS
AFFILIATED LOCALS,
Plaintiff,

v

CHARTER COUNTY OF WAYNE
and WARREN EVANS, Individually and
in His Official Capacity as County
Executive/Chief Administrative Officer,
Defendants.

Case No. 15-13288
Hon. Judith Levy
Mag. Judge R. Steven Whalen

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

MARK A. PORTER (P42280)
Co-counsel for Plaintiffs
551 E. 11 Mile Road, Ste. 3D
P. O. Box 71527
Madison Heights, MI 48071-0527
(248) 547-1911
mporter@map-law.com

RICHARD C. KAUFMAN (P27853)
BRUCE A. CAMPBELL (P37755)
Office of Wayne County
Corporation Counsel
Attorney for Defendants
500 Griswold, 30th Floor
Detroit, MI 48226
(313) 224-0055
rkaufman@wayncounty.com
bcampbell@waynecounty.com

**PLAINTIFF'S REQUEST FOR CLARIFICATION OF THE COURT'S
10/16/2015 OPINION AND ORDER; (2) MOTION FOR REHEARING
AND/OR RECONSIDERATION UNDER LR 7.1(h) and (3) MOTION TO
ALTER OR AMEND JUDGMENT UNDER FRCP 59(e) and/or RELIEF
FROM JUDGMENT OR ORDER FRCP 60**

For its Motion, Plaintiff states as follows:

- I. **Request for Clarification of the Court's Opinion and Order dated 10/16/2015.**

Plaintiff requests clarification as to the court's Opinion and Order of October 16, 2015, as to Counts I and III. As ordered by the court at Page 16, it is Plaintiff's understanding that Count I of Plaintiff's First Amended Complaint

alleging violations of the Plaintiffs' 1st Amendment rights are dismissed with prejudice; and that the Second Amended Complaint will not alter the court's Opinion and Order.

As to Count III, it is Plaintiff's understanding that said cause of action is dismissed without prejudice and will not be revisited by the court if the court grants Plaintiff's motion to file a Second Amended Complaint.

Further, as to Count II, the Plaintiffs' due process claim, Plaintiff's understanding is that the court dismisses with prejudice the alleged violation in the First Amended Complaint. However, the court will revisit any additional allegations contained within Plaintiff's Count II of its Second Amended Complaint.

It is Plaintiff's understanding that until the court rules on the Plaintiffs' motion to file a second amended complaint, that the October 16, 2015 Opinion and Order is not appealable as of right. If, however, the court grants Plaintiff's motion to file a second amended complaint, the entire complaint, including the request for injunctive relief would be subject to an appeal by right.

As to Count II, Plaintiffs' due process claim, a clarification is requested that the court dismisses with prejudice the alleged violation contained in the First Amended Complaint - however, the court will revisit any additional allegations contained within Plaintiff's Count II of its Second Amended Complaint.

At Pages 13-14 of the court's Opinion and Order, the court stated:
"Plaintiffs have filed a motion seeking leave to amend this count

to state a property interest of which they allege Defendants have deprived them. Accordingly, this claim is dismissed without prejudice as to this particular allegation: that Act 436 abrogation of Act 312's arbitration requirement constitutes the deprivation of property interest."

Plaintiffs would like to point out to this Honorable Court that in addition to property rights as alleged in the First Amended Complaint dealing with Act 312, Plaintiffs have also stated, with specificity, the contractual provisions which Plaintiffs contend are property rights protected under the due process clause of the 14th Amendment to the U.S. Constitution, said allegations are contained in Plaintiffs' second amended complaint.

II. **Plaintiffs' Motion for Rehearing and/or Reconsideration brought Under LR 7.1(h).**

At Page 10 of the court's October 16, 2015 Opinion and Order, at Footnote 1, the court states as follows:

"Plaintiffs also assert in the final paragraph of their First Amendment count that the "clone-like reincarnation of 2011 P.A. 4 [in the guise of Act 436] violates Article I, §10 of the U.S. Constitution, by again impairing contracts." (Dkt 9 at 6). However, other than this cursory assertion, plaintiffs allege no facts giving rise to a Contracts Clause claim. Further, the paragraph alleges that [t]he State Legislature," which is not a party to this case, violated the Contracts Clause, rather than defendants. Accordingly, to the extent this claim has been brought against the County or its chief executive, it is dismissed."

To the extent that the court found that the State was not a party to this litigation, Plaintiffs state that the court made palpable error. County Executive Warren Evans was appointed by the State Treasurer pursuant to Act 436 at

M.C.L. 141.1548(10), to act on behalf of the State Treasurer as chief administrator officer. That section provides in relevant part:

(10) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers as otherwise provided in this act for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement.

The Consent Agreement dated August 21, 2015, specifically names Defendant Evans as the State-appointed officer vested with the authority to assume many of the duties of the State Emergency Manager under Section 12 (1)(ee) of the Statute. There is no question, therefore, that Defendant Evans is in fact and at law the agent of the State of Michigan, and exercising the powers of a State officer.

At Page 12 of the court's Opinion and Order, the court states:

"Plaintiffs have failed to plead that they have any particular property interest for which Defendant deprived them. Instead, they have alleged that they had a contract with Defendants that contained unspecified property rights.

Insofar as the court determined that the county or its chief executive are not State agents, said finding constitutes palpable error and Plaintiff is requesting that the court revisit this decision. It was the State of Michigan, acting through its appointed Chief Administrative Officer, County Executive Warren Evans, who voided the contracts.

Assuming *arguendo* that the County had the authority to change or amend expired labor contracts pursuant to the consent agreement, it in fact terminated the retirement article of the Local 3317's CBA, which was frozen and closed until 2010.

As detailed in Count II of the Complaint, the County and Defendant Evans substantially and irreversibly impaired the retirement article of the collective bargaining agreement.

The County recognized the fact that it did not have the authority under law or contract to amend the retirement provisions of the Local 3317 contract. On May 8, 2015, Wayne County specifically acknowledged that it had a contract relating to Article 38 through the year 2020 (Exhibit 1).

A clear example that Wayne County recognized it had a contractual obligation that did not expire until 2020, is the May 8, 2015 letter from Kenneth Wilson to Plaintiffs' attorney, Jamil Akhtar, stating that the county did not have an obligation until 2020 to bargain pensions (Exhibit 1). Further, the parties on July 23, 2015, signed a Confidentiality Agreement stating that the Act 312 arbitrator would not be made aware of any proposals or counter proposals made by either party relating to changes in the pension article until 2020 (Exhibit 2).

The court committed palpable error in stating that there was an expired collective bargaining agreement (Page 3, Opinion and Order).

Wherefore, Plaintiff respectfully request that this Honorable Court reverse its finding that there was no contract in effect when Evans, the State

Agent, eliminated the retirement provisions of the collective bargaining agreement.

Respectfully submitted,

s/ Jamil Akhtar
JAMIL AKHTAR (P38597)
JAMIL AKHTAR, P.C.
Attorney for Plaintiff
7577 U.S. Highway 12, Suite B
Onsted, MI 49265
517.467.7373
jimakhtar@att.net

Dated: October 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Richard Kaufman, Bruce Campbell, Mark Porter., and I hereby certify that I have emailed the paper to the following non-ECF Participants: None

s/ Jamil Akhtar