

**UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION**

WAYNE COUNTY RETIREES' ASSOCIATION, INC.;
AFSCME SUBCHAPTER 38; EUGENE WRIGHT,
ANTHONY CECE, DOUGLAS WADLIN, CHARLES BONZA,
EVELYN GLANTON, MARGY BISHOP, BEVERLY BRODEN,
PAUL PENERACKL, AND KIM SMITH,
on behalf of themselves and all other similarly
situated,

Plaintiffs

Case No. 2:16-cv-10546
Hon. BERNARD A. FRIEDMAN

Vs

CHARTER COUNTY OF WAYNE,
WARREN EVANS, Individually and in
his official capacity of Wayne County
Executive, and Ex-Official
Member of the Wayne County Employees'
Retirement System, and **GARY WORONCHAK,**
Individually and in his official capacity
As Chairman of the Wayne County Commission,
And Ex-Official Member of the Wayne County
Employees' Retirement Commission, and **WAYNE COUNTY**
EMPLOYEES' RETIREMENT SYSTEM AND ITS TRUSTEES;
JOHN DOE NO. 1 THROUGH JOHN DOE NO. 10,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY AS
TRUSTEES OF THE WAYNE COUNTY EMPLOYEES'
RETIREMENT SYSTEM, jointly and severally,
Defendants

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR AN EMERGENCY TEMPORARY RESTRAINING ORDER AND SHOW CAUSE

I. INTRODUCTION

Plaintiffs are before this Honorable Court requesting an Emergency Temporary Restraining Order and Preliminary Injunction. As will be stated more fully below, Plaintiffs are organizations representing individual retirees and potential class action Plaintiffs. All of the Plaintiffs are retirees of Wayne County, Michigan and receive healthcare and prescription benefits pursuant to the terms of the Collective Bargaining Agreement which was in effect on the date of their retirement. The contractual language is uniform for all County workers represented by unions, as it relates to their rights to medical benefits upon retirement and benefits upon retirement.

Of the approximate 5,000 retirees from Wayne County, these Plaintiffs make up approximately 1,500 and are classified as "mirror" retirees; as "mirror" retirees are to receive the same healthcare and prescription benefits as those received by present active employees of Wayne County.

On December 16, 2015, County Executive Evans published a Memorandum, advising the active employees, with the exception of County Commissioners and the Commissioners' staff and police officers of the Sheriff's Department, represented by the Police Officers Association of Michigan (POAM), as of January 1, 2016, their benefits would be changed to a High Deductible Healthcare Plan (HDHP). (Exhibit 1) The Memorandum also advised employees that their medical benefits premiums will be raised from 10% to 25%; further, employees will be required to pay between \$1,300.00 and \$2,600.00 per year as their first dollar deductible and they will receive cash

bonuses to be added to their Health Saving Account (HAS), in the amount of \$650.00 for a single person to \$1,300.00 for a family plan). (Exhibit 1)

The Defendants have not provided any notice, whatsoever, to the retirees as to how their healthcare and prescription benefits have been changed, as of January 1, 2016; however, it is Plaintiffs' understanding that retirees are now covered by the \$1300.00-\$2600.00 deductible. It is anticipated that County Executive Evans will deduct the 25% benefits premium from their retirement checks issued on March 1, 2016. **These checks are due to be printed on February 23, 2016 and therefore time is of the essence.**

It is Plaintiffs' position that under the "mirror" provisions of the active employees' healthcare benefits coverage, that Plaintiffs will be covered by the High Deductible Healthcare Plan; however, based upon the language of the Collective Bargaining Agreement, which was in effect on the date of their retirement, their medical benefits premiums are fixed at 10% of the cost of healthcare benefits.

Retirees under the Defendants' Plan are not entitled to the same cash bonuses which are being received by employees; which would help pay for the HDHP deductibles.

II. STATEMENT OF FACTS

Plaintiffs hereby incorporates their Statement of Facts and the allegations contained in its Complaint, as the Statement of Facts for this pleading. (Exhibit 2, exhibits to the complaint are not included)

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING AN INJUNCTION

When evaluating a Motion for Preliminary Injunction or a Temporary Restraining Order, a District Court must consider four factors: (1) whether the party seeking injunctive relief has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. Bonnell v. Lorenzo, 241 F.3d 800, 809 (6th Cir, 2001) (quoting Rock & Roll Hall of Fame v. Genl Prods., 134 F.3d 749, 753 (6th Cir, 1998)).

The above factors should be balanced; In *re* DeLorean Motor Co., 755 F.2d 1223, 1229 (6th Cir.1985). Where the three factors other than the likelihood of success all strongly favor issuing the injunction, a district court is within its discretion in issuing a Preliminary Injunction if the merits present a sufficiently serious question to justify a further investigation. *Id.* at 1230. Alternatively, the court may also issue a Preliminary Injunction if the movant “*at least shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued*”. Frisch’s Rest, Inc. v. Shoney’s Inc., 759 F.2d 1261, 1270 (6th Cir. 1985) (citations omitted); see also City of Pontiac Retired Employees Ass’n v Louis Schimmel, et al; 751 F.3d 427 (en banc 6th Cir. 2014) (Exhibit 3)

For the reasons discussed more fully below, the Court should issue a Temporary Restraining Order and/or a Preliminary Injunction in this matter; Plaintiffs are likely to prevail on the underlying merits of their claims, because Defendants’ actions are flagrant violations of the Federal and State Constitution and law.

Additionally, Plaintiffs can also demonstrate irreparable injury.

B. **ISSUES WHICH ARE TO BE CONSIDERED FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION**

The following issues are the elements contained in of Plaintiffs' Complaint, all of which Plaintiffs are requesting the Court issue an Injunctive Order staying the implementation of changes to medical benefits; changing the composition of the Retirement Commission and removing one of the two elected retiree Commissioners.

Plaintiff can meet its burden as to why this Honorable Court should grant injunction as to all 4 issues, as set out below.

See Bonnel v Lorenzo, 241 F3d 800, 809 (6th Cir 2001) quoting (Rock & Roll Hall of Fame v Gen'l Prods, 134 F3d 749, 753 (6th Cir 1998); In Re DeLorean Motor Co, 755 F2d 1223, 1229 (6th Cir 1985) and Frisch's Rest, Inc v Shoney's, Inc 759 F2d 1261, 1270 (6th Cir 1985); City of Pontiac Retired Employees Ass'n v Louis Schimmel, et al; 751 F3d 427 (en banc 6th Cir. 2014)

1. **Implementation of the 25% payment of benefits premiums and failure of the defendants to provide retirees with the cash bonus to help defray the cost of the high deductible healthcare plan.**
 - a. **Whether the parties seeking injunctive relief have a strong likelihood of success on the merits.**

Each of the class retirees represented by Plaintiffs, Wayne County Retirees' Association (hereinafter WCRA) and AFSCME Sub-Chapter 38 (hereinafter Sub-Chapter 38) retired from Wayne County on and after January 1, 2007. Under the terms of their then existing Union Contracts, they were guaranteed lifetime medical and prescription benefits, all of the Union Contracts contained substantially the same language. Said contractual provision is as follows:

"ARTICLE 37 - BENEFITS PROGRAMS

37.01

Except where inconsistent with the express terms of this Agreement, the Wayne County Health and Welfare Benefit Plan, effective December 1, 2006, as amended, is hereby incorporated by reference.

37.02 Medical Benefits:

A. Effective upon the next open enrollment following execution of this Agreement by the County Executive, qualified employees will be eligible to select a health care plan among the available options listed below:

- 1. Preferred Provider Organization (PPO) as described in Appendix A.*
- 2. Health Maintenance Organization (HMO) as described in Appendix B.*
- 3. High-Deductible Health Plan (HDHP) as described in Appendix C¹.*

B. Prescription drug coverage will also be provided for qualified employees enrolled in an available medical plan, subject to graduated co-payments based on the class of drug prescribed as described in Appendix D.

C. Effective October 1, 2011, active employees will be required to contribute toward the cost of medical and prescription drug coverage as a monthly rate as indicated in the schedule below for plan year 2011-2012:

MONTHLY

CONTRIBUTION	Single	Two	Family
(Deducted twice a	Person	Person	Rate
month	Rate	Rate	
on a pre-tax basis)			
PPO	\$116.77	\$130.20	\$152.85
HMO	\$116.77	\$166.98	\$192.90

¹ Deductibles and co-pays will be established by the County and otherwise subject to IRS rules and regulations.

HDHP

None

None

None

For each successive plan year thereafter, contributions shall be increased/decreased at the same rate at which reported monthly illustrative rates or premiums increase or decrease.

Contributions shall be deducted out of the first two (2) pays of each month. Employees on any type of leave of absence who continue to be enrolled in an Employer-sponsored healthcare plan shall be required to make the monthly contribution in order to maintain enrollment in the plan.

D. Employees who retire from County service who are eligible for post retirement health care benefits shall participate in the same health care plan options, coverages, co-pays, deductibles, etc., as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare.

E. Qualified employees may select only one health care plan option. Selection and enrollment of a qualified employee and his or her eligible dependents in an available health plan will remain the responsibility of the employee.

Health care coverage for eligible dependents will be in accordance with the terms and conditions outlined in the Wayne County Health and Welfare Benefit Plan.

Spouses who are eligible for primary medical coverage through another Employer shall not be eligible for primary coverage through Wayne County.

On December 16, 2015, County Executive Evans issued a Memorandum advising the active County employees; with the exception of County Commission staff and employees represented by the POAM that their medical benefits would be changed to the High Deductible Healthcare Plan (HDHP) as of January 1, 2016; this meant that employees would have a deductible of \$1,300.00 for a single employee member plan up to \$2,600.00 for a family plan. (Exhibit 1)

The December 16, 2015, Memorandum also provided for cash bonuses in the amount of \$650.00 for a single employee plan participant up to \$1,300.00 for a family

plan participant to help defer the cost of the High Deductible Healthcare Plan. (Exhibit 1)

All retirees covered by the "mirror" plan and represented by the Plaintiffs, have not received any notice to the fact that their medical benefits would be converted to the HDHP and that they will have their benefits premiums increase from 10% to 25% of the cost of providing said HDHP medical benefits.

It is s' understanding that the retirement checks which are to be issued on March 1, 2016 and which are scheduled to be printed on February 23, 2016 will increase the retirees' premiums to the 25% amount which is set out in Exhibit 1.

It is further Plaintiffs understanding, that the defendants have determined that retirees **will not receive** the \$650.00 to \$1,300.00 cash bonus to help defray the High Deductible Healthcare Plan requirements, i.e. deductible of \$1,350.00 for a single plan and up to \$2,600.00 for a family plan.

These drastic changes to the retirees' medical benefits, without notice to the retirees of said plan changes and increase in premiums are the type of changes which the 6th Circuit dealt with in the **City of Pontiac Retired Employee's Ass'n** matter, (Exhibit 3. The Pontiac Retiree's decision is a clear roadmap for this Court to follow in dealing with the issues now presented to the Court, in requesting an Ex Parte Temporary Restraining Order and Order to Show Cause.

b. **Whether the movant would suffer irreparable injury without the injunction.**

The actions by the defendants in unilaterally changing retirees' medical benefits to the HDHP and driving up the cost of retirees' medical benefits, which will be increased by over 70%, for first dollar payment of deductibles and the increase in co-pays, is unconscionable.

In 2011 the State of Michigan started taxing the retirees' benefits; most retirees lost approximately 2.4% of their annual retirement income. Now, County Executive Evans wants to change the amount that retirees have to pay towards the medical benefits by 150% (10% to 25%) and at the same time increasing their first dollar out of pocket deductibles up to as much as \$2,600.00 per year. Under any reading of the 6th Circuit decision in City of Pontiac, supra, (Exhibit 3) the harm to Plaintiffs is immediate and irreparable. Many of the Plaintiffs are head of household and must bear the costs of all expenses they will incur on a monthly basis.

The loss of approximately \$5,000.00 per year is an extreme hardship on Wayne County's employees who are presently working and who are receiving paychecks; however, this \$5000.00 cost for medical benefits is devastating on most if not all retirees.

Therefore, without injunctive relief, tragedy will befall many of the Plaintiffs. The City of Pontiac decision should be controlling.

c. **Whether the issuance of an injunction would cause substantial harm to others.**

The Defendants cannot claim that Wayne County will be face a financial hardship. Wayne County's finances have improved dramatically and there is in fact no financial crisis. (Exhibit 4, Affidavit of Hugh Macdonald).

d. **Whether the public interest would be served by issuance of the injunction.**

The public interest is well served by the Court granting the injunction to maintain the status quo and to offer protection to the retirees who are facing catastrophic change in the increase in the cost of medical benefits.

in 1911 the State of New York passed a law which provided that

any person who should be found guilty of a crime should be

sentenced to a term of years or to life imprisonment, or to

death, as the case might be, and that the sentence should be

fixed by the jury, and that the jury should be authorized to

recommend to the court that the defendant be committed to a

reformatory or to a house of correction, or to a prison, or to

any other institution, and that the court should be authorized

to accept or reject the recommendation of the jury, and that the

court should be authorized to fix the term of the sentence, and

that the jury should be authorized to recommend that the

defendant be committed to a reformatory or to a house of

correction, or to a prison, or to any other institution, and

that the court should be authorized to accept or reject the

recommendation of the jury, and that the court should be

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to recommend that the defendant be committed to a reformatory

or to a house of correction, or to a prison, or to any other

institution, and that the court should be authorized to accept

or reject the recommendation of the jury, and that the court

Wherefore Plaintiffs respectfully request that this Honorable Court issue an injunction as it would not cause substantial harm to others.

See Bonnel v Lorenzo, 241 F3d 800, 809 (6th Cir 2001) quoting (Rock & Roll Hall of Fame v Gen'l Prods, 134 F3d 749, 753 (6th Cir 1998); In Re DeLorean Motor Co, 755 F2d 1223, 1229 (6th Cir 1985) and Frisch's Rest, Inc v Shoney's, Inc 759 F2d 1261, 1270 (6th Cir 1985); City of Pontiac Retired Employees Ass'n v Louis Schimmel, et al; 751 F3d 427 (en banc 6th Cir. 2014)

2. Composition of the Retirement Commission

County Executive Evans is under the misconception, that just because he was able to force the Unions into adopting language in their new Collective Bargaining Agreement, which allowed him to restructure the Retirement Commission, that he has the right to do so. The Wayne County Employees' Retirement System is created by the Wayne County Home Rule Charter; the Charter can only be amended by a vote of the people. (Exhibit 5-County Charter). Further the Charter was implemented by the County Code of Ordinances and more specifically Ordinance 141.35, et seq. (Exhibit 6)

There are at a minimum four classifications of employees who under the County Charter and Ordinances can vote for Trustees. The four classification of members of the Retirement System are:

1. Employees covered by a Collective Bargaining Agreement,
2. Employees who are members of the Retirement System, but who are not covered by the Collective Bargaining Agreement,
3. Wayne County Retirees, which number over 5000, and
4. Elected officials who are members of the Retirement System

County Executive Evans relied upon the Michigan Court of Appeals decision in Werdrow v City of Detroit, 269 Mich App 383 (2006). (Exhibit 7)

In the Werdrow holding, by the Court of Appeals dealt with the Police and Fire Pension System and held that the composition of the Retirement Commission was a

mandatory subject of bargaining. The only problem with the County Executive's argument is that the Wayne County Employees' Retirement System, is not made up of all active and retired employees, who are all members of the Unions which comprise the total makeup of the bargaining system. County Executive Evans, in order to have the unilateral right to change the composition of the Pension Commission, which includes two retiree representatives, voted into office by retirees, he would have to get each and every County worker to approve him taking over the Retirement Commission in the manner he prescribed in his letter dated February 10, 2016. (Exhibit 8)

The retirees take the position that they have a property right under the Charter and County Ordinance to maintain two positions on the Retirement Commission; further, the number of Trustees on the Commission, is fixed by the County Charter. The issue of whether or not County Executive Evans can change the composition of the Retirement Commission as it relates to active employees is presently before the Hon. Judith Levy, District Court Judge in the matter of AFSCME v Wayne County, Case No. 15-cv-13288 on December 4, 2015, Judge Levy entered an Order, wherein she found that the composition of the Wayne County Retirement Commission, constituted a property right which County Executive Evans could not eliminate absent due process. (Exhibit 9, p. 7-8 Judge Levy's Order dated December 4, 2015)

Property rights are not created by the Constitution; they are created by statute or contract. **Board of Regents v Roth**, 408 U.S. 564, 569-71 (1972); **Hahn v Star Bank**, 190 F3d 708; (6th Cir 1999); **Hinckley v Kelsey-Hayes Co.**, 866 Fed Sup 1034, 1044 (ed Mich 1994); **City of Pontiac Retired Employees Ass'n et al v Louis Schimmel**, et al, 751 F3d 427 (en banc 6th Cir 2014) (Exhibit 4)

- a. **Whether the parties seeking injunctive relief have a strong likelihood of success on the merits.**

County Executive Evans will not be able to point to any State Constitutional provision, State Statute, County Charter provision or County Code of Ordinance provision, which authorizes him to change the composition of the Retirement Commission without a vote of the people amending the County Charter. The Wayne County Charter at Article VII allows for the amendment of the provisions of the Charter by vote of the people only. Sec. 7.112 (a) of the Charter provides as follows:

"7.112 Initiative, referendum and recall

(a) The people of Wayne County reserve the power to amend and revise this Charter, the power to recall elected officers, and the power to initiative and referendum."

Further, faced with the identical issue relating to the composition of the Retirement Commission, Judge Judith Levy, in the matter of AFSCME Council 25, Local 3317 v Wayne County, made a preliminary ruling that the composition of the Pension Board constituted a property right. (Exhibit 10, p.7-8)

Therefore, Plaintiffs are able to show, with overwhelming evidence that they have a strong likelihood of success on the merits.

b. **Whether the movant would suffer irreparable injury without the injunction.**

County Executive Evans has unilaterally determined that based upon his success in forcing the Unions to incorporate language in the Collective Bargaining Agreement giving him the right to restructure the membership of the Retirement Commission, that he had a right to do so on and after October 1, 2015. (Exhibit 9- Evans letter dated 2-11-16)

County Executive Evans has also declared the actions taken by the Retirement Commission on and after October 1, 2015 are null and void. County Executive Evans

sits on the Retirement Commission through his representative and never made such a claim until February 10, 2016.

Based upon information received from Trustees of the, Retirement Commission, County Executive Evans, at the scheduled February 29, 2016, Retirement Commission meeting, will attempt to seat his replacements to the Commission, remove one of the active employee representatives on the Commission and remove one of the two retiree representatives on the Commission.

Unless this Honorable Court grants the requested Preliminary Injunction the changes to the Commission on February 29, 2016 amounts to a fait accompli plea.

Act 314, PA 1965 (Public Employee Retirement System Investment Act) mandates at §21 of the Act being MCL 38.1141 mandates that before a member of the Retirement Commission, of a local pension system can be removed, said member must be given notice and a hearing on the removal, before the member can be removed from sitting on the Board of Directors.

Act 314 is a statute which creates a property interest in the retirees' representative members on their Retirement Commission; absent this Court entering an injunction, prohibiting County Executive Evans from taking unilateral action in changing the composition of the Retirement Commission, the retirees will suffer irreparable harm, in that their interest will not be protected. Retirees represent the majority of members of the retirement system, have a 25% voting right on the Commission (Two of Eight members); all of the assets of the Retirement System are maintained to pay for their vested benefits which are guaranteed under Article IX §24 of the Michigan Constitution.

Therefore, without injunctive relief, the tragedy as set out above is sure to happen.

c. **Whether the issuance of an injunction would cause substantial harm to others.**

It is hard to conceive of a situation where granting an injunction stopping County Executive Evans from seating his handpicked members of the Retirement Commission would cause substantial harm to others. All of the harm is laid upon the shoulders of the current Trustees on the Commission, including the two retiree representatives who were elected to protect the majority of the members of the retirement system, that being the 5,000 retirees. As can be seen by the uniform language inserted into each of the Collective Bargaining Agreement, the majority interest is being subverted by the Emergency Manager Statute; Act 436, PA 2012 and by the power granted to County Executive Evans under the Consent Agreement, all of said powers unconstitutional. (Exhibit 10)

Wherefore, Plaintiffs request injunctive relief as above set forth.

d. **Whether the public interest would be served by issuance of the injunction.**

The public interest would be well served by this Court entering an injunction. There is a real question of fact and law as to whether or not County Executive Evans has the authority under Act 436 and the Consent Agreement, to amend the County Charter where the Charter specifically provides any amendment or changes being made by a vote of the people. (Exhibit 11)

The public interest will be served by this Court entering an injunction at this stage of the litigation in order to protect the rights of the citizens to participate in this particular issue.

Wherefore, Plaintiffs request injunctive relief as set forth above.

See Bonnel v Lorenzo, 241 F3d 800, 809 (6th Cir 2001) quoting (Rock & Roll Hall of Fame v Gen'l Prods, 134 F3d 749, 753 (6th Cir 1998); In Re DeLorean Motor Co, 755 F2d 1223, 1229 (6th Cir 1985) and Frisch's Rest, Inc v Shoney's, Inc 759 F2d 1261, 1270 (6th Cir 1985); City of Pontiac Retired Employees Ass'n v Louis Schimmel, et al; 751 F3d 427 (en banc 6th Cir. 2014)

3. Wayne County Charter §32 provides the authority for Wayne County Commissioners to require that all County employee receive the same benefits

In order to prevail on a request for injunctive relief, Plaintiffs must present evidence as to the following four elements:

a. Whether the parties seeking injunctive relief have a strong likelihood of success on the merits.

The Wayne County Charter grants the Wayne County Board of Commissioners with the authority to adopt ordinances regulating county employment; the Charter also gives the County Executive the authority to veto any ordinance passed by the County Commission and further the County Commission can override the veto by way of a 2/3 vote to do so. (Exhibit 12, Wayne County Charter provisions)

The Wayne County Board of Commissioners on August 8, 2013 adopted an Ordinance entitled "County Benefits" and the County Executive subsequently signed off on said Ordinance. The Ordinance specifically provides that all County workers including employees represented by Unions shall receive benefits that are equal to the benefits received by the County Commissioners and their staff. (Exhibit 12- Ordinance, Chapter 32, §32.1 through 32.8).

In the matter now before the Court, Wayne County Commissioners and its staff receive fringe benefits which were in effect prior to the imposition of the September 21, 2015 Collective Bargaining Agreements negotiated under the provisions of Act 436, P.A. 2012 (commonly referred to as the Emergency Manager Act).

As it now stands, the Wayne County Commissioners and its staff employees, receive fringe benefits, including healthcare benefits, which are far superior than the healthcare benefit received by other County employees.

As stated above, the Plaintiffs, former employees/retirees of Wayne County, receive "mirror" healthcare benefits in accordance with the provisions of their Collective Bargaining Agreement, at the time of retirement. Therefore, pursuant to the Ordinance adopted by the County Commissioners and approved by the County Executive on August 8, 2013, retirees are entitled to the same fringe benefits as those received by the Wayne County Commissioners and the employees of the Wayne County Commission. (Exhibit 12)

County Ordinance/Chapter 32 creates a property right for the retirees to receive healthcare benefits equal to those received by the Wayne County Commission and its employees

Therefore, injunctive relief is appropriate in light of the fact we are dealing with retirees' healthcare benefits and the 6th Circuit has held that injunctive relief is appropriate when former public employees' healthcare benefits received as part of their retirement package are diminished. See Hahn v Star Bank, 190 F3d 708; (6th Cir 1999); Hinckley v Kelsey-Hayes Co., 866 Fed Sup 1034, 1044 (ed Mich 1994); City of Pontiac Retired Employees Ass'n et al v Louis Schimmel, et al, 751 F3d 427 (en banc 6th Cir 2014)

b. **Whether the movant would suffer irreparable injury without the injunction.**

Here again, Plaintiffs point out to this Honorable Court, the holding in the City of Pontiac; wherein the 6th Circuit en banc decision clearly states that injunctive relief is warranted and in fact the law sides with retirees when it comes to the reduction or

elimination of their healthcare benefits, and constitutes irreparable harm. Further, in light of the fact that the Plaintiffs allege a constitutional deprivation, actionable under 42 U.S.C. 1983, this in of itself constitutes irreparable harm.

Wherefore, Plaintiffs respectfully request that this Honorable Court find that the Plaintiffs will suffer irreparable injury without the injunction.

c. **Whether the issuance of an injunction would cause substantial harm to others.**

In light of the fact that the Plaintiffs are before this Honorable Court as retirees and not as active employees, there can be no harm to other similarly situated elected officials and County employees who are receiving greater benefits which are at least equal to the benefits the Plaintiffs were receiving prior to January 1, 2016; there can be no harm to the comparable class, which are the County Elected Commissioners and their employees.

Wherefore, Plaintiffs respectfully request that the Honorable Court find that there will not be substantial harm to others.

d. **Whether the public interest would be served by issuance of the injunction.**

The public interest is well served by the Court's granting an injunction to maintain the status quo and to offer protection to approximately 1,500 retired workers of Wayne County, by not being forced to pay up to an additional \$5,000.00 in healthcare benefits while at the same time other County employees are receiving substantially greater benefits.

Wherefore, Plaintiffs respectfully requests that this Honorable Court grant its request for an injunction as it relates to Plaintiffs cause of action stated above.

See Bonnel v Lorenzo, 241 F3d 800, 809 (6th Cir 2001) quoting (Rock & Roll Hall of Fame v Gen'l Prods, 134 F3d 749, 753 (6th Cir 1998); In Re DeLorean Motor Co, 755 F2d 1223, 1229 (6th Cir 1985) and Frisch's Rest, Inc v Shoney's, Inc 759 F2d 1261, 1270 (6th Cir 1985); City of Pontiac Retired Employees Ass'n v Louis Schimmel, et al; 751 F3d 427 (en banc 6th Cir. 2014)

4. The removal of one (1) of the retirees elected representatives to the Wayne County Employees' Retirement Commission, violates Plaintiffs property rights under the 14th Amendment to the United States Constitution.

The retirees of the Wayne County have a vested right under the County Charter and under the County Code of Ordinance to have two retiree representatives elected to the eight-member Commission.

a. Whether the parties seeking injunctive relief have a strong likelihood of success on the merits.

Unlike part (2) above relating to the composition to the Retirement Commission, Plaintiffs' last argument is that County Executive Evans has removed one of the retiree Commission members, from the Retirement Commission. Public Act 314 P.A. 1965 (Public Employee Retirement System Investment Act) regulates the procedures to be used to remove an elected Trustee from the local governmental unit's Retirement Commission. Specifically, § 1 of the Act, being MCL 37.1141(Removal of Members of the Board or Body) sets forth the removal procedure to be followed as it relates to members of a local Retirement Commission.

In the matter now before the Court, the retirees represented by Plaintiffs had a right, as members of the retirement system, to elect two of its own retirees to the Commission on the Wayne County Retirement Commission. County Executive Evans, without stating any legal precedent or authority to do so has determined that he has the power to reshape the Commission by not only eliminating one retired member representing active County employees; but also to reduce the number of retiree members on the Commission from two down to one position.

The Wayne County Charter specifically states that there will be two members elected by the retirees from Wayne County (approximately 5,000 former County employees); further, Wayne County Code of Ordinances No. 141.35 specifically states that there shall be two members of the Commission who are elected by the retirees. (Exhibit 6).

As pointed out in part (2) above, when it comes to a public employee retirement system, such as the City of Detroit Fire and Police Retirement System. where all of the members of the retirement system are represented by certified collective bargaining Unions, the Michigan Court of Appeals has ruled that the composition of the Retirement Commission is a mandatory subject of bargaining. (Exhibit 7, Werdrow v City of Detroit, 269 Mich App 383 (2006)).

The facts in Werdrow are not the same facts in Wayne County. Wayne County's Retirement System is composed of employees represented by several unions, however, also includes non-union employees, elected officials and most importantly 5,000 retired members. The retirees are represented by two of the eight members of the Commission, the other commissioners are the County Executive (Ex-Official); the Chairman of the Wayne County Board of Commissioners (Ex-Official); four active employees from different County department. (Exhibit 5- County Charter; and Exhibit 13- County Code of Ordinances)

Without submitting an amendment of the charter, to the Citizens of Wayne County, County Executive Evans cannot accomplish his goal to control the Retirement Commission, there cannot be a unilateral takeover of the Commission by County Executive Evans. Act 314 P.A. 1965 at §21, states that the members of the Commission have a property right and said right cannot be taken away without affording due process of law as required by the 14th Amendment to the United States Constitution.

The above information is being furnished to you for your information.

It is requested that you advise the Bureau of any changes in the information furnished above.

Very truly yours,

Special Agent in Charge

Enclosed for the Bureau are two copies of the report of the

investigation conducted at the above address on the date indicated.

The above information is being furnished to you for your information.

Very truly yours,

Special Agent in Charge

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Board of Regents v Roth, 408 U.S. 564, 569-71 (1972); See **Bishop V Wood**, 426, 344-45 U.S. 341 (1976).

Plaintiffs once again bring this Honorable Court's attention to the Opinion of Judge Judith Levy, in the matter of AFSCME v Wayne County dated December 4, 2015 (Exhibit 9)

Plaintiffs are therefore able to show that it has a strong likelihood of success on the merits and therefore, the Court should find for Plaintiffs and grant injunctive relief request.

b. **Whether the movant would suffer irreparable injury without the injunction.**

It is clear that the loss of representation on the Retirement System Commission is a serious matter and deprives the Plaintiffs of their right to select the retired members to represent them at the Retirement Commission. Without an injunction, the 5000 retired members of the Wayne County Employees' Retirement System, will have their voices cut in half and further, their elected representative will be removed without affording them the due process as required under Act 314 P.A. 1965, §21.

The action of the defendants is so flagrant, in light of the statutory requirement of due process, and the language contained in both the Wayne County Charter and Wayne County Code of Ordinances, that when all three laws are read together, there can only be one conclusion and that is the Wayne County Retirement Commission, whomever they may be, cannot remove one of the two retiree members without due process.

Therefore, the Plaintiffs will suffer irreparable injury without the issuance of an injunction, preventing the Trustees of the Wayne County Retirement Commission from removing one of the two retiree representatives.

c. **Whether the issuance of an injunction would cause substantial harm to others.**

The only possible harm that could happen, would be if the Court issues an injunction, stopping County Executive Evans from implementing his nefarious attempt to take over the Retirement Commission and to gain total control of the pension funds, totaling almost \$1,000,000,000.00.

d. **Whether the public interest would be served by issuance of the injunction.**

Plaintiffs are before this Honorable Court seeking to protect the interests of the public; it is a public interest to see to it that its elected governmental officials live by the Charter of Wayne County, the Ordinances (Law) of Wayne County and the statutes of the State of Michigan, which provide for the process to remove Commission Trustees, from the Wayne County Retirement Commission.

Plaintiffs claim that the existing Trustees and/or the "ghost" Trustees who were appointed by County Executive Evans in October of 2015, have an affirmative duty to take legal action under Act 314, P.A. 1965, to bring formal charges against the retiree representative on the Retirement Commission, who is about to be removed by County Executive Evans' "ghost" members of the Commission.

Plaintiffs bring this lawsuit in order to protect the "public Interest" in addition to the interests of its 5,000 retired members from Wayne County.

Wherefore Plaintiffs respectfully requests that this Honorable Court enter an injunction preventing the County from removing one of the two retiree representatives without according said retiree Commission member due process as required by law.

See **Bonnel v Lorenzo**, 241 F3d 800, 809 (6th Cir 2001) quoting **Rock & Roll Hall of Fame v Gen'l Prods**, 134 F3d 749, 753 (6th Cir 1998); **In Re DeLorean Motor Co**, 755 F2d 1223, 1229 (6th Cir 1985) and **Frisch's Rest. Inc v Shoney's, Inc** 759 F2d 1261,

1270 (6th Cir 1985); City of Pontiac Retired Employees Ass'n v Louis Schimmel, et al;
751 F3d 427 (en banc 6th Cir. 2014)

CONCLUSION

Wherefore, Plaintiffs respectfully requests that this Honorable Court grant the Plaintiff's request for injunctive relief, enter an ex parte Temporary Restraining Order and issue a show cause for this matter to be argued by the county at the earliest date.

Respectfully submitted,

/s/Jamil Akhtar
JAMIL AKHTAR (P38597)
Attorney for Plaintiffs
7577 US Highway 12, Suite B
Onsted, MI 49265
517-467-7373

Dated: February 16, 2016

INDEX OF EXHIBITS

- 1) December 16, 2015 Memorandum**
- 2) Complaint (W/O Exhibits)**
- 3) 6th Circuit City of Pontiac Retired Employees Ass'n.**
- 4) Macdonald Affidavit**
- 5) Wayne County Charter Section VI**
- 6) Wayne County Code of Ordinance Sec, 141.43**
- 7) Werdlow V. City of Detroit**
- 8) February 10, 2016 Evans Letter**
- 9) Decision and Order dated December 4, 2015**
- 10) Consent Agreement**
- 11) Wayne County Charter re: Amendments**
- 12) Wayne County Code of Ordinance Part 32**
- 13) Wayne County Charter VI and Code of Ordinance 141.3**

WCRA INJUNCTION BRIEF
EXHIBIT #1



Warren C. Evans
Wayne County Executive

MEMORANDUM

TO: All Health Benefit Eligible Wayne County Employees
(Excluding Members of POAM and Employees Covered by Legislative Branch Executive and Non-Executive Exempt Benefit Plan)

FROM: Livia Calderoni, Division Director
P/HR Benefits & Disability Administration Division

DATE: December 16, 2015

RE: **NOTICE OF IMPLEMENTATION OF HEALTH PLAN CHANGES, FSA / HSA ELECTIONS AND ANNUAL BONUSES, EFFECTIVE JANUARY 1, 2016**

Effective January 1, 2016, the changes outlined below will be made to the County's Health Care Plan for active employees. Additionally, beginning immediately until the deadlines specified below, active employees have the opportunity to make the following elections:

- 1) Decline participation in a County group health (medical / prescription drug, dental and vision) insurance plan for calendar year 2016 –
January 4, 2016 Deadline for January 1, 2016 Effective Date
- 2) Change (add and/or delete) dependents –
January 4, 2016 Deadline for January 1, 2016 Effective Date
- 3) Elect to participate in a Dental Insurance Buy-Up Plan –
January 4, 2016 Deadline for January 1, 2016 Effective Date
- 4) Elect to participate in a Health Savings Account (HSA) –
December 31, 2015 Deadline for January 1, 2016 Effective Date
- 5) Elect to participate in a Flexible Spending Account (FSA) –
December 31, 2015 Deadline for January 1, 2016 Effective Date

In early 2016 (anticipated in February 2016), the County will hold an active Open Enrollment period, at which time employees will have the option to select a health care plan with any carrier that offers a County sponsored plan. For example:

Scenario 1: an employee who is enrolled in the Blue Cross Blue Shield PPO high-deductible health plan (HDHP) medical/prescription drug coverage plan may change to an HMO HDHP plan offered by another carrier.

Scenario 2: an employee who is enrolled in the Blue Cross Blue Shield Traditional Dental plan may change to a Dental HMO plan offered by another carrier.

Any employee who currently opts out of group health care coverage will have the opportunity to enroll during the active enrollment period in early 2016. Eligible employee will also be able to elect to participate in a HSA going forward.

I. HEALTH CARE PLAN CHANGES

Medical / Prescription Drug Coverage

Effective January 1, 2016, employees will be transferred into a HDHP, as described in the terms of applicable labor agreements or benefit plan, with your current carrier. Employees will be required to pay 25% of the monthly rate. The following tables outline the changes:

Medical Plan Changes

Current Enrollment (2015)	Enrollment on January 1, 2016
Community Blue PPO	New Simply Blue HDHP
Simply Blue HDHP	New Simply Blue HDHP
HAP HMO	HAP HDHP
Medical / Rx Plan Opt Out	Opt Out Continues

Employee 25% Monthly Contribution Toward Cost of Medical / Rx Coverage

Coverage Type	NEW BCBSM Simply Blue HDHP / PPO	HAP HDHP / HMO
Single Person	\$107.22	\$86.75
Two Person	\$257.33	\$215.13
Family	\$321.66	\$269.77

Declining Medical / Prescription Drug Coverage: You may elect to decline medical and prescription drug coverage at this time. If you wish to decline coverage, complete the attached Health Plan Implementation Election Form and return it to the Benefits & Disability Administration Division no later than January 4, 2016.

Dental Coverage

Effective January 1, 2016, employees will be transferred to a new \$20 dental plan with their current carrier with benefits as described in the attached benefit comparison / summary. There will be no employee monthly contribution cost associated with this change. Alternatively, employees may elect to "buy up" to the current plan with their current carrier. However, the County will pay only \$20 toward the cost of any "buy up" plan; all additional costs will be the sole responsibility of the employee.

Dental Plan Changes

Current Enrollment (2015)	Enrollment on January 1, 2016
Blue Cross Traditional Dental	Blue Dental EPO
Golden Dental Plan	Golden Dental \$20 Plan
Dental Plan Opt Out	Opt Out Continues

Employee Monthly Contribution Towards Cost of "Buy-Up" Dental Coverage

Coverage Type	Blue Cross Dental	Golden Dental
Single Person	\$23.51	\$10.70
Two Person	\$84.44	\$27.08
Family	\$110.54	\$58.96

Electing Dental Buy-Up Coverage: To elect "buy-up" dental coverage, complete the attached Health Plan Implementation Election Form and return it to the Benefits & Disability Administration Division no later than January 4, 2016.

Declining Dental Coverage: You may elect to decline dental coverage at this time by completing the Health Plan Implementation Election Form and returning it to the Benefits & Disability Administration Division no later than January 4, 2016.

Vision Coverage

Employees will remain in the current vision plan until the Open Enrollment period to be held in early 2016. At that time, employees will be able to make a new election if more than one option is available pursuant to the applicable labor agreement or benefit plan. There is no monthly employee contribution cost associated with vision plan coverage.

Dependent Changes

Employees may add and/or delete dependents from their medical/prescription drug, dental and/or vision coverage by completing the Health Plan Implementation Election Form, which is attached to this Notice.

Changing Dependents: To add and/or delete dependents complete the Health Plan Implementation Election Form, which is attached to this Notice.

Health Care Plan Summaries / Employee Monthly Cost Share

Comparisons and summaries of the new plans are attached to this Notice and are available on the Benefits page at www.waynecounty.com. Any required employee monthly contribution toward the cost for participation in these plans will be deducted from the first two pays of each month beginning with the first pay in January 2016. The contribution amounts are included on the tables above and in the attached plan summaries.

II. HEALTH SAVINGS ACCOUNT (HSA) & FLEXIBLE SPENDING ACCOUNT (FSA) OPTIONS

Employees may elect to participate in either a HSA or a general or limited purpose health FSA for calendar year 2016. Both a HSA and a **general purpose and/or limited purpose FSA** allow for employees to set aside funds on a pre-tax basis for qualified healthcare expenses that are not covered by an employee's healthcare plan (including insurance deductibles, coinsurance / co-pays, as well as dental and vision expenses). However, they differ in terms of who is eligible, who owns the funds, whether funds are portable or roll over, contribution limits, and eligible expenses. **Employees participating in a HSA may not participate in a general purpose FSA but may participate in a limited purpose FSA at the same time.**

More information about HSAs and FSAs is included below. Additionally, a comparison chart highlighting the differences between a HSA and FSA is attached to this Notice and is available on the Benefits page at www.waynecounty.com along with answers to frequently asked questions (FAQs), a list of qualified medical expenses and other information. Additionally, American Fidelity has created a one-stop landing page that features information on each type of account, including videos, worksheets, and other tools to help employees better understand HSAs and FSAs. Visit <http://americanfidelity.com/waynecounty> to access this information.

HSA Option

Employees who are enrolled in a qualified HDHP healthcare plan can participate in a HSA. More money can be contributed to a HSA (as compared to a FSA). Additionally, funds in an HSA that are not spent in a given year roll over to the next year, like those being offered by the County. Participants continue to own money in the HSA even if there is a change in health plans or termination of employment. However, funds in an HSA cannot be used to pay your employee monthly contribution toward the cost of healthcare.

Contribution limits for an HSA are set each year by the IRS. The 2016 HSA contribution limits are as follows:

Coverage Tier	2016 Tax Year
Single Person Maximum Contribution	\$3,350
Family (2 or more covered members) Maximum Contribution	\$6,750
Additional "Catch Up" Contribution for Persons Age 55 to 65	\$1,000

Election of an HSA: To commence participation in a HSA, go to <http://americanfidelity.com/waynecounty> by December 31, 2015 to complete your enrollment or print a paper copy of the attached **HSA Deduction Authorization Form** and return it no later than December 31, 2016 in order for contributions to commence with the first pay in 2016.

Health FSA Options

General Purpose FSA: All full-time permanent employees are eligible for a general purpose FSA; participation in a HDHP is not required. Upon an employee's election to participate in a FSA, the County advances funds up to the employee's selected annual contribution election not to exceed \$2,500 for the year. Once elected, employees may not change their contribution amount. Moreover, unspent and unclaimed funds are forfeited (with some exceptions) at the end of each calendar year. Any funds in a FSA are also forfeited upon termination of employment.

Limited Purpose FSA: A Limited Purpose FSA is very similar to a general purpose FSA. However, under a Limited Purpose FSA, eligible expenses are limited to qualifying dental and vision expenses only for the employee, spouse, and eligible dependents.

Election of a Health FSA: Employees wishing to elect to participate in a general purpose health FSA or Limited FSA in 2016 may do so through American Fidelity. Visit <http://americanfidelity.com/waynecounty> by December 31, 2015 to complete your enrollment or visit the Benefits page at www.waynecounty.com to download a paper copy of the Health Savings Account (HSA) Payroll Deduction Authorization Form.

End of Calendar Year Alert for Health FSA Participants

To be eligible to participate in a HSA effective January 1, 2016, all funds in a 2015 FSA must be fully disbursed by December 31, 2015. Otherwise the funds will be forfeited. To be considered fully disbursed by December 31st, Employee Benefit Concepts (EBC) must receive the participant's 2015 claim(s) by noon on December 31st via fax, email, U.S. mail or in person at the contact information below. For active debit card holders, the debit card will be active until midnight on December 31st.

For more information about current FSA participation and FSA claims handling, please contact EBC at (248) 855-8040 or email claims@employeebenefitconcepts.com. Submit your claim(s) via fax at (248) 855-2454 or by U.S. Mail or in person 28800 Orchard Lake Rd, Suite 140, Farmington Hills, MI 48334.

Dependent Care FSA Option

FSAs can also be established to pay for certain expenses to care for dependents while the legal guardian is at work. While this most commonly means child care, for children under the age of 13, it can also be used for children of any age who are physically or mentally incapable of self-care, as well as adult day care for senior citizen dependents who live with the person, such as parents or grandparents. Additionally, the person or persons on whom the dependent care funds are spent must be able to be claimed as a dependent on the employee's federal tax return. The funds cannot be used for summer camps (other than "day camps") or for long term care for parents who live elsewhere (such as in a nursing home).

Election of a Dependent Care FSA: Employees wishing to elect to participate in a Dependent Care FSA in 2016 may do so through American Fidelity. Visit <http://americanfidelity.com/waynecounty> by December 31, 2015 to complete your enrollment or visit the Benefits page at www.waynecounty.com to download a paper copy.

Participants with funds remaining in their current Dependent Care FSA account after December 31, 2015, may continue to submit claims until April 1, 2016 for qualified expenses incurred on or before March 15, 2016. Contact EBC for additional information.

III. DISCONTINUATION OF ADOPTION FSA, PARKING-AT-WORK AND COMMUTER TRANSIT BENEFIT PLANS

Effective January 1, 2016, the County will no longer offer an Adoption FSA, Parking-at-Work or Commuter Transit benefit plans. Participants with funds remaining in their current Adoption FSA, Parking-at-Work or Commuter Transit account after December 31, 2015, may continue to submit claims until April 1, 2016 for qualified expenses incurred on or before March 15, 2016. Contact EBC for additional information.

IV. ANNUAL WAGE BONUS

In accordance with applicable labor agreements and benefit plans, employees may receive an annual wage bonus. Wage bonuses will be paid once a month on the first pay of each month on a prorated basis. Employees have the option of receiving their bonus payment as part of their payroll check, which will be taxable, or have all or a portion of the bonus deposited in a pre-tax HSA, FSA or Limited FSA. The table below illustrates the amounts of the bonus earning, how the applicable earning will be paid on a monthly basis and the calculated amount of the deduction for participation in a HSA, FSA or Limited FSA *if elected*.

Employee Status	Annual Bonus Amount	Prorated Monthly Earning Amount	HSA, FSA or Limited FSA Bi-weekly Deduction <i>IF ELECTED</i> (based on 26 pays)
Single Person OR Decline Coverage	\$ 650.00	\$ 54.17	\$ 25.00 / pay
Two Person	\$ 1,000.00	\$ 83.33	\$ 38.46 / pay
Family	\$ 1,300.00	\$ 108.33	\$ 50.00 / pay

To elect a HSA, FSA or Limited FSA, see sections above for instructions.

V. ACTIVE OPEN ENROLLMENT ANTICIPATED IN EARLY 2016

Subject to Commission approval of new contracts with insurance carriers, an active Open Enrollment period is anticipated to be held in early 2016 (anticipated in February 2016). At that time, employees who do not decline healthcare coverage will be able to select the medical / prescription drug HDHP (PPO or HMO) plan of their choice. Employees will also be able to select from available dental plans. Additionally, employees will have the opportunity to decline health care coverage for the remainder of the 2016 calendar year.

VI. CUSTOMER SERVICE SUPPORT

For general assistance, please contact the NEW Benefits Hotline at (313) 224-8100 or (888) 989-8686 or email benefits@waynecounty.com. Assistance will be available between the Christmas and New Year's holidays on December 28 - 30, 2015 from 9:00 a.m. - 5:00 p.m.

HSA and FSA Online Enrollment Instructions and Information

Visit <http://americanfidelity.com/waynecounty> for more information about HSAs and FSAs. Complete your enrollment by December 31, 2015 by using the following login information:

Login ID: employee social security number
Password: last four digits of employee SSN + last 2 digits of employee's birth year

VII. ATTACHMENTS TO THIS NOTICE

- Health Care Benefit Plan Comparisons & Summaries
- January 1, 2016 Health Plan Implementation Election Form
- Health Savings Account (HSA) Payroll Deduction Authorization Form
- Comparison of Wayne County Flexible Spending Account (FSA) and Health Savings Account (HSA)



HEALTH SAVINGS ACCOUNT (HSA)
One-Time Bonus Payment Deposit Authorization

Important: For use only by employees currently enrolled in a High Deductible Health Plan (HDHP) through Wayne County and eligible for an annual wage bonus.

First Name Last Name M.I. Employee ID #

Daytime Phone Work E-mail Address Home E-mail Address

Date of Birth Effective Date of HDHP Enrollment

I am currently enrolled in a High Deductible Health Plan (HDHP) through Wayne County and eligible for the annual bonus payment. Fifty percent (50%) of the annual bonus will be paid in January 2016 in accordance the following schedule.

Coverage Type	Annual Bonus Amount	First Bonus Payment
Single Person	\$650.00	\$325.00
Two Person	\$1,000.00	\$500.00
Family	\$1,300.00	\$650.00

I elect to have contributed to my HSA the amount stated below from my annual bonus payment that will be distributed on or around January 22, 2016. This is a one-time contribution to my HSA. I understand that I must complete a separate HSA Deduction Authorization Form if I want to direct additional funds to my HSA. I also understand that this does not alter any contributions I have previously authorized be made to my HSA.

One-Time Deduction: \$ _____

☐ I do not wish to contribute any portion of the bonus payment to my HSA

***This form must be submitted to Benefits & Disability Administration Division no later than
Tuesday, January 19, 2016.***

¹ **Contribution Limits:** Annual HSA contributions cannot exceed the statutory IRS contribution annual maximums updated each year (listed below for the current year). See Department of Treasury Web Site for more details. <http://www.treas.gov/offices/public-affairs/hsa/>

Tax Year	2016
Single Person Maximum Contribution	\$3,350
Family (2 or more members) Maximum Contribution	\$6,750
Additional "Catch Up" Contribution for Persons Age 55 and Over	\$1,000

By signing this form, I authorize my employer to contribute the elected amount to the HSA administrator, Health Equity. I hereby confirm that all personal information and selections made on this form are correct and that I am currently qualified to contribute to an HSA under IRS guidelines.

Signature Date

DISCLAIMER: HSAs are personal health savings vehicles rather than group employee benefits. Although Wayne County has agreed to forward contributions through its payroll system to Health Equity, it has not specifically endorsed Bancorp Bank or any other HSA provider. Persons are not restricted from moving funds to another HSA, but Wayne County is not required to forward payroll contributions to another HSA provider. With respect to HSAs offered through Health Equity, Wayne County does not impose conditions on the use of HSA funds, make or influence any investment decisions with respect to funds contributed to an HSA, or received any payment or compensation in connection with an HSA. All bank fees associated with the maintenance of an HSA account are strictly the responsibility of the individual account holder.

Submit Completed Form to:

Wayne County Benefits Admin. Division • 500 Griswold St, 9th Floor, Detroit, MI 48226
Phone: (313) 224-8100 • Fax: (313) 967-1228 • E-mail: benefits@waynecounty.com

WCRA INJUNCTION BRIEF
EXHIBIT #2

**UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION**

**WAYNE COUNTY RETIREES' ASSOCIATION, INC.;
AFSCME SUBCHAPTER 38; EUGENE WRIGHT,
ANTHONY CECE, DOUGLAS WADLIN, CHARLES BONZA,
EVELYN GLANTON, MARGY BISHOP, BEVERLY BRODEN,
PAUL PENERACKI, AND KIM SMITH,
on behalf of themselves and all other similarly
situated,**

Plaintiffs

**Case No.
Hon.**

Vs

**CHARTER COUNTY OF WAYNE, and
WARREN EVANS, Individually and in
his official capacity of Wayne County
Executive, and Ex-Official
Member of the Wayne County Employees'
Retirement System, and GARY WORONCHAK,
Individually and in his official capacity
As Chairman of the Wayne County Commission,
And Ex-Official Member of the Wayne County
Employees' Retirement Commission, WAYNE COUNTY
EMPLOYEES' RETIREMENT SYSTEM AND ITS TRUSTEES;
JOHN DOE NO. 1 THROUGH JOHN DOE NO. 8,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY AS
BOARD MEMBERS OF THE WAYNE COUNTY EMPLOYEES'
RETIREMENT COMMISSION, jointly and severally,**

Defendants

JAMIL AKHTAR P.C.

By Jamil Akhtar

Attorney for Plaintiff

7577 U.S. Hwy. 12

Onsted, MI 49265

Tx. 517-467-7373

Facsimile (517) 858-0190

Email: jimakhtar@att.net

-AND -

MARK PORTER & ASSOCIATES

By Mark Porter

Attorney for Plaintiff

551 East 11 Mile Road, Suite 3D

PO Box 71527

Madison Heights. Michigan 48071-0527

Tx (248) 547.1911

Facsimile (248) 547.1917

COMPLAINT AND JURY DEMAND

Plaintiffs ("Class Representatives") on behalf of themselves and all persons similarly situated, by their attorneys, Jamil Akhtar, P.C. by Jamil Akhtar and Mark Porter & Associates, by Mark Porter, complaint against the Defendants is as follows:

JURISDICTION AND VENUE

1. This is an action for equitable relief and damages alleging that Defendants have breached its obligations owed to Plaintiffs, to provide specific health care and other retirement benefits and coverage to Plaintiffs as retirees. Plaintiffs also allege that Defendants have violated their constitutional rights by substantially impairing their contractual rights and depriving them of property contrary to due process of law. These claims are asserted under 42 U.S. C. §1983 and this court has jurisdiction to hear these claims under 28 U.S.C. §1331. This Court has supplemental jurisdiction to consider any claims brought pursuant to Michigan law and the Michigan constitution.

2. This action is brought as a class action by the Wayne County Retirees Association (WCRA), AFSCME Sub-Chapter 38 and the Class Representatives on behalf of themselves and a similarly situated class of retirees and surviving spouses and dependents pursuant to Rule 23(a) and Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

3. In Count I, brought under 42 USC §1983 as well as the state constitution, Plaintiffs seek damages as well as declaratory and injunctive relief where Defendants have deprived Plaintiffs of a property interest without procedural due process and in violation of substantive due process, as well as a taking of property without just compensation, in violation of 42 U.S.C §1983, U.S. Const. Amend. 14, and Article

I §17 and Article IX §24 of the Constitution of the State of Michigan. Additionally, Defendants Robert Ficano, County Executive Evans and Charter County of Wayne acted pursuant to an official policy or custom.

PARTIES

4. Plaintiff, Wayne County Retirees' Association, Inc., (hereinafter WCRA) is a non-profit corporation registered with the Michigan Department of Licensing and Regulatory Affairs. The WCRA was formed *"to represent the interests of retirees of Wayne County in regard to their retirement benefits from the Defendant-County, including all type of health and medical benefits and insurance benefits, including advocacy, lobbying and/or litigation"*; plaintiff, Eugene Wright serves as the current president of WCRA; at the time of filing this complaint, WCRA has approximately 100 dues paying members.

5. Plaintiff, AFSCME Sub-Chapter 38 is affiliated with the American Federation of State, County and Municipal Employees and is chartered by said labor organization; further, Sub-Chapter 38 is a non-profit corporation registered with the Michigan Department of Licensing & Regulatory Affairs. Plaintiff, Sub-Chapter 38, represents approximately 1700 retirees from Wayne County, Michigan.

6. Plaintiff and class representative, Anthony Cece, is a member of the WCRA, was employed by Wayne County and retired on December 1, 2010. At the time of his retirement, he was a Lieutenant in the Sheriff's Department and was represented by a collective bargaining unit; AFSCME Council 25, Local 3317. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

7. Plaintiff and class representative, Eugene Wright, is a member of the WCRA, was employed by Wayne County and retired on 3-1-15. At the time of his retirement, he was a Corporal in the Sheriff's Department and was represented by the

Police Officers' Association of Michigan. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

8. Plaintiff and class representative, Douglas Wadlin, is a member of the WCRA who was employed by Wayne County and retired on 11-30-2004. At the time of his retirement, he was a Corporal in the Sheriff's Department and was represented by the Police Officers Association of Michigan. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

9. Plaintiff and class representative, Evelyn Glanton, is a member of the WCRA, was employed by Wayne County and retired on 8-1-2009. At the time of her retirement, she was represented by the Governmental Administrator Association. She is not currently a Medicare eligible retiree, receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. 's's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

10. Plaintiff and class representative, Charles Bonza, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction in elimination of

benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

11. Plaintiff and class representative, Margy Bishop, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

12. Plaintiff and class representative, Beverly Broden, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

13. Plaintiff and class representative, Paul Penerackl, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

14. Plaintiff and class representative, Kim Smith, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through

the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

15. At all relevant times Defendant, County Executive Evans, was the elected County Executive and an ex-official member of the Wayne County Retirement Systems Board of Trustees.

16. At all relevant times, Defendant, Gary Woronchak, was an elected County Commissioner, and appointed to be the Chairman of the Board of Commissioners and an ex-official member of the Wayne County Employees' Retirement Systems Board of Trustees.

17. At all relevant times Defendant, Wayne County Employees' Retirement System, had Statutory, Charter and Enabling Ordinance authority, to manage the funds and administration of the Wayne County Employees' Retirement System; as such, pursuant to Act 314 P.A .1965, the Commission had a fiduciary duty to protect the retirees' benefits and to protect the retirees' representation on the Commission.

18. On February 10, 2016 Defendant County Executive Evans with the apparent approval of Defendant, Woronchak, sent a letter to the Director of the Wayne County Employees' Retirement Commission, Mr. Robert Greden , advising him that as of October 1, 2015 County Executive Evans through his anonymous appointees to the Retirement Commission were in charge of the Retirement Commission and the Commissioners who were serving prior to October 1, 2015 were forbidden to take any action; further County Executive Evans through his Corporation Council advised Mr. Greden that any action taken by the Commission as it relates to hiring outside counsel was not recognized.

SUMMARY OF FACTS

19. Plaintiff hereby incorporates paragraph 1 through 18 above to avoid repetition.

20. On or after approximately May 1, 2007, all collective bargaining agreements, contained a provision which provided for retirees to receive the same medical and prescription benefits as received by active employees. The applicable language in the Collective Bargaining Agreement basically provided as follows:

D. Employees who retire from County service who are eligible for post-retirement health care benefits shall participate in the same health care plan options, coverages, co-pays, deductibles, etc., as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is

within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare.

21. On December 16, 2015, defendant, County Executive Evans, published a "Memorandum" to all Wayne County employees of his intent to implement healthcare and prescription drug plan changes effective January 1, 2016. (Exhibit 1)

22. Changes to the active employees' medical/prescription benefits include but are not limited to the following:

- a. Effective January 1, 2016 a high deductible medical/prescription plan would go into effect, wherein the active employees with a family plan; co-pays would be \$2600.00 before any insurance coverage would be provided;
- b. Employees would now be required to pay 25% of the premium for medical insurance which amounts to \$107.22 for a single person; \$257.33 for a (2) person policy and \$321.66 for a family policy payable on a monthly basis; by way of a deduction from their March 1st retirement checks
- c. Active employees will receive an annual bonus in the amount of \$1300.00 to be placed in a health saving account to pay for the high deductible co-pays of up to \$2600.00 per year for a full family policy.
- d. Based upon good faith information and belief, County Executive Evans will, as of the March 1, 2016, start deducting from retirees' month retirement check, the 25% medical insurance premium co-pay.

23. Based upon good faith information and belief, County Executive Evans, if he has not already done do, will implement the high deductible insurance plan for all retirees, which require a first dollar payment of \$2600.00 deductible.

24. Based upon good faith information and belief, County Executive Evans will not provide retirees with the same \$1300.00 bonus, to be placed in a HRA as received by active employees.

25. Retirement checks will be printed no later than February 23, 2016; therefore, time is of the essence.

26. Plaintiffs, WCRA and AFSCME Sub-Chapter 38 and the named and class Plaintiffs herein, have not received notice of the change in premiums and co-pays as said information has not been made available by the Defendants.

27. On February 10, 2016 Evans sent a letter to the members of the Wayne County Retirement Commission advising that as of October 1, 2015 they were removed from their position as Trustees of the Retirement System. (Exhibit 2)

CLASS ACTION ALLEGATIONS

28. Plaintiffs hereby incorporate paragraph 1 through 27 above to avoid repetition.

29 The individual Plaintiffs bring this action on behalf of themselves, and on behalf of those similarly situated. Pursuant to Act 314, PA 1965; §21(2), plaintiff's intent is to protect the retiree representatives on the Retirement Commission and more specifically the two (2) retiree representatives elected to the Commission by retirees were not provided with the due process mandated by § 21(2) of Act 314, P.A. 1965; MCL 38.1141.

30 The individual Plaintiffs bring this action on behalf of themselves, and on behalf of those similarly situated, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1)(A) and (B)(2) and (3).

31. The individual Plaintiffs seek to represent a class of all represent a class of individuals represented by WCRA and Sub-Chapter 38 who were or are participants or beneficiaries in the lifetime health insurance benefits plan or plans arising under collective bargaining agreements between the County of Wayne and various labor

organizations, or participants or beneficiaries in lifetime health insurance plans arising from ordinances and mutually explicit understandings establishing a property interest in lifetime health insurance in the absence of representation by a labor organization that resulted in plans provided under collective bargaining agreements.

32. The exact number of the members of the proposed class is not presently known, but based on information and belief the number is in excess of 1500 persons, and is so numerous that joinder of all members of the proposed class in this action is impracticable.

33. There are questions of law and fact common to the class, including legal and factual questions pertaining to the retirement health benefits provided under applicable collective bargaining agreements and ordinances and past practices, and to the propriety under federal and state law of Defendants' discontinuation or modification, and threatened discontinuation or modification, of various retirement health care benefits.

34. The individual Plaintiffs' claims are typical of the claims of members of the proposed class in that all these claims arise under collective bargaining agreements, ordinances and past practice and conduct. The plans cover retirees as well as their eligible spouses and dependents. Additionally, the claims relate to Defendants' wrongful reduction or threatened reduction of retiree health insurance benefits contrary to relevant agreements.

35. The individual Plaintiffs will fairly and adequately represent the interests of the proposed class because they have the same or similar claims and interests arising out of the same or similar operative facts and the same or similar law and contract obligations and retiree health plans, and because they have secured representation of attorneys who are skilled, knowledgeable, and experienced in labor and employment law, civil constitutional litigation and multiparty and class action

litigation involving attempts to reduce or eliminate the retirement benefits of public sector retirees.

36. Defendants' wrongful acts were undertaken on grounds that are generally applicable to the proposed class members, making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

37. The common questions of law and fact that are implicated predominate over any questions that affect only individual members of the proposed class, and class action is far superior to any other available methods for the fair and efficient adjudication of this controversy.

COUNT I

VIOLATION OF PLAINTIFFS' RIGHT UNDER U.S. CONSTITUTION AMENDMENT 14 DUE PROCESS ACTIONABLE UNDER 42 U.S.C. §1983

38. Plaintiff hereby incorporates paragraph 1 through 37 above to avoid repetition.

39. On the date of their retirement, the individual Plaintiffs had a binding contract with the Defendant, Wayne County, for lifetime medical insurance benefits. (See paragraph 20 above).

40. A collective bargaining agreement creates a property interest which can only be taken away from the Plaintiffs as a result of providing the Plaintiffs with the appropriate due process of law as required by Amendment 14 to the U. S. Constitution. (Hahn v Star Bank, 190 F3d 708, 716 (6th Cir. 1999)).

41. The Plaintiffs' lifetime retirement, medical and prescription drug benefits constitute a property interest in addition to being established by contract, said rights are also protected by Article IX §24 and Article 1 §17 of the 1963 Michigan Constitution; see also Wayne County Ordinance 32.

42. The retirement benefits which the Plaintiffs claim is a "property right", are referred to as "mirror plan benefits" and which are the same level of benefits provided to active employees. Benefits are divided into two components; (1) part one is the level of medical and drug services to be provided for under the plan and (2) the second component is the cost of the plan and who pays what amount.

As can be seen by reviewing the pre September 21, 2015, labor agreements, this division between the level of benefits and cost of the insurance is clear:

ASFCME COUNCIL 25: LOCALS 25 et al ending 9-30-2014

- D. Employees who retire from County service who are eligible for postretirement health care benefits shall participate in the same health care plan options, coverages (excluding Master Medical and dental coverage), co-pays, deductibles, etc. as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person, and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate. Contributions for each plan year will be increased/decreased at the same rate at which reported monthly illustrative rates or premiums increase or decrease, not to exceed ten percent (10%) over the previous plan year's contribution rate for the specified plan.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health

care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare. (Exhibit 5 (a))

AFSCME Council 24 Local 3317 (10-1-2008 to 9-30-2011)

- D. Employees who retire from County service who are eligible for post retirement health care benefits shall participate in the same health care plan options, coverages, co-pays, deductibles, etc. as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate. Retirees electing to enroll in the Traditional plan option shall contribute an amount equal to retirees enrolled in the PPO or HMO plan option plus the monthly rate difference between the standard average monthly medical plan rate and the average monthly Traditional plan rate.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare. (Exhibit 5(A))

43. The Plaintiffs will be irreparably harmed by the actions of the Defendants, a request for injunction is included in this lawsuit; the reduction in medical insurance coverage constitutes irreparable harm, meriting a preliminary injunction; Hinckley v Kelsey-Hayes Co., 866 F Sup 1034, 1044 (Ed Mich 1994); City

of Pontiac Retired Employees Ass'n et al v Louis Schimmel et al, 751 F3d 427 (en bac 6th Cir. 2014) (Exhibit 3).

44. Without providing the Plaintiffs with notice or the right to have a hearing, the Defendants, on January 1, 2016, changed the retirement, medical and prescription insurance benefits which Plaintiffs were to receive on a lifetime basis. All such changes were done without notice and without a right to appeal, in violation of Plaintiffs' rights to due process.

45. Pursuant to Wayne County Code at §141(43), the Plaintiffs are guaranteed their medical and prescription benefits until they reach age 65 when they must apply for Medicare supplemental insurance benefits. (Exhibit 4)

46. The Plaintiffs are for the most part, live on fixed incomes, and are now required to pay between \$107.22 to \$321.66 per month, for their 25% insurance premium payments. (Exhibit 1)

47. Under the terms of the high deductible insurance plan, retirees are now required to pay out of pocket co-pays of \$1300.00 to \$2600.00 deductible prior to receiving medical and prescription coverage under the terms of the County medical/prescription high deductible plan. (Exhibit 5(b); high deductible health plan)

48. County Executive Evans' actions as herein stated were done under color of law.

WHEREFORE PLAINTIFFS REQUEST judgment against the Defendants for the following relief:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continued medical/prescription benefits without notice, is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;

- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions;
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;
- e. Award Plaintiffs punitive damages against Defendant governmental officials and against Defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' right to due process of law;
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs such other and additional legal and/or equitable relief to which they are entitled to.

COUNT II

DEPRIVATION OF PROPERTY RIGHT CREATED UNDER U.S. CONSTITUTION AMENDMENT 14. ACTIONABLE UNDER 42 U.S.C. 1983 (COMPOSITION OF THE RETIREMENT COMMISSION)

- 49. Plaintiff hereby incorporates paragraphs 1 through 48 above to avoid repetition.
- 50. All retired employees of Wayne County are guaranteed the right to vote and elect (2) members of the Wayne County Retirement System Board of Trustees.
- 51. This property right is created by the Wayne County Charter at Article VI-Retirement, §6.111 and §6.112 Retirement Commission which provides as follows:

"ARTICLE VI - RETIREMENT

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

COMPILER'S COMMENTS:

The Wayne County Retirement Ordinance was republished on November 20,1986 (Ordinance 86-486) to incorporate all prior amendments, conform the ordinance with federal law remove outdated provisions, and reconcile inconsistent terminology. This was done again on November 17,1994 in Ordinance 94-747, which has since been amended by Ordinances 97-728, 98-335, 2000-536,2002-1103, 2002-1147,2003-124, 2005-924 and 2010-514. (Code Chapter 141)

It has been ruled that those provisions of the Wayne County Retirement Ordinance which provided for "20 and out" benefits for non-union employees were invalid because in conflict with MCL 46.12a which requires that a county employee have at least 25 years of service to become eligible for retirement benefits if less than 60 years of age. (Donald Gray vs. Wayne County Retirement System, et al Civil Action No. 84-401 649 CK, August 31, 1984, Third Circuit Judge Roland Olzark presiding.)
6.112 Retirement Commission.

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordinance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System. The costs of administration and management of the

Retirement System shall be paid from the investment earnings of the Retirement System.

COMPILER'S COMMENTS:

In Opinion 88-012, the Corporation Counsel advised that the Retirement Commission was without authority to amend the Retirement Ordinance or to expand benefits beyond those authorized by the Ordinance." (Exhibit 6)

52. Wayne County Home Rule Charter provision 6.112 was implemented by way of the adoption of the Wayne County Code of Ordinances (Chapter 141- et seq. Retirement). (Exhibit 7)

53. Wayne County Ordinance §141-35-Retirement Commission (a)(1)(d) provides as follows:

"(2) retired members who are residents of Wayne County to be elected by the retired members and beneficiaries. The election shall be conducted in accordance with procedures adopted by the Retirement Commission."

54. Property rights are created by contract and by law. (Hahn v Star Bank, 190 F3d 708, 716 (6th Cir. 1999).

55. Under the provisions of Act 436 P.A. 2012 a Consent Agreement was approved by the State Treasurer, signed on August 21, 2015. (Exhibit 8). Defendant, County Executive Evans, forced all Unions with the exception of Local 3317, to agree to a contract provision which would allow Evans to reorganize the membership of the Retirement Commission; in part the retiree representatives would be changed from two elected representatives to one elected representative. (Exhibit 9-GAA Contract)

56. Defendant, County Executive Evans, has submitted to the County Commission a request to reorganize the Retirement Commission which would have the affect of eliminating one of the two retired members elected by the retirees to the

Wayne County Retirement Commission. (Exhibit 10, Evans' letter dated January 11, 2016)

57. Defendant, County Executive Evans, is without authority to unilaterally amend the Wayne County Charter, the Wayne County Charter can only be amended by the citizens of Wayne County.

58. Each of the Collective Bargaining Agreements entered into between Wayne County and the various unions, prior to September 21, 2015, contained a provision wherein the:

"The detail provisions of the Wayne County Employees' Retirement System shall control except where changed or modified below."

59. In addition to union employees of Wayne County, there are non-unionized employees who are members of the retirement system; most important is that there are several thousand retired members who would be disenfranchised if defendant, County Executive Evans, is allowed to change the composition of the Retirement Commission without a Charter amendment. County Executive Evans is attempting to eliminate a property right created by law, by eliminating (1) of the (2) retired members of the Wayne County Retirement Commission in violation of the members' rights of due process under the 14th Amendment to the United States Constitution.

60. United States District Court Judge Judith E. Levy, in the matter of AFSCME Council 25 and its Affiliated Locals Vs Charter County of Wayne and County Executive Evans, on December 4, 2015 entered an Order wherein the Court stated:

"Plaintiff may, however, allege that their rights to pensions and vested retirement benefit, as well as their right to representation on the government Public Employee Pension Board, are property rights, and that the right to arbitration are procedural rights owned before plaintiff are deprived of their property rights." (Exhibit 11).

In the AFSCME Council 25 case, the Plaintiffs represented active employees and not retirees. However, Article IX, §24 of the Michigan Constitution provides that retirees' vested rights cannot be diminished or impaired and are considered contractual. (Exhibit 12)

Under Act 314, PA 1965, the County Charter and County Ordinances, the composition of the Retirement Commission, creates a property right protected by the 14th Amendment.

61. As of the date of each of Plaintiffs' retirement, they had a vested right to participate in the management and operation of the Wayne County Employees' Retirement System by way of selecting (2) retirees to represent their interests.

62. Defendants have placed the Retirement Commission (Exhibits 2 and 10) on notice that at its meeting of February 29, 2016, County Executive Evans will attempt to seat his personally selected members of the Retirement Commission.

Plaintiffs through their representation by their two elected Trustees now presently have a 25% voting right on the Commission; whereas under Evans' plan retirees will only have a 1/10 vote on the Commission. (Exhibit 9).

WHEREFORE PLAINTIFFS REQUEST judgment against the Defendants for the following relief:

- a. A Declaratory judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continually to have the right to select the (2) retiree members on the Retirement Commission is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;**
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;**
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions;**
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;**

- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.

COUNT III

DEPRIVATION OF PROPERTY RIGHTS CREATED UNDER WAYNE COUNTY ORDINANCE NO. 2013-500

63. Plaintiff hereby incorporates paragraphs 1 through 62 above to avoid repetition.

64. On August 8, 2013 the Wayne County Commission passed Ordinance No. 2013-500 which provides as follows:

Chapter 32 - COUNTY BENEFITS

Sec. 32-1. - Citation.

***This chapter may be cited as the county benefits ordinance.
(Ord. No. 2013-500, § 1, 8-8-13)***

Sec. 32-2. - Definitions. Modified

For purpose of this chapter words, terms and phrases shall have the following meanings:

Benefit means a healthcare; retirement; pension; insurance; leave time; bonus; severance; lump sum payment; loan or similar compensation, arrangement, accommodation or incentive of a financial nature excluding wages or salary.

Bonus means any lump sum monetary payment received once in a fiscal year in addition to an employee's wages or salary, or an increase in an employee's wages or salary that is reduced within 60 days of implementation of the increase.

Contractor means a person, business, corporation, partnership, sole proprietorship, joint venture or other private legal entity that has an agreement, no matter what it is called, to provide goods, services, supplies, or construction to the County of Wayne.

Elected official means a person who is elected to the office of chief executive officer, county commissioner, county clerk, register of deeds, prosecuting attorney, sheriff, treasurer, circuit court judge or probate court judge within the County of Wayne.

Employee means any person who receives wages or a salary from the County of Wayne regardless of the number of hours worked by or the position of employment held by the person.

Leave time means vacation, annual, sick, holiday, personal business or other similar time compensated by the County of Wayne.

Sec. 32-3. - Commission findings.

(a) The Wayne County Commission finds that the chief executive officer has specifically tailored, offered and provided special benefits and/or accommodations to individuals who serve as appointees in his administration.

(b) The Wayne County Commission finds that the expenditure of public funds requires great responsibility and stewardship to maintain public confidence.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-4. - County benefits.

(a) The County of Wayne shall not provide any benefit to, or any change to an existing benefit, for an elected official, employee or contractor without prior approval, by a majority vote, of the Wayne County Commission.

(b) Notwithstanding subsection (a) of this section, the County of Wayne shall not offer or provide a benefit to an elected official, employee or contractor, unless the benefit is offered or provided on the same terms and at the same time to one of the following groups:

(1) All elected officials;

(2) All union employees within a local;

(3) All non-union or appointed employees within the executive branch of county government;

(4) All non-union or appointed employees within the legislative branch of county government;

(5) All non-union or appointed employees within the judicial branch of county government; or

(6) All similarly situated contractors.

(c) Notwithstanding subsections (a) or (b) of this section, the County of Wayne may provide an elected official, employee or contractor with a benefit, if the benefit is specifically provided by the Wayne County Charter, law, resolution, ordinance, or a court of competent jurisdiction.

(d) The chief executive officer or his/her designee shall prepare and implement policies and procedures to provide for concurrence, uniformity and consistency in the application of this chapter.

(e) No employee may receive monetary compensation that will result in him or her exceeding the salary range for his or her position that is in effect on January 1 of that year without approval of the Wayne County Commission.
(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-5. - Existing contractual rights.

This chapter shall not impair any rights under a collective bargaining agreement or contract of employment with respect to benefits or other compensation in effect on the date the ordinance from which this chapter is derived becomes effective.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-6. - Delegation of authority.

The provisions of this chapter shall supersede any authority delegated by the Wayne County Commission to execute contracts or otherwise legally bind the County of Wayne to obligations, except authority delegated by

resolution of the county commission to the department of corporation counsel and the commission chairperson to settle legal matters.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-7. - Penalties.

(a) In addition to any remedies or penalties provided by law, a person who violates this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for a period not exceeding 90 days, or both.

(b) The office of corporation counsel or the office of commission counsel may institute a civil action in the appropriate district court or in the Third Circuit Court against a person who violates this chapter to recover any financial loss on behalf of the county.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-8. - Application.

This chapter shall apply to any benefit or change in benefit, provided after the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2013-500, §1, 8-8-13) (Exhibit 13)

65. The individual and class Plaintiffs are entitled to medical and prescription insurance benefits equal to active employees of Wayne County.

66. The right to medical and prescription insurance constitutes a property right created by the due process provisions of the 14th Amendment to the United States Constitution. ((Hahn v Star Bank, 190 F3d 708, 716 (6th Cir. 1999)).

67. Wayne County Ordinance 2013-500 in part provides at §34-4 (b) that employees of Wayne County shall not receive fringe benefits (which include medical and prescription benefits) "*unless the benefit is offered or provided on the same terms and at the same time in one of the following groups:*

2. *All union employees within a local*".

68. On December 16, 2015, Defendant, County Executive Evans, gave notice that as of January 1, 2016, Wayne County Executive Evans would change medical and prescription benefits to all union and non-union employees. (Exhibit 1)

69. The Wayne County Commission determined that County Executive Evans' Order relating to medical and prescription insurance coverage does not apply to elected Wayne County Commissioners and the Commission own County employees. (Exhibit 14).

70. Because Wayne County Commission employees are covered under Ordinance 2013-500, the retirees are to receive the same medical and prescription benefits as those received by "County employees" that being employees of the Wayne County Commission.

71. Wayne County Executive Evans has deprived the Plaintiffs of a property right, that being the same medical and prescription benefits provided to Commissioners and their employees in violation Plaintiffs' rights under the due process provisions of the 14th Amendment to the United States Constitution.

72. Plaintiffs are entitled to just and proper medical benefits equal to the benefits received by county employees working for the Wayne County Commission.

WHEREFORE, PLAINTIFF REQUESTS:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continued medical/prescription benefits without notice, is unlawful and violative of Plaintiffs rights under the due process clause of the 14th Amendment;**
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;**
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions**
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;**
- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;**
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);**
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.**

COUNT IV

BREACH OF CONTRACT

73. Plaintiffs hereby incorporate paragraphs 1 through 72 above to avoid repetition.

74. Plaintiffs and prospective class Plaintiffs, at the time of their retirement, were all covered by Collective Bargaining Agreements, which provided that upon retirement, the Plaintiffs would receive lifetime medical and prescription drug insurance which "mirrored" the medical and prescriptions benefits received by active employees.

75. Chapter 32 (County Benefits) guaranteed all county workers that they would receive, at a minimum the same medical and prescription benefits which are being received by the elected County Commissioners and the Commissioner's staff. This guarantee is contained in the County Code of Ordinances at §32. (Exhibit 3)

Chapter 32 - COUNTY BENEFITS

Sec. 32-1. - Citation.

This chapter may be cited as the county benefits ordinance.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-2. - Definitions. Modified

For purpose of this chapter words, terms and phrases shall have the following meanings:

Benefit means a healthcare; retirement; pension; insurance; leave time; bonus; severance; lump sum payment; loan or similar compensation, arrangement, accommodation or incentive of a financial nature excluding wages or salary.

Bonus means any lump sum monetary payment received once in a fiscal year in addition to an employee's wages or salary, or an increase in an

employee's wages or salary that is reduced within 60 days of implementation of the increase.

Contractor means a person, business, corporation, partnership, sole proprietorship, joint venture or other private legal entity that has an agreement, no matter what it is called, to provide goods, services, supplies, or construction to the County of Wayne.

Elected official means a person who is elected to the office of chief executive officer, county commissioner, county clerk, register of deeds, prosecuting attorney, sheriff, treasurer, circuit court judge or probate court judge within the County of Wayne.

Employee means any person who receives wages or a salary from the County of Wayne regardless of the number of hours worked by or the position of employment held by the person.

Leave time means vacation, annual, sick, holiday, personal business or other similar time compensated by the County of Wayne.

Sec. 32-3. - Commission findings.

(a) The Wayne County Commission finds that the chief executive officer has specifically tailored, offered and provided special benefits and/or accommodations to individuals who serve as appointees in his administration.

(b) The Wayne County Commission finds that the expenditure of public funds requires great responsibility and stewardship to maintain public confidence.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-4. - County benefits.

(a) The County of Wayne shall not provide any benefit to, or any change to an existing benefit, for an elected official, employee or contractor without prior approval, by a majority vote, of the Wayne County Commission.

(b) Notwithstanding subsection (a) of this section, the County of Wayne shall not offer or provide a benefit to an elected official, employee or contractor, unless the benefit is offered or provided on the same terms and at the same time to one of the following groups:

- (1) All elected officials;***
- (2) All union employees within a local;***
- (3) All non-union or appointed employees within the executive branch of county government;***
- (4) All non-union or appointed employees within the legislative branch of county government;***
- (5) All non-union or appointed employees within the judicial branch of county government; or***
- (6) All similarly situated contractors.***

(c) Notwithstanding subsections (a) or (b) of this section, the County of Wayne may provide an elected official, employee or contractor with a benefit, if the benefit is specifically provided by the Wayne County Charter, law, resolution, ordinance, or a court of competent jurisdiction.

(d) The chief executive officer or his/her designee shall prepare and implement policies and procedures to provide for concurrence, uniformity and consistency in the application of this chapter.

(e) No employee may receive monetary compensation that will result in him or her exceeding the salary range for his or her position that is in

effect on January 1 of that year without approval of the Wayne County Commission.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-5. - Existing contractual rights.

This chapter shall not impair any rights under a collective bargaining agreement or contract of employment with respect to benefits or other compensation in effect on the date the ordinance from which this chapter is derived becomes effective.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-6. - Delegation of authority.

The provisions of this chapter shall supersede any authority delegated by the Wayne County Commission to execute contracts or otherwise legally bind the County of Wayne to obligations, except authority delegated by resolution of the county commission to the department of corporation counsel and the commission chairperson to settle legal matters.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-7. - Penalties.

(a) In addition to any remedies or penalties provided by law, a person who violates this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for a period not exceeding 90 days, or both.

(b) The office of corporation counsel or the office of commission counsel may institute a civil action in the appropriate district court or in the Third Circuit Court against a person who violates this chapter to recover any financial loss on behalf of the county.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-8. - Application.

This chapter shall apply to any benefit or change in benefit, provided after the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2013-500, § 1, 8-8-13)

76. On December 16, 2015 Defendant, County Executive Evans, advised all County employees, excluding employees represented by the Police Officers Association of Michigan and County Commissioners and their staff that as of January 1, 2016, the new high deductible medical insurance would go into effect. (Exhibit 1).

77. The December 16, 2015 notice which Defendant, County Executive Evans gave to County employees, guaranteed that they would receive a \$1300.00 cash bonus to be transferred to the employee's health saving account (HSA); however, County Executive Evans, refused to pay Plaintiffs, retired Wayne County employees, the same \$1300.00 bonus. (Exhibit 1)

78. This action by County Executive Evans, of not providing for the same \$1300.00 cash bonus to retirees, constitutes an act of bad faith on Defendants' part.

79. Many, if not most of the Plaintiffs, live on fixed incomes and depend on their pension benefits to sustain their standard of living.

80. Wayne County employees are still receiving paychecks every (2) weeks in addition to paid holidays, paid vacation time, paid sick days, paid shift and weekend premium pay, all of which are provided for through their Collective Bargaining Agreement and/or the non-union and executive compensation plan.

81. The January 1, 2016 implementation of the new high deductible health plan will constitute a severe hardship on the Plaintiffs in that many are faced with a \$2600.00 out of pocket deductible before any of the County medical insurance takes effect. (Exhibit 1 and Exhibit 5).

82. When the high deductible payments are added to the increase in the employee's premium share going from 10% to 25%, this amounts to a total out of pocket expense, which could exceed \$5000.00 per retiree.

83. It was never the intent of the parties, when in 2007 and thereafter, to place retirees in a position where they had to choose between medical care and paying their bills.

84. County Executive Evans did publically state that his contract proposals were "draconian in nature".

85. There are currently 5,317 retirees of which 1,175 are classified as "mirror" retirees with an average age of 63.

86. In January 2015 Wayne County Executive Evans published a document entitled "Wayne County Recovery Plan"; said plan provided for "mirror retirees" to pay a 10% premium sharing. (Exhibit 15)

87. The Defendants set out on a course of conduct to insure that retirees would receive less in medical benefits than did active employees; said actions constitute fraud on the part of the County-Defendants.

88. The September 21, 2015 contracts entered into between the Defendants and the employee unions (including Local 3317) are considered adhesion contracts and therefore are to be considered *void ab initio*.

89. Federal and Michigan Courts, use the standard rule of contract interpretation when reviewing complaints and pleadings for breach of contract, grounded under Collective Bargaining Agreements. Port Huron Educ. Ass'n, MEA/NEA v Port Huron Area School Dist., 452 Mich. 309, 324(1996); the contract is read as a whole, to give meaning to all terms within the contract: Century Security Co. v Charron, 230 Mich App 79 82(1998); cited in Genesee County Community Health

Dept v Sprague, Michigan Court of Appeals docket #297490; 2011 WL 2557476 (2011) (Exhibit 5).

90. Federal and Michigan Courts used the collective bargaining contract as guidance for contract cases involving public employees. **Quinn v Police Officers Labor Counsel**, 456 Mich 478, 482 n.1 (1998); citing: **Demings v City of Ecorse**, 423 Mich. 49, 56 (1985).

91. Customary rules of contract interpretation are used to determine the vested rights of retirees through collective bargaining agreements. **UAW v Yardman** 716 F2d 1476-1479 (6th Cir 1983); cert denied, 465 US 1007(1984) in the case at bar, the mutually/ ratified language of the Collective Bargaining Agreements and Memorandum of Agreements, explicitly created Plaintiffs vested rights to those health insurance program specified by written agreements.

92. Plaintiffs vested health insurance program are specifically linked to the pension article and clauses contained in their respective collective bargaining agreements and memorandum of agreements. **Golden V Kelsey-Hayes**, 73 F3d 648, 656 (6th Cir 1997). See also **Harper Woods Retiree Association**, (Exhibit 16)

93. In each case, Plaintiffs provided the accord and satisfaction of their vested health care insurance programs. They completed the required years of good faith service; as well as the other requirements demonstrates the Defendants' agreement that is medical benefits are a contractual obligation, which began at the retirement date of each Plaintiff; and continued through every successive year, regardless of language change in subsequent collective bargaining agreements. **Cole v Arvin-Meritor**, 515 Fed Supp 2^d 791, 803(ED Mich 2006). (Exhibit 17).

a. The retirement benefits clause is "general" duration clauses, tied to "the life times" of the Plaintiff with no expiration date tied to any subsequent collective bargaining agreement. Id, at pg-802.

b. The general duration clause for retiree health care benefits are opposite the language and set off to the specific duration of health insurance program for active County employees through subsequent contracts. *Id.*, at pg-803.

94. The Defendants' unilateral imposition of the health plan changes on January 1, 2016 is not reasonable in light of changes in health care, nor are they reasonably commensurate for Plaintiffs, given the fixed income of retirees.

95. The Defendants' unilateral actions are material breaches of the various Collective Bargaining Agreements and the Memorandum of Agreements previously obtained and accord and satisfaction with the Defendants.

96. As a result of the Defendants willful reputation of the contracts the Plaintiffs have incurred and will continue to incur substantial economic damages in a form of the payment of medical insurance premiums and out of pocket co-payments.

WHEREFORE, Plaintiff requests this Honorable Court:

- a. Declare the Defendants' actions of January 1, 2016 to be material breach of contract.
- b. Permanently enjoin the Defendants from making the retiree healthcare changes, which were unilaterally made as herein set forth.
- c. Order returned to the status quo ante for retirees' health care insurance, as it operated prior to January 1, 2016 for all of the Plaintiffs herein.
- d. Grant Plaintiffs their cost and attorney fees pursuant to law and court rules.
- e. Order that all affected retirees and their spouses be made otherwise whole for all cost incurred by the Plaintiffs after January 1, 2016.
- f. Take such other action the Court deems necessary at law; equity, and court rules to affect its order.

COUNT V

**VIOLATION OF PLAINTIFF'S RIGHTS UNDER U.S. CONSTITUTION
AMENDMENT 14 DUE PROCESS ACTIONALBE UNDER 42 U.S.C. § 1983
RE PLAINTIFFS' REPRESENTATIVES ON THE WAYNE COUNTY EMPLOYEES'
RETIREMENT SYSTEM (ELIZABETH MISURACA AND HUGH MACDONALD)**

97. Plaintiffs hereby incorporate paragraphs 1 through 96 above to avoid repetition.

98. The individual and class Plaintiffs pursuant to the Wayne County Charter and Wayne County Code of Ordinances, elect (2) retired representatives to the Wayne County Employees' Retirement Commission.

99. As of December 31, 2015 Commissioner Elizabeth Misuraca had over a year remaining in 'her term of office.

100. As of December 31, 2015 Hugh Macdonald had had over a year remaining in his term of office.

101. On February 10, 2016 Defendant, County Executive Evans, sent a letter to Robert Greden the Director of the Wayne County Employees' Retirement Commission, advising them that all of the Commission's actions taken on and after October 1, 2015, were null and void. County Executive Evans takes the position that the new Collective Bargaining Agreements provides him with the authority to change the composition of the Retirement Commission; more specifically County Executive Evans claims the right to eliminate one of the two retiree elected Commissioners. (Exhibit 2 and Exhibit 10)

102. Pursuant to Act 314, PA 1965 MCL 38.1141, no member of the Retirement Commission can be removed from his or her elected office, without the Commission first bringing charges and holding a hearing on his/her removal.; Sec. 21(2) of the Act provides as follows:

"(2) The governing board vested with the general administration, management and operation of a system or other decision/making body that is responsible for implementation and supervision of a system shall give notice and hold a hearing on the removal of a member of that board or body for any of the following reasons..."

103. Sec. 21 of Act 314, PA 1965, creates a property right in the Commissioner position and therefore, removal can only be for cause.

104. County Executive Evans, by implementing his changes to the Retirement Commission on a retroactive basis, whereby one of the two retiree members was removed as of October 1, 2015 said unilateral removal constitutes a deprivation of a property right, without due process of law, in violation of the 14th Amendment to the United States Constitution.

105. County Executive Evans is mistaken in his belief that by changing the Collective Bargaining Agreements to allow him to take control of the Retirement Commission is authorized by Act 436, PS 2012 and the Consent Agreement approved by the State Treasurer on August 21, 2015.

106. County Executive Evans cannot point to any statute or court decision which would allow him to change the makeup of the Retirement Commission, amend the County Charter without a vote of the people or to amend the Wayne County Code of Ordinances, all of which provide for the appointment of two Trustees to represent retirees.

107. As a result of the retroactive changing of the membership of the retirement system, the Plaintiffs and the class Plaintiffs had their membership participation as far as their ability to vote on retirement system business diminished from 25% participation in voting down to 10% participation in voting without County Executive Evans amending the Charter, Code of County Ordinances and in violation of §21 of Act 314, PA 1965.

108. The current elected Wayne County Retirement Commissioners, Tina Turner, Henry Wilson, Gary Woronchak, and Wayne County Executive Evans, breached their fiduciary and statutory created obligation to protect the rights of Plaintiffs'

members to ensure that the Plaintiffs, pursuant to the Wayne County Charter, the Wayne County Code of Ordinances and Act 314, PA 1965 continue to have two retired employees serving on the Wayne County Retirement Commission.

109. By breaching its duties as above set forth, 5000 retirees have been denied a statutorily created property right to have representation as required by the Charter, Code of County Ordinances and Act 314, PA 1965.

WHEREFORE, PLAINTIFFS REQUEST that this Honorable Court enter an injunction prohibiting County Executive Evans from taking any actions in replacing the Retirement Commission members and more specifically the representatives of retirees on the Commission.

Further, plaintiff requests that the Court take the following actions:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in having two elected Retirement Commissioners representing retirees is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;
- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;
- f. Award to Plaintiffs costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.

REQUEST FOR PRELIMINARY INJUNCTION

110. The damages are irreparable, in that the imposed financial actions – which have been self-described by Defendant County Executive Evans as “draconian” – are designed to be beyond “economic.” Said changes will directly and adversely affect Plaintiffs’ protected entitlements and also adversely affect their access to appropriate health care. The loss is beyond that which can be financially recovered. Sampson v. Murray, 415 U.S. 61, 90; 94 S. Ct. 937 (1974); also Basicomputer Corp. v. Scott, 973 F.2d 507, 512 (6th Circ. 1992).

111. There is no adequate remedy at law. The actions and omissions of the Defendants, coupled with their active solicitation of State intervention, have placed Plaintiffs in a position where no appeal to any independent forum was available. “A theoretical right to recover money damages will not constitute an adequate legal remedy where difficulties in the collection of any judgment render that remedy illusory.” Winston v. General Drivers, Warehousemen & Helpers Local Union No. 89, 879 F. Supp. 719, 725 (W.D. Ky. 1995). In the case at bar, over 2,500 class members will all have collective and individual claims against Defendants – on an ongoing basis.

112. The Plaintiffs’ Complaint has demonstrated numerous, “serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued.” Friendship Materials, Inc., v. Michigan Brick, Inc., 679 F.2d. 100, 105 (6th Circ. 1982)

113. The issuance of a preliminary injunction will support the public interest. For instance, Plaintiffs’ contracts have been in place and relied upon by Plaintiffs’ members for decades. The benefits will not be merely reduced, but completely eliminated under the guise of a law that facially, and as-applied, violates the U.S. Constitution. “It is always in the public interest to prevent violation of a party’s constitutional rights.” G & V Lounge, Inc. v. Michigan Liquor Control Comm’n, 23 F.3d 1071, 1079 (6th Cir.1994).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF REQUESTS that this Court:

- A. Issue a Preliminary Injunction against all Defendants.**
- B. Declare the acts and omissions of all Defendants to be unconstitutional, in violation of the Plaintiffs rights under Federal law, and *void ab initio*.**
- C. Enter an Order Compelling Defendants to maintain the level of benefits and representation required under law and contract.**
- D. Enter an award of attorney fees pursuant to 42 U.S.C. §1988.**
- E. Have the Plaintiffs Otherwise Made Whole, by such other relief as required by law and equity.**

Respectfully submitted,

Dated: February 16, 2016

/S/ Jamil Akhtar
Jamil Akhtar, Attorney for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on the issues set forth by this Complaint.

Respectfully submitted,

Dated: February 16, 2016

/S/ Jamil Akhtar
Jamil Akhtar, Attorney for Plaintiffs

WCRA INJUNCTION BRIEF
EXHIBIT #3

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CITY OF PONTIAC RETIRED EMPLOYEES
ASSOCIATION; DELMER ANDERSON; THOMAS
HUNTER; HENRY C. SHOEMAKER; YVETTE TALLEY;
DEBRA WOODS; JOHN CLAYA,

Plaintiffs-Appellants,

v.

LOUIS SCHIMMEL, Individually and in his official
capacity as Emergency Manager of the City of
Pontiac; CATHY SQUARE, Individually and in her
official capacity as the Director of Human
Resources and Labor Relations for the City of
Pontiac; CITY OF PONTIAC,

Defendants-Appellees,

BILL SCHUETTE, Attorney General of Michigan,

Intervenor-Appellee.

No. 12-2087

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:12-cv-12830—Lawrence P. Zatkoff, District Judge.

Argued: March 19, 2014

Decided and Filed: May 5, 2014

Before: BATCHELDER, Chief Judge; BOGGS, MOORE, COLE, CLAY, GIBBONS,
ROGERS, SUTTON, COOK, McKEAGUE, GRIFFIN, KETHLEDGE, WHITE, STRANCH,
and DONALD, Circuit Judges.

COUNSEL

ARGUED: Alec Scott Gibbs, LAW OFFICE OF GREGORY T. GIBBS, Flint, Michigan, for
Appellants. Stephen J. Hitchcock, GIARMARCO, MULLINS & HORTON, P.C., Troy,
Michigan, for Appellees. Aaron D. Lindstrom, OFFICE OF THE MICHIGAN ATTORNEY

GENERAL, Lansing, Michigan, for Intervenor-Appellee. **ON BRIEF:** Alec Scott Gibbs, Gregory T. Gibbs, LAW OFFICE OF GREGORY T. GIBBS, Flint, Michigan, for Appellants. Stephen J. Hitchcock, John C. Clark, John L. Miller, GIARMARCO, MULLINS & HORTON, P.C., Troy, Michigan, for Appellees. Aaron D. Lindstrom, Heather S. Meingast, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Intervenor-Appellee. Richard Soble, SOBLE ROWE KRICHBAUM LLP, Ann Arbor, Michigan, Daniel S. Korobkin, Michael J. Steinberg, AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN, Detroit, Michigan, John C. Philo, MAURICE & JANE SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE, Detroit, Michigan, for Amici Curiae.

THE COURT delivered a per curiam order. McKEAGUE, J. (p. 9), delivered a separate concurrence, in which BATCHELDER, C.J., joined.

ORDER

PER CURIAM. Legal, factual, and equitable considerations have developed significantly since the district court denied the plaintiffs' request for a preliminary injunction almost two years ago. In light of these developments, we vacate the district court's denial of injunctive relief and remand for further proceedings.

I. BACKGROUND

The basic facts of this case are set out in the panel's majority and dissenting opinions. *See City of Pontiac Retired Emps. Ass'n v. Schimmel*, 726 F.3d 767, 769–71, 779–80 (6th Cir. 2013). In brief, Michigan's Governor appointed Louis Schimmel as emergency manager for the City of Pontiac. In December 2011, April 2012, and May 2012, under authority granted to him by Michigan's Public Act 4, Schimmel issued orders that would both reduce and eliminate health care benefits of retired City employees.

In June 2012, the City of Pontiac Retired Employees Association and its representatives, Delmer Anderson, Thomas Hunter, Henry Shoemaker, Yvette Talley, and Debra Woods (the "retirees"), filed a putative class action against Schimmel, the City of Pontiac, and Cathy Square, the City's director of human resources and labor relations. Among other things, the retirees claimed that the orders were prohibited by the Bankruptcy Code and violated the Contract and Due Process Clauses of the United States Constitution.

At the same time, the retirees moved to enjoin the City from implementing the proposed changes to their health care benefits. The district court denied their request for a temporary restraining order, but it scheduled a hearing to consider their request for a preliminary injunction. The court heard argument from the parties in July 2012, and it denied preliminary injunctive relief a week later. The retirees appealed, the district court stayed the case, and the emergency manager's orders took effect.

After the parties had filed their principal briefs in this court, Michigan voters repealed Public Act 4 in November 2012. The Michigan Legislature responded the next month by enacting Public Act 436, which granted Schimmel powers substantially similar to those he had under Public Act 4. Under this reenacted authority, Schimmel issued orders in July 2013 that eliminated all health, prescription drug, dental, life, disability, vision, and hearing insurance for the retirees until "June 30, 2015, or for so long as the City remains in receivership, whichever is longer."

We reversed the district court's decision in August 2013 and remanded the case for additional fact-finding and full consideration of potentially dispositive state-law issues. *City of Pontiac Retired Emps. Ass'n*, 726 F.3d at 769, 778–79. This court then agreed to rehear the case en banc and allow the Michigan Attorney General to intervene on behalf of the State of Michigan. The district court had jurisdiction over the retirees' claims arising under federal law, 28 U.S.C. § 1331, and we have jurisdiction over the district court's interlocutory order denying the grant of an injunction, *id.* § 1292(a)(1).

II. ANALYSIS

A. Standard of Review

The district court properly identified the four factors it must balance when considering a motion for preliminary injunction: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *PACCAR Inc. v. TeleScan Techs., LLC*, 319 F.3d 243, 249 (6th Cir. 2003), *abrogated on other grounds by KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111 (2004). "When a party seeks a

preliminary injunction on the basis of a potential constitutional violation, “the likelihood of success on the merits often will be the determinative factor.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). Whether the movant is likely to succeed on the merits is a question of law we review de novo. *NAACP v. City of Mansfield*, 866 F.2d 162, 169 (6th Cir. 1989). We review “for abuse of discretion, however, the district court’s ultimate determination as to whether the four preliminary injunction factors weigh in favor of granting or denying preliminary injunctive relief.” *Tumblebus Inc. v. Cranmer*, 399 F.3d 754, 760 (6th Cir. 2005). This standard is deferential, but the court may reverse the district court if it improperly applied the governing law, used an erroneous legal standard, or relied upon clearly erroneous findings of fact. *NAACP*, 866 F.2d at 166–67.

As an initial matter, the emergency manager’s orders issued in December 2011 and April 2012 under Public Act 4 have been superseded by orders issued in July 2013 under Public Act 436. The retirees’ claims for injunctive relief from the orders issued under Public Act 4, however, still present a live case or controversy before us. Where a legislative enactment forming the basis of a live case or controversy is superseded by a legislative enactment that has not changed substantially from the initial one, the federal courts retain jurisdiction. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 & n.3 (1993). In such circumstances, the preferred procedure is to remand for reconsideration under the amended law, *see Green Party of Tenn. v. Hargett*, 700 F.3d 816, 824 (6th Cir. 2012), which we do here. Moreover, the superseding orders do not affect the retirees’ claims for damages caused by the orders issued under Public Act 4.

B. Likelihood of Success on the Merits

First, the retirees argue that § 903(1) of the Bankruptcy Code prohibits the emergency manager’s orders reducing their health care benefits from binding them. Section 903(1) provides that “a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition.” 11 U.S.C. § 903(1). The plain language of this section is not limited to bankruptcy proceedings. The retirees’ Bankruptcy Code claim turns on whether Public Act 4 (or Public Act 436, to the extent relevant on remand)

prescribes a method of composition of indebtedness that binds the retirees without their consent and, if so, whether principles of state sovereignty preclude application of § 903(1) in this case. The record and briefing were not sufficiently developed to permit the district court, or this court, to consider this and related issues.

Second, the retirees argue that the emergency manager's orders violated the Federal Constitution's Contract Clause. This claim turns in part on whether the emergency manager was exercising legislative authority when he issued the orders under Public Act 4. *See Ross v. Oregon*, 227 U.S. 150, 162 (1913). A Contract Clause claim must be based on a legislative act because the clause's prohibition "is aimed at the legislative power of the state, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals." *New Orleans Water-Works Co. v. La. Sugar Ref. Co.*, 125 U.S. 18, 30 (1888). Still, the Contract Clause reaches "every form in which the legislative power of a state is exerted," including an "order of some other instrumentality of the state exercising delegated legislative authority." *Ross*, 227 U.S. at 163. Whether actions "are, in law and fact, an exercise of legislative power depends not on their form but upon whether they contain matter which is properly to be regarded as legislative in its character and effect." *INS v. Chadha*, 462 U.S. 919, 952 (1983) (quoting S. Rep. No. 54-1335, at 8 (1897)) (internal quotation marks omitted). Some of the orders unilaterally modified collective bargaining agreements, and another repealed a local ordinance. The district court concluded, without citation to legal authority, that the emergency manager's actions were not an exercise of legislative power because the emergency manager "did not enact any laws." The court conducted no further analysis of and made no factual findings about whether the orders are properly regarded as legislative in character and effect.

In the event the challenged orders are determined to be an exercise of legislative authority, the Contract Clause claim also turns on whether the impairment of retiree health care benefits was necessary and reasonable to address the City's fiscal emergency. *See U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 25 (1977). For a substantial impairment of a contract to be reasonable and necessary, the state must not "impose a drastic impairment when an evident and more moderate course would serve its purposes equally well," nor act unreasonably "in light of

the surrounding circumstances.” *Id.* at 31. Furthermore, “a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives.” *Id.* at 30–31. The district court conducted no analysis of whether the reductions and eliminations were necessary and reasonable when made, nor did it consider what, if any, practical alternatives existed. Again, the record central to a determination of this issue was not adequately developed before the district court.

Third, the retirees argue that the City violated the Fourteenth Amendment by depriving them of their health care benefits without due process of law. A procedural due process claim requires a showing that the plaintiff has been deprived of a protected property interest without adequate process. *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999). “A contract, such as a collective bargaining agreement, may create a property interest.” *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). But to have a property interest in a contractual benefit, a person must “have a legitimate claim of entitlement to it.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). This issue was not considered thoroughly by the district court. Moreover, we cannot properly assess the retirees’ claim without analyzing the collective bargaining agreements in their entireties, which were not before the district court when it considered this issue. Based on excerpts alone, “it is difficult to discern the intent of the contracting parties and whether health care benefits were guaranteed indefinitely or were instead subject to change.” *City of Pontiac Retired Emps. Ass’n*, 726 F.3d at 788 (Griffin, J., dissenting). Furthermore, the district court did not consider whether, as a threshold matter, the retirees’ procedural due process claim is viable in light of *Atkins v. Parker*, 472 U.S. 115 (1985), and *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441 (1915).

C. Irreparable Harm and Equitable Factors

The district court concluded that the retirees could not face irreparable harm because their benefits were reduced but not *completely* eliminated. But “[n]umerous courts have found that reductions in retiree insurance coverage constitute irreparable harm, meriting a preliminary injunction.” *Hinckley v. Kelsey-Hayes Co.*, 866 F. Supp. 1034, 1044 (E.D. Mich. 1994) (collecting cases); *see also Welch v. Brown*, No. 13-1476, 2014 WL 25641, at *9 (6th Cir. Jan. 3, 2014) (“In totality, the affidavits and testimony in this case indicate that Plaintiffs’ medical

treatment may be interrupted by Defendants' modifications, and such a disruption in care constitutes irreparable harm."'). The district court failed to consider that a reduction in health care benefits can cause irreparable harm.

In addition, factual considerations apparently have changed considerably during the pendency of this appeal. For one, after oral argument to the initial panel, and under authority granted by Public Act 436, the emergency manager issued orders eliminating all retiree health care benefits. The orders remain in effect until June 30, 2015, or so long as the City is in receivership—whichever is longer. For another, the City no longer has an emergency manager, but it remains in receivership under control of a city administrator and a transition advisory board.

These changes alter the equitable concerns balanced by the district court when it denied the preliminary injunction. Moreover, the City claims that it could not provide the relief the retirees seek because the particular health insurance in effect when the collective bargaining agreements were signed or when the retirees retired is no longer commercially available. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), too has changed the health care landscape. The prudent course of action requires the district court to examine, with the assistance of fuller briefing and a more developed record, the legal, factual, and equitable considerations now in place.

III. CONCLUSION

For the foregoing reasons, we vacate the district court's order denying a preliminary injunction and remand for further proceedings consistent with this court's order. On this general remand, the parties and district court should develop a more thorough factual record supporting carefully considered legal arguments about the following: (1) whether, under § 903(1) of the Bankruptcy Code, Public Act 4 (or Public Act 436, to the extent relevant) prescribes a method of composition of indebtedness that binds the retirees without their consent and, if so, whether principles of state sovereignty preclude application of § 903(1) in this case; (2) whether the emergency manager's orders were legislative acts under the Contract Clause; (3) whether the reductions and eliminations of health care benefits were "necessary and reasonable" under the Contract Clause; (4) whether the retirees' procedural due process claim is viable in light of

Atkins and *Bi-Metallic*; and (5) assuming the Due Process Clause's procedural protections apply, whether the collective bargaining agreements, considered in their entireties, establish protected property rights.

The district court should also consider whether injunctive relief is proper in light of the equitable considerations now facing the parties and the public. The parties and the district court need not focus on the state-law issues presented to this court en banc. Finally, the district court should permit the parties to supplement the record before it, perhaps through abbreviated discovery or at an evidentiary hearing.

It is so ordered.

CONCURRENCE

McKEAGUE, Circuit Judge, concurring. I fully concur in the court's ruling today, but write separately to afford one point of clarification.

The majority opinion states: "The plain language of this section [meaning subsection (1) of 11 U.S.C. § 903] is not limited to bankruptcy proceedings." True enough. However, § 903(1) does not exist in a vacuum. It is part of, and in fact an *exception* to, the main point of a longer sentence. The principal purpose of § 903 is to make clear that Chapter 9 of the Bankruptcy Code does *not* limit or impair State power. In its entirety, § 903 provides:

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

- (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
- (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

11 U.S.C. § 903.

Thus, subsection (1) is an exception to the general proposition that Chapter 9 does not limit or impair State power. The exception appears to reflect congressional intent that where Chapter 9 is invoked, it does operate to limit or impair State power in relation to the specific type of State law described in subsection (1). Viewed in context, then, the plain language of § 903(1) *may* be construed to mean, and today's opinion should not be read to foreclose the possibility, that § 903(1) represents a specific limitation on State power only where Chapter 9 has been invoked.

WCRA INJUNCTION BRIEF
EXHIBIT #4

AFFIDAVIT OF HUGH MACDONALD

Hugh MacDonald, after being first duly sworn, deposes and states that he is otherwise competent to testify, does so under penalty of perjury, and states that the facts contained in this Affidavit are based upon his personal knowledge; for his Affidavit,

Hugh MacDonald states as follows:

1. I am a former employee of Wayne County and among my many duties were the director of accounting for Wayne County, a position within the chief financial officers department.
2. As part of my duties as the director of accounting for Wayne County, I was required to assist the auditor employed by Wayne County to perform an audit under Act 2 of the Public Acts of 1987.
3. I am familiar with the process used under the state Uniform Budgeting and Accounting act in preparing, developing and presenting the annual budget for Wayne County.
4. Pursuant to Michigan Constitution, Article IX, Section 6, Wayne County, a charter county, is limited to 15 mills.
5. The home rule charter for Wayne County provides in Article 5.181(Limits the Ad Valorem Property Taxes to 6.07 mills). Further, charter provision 5.181G provides that the ad valorem tax may be increased by the voters of Wayne County for up to 20 years.
6. Wayne County charter provision 5.182 states that any other taxes levied by the county shall be considered as part of the 15 mills.

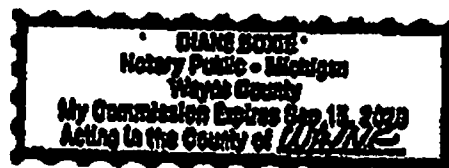
7. Wayne County is presently, after reductions required by the Michigan Constitution, Article IX, Section 6 (Headley Amendment) 5.6634 mills under the 15 mil cap.
8. Page 231 of the 2014 Consolidated Annual Financial Report which is required under the Uniform Budgeting and Accounting Act, being Act 2 of the Public Acts of 1968, states that Wayne County has been levying 6.6012 mills since 2005. The 6.6012 mills include the Wayne County voted operating millage of 0.9529 mills and the base millage of 5.6483 mills.
9. Page 230 of the 2014 Consolidated Annual and Financial Report states that as December 1, 2014, the total taxable value for Wayne County to be \$40,043,688,852, which equates to \$40,043,688.85 for each mil levied, excluding any taxes captured in the local tax increment districts.
10. Wayne County has the statutory authority to levy 5.5488 (\$0.8000 plus Headley restoration of 0.4688) mills for county operations which would equal \$222,194,421 less any tax increment districts. Wayne County has the statutory right to request the voters to approve 5.5488 mills or \$222,194,421 in general fund operating revenue.

FURTHER, DEPONENT SAITH NOT.


Hugh MacDonald

Subscribed and sworn to before me
This 30 day of September, 2015


NOTARY PUBLIC



WCRA INJUNCTION BRIEF
EXHIBIT #5

HOME RULE CHARTER FOR THE COUNTY OF WAYNE



As adopted June 16, 1981
by the Wayne County Charter Commission
Approved July 22, 1981
By Governor William G. Milliken

•

Approved by the Voters
November 3, 1981

•

Amended by the Voters
August 7, 1984
November 4, 1986
November 3, 1992
November 5, 1996
August 4, 1998
August 3, 2004
November 6, 2012

With Compiler's Comments to December 14, 2012

ARTICLE VI RETIREMENT

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

COMPILER'S COMMENTS:

The Wayne County Retirement Ordinance was republished on November 20, 1986 (Ordinance 86-486) to incorporate all prior amendments, conform the ordinance with federal law, remove outdated provisions, and reconcile inconsistent terminology. This was done again on November 17, 1994 in Ordinance 94-747, which has since been amended by Ordinances 97-728, 98-335, 2000-536, 2002-1103, 2002-1147, 2003-124, 2005-924 and 2010-514. (Code Chapter 141)

It has been ruled that those provisions of the Wayne County Retirement Ordinance which provided for "20 and out" benefits for non-union employees were invalid because in conflict with MCL 46.12a which requires that a county employee have at least 25 years of service to become eligible for retirement benefits if less than 60 years of age. (Donald Gray vs. Wayne County Retirement System, et al Civil Action No. 84-401 649 CK, August 31, 1984, Third Circuit Judge Roland Olzark presiding.)

6.112 Retirement Commission

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordinance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System . The costs of administration and management of the Retirement System shall be paid from the investment earnings of the Retirement System.

COMPILER'S COMMENTS:

In Opinion 88-012, the Corporation Counsel advised that the Retirement Commission was without authority to amend the Retirement Ordinance or to expand benefits beyond those authorized by the Ordinance.

At the general election held on November 6, 2012, voters rejected by a vote of 302,104 (yes) to 321,515 (no) a proposed amendment to this Section. The ballot question certified to the County Clerk read:

“Shall Section 6.112 of the Wayne County Home Rule Charter be amended to expand the Wayne County Retirement Commission’s membership from 8 to 9, adding as a member the Wayne County Treasurer or his or her designee; and also to authorize the Chairperson of the Wayne County Commission, who is also a member of the Wayne County Retirement Commission, to appoint a person to serve as his or her designee on the Retirement Commission; and further to allow employees and retirees of the Wayne County Airport Authority to vote for and serve as members of the Wayne County Retirement Commission with no more than one member being an airport employee or retiree until such time as the Airport Authority establishes its own retirement system or pension plan?”

6.113 Financial Management

The financial objective of the Retirement System is to establish and receive contributions each fiscal year which, as a percentage of active member payroll, are designed to remain approximately level from year to year. Specifically, contributions shall be sufficient to (i) cover fully costs allocated to the current year by the actuarial funding method, and (ii) liquidate over a period of years the unfunded costs allocated to prior years by the actuarial funding method. The period of years used in the application of item (ii) shall not exceed 35 years for unfunded amounts in existence December 1, 1982, 25 years for unfunded amounts resulting from benefit changes effective on or after December 1, 1982, and 15 years for experience gains and losses during years ending after November 30, 1981. Contributions made after November 30, 1981, which are in excess of the minimum requirement, may be used to reduce contribution requirements in a subsequent fiscal year. The actuarial funding method must produce contribution requirements which are not less than those produced by the individual-entry-age-normal-cost-actuarial method.

6.114 Employment of Actuary

The actuary employed by the Retirement System must have 5 years experience as a practicing actuary.

WCRA INJUNCTION BRIEF
EXHIBIT #6

the county as is necessary to cause the retirement system to be in compliance with the permissive service purchase rules of IRC 415(n).

(Ord. No. 94-747, § 32.05, eff. 12-2-94; Ord. No. 2003-124, § 1(6), eff. 3-20-03; Ord. No. 2014-679, § 1, 11-20-14)

- **Sec. 141-43. - Medicare benefits.**

Thirty days prior to turning 65 years of age, the retirement member shall complete the necessary documents to apply for Part B Medicare benefits through the Social Security Administration.

WCRA INJUNCTION BRIEF
EXHIBIT #7

711 N.W.2d 404 (2006)
289 Mich. App. 383

Sean WERDLOW, Chief Financial Officer/Finance Director; Roger Short, Budget Director; Ruth Carter, Corporation Counsel; Roger Cheek, Mayor's Designated Representative; and City of Detroit, Plaintiffs-Appellants,

v.

CITY OF DETROIT POLICEMEN AND FIREMEN RETIREMENT SYSTEM BOARD OF TRUSTEES, Detroit Fire Fighters Association Local 344, I.A.F.F., and Detroit Police Command Officers Association, Defendants-Appellees.

Docket No. 254516,

Court of Appeals of Michigan.

Submitted July 12, 2005, at Detroit.

Decided January 12, 2006, at 9:00 a.m.

Released for Publication March 31, 2006.

406 *406 Abbott, Nicholson, Quilter, Eashaki & Youngblood, P.C. (by Kenneth S. Wilson and Daniel G. Kielczewski), and Miller, Canfield, Paddock & Stone, P.L.C. (by John H. Willems), Detroit, Detroit, for the plaintiffs.

Marlens, Ice, Klass, Legghio & Israel, P.C. (by Christopher P. Legghio and John Adam), Royal Oak, for the City of Detroit Policemen and Firemen Retirement System Board of Trustees.

Helveston & Helveston, P.C. (by Ronald R. Helveston), Detroit, for the Detroit Fire Fighters Association, Local 344, I.A.F.F.

Sachs Waldman, P.C. (by Mary Ellen Gurewitz), Detroit, for the Detroit Police Command Officers Association.

Before: COOPER, P.J., and FORT HOOD and R.S. GRIBBS^[1], JJ.

FORT HOOD, J.

A labor dispute between the city of Detroit and the Detroit Police Officers Association (DPOA) was submitted to binding arbitration pursuant to 1969 PA 312 (Act 312), MCL 423.231 *et seq.*^[1] The arbitration panel determined that the composition of the pension board would be altered. Previously an eleven member board, it was concluded that two board members would be replaced and a twelfth member would be added. The same pension board acted on behalf of four different unions, and participation in the arbitration was limited to plaintiff city and the DPOA. Although the arbitration involved only one union, the contract governing the union for the Detroit Police Lieutenants and Sergeants Association (DPLSA) contained an express provision adopting the conditions of the DPOA agreement.^[2] However, the remaining
407 two unions,^[3] whose members' retirement *407 benefits were governed by the same pension board as the members of the DPOA, allegedly did not have the same language in their collective bargaining agreements. Nonetheless, plaintiffs alleged that the two remaining unions were bound by the Act 312 arbitration award involving the city and the DPOA through the labor principle of parity.^[4] Plaintiffs noted the fact that, in the past, the unions had filed suit to obtain wages and compensation that had been negotiated in other Act 312 proceedings. Plaintiffs attempted to seat the twelve-member pension board, but were rejected. Consequently, plaintiffs filed suit to seat the twelve-member board and allow it to govern the four unions regardless of the participants in the Act 312 arbitration ruling that altered the composition of the board. The trial court granted defendants' motion for summary disposition and denied plaintiffs' motion for summary disposition, concluding that violations of due process of law would occur by requiring defendant unions to be bound by an arbitration proceeding in which they did not participate. We affirm the trial court's decision regarding summary

I. PROCEDURAL HISTORY

On October 9, 2003, plaintiffs filed a complaint for declaratory and injunctive relief.^[6] This complaint alleged that the Policemen and Firemen Retirement System (the system) was a tax qualified, defined benefit plan established to provide retirement allowances to police officers, fire fighters, and their beneficiaries. Pursuant to federal and state statutory requirements, the assets for the system were held in a trust fund separate and distinct from city assets with administration of the system and the fund by the board of trustees. Plaintiffs asserted that the composition of this pension board was a mandatory subject of bargaining. On June 15, 2001, the DPOA filed with the Michigan Employment Relations Commission (MERC) a petition to initiate Act 312 binding arbitration proceedings involving employment condition disputes, including wages and hours, for a collective bargaining agreement to cover the period from July 1, 2001, to June 30, 2004. The prior collective bargaining agreement had a provision, article 46, that set forth the composition of the board of trustees. These 11 members were: (1) the mayor or his representative; (2) the president of the city council or other council member; (3) the city treasurer or deputy treasurer; (4) the chief of police or designated representative; (5) the fire commissioner or designated representative; and (6-8) three fire fighters who were members of the system and elected by their peers and (9-11) three police officers who were members of the system and elected by their peers (Union Board Members).

408 In the complaint, plaintiffs asserted that the function of the pension board was to "408 render decisions for the benefit of the long-term operation of the retirement system. The board was to act on recommendations of the actuary and could not modify, expand, or increase pension benefits. During the collective bargaining process before the submission to arbitration, plaintiff city proposed amendments of article 46 that would have altered the board composition to provide for equal representation of the employer and the employees "to provide a method of resolving actuarial and non-actuarial issues in the event of a Board deadlock." Because six of the 11 trustees on the board were Union Board Members and union officers, it was asserted that the unions utilized the majority status of the existing article 46 to obtain city benefits that could not be gained through collective bargaining or Act 312 arbitration. It was further alleged that the Union Board Members majority also utilized its status to obtain member benefits not authorized by the system, and that the DPOA opposed this proposal and included the issue in the arbitration.

Hearings were held between October 10, 2002, and April 11, 2003, before the arbitration panel issued an award on August 28, 2003. Plaintiffs asserted that the DPOA arbitration panel identified clear and convincing evidence that the unequal representation on the board had affected the city's budget and member benefits. Therefore, the arbitration panel altered the composition of the board and determined that it would consist of: (1) the mayor or his representative; (2) city council president or other council representative; (3) city treasurer or deputy treasurer; (4) finance director or designated representative; (5) budget director or designated representative; (6) corporation counsel or designated representative; (7-9) three member fire fighters elected by peers; and (10-12) three member police officers elected by their peers. Plaintiffs alleged that the DPOA award incorporated the change of the composition of the board into the DPLSA agreement.

Plaintiff city was also a party to the collective bargaining agreement with the Detroit Fire Fighters Association, I.A.F.F., Local 344 (DFFA). That agreement expired on June 30, 2001, but continued to be in effect by mutual agreement. Despite the fact that plaintiff city and defendant DFFA were involved in Act 312 arbitration, plaintiffs did not wait to determine the outcome of the proceeding and any effect on the pension board. Rather, plaintiffs alleged that the DFFA agreement provided that its members were the beneficiaries of the same system as the members of the DPOA. Specifically, plaintiffs alleged that the DFFA agreement provided for the same board and the same benefits. Therefore, the DPOA agreement addressing board composition was subject to parity and had to be incorporated into the DFFA agreement. On the basis of the contractual principle of "parity," the wages and benefits, including pension benefits, automatically passed to members of the DFFA and were incorporated into the DFFA agreement. Plaintiffs further asserted that these benefits were not separately negotiated by plaintiff city and the DFFA and were not submitted to Act 312 proceedings. Thus, plaintiffs concluded that the DFFA agreement had to be amended to incorporate the DPOA award addressing board

409 Plaintiffs also contended that the Union Board Members majority on the pension board constituted a "cash benefit" to DFFA members. A proposal submitted to the arbitration panel under Act 312 had to be defined as "economic" or "non-economic." Economic proposals involved payment of compensation or benefits to union members, and the panel was required to adopt one party's economic proposal as "409 submitted without modification. Plaintiffs alleged that "[t]he Board composition proposal is clearly one effecting 'compensation' or 'cash benefits' as the Arbitrator in the DPOA Award shows that the Unions majority status has, in fact been a 'cash benefit' to Union members." Plaintiffs further alleged that, based on the Union Board Members majority status, over \$230 million of benefits had been obtained in excess of those provided by the system for active employees and retirees.

Although plaintiffs alleged that they sought to enforce the Act 312 arbitration award against the DFFA and alleged that the contractual benefits or changes were granted through parity of the agreements, the complaint filed by plaintiffs did not raise traditional claims, but contained the following counts:

COUNT I

Plaintiffs are entitled to Declaratory Relief that the Composition of the Board is a Benefit Subject to Parity. Union Board Members, Between January 1998 and January 2001, Consistently Rejected the Contribution Rate Computed By The Plan's Actuary For A Higher One To Force the City To Give Union Member Benefits[.]

...

COUNT II

[Plaintiffs are entitled] to Declaratory Relief that the Composition of the Board is a Benefit Subject to Parity. [Along With Using Its Majority Status On The Board To Extract Benefits From The City It Cannot Gain Through Collective Bargaining Or Arbitration Pursuant To Act 312, The Union Dominated Board Just "Gives" Its Members Benefits Not Authorized By the Plan(.)]

...

COUNT III

Plaintiffs [sic] are entitled to Declaratory Relief that the Compensation [sic, Composition] of the Board is a Benefit Subject to Parity as the DPOA Award Establishes That Board Composition Is An Economic Benefit to Firefighters[.]

...

COUNT IV

Pending Resolution of Proper Identity of Trustees, this Court should appoint Special Fiduciaries to assure Ongoing Administration of the Plan and Trust that Protects the Rights of Members and Provides for Orderly Administration[.]

...

COUNT V

This Court has Jurisdiction and Authority, Pursuant to § 601 of the Revised Judicata [sic, Judicature] Act, MCL 600.601 and MCL 555.26 and 555.27 to Grant Relief as is Necessary to Preserve and Prevent Dissipation of Fund Assets.

This last count of the complaint included the following paragraphs delineating the alleged benefits the unions acquired

because of a pension board membership majority that favored the unions:

123. The Award held that the union majority on the Board rejected the actuary's computed rate in order to obtain benefits for DPOA members not already provided for in Plan documents.

124. The union dominated Board rejected contribution rates computed by the Plan's actuary in favor of higher contribution rates in order to force the City to give additional benefits to union trustees, as well as union members.

410 *410 125. The union dominated Board, along with using its majority status to extract \$218,000,000 of benefits specifically denied them by two experienced MERC arbitrators in Act 312 Awards, used their majority status to obtain substantial allocations of fund assets for themselves. . . .

126. Any attempt by the union trustees on the Board to oppose implementation of the DPOA Award and the LSA Award and to, use fund assets to oppose implementation of these awards violates MCL 38.1133(6)(a) and would otherwise lead to further dissipation of fund assets.

In essence, the complaint alleged that a change in board composition was necessary because the majority of the board favored union members, acted for the sole benefit of union members, and did not act in accordance with arbitration decisions.^[1]

On October 29, 2003, defendant DFFA filed a motion for summary disposition based on MCR 2.116(C)(4) and (7) in lieu of an answer. Defendant DFFA asserted that the change of the composition of the pension board from 11 members to 12 was never bargained with the authorized bargaining representatives of the DFFA, and, therefore, the parties' collective bargaining agreement continued to have full force and effect between defendant DFFA and plaintiff city. Defendant DFFA contended that plaintiffs could not obtain declaratory relief when it requested enforcement of an arbitration decision against a nonparty to the arbitration. Therefore, the trial court was without jurisdiction to provide plaintiffs declaratory or injunctive relief. Moreover, Act 312 provided that a decision by the arbitration panel was binding on the parties, not a nonparty. Defendant DFFA also asserted that the appropriate course of action was to submit the issue of the composition of the pension board to the Act 312 proceeding involving plaintiff city and defendant DFFA. Plaintiffs also moved for summary disposition, reiterating the claim raised in the complaint that change to the composition of the board was necessary and proper to achieve parity.

Following oral arguments regarding the cross-motions for summary disposition, the trial court held that a due process violation occurred when the composition of the pension board was altered without all applicable unions participating in the arbitration proceeding. Defendants were not given notice of the proceedings and the opportunity to be heard during the arbitration. The trial court further held that the composition of the pension board could not be altered by filing a lawsuit to impose the new board on nonparticipating unions.

On January 5, 2004, a written order entered that provided.^[2]

This matter having been brought before the Court by Plaintiffs' Motion for Summary Disposition and Defendant Detroit Fire Fighters Association's Motion to Dismiss in Lieu of Answer, briefs and responses having been filed by the parties, and the Court otherwise being fully advised in the premises,

411 *411 It is hereby ordered that there can be only one (1) Detroit Policemen and Firemen Retirement System Board of Trustees ("Board"), and that the status quo of the Board composition shall be maintained, consisting of the following eleven (11) members, as provided in the Collective Bargaining Agreements between the Detroit Fire Fighters Association and City of Detroit, and the Detroit Police Command Officers Association and the City of Detroit:

1. The Mayor of the City or his/her designated representative, ex-officio.

2. The President of the City Council, or another member thereof selected by the City Council, ex-officio.

3. The City Treasurer or Deputy City Treasurer, ex-officio.

4. The Chief of Police or a designated representative appointed to serve in his/her absence, ex-officio. This representative shall be a person in the Police Department and shall serve at the pleasure of the Chief.

5. The Fire Commissioner or a designated representative appointed to serve in his/her absence, ex-officio. This representative shall be a person in the Fire Department and shall serve at the pleasure of the Commissioner.

6. Three Firefighters who are members of the system to be elected by the Firefighter members under such rules and regulations as may be established by the Fire Commissioner to govern such elections. Such trustees shall consist of:

a. Two to be elected by and from members holding the rank of Lieutenant (or its equivalent) and lower ranks.

b. One to be elected by and from the members holding rank above the rank of Lieutenant (or its equivalent).

7. Three Police Officers who are members of the system to be elected by the Police Officer members under such rules and regulations as may be established by the Police Chief to govern such elections. Such trustees shall consist of:

a. Two to be elected by and from members holding the rank of Lieutenant (or its equivalent) and lower ranks.

b. One to be elected by and from the members holding the rank above the rank of Lieutenant (or its equivalent).

Annual elections shall be held in the Police and Fire Departments during the month of May to elect a trustee to fill the vacancy created by the expiration of a term.

In each such election the members entitled to vote shall be those of classes provided above, the term of whose representative is about to expire. The terms of office for all elected trustees shall be three years. Elected trustees holding office of (sic) the effective date of this provision shall serve the remainder of their term.

It is further ordered that the composition of the Board, as set out in this Order, cannot be modified until such time as each of the four (4) collective bargaining agents, the Detroit Police Officers Association, the Detroit Police Lieutenants and Sergeants Association, the Detroit Police Command Officers Association and the Detroit Fire Fighters Association, uniformly agree to any change to the composition of the Board;

It is further ordered that Plaintiffs [sic] Motion for Summary Disposition is denied for the reasons stated on the record;

It is further ordered that summary disposition is granted to Defendant Detroit Police Command Officers Association;

412 It is further ordered that Defendant Detroit Fire Fighters Association's Motion *412 to Dismiss is granted for the reasons stated on the record, and that the above-captioned matter shall be dismissed with prejudice.

On February 23, 2004, plaintiffs filed a motion for reconsideration or clarification. Plaintiffs alleged that the issue of two boards was not submitted to the court for adjudication. The arbitration panel ruled that a 12-member board should govern the retirement system for the DPOA and DPLSA. Those two entities did not challenge the award. Rather,

defendant unions, DFFA and DPCOA, challenged the proposed composition of the board. In any event, on the basis of an affidavit of Arvin Hellman, the pension actuary and the city's consulting actuary to the system for over 20 years, it was alleged that there could be two boards. However, this affidavit was executed on February 20, 2004, and was not submitted with the pleadings when the trial court entertained the cross-motions for summary disposition. The trial court denied the motion for reconsideration. Plaintiffs appeal as of right.

II. STANDARDS OF REVIEW

Summary disposition decisions are reviewed de novo on appeal. In re Capuzzi Estate, 470 Mich. 399, 402, 684 N.W.2d 677 (2004). Constitutional issues are reviewed de novo as a matter of law. Studlar v. Michigan Pub. School Employees' Retirement Bd., 472 Mich. 642, 649, 698 N.W.2d 350 (2005). Issues of statutory construction present questions of law that are reviewed de novo on appeal. Gruz v. State Farm Mut. Automobile Ins. Co., 466 Mich. 589, 594, 648 N.W.2d 591 (2002). The construction and interpretation of a contract presents a question of law that is reviewed de novo. Bandit Industries, Inc. v. Hobbs Int'l. Inc. (After Remand), 463 Mich. 504, 511, 620 N.W.2d 531 (2001).

III. DUE PROCESS OF LAW

Although plaintiffs' statement of the questions presented alleged that the trial court erred in concluding that the enforcement of the arbitration award against nonparties would violate due process of law, plaintiffs did not brief the question whether a due process violation occurred. Rather, plaintiffs examined the trial court's ruling and concluded, "It appears that the [trial court] opined that the DPCOA and DFFA had not waived its [sic] right to bargain or arbitrate with the City over the composition of the Board. This analysis otherwise was erroneous and immaterial to the issue before this Court." We disagree with plaintiffs' characterization of the trial court's ruling and the challenge to the trial court's ruling.¹⁸

As previously stated, this constitutional question is reviewed de novo on appeal. Studlar, supra. Due process enforces the rights enumerated in the Bill of Rights and includes both substantive and procedural due process. Kampf v. Kampf, 237 Mich.App. 377, 381-382, 603 N.W.2d 295 (1999). Procedural due process serves as a limitation on government action and requires a government to institute safeguards in proceedings that affect those rights protected by due process, including life, liberty, or property. *Id.* at 382, 603 N.W.2d 295. Due process is a flexible concept applied to any adjudication of important rights. Thomas v. Deputy Warden, State Prison of Southern Michigan, 249 Mich.App. 718, 724, 644 N.W.2d 59 (2002). The procedural protections, which include fundamental fairness, are based on "413 what the individual situation demands. *Id.* Fundamental fairness includes: (1) consideration of the private interest at stake; (2) the risk of an erroneous deprivation of such interest through the procedures used; (3) the probable value of additional or substitute procedures; and (4) the interest of the state or government, including the function involved and the fiscal or administrative burdens imposed by substitute procedures. Dobrzanski v. Dobrzanski, 208 Mich.App. 514, 515, 528 N.W.2d 627 (1995). In civil cases, due process generally requires notice of the nature of the proceedings, a meaningful time and manner to be heard, and an impartial decision maker. Gummings v. Wayne Co., 210 Mich.App. 249, 253, 533 N.W.2d 13 (1995). The opportunity to be heard does not require a full trial-like proceeding. *Id.* However, it does require a hearing such that a party has the chance to learn of and respond to the evidence. *Id.*

Following review of the proceedings in the present case, the trial court correctly determined that defendants DFFA and DPCOA were deprived of due process when plaintiffs attempted to enforce the twelve-member pension board on the basis of an arbitration proceeding in which these unions were not given the opportunity to be heard and participate. *Id.* It is important to note that plaintiffs went to great lengths in their complaint to allege that the pension board composition was merely an instrumentality of the unions because a majority of the membership was slanted in favor of the unions. Plaintiffs' complaint asserted that the city was forced to allow "gain sharing" because of the threats of the union and that the pension system was *overfunded by millions of dollars* as a result, contrary to the recommendations of the actuary. Plaintiffs alleged that the application of the principle of parity to the unions that did not participate in the arbitration was nonetheless appropriate because, for years, the unions had filed suit to obtain parity of benefits given to other members.

However, in this case *as alleged by plaintiffs*, the change in composition to the board would not be an economic benefit to the unions. Rather, plaintiffs asserted that the twelve-member board composition was necessary to require the pension board to follow the recommendations of the actuary and stop following the mandate of the union membership. Thus, in the present case, application of the twelve-member pension board to defendants DFFA and DPCOA would result in a deprivation of due process of law because *benefits will be taken* from the unions without the benefit of any hearing or presentation of evidence before the arbitration panel. Moreover, by statute, MCL 423.321, defendant unions are prohibited from striking, but, in turn, are provided the benefit of compulsory arbitration to resolve their labor disputes. *Police Officers Ass'n v. Ottawa Co. Sheriff (On Reconsideration)*, 264 Mich.App. 133, 138, 694 N.W.2d 757 (2004). Mere application of an arbitration award rendered with regard to different parties deprives defendant unions of the statutory right of arbitration that has been granted in exchange for the prohibition on labor stoppage. Therefore, the trial court did not err in holding that application of the arbitration award's 12-member Board of Trustees would result in a deprivation of due process to defendant unions because they were unable to participate in the arbitration proceeding involving another party.

IV. ACT 312^[9]

MCL 423.231 provides for compulsory arbitration:

- 414 "414 It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

MCL 423.233 provides that, when a dispute is not resolved during the course of a mediation dispute, the parties may initiate binding arbitration proceedings. A delegate is selected by each party, the employer and the employees, for the binding arbitration. MCL 423.234. An arbitration panel is selected, the duties of the chairman of the arbitration panel are delineated, and anything deemed relevant by the arbitration panel may be received into evidence. MCL 423.235; MCL 423.236. The proceedings are informal, and the technical rules of evidence do not apply. *Id.* MCL 423.237 provides that the arbitration panel may subpoena witnesses and may invoke the aid of the circuit court if necessary. The failure to obey orders of the circuit court may be punished as contempt.

Before the conclusion of the hearing, the arbitration panel identifies the economic issues in dispute, and the parties are directed to submit their last offer of settlement on the economic issues. MCL 423.238. "The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive." *Id.* The arbitration panel then renders its findings. *Id.*

MCL 423.239 provides the factors on which the arbitration panel is to base its findings, opinion, and order. Specifically, the arbitration panel examines: the lawful authority of the employer; any stipulations by the parties; the interest and welfare of the public; the financial ability of the government to meet costs arising after the mediation; the comparison of wages, hours, and conditions of employment to public and private employment in comparable communities; the cost of living; overall compensation; and other factors normally taken into consideration when determining benefits. *Id.*

MCL 423.240 provides for a final and binding majority decision and circuit court enforcement:

A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increase in rates of compensation or other benefits may

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be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties, *415 by stipulation, may amend or modify an award of arbitration.

When an employee organization fails to obey enforcement by a circuit court, penalties are imposed. MCL 423.241. Review of the arbitration decision to the circuit court is limited:

Orders of the arbitration panel shall be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material and substantial evidence on the whole records; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel. [MCL 423.242.]

MCL 423.243 provides:

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.

After review of the complaint, the documentary evidence, and the arguments of the respective parties, the trial court properly granted the defense motion for summary disposition for lack of jurisdiction because plaintiffs did not seek more enforcement of an arbitration award *on the parties*. See MCL 423.240. Rather, plaintiffs attempted to enforce the arbitration agreement against nonparties that did not participate in the proceedings. As previously indicated, an order of the arbitration panel is reviewable in circuit court. MCL 423.242. However, the review is limited to determining whether the "arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material and substantial evidence on the whole record; or the order was procedure by fraud, collusion or other similar and unlawful means." *Id.*

In circuit court, plaintiffs did not seek review of the arbitration panel's decision involving the DPOA on the basis of the criteria set forth in MCL 423.242. Rather, plaintiffs asserted that the arbitration decision rendered in the case between plaintiff city and the DPOA could be applied to union defendants, DFFA and DPCOA. In support of this contention with regard to the DPCOA, plaintiffs alleged that the following provision of the DPCOA agreement provided for the incorporation of the DPOA arbitration into the DPCOA agreement. That provision provides:

41(O) Future Pension Provisions Changes: "Effective July 1, 2001, and for the balance of the term of this Labor Agreement, bargaining unit members shall receive all pension changes received by Police Lieutenant represented by the DPLSA."

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However, the rules of statutory and contract construction do not permit the trial and appellate courts to interpret sua sponte the contract of the parties. Statutory interpretation is reviewed de novo by the appellate courts. Echelon Homes, LLC v. Carter Lumber Co., 472 Mich. 192, 196, 694 N.W.2d 544 (2005). The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent—the words of the statute. *Id.* If the meaning is unambiguously expressed, no further judicial construction is required or permitted, and the statute must be enforced as written. *Id.* The words of a statute are given their plain and ordinary meaning, and the plain and ordinary meaning can be ascertained *416 by examining the dictionary definitions. *Id.* Similarly, the goal of contract construction is to determine and enforce the parties' intent on the basis of the plain language of the contract itself. Old Kent Bank v. Sobczak, 243 Mich.App. 57, 63, 620 N.W.2d 663 (2001). If the terms of a contract are subject to two or more reasonable interpretations, a factual development occurs for which it is necessary to determine the intent of the parties. SSC Assoc. Ltd. Partnership v. Detroit Gen. Retirement Sys., 192 Mich.App. 360, 363, 480 N.W.2d 275 (1991). A term of a contract can be interpreted in accordance with the commonly used meanings. Henderson v. State Farm Fire & Cas. Co., 460 Mich. 348, 354, 596 N.W.2d 190 (1999).

Plaintiffs' citation of the terms of the collective bargaining agreement involving the DPCOA falls outside the parameters of review by the circuit court. The rules of statutory and contract construction prohibit the relief that plaintiffs seek. The plain language of the statute governing court review of an arbitration decision is limited to an examination of jurisdiction, an examination of the evidence to determine whether the holding was supported by competent, material, and substantial evidence on the whole record, and an examination of whether fraud or collusion caused the award. MCL 423.241; see Echelon, supra at 197, 894 N.W.2d 544. Instead, plaintiffs requested that judicial review by the trial and appellate courts involve examination of the terms of the collective bargaining agreement and a determination that "all pension changes" received by one entity must be imposed on another union. However, the term "all pension changes" is not defined in the contract. Moreover, the DPCOA was not a party to the arbitration award at issue. Consequently, it was unable to submit to the arbitration panel the questions whether a change to the pension board composition was an economic or noneconomic change, and whether the reference to "all pension changes" encompasses monetary awards as well as board composition. Moreover, the arbitration panel did not have the DPCOA contract before it. Therefore, the panel did not make an assessment of the definition of "all pension changes" in that particular contract or render a determination regarding whether a change to the composition of the pension board fell within the term "all pension changes."

Under the circumstances, the trial court properly granted summary disposition in favor of defendant DPCOA. The issue before the circuit court was not whether the arbitration panel decision was supported by competent, material, and substantial evidence on the whole record. Rather, the circuit court was asked to construe the terms of the DPCOA's collective bargaining agreements in relation to an unrelated arbitration proceeding in which the DPCOA did not participate.

Plaintiffs also allege that the trial court erred in failing to apply the 12-member pension board to the DFFA agreement. Once again, plaintiffs requested that this Court apply the Act 312 arbitration decision between plaintiff city and the DPOA to defendant DFFA. However, defendant DFFA did not participate in that Act 312 decision. By statute, review of the arbitration award is strictly limited to three circumstances, none of which was raised by plaintiffs. MCL 423.242. As previously stated, plaintiffs do not ask this Court to examine the content of the award on its face and determine that the composition of the board changed with regard to the DFFA. Rather, plaintiffs ask this Court to examine the content of the DFFA agreement and conclude that the provisions of the labor award should be applied to the DFFA agreement. This exceeds the authority '417 granted to court review of an Act 312 arbitration. MCL 423.242.

We note that the collective bargaining agreement between the city and DFFA has been submitted for review. Although the agreement refers to "parity" with regard to benefits and wages, there is no indication that "parity" would even be applied to the composition of the membership of the pension board. Section 21 of the agreement delineates the membership of the board of trustees of the pension board and provides for 11 members. It contains no discussion of the principle of parity in relation to pension board membership. Section 22 is separately entitled "Economic Provisions" and § 14 of this provision addresses pensions. It provides, in relevant part:

For members having a parity relationship with the DPOA and the DPCOA, Unit 1, beginning July 21, 2000, a member who has elected to retire and elected to withdraw his/her annuity for the purposes of calculating his/her retirement allowance (thereby lowering the retirement allowance), may nevertheless choose to leave the annuity in the Retirement System collecting regular annuity interest with the option of a one-time withdrawal of the annuity funds at a later date.

Thus, while the DFFA agreement referenced the composition of the pension board and, while the pension provisions referred to parity, there is no indication that the DFFA contemplated that the composition of the pension board could be altered in their contract on the basis of parity.

Plaintiffs also allege that schedule I of the DFFA agreement refers to parity. Indeed, it does. However, once again, it refers to parity in terms of comparing the salaries of police officers and fire fighters who have achieved the same rank. There is no indication that this schedule put defendant DFFA on notice that the composition of the pension board could be altered on the basis of parity when an Act 312 decision was rendered for another union. As an example, schedule I provides:

A. Traditional police-fire pay parity means that the full time Police Officer and the full time Fire Fighter, whose base salaries are the same, will experience identical salary rate changes with identical effective dates throughout the fiscal year so that the total base pay of a Police Officer is equal to that of a Fire Fighter in any fiscal year covered by this Agreement. Similarly, the Fire Sergeant and Fire Engine Operator have parity with the Police Investigator, the Fire Lieutenant has parity with the Police Sergeant, the Fire Captain with the Police Lieutenant, the Battalion Fire Chief with the Police Inspector, and the Chief of Fire Department with the Deputy Chief-West Operations.

Thus, the text of the DFFA agreement does not contemplate that parity would be applied to the composition of the pension board. It merely equalizes the pay levels of comparable employees given different titles in the police and fire departments. Consequently, plaintiffs inappropriately attempted to impose the Act 312 labor award involving the DPOA onto defendant DFFA. That labor award does not govern the DFFA, and the provisions cited as basis to apply the award to the DFFA do not contemplate a change in the composition of the board. Therefore, plaintiffs' request for summary disposition was simply without statutory or contractual support.

418 While there is no authority exactly on point, the following decision is noteworthy. In Detroit v. Michigan Council 25, AFSCME, 118 Mich.App. 211, 324 N.W.2d 578 (1982), the city council approved an ordinance that changed the composition of 418 the board of trustees for the policemen and firemen retirement system as well as the general retirement system unilaterally without prior bargaining with the affected labor unions. After the unilateral changes were made, charges were filed by the affected labor organizations with MERC. MERC concluded that the composition of the board was a mandatory subject of bargaining. This Court examined whether it was a permissive or mandatory subject because it controlled whether the city engaged in an unfair labor practice.

This Court stated:

The public employment relations act (PERA), MCL 423.201 *et seq.*, imposes upon public employers the duty to bargain with respect to "wages, hours and other terms and conditions of employment. . . ." Subjects falling within these terms are called mandatory subjects of bargaining. Michigan cases have adopted a broad, expansive approach to determining whether a particular subject may be classified as a mandatory subject of bargaining. The approach fosters protection of public employees' rights, because those employees are forbidden to strike under § 2 of PERA.

Determination of what are mandatory subjects of bargaining is done on a case-by-case basis. The test generally applied is whether the matter has a significant impact upon wages, hours, or other conditions of employment, or settles an aspect of the employer-employee relationship.

...

In the case at bar, the powers of the board of trustees are substantial and have a significant effect upon the conditions of employment. They include the power to determine whether employees are totally disabled as a result of their performance of city work so as to entitle them to the increased benefits provided under duty disability pensions. Similarly, the boards of trustees determine whether employees are totally disabled due to nonduty disability, entitling them to early and substantial pension benefits. The boards of trustees as well determine whether an employee's beneficiaries are entitled to accident death benefits for death while in city service and determine whether retirees on disability pension need reexamination or are subject to revocation of their pension if their physical condition has improved. Under specific provisions of the new city code, the boards of trustees also compute the city's contribution liability to the fund, for which the mayor and council must appropriate sufficient funds. Finally the board of trustees determine the investment of funds, which in the long run determines the amount of benefits, amount of city contributions, and amount of employee contributions. (Michigan Council 25, supra at 215, 218-219, 324 N.W.2d 578 (citations deleted).)

Applied to this case, plaintiffs' position is simply without merit. To determine whether a provision is a mandatory subject

of bargaining, the test is whether the matter has a significant effect on wages, hours, or other conditions of employment, or settles an aspect of the employer-employee relationship. In the present case, by virtue of the allegations contained in the complaint, the composition of the pension board has a significant effect on employee benefits. Plaintiffs alleged that the composition of the board has caused a surplus in the fund to the detriment of plaintiff city. Thus, plaintiffs contended that the change in the composition of the pension board was necessary to prevent the extraction of city funds into the pension system. Thus, this is a mandatory bargaining subject. It is inappropriate to request that this Court *419 construe the other bargaining agreements that an arbitration panel has not examined and to render a decision when defendant unions have not had the opportunity to address the issue of the composition of the pension board.

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V. ORDER DENYING RECONSIDERATION^[10]

Lastly, plaintiffs allege that the trial court erred in concluding that there could not be two boards, and any statement along that line was obiter dictum, which lacked the force of adjudication. On the basis of the rules governing summary disposition and motions for reconsideration, we cannot conclude that the trial court erred. Summary disposition decisions are reviewed de novo. Capuzzi, supra. The moving party here had the initial burden of supporting its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. Quinto v. Cross & Peters Co., 461 Mich. 358, 362, 547 N.W.2d 314 (1996). The burden then shifted to the nonmoving party to demonstrate a genuine issue of disputed fact existed for trial. *Id.* To meet this burden, a nonmoving party must present documentary evidence establishing the existence of an issue of material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. Malden v. Rozwood, 461 Mich. 108, 118, 597 N.W.2d 817 (1999). This Court reviews a trial court's decision regarding a motion for reconsideration for an abuse of discretion. Churchman v. Rickerson, 240 Mich. App. 223, 233, 611 N.W.2d 333 (2000). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Id.* MCR 2.119(F)(3) provides:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"We find no abuse of discretion in denying a motion [for rehearing or reconsideration] resting on a legal theory and facts which could have been pled or argued prior to the trial court's original order." Charbeneau v. Wayne Co. Gen. Hosp., 158 Mich. App. 730, 733, 405 N.W.2d 151 (1987).

The trial court did not abuse its discretion in denying the motion for reconsideration. See Churchman, supra at 233, 611 N.W.2d 333. After the motion was heard, plaintiffs submitted an affidavit and documentary evidence to support the allegation that two existing pension boards could function. Because of the timing of the submission of the materials, defendants did not have the opportunity to rebut the allegations contained within the affidavit. Moreover, plaintiffs failed to proffer any reason the documentary evidence was not presented at the time of the hearing on the cross-motions for summary disposition. *Id.* Therefore, the trial court *420 did not abuse its discretion by denying plaintiffs' motion for reconsideration.

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Although the trial court properly granted summary disposition in favor of defendants, the written order contained the following provision:

It is further ordered that the composition of the Board, as set out in this Order, cannot be modified until such time as each of the four (4) collective bargaining agents, the Detroit Police Officers Association, the Detroit Police Lieutenants and Sergeants Association, the Detroit Police Command Officers Association, and the Detroit Fire Fighters Association, uniformly agree to any change to the composition of the Board;

On review of the record available, this written order did not comport with the trial court's oral ruling on the record. Additionally, this portion of the order rendered a decision with regard to parties that were not joined in the litigation. There is no indication in the lower court record that the cases involving the DPOA and the DPLSA were consolidated with this litigation, although pleadings from different legal actions in the lower court were submitted as appendices to briefs in this appeal. Accordingly, we remand for review of the propriety of the inclusion of this provision in the order granting summary disposition.^[11]

Affirmed with regard to the trial court's grant of summary disposition, but remanded for review of the terms of the order granting summary disposition. We do not retain jurisdiction.

R.S. GRIBBS, J., concurred.

COOPER, P.J. (concurring).

I agree with the majority that we should affirm the trial court's order granting summary disposition in defendants' favor. I write separately, however, as I do not want any of the gratuitous comments in the majority's lengthy analysis to be considered rulings or dicta in this case. The resolution of this case is, in fact, very simple—we do not have jurisdiction. Therefore, this Court must enter a clear and affirmative order remanding this dispute for grievance arbitration that includes the union defendants.

Our review of an arbitration award is very limited. As noted by the majority, we may only examine jurisdictional issues; review the evidence to determine whether the arbitrator's order was supported by competent, material, and substantial evidence on the record; and determine whether the award was procured by fraud or collusion.^[11] Plaintiffs asked the trial court, and this Court on review, to interpret undefined terms and provisions in the DPCOA and DFFA collective bargaining agreements, including the parity provisions. However, those interpretations are within the purview of a 1989 PA 312 arbitration. No other comment is necessary.

421 I also agree with the majority that we must remand to allow the trial court to "421 clarify its order granting defendants' motion for summary disposition. While inartfully worded, it appears that the trial court intended to impose a restraining order to prevent the modification of the board composition without an agreement among all affected parties or a resolution from the arbitration panel.

[1] Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

[1] Act 312 provides for compulsory arbitration for police and fire departments because they are forbidden from striking. *Police Officers Ass'n v. Ottawa Co. Sheriff (On Reconsideration)*, 284 Mich.App. 133, 138, 694 N.W.2d 757 (2004). To maintain the high morale of employees and efficient department operations, the act provides an alternate, binding procedure for resolution of disputes. *Id.*

[2] The application of the arbitration award to the DPLSA is not at issue in this appeal.

[3] The remaining two unions are defendant Detroit Fire Fighters Association Local 344, I.A.F.F. (DFFA), and defendant Detroit Police Command Officers Association (DPCOA). Although the pension board (City of Detroit Policemen and Firemen Retirement System Board of Trustees) is named as a defendant, this entity is involved in order to determine whether the twelve-member board should be recognized.

[4] "Parity" is defined as "1. equality, as in amount, status or character. 2. equivalence; correspondence; similarity; analogy." *Random House Webster's Unabridged Dictionary*.

[5] Plaintiffs submitted appendices with their appellate brief that indicated that an amended complaint was filed; however, it was not found in the lower court record. Additionally, it appeared that there were residual lawsuits filed as a result of the attempted enforcement of the Act 312 arbitration between plaintiff city and the DPOA. Defendant DFFA filed a lawsuit requesting injunctive relief to preclude the alteration of the pension board. Moreover, review of the appendices filed by plaintiffs indicated that the pension board also filed litigation because it did not know how to proceed in light of the Act 312 arbitration ruling between plaintiff city and the DPOA. However, there was no order of consolidation in the lower court record.

[6] On October 14, 2002, the Detroit Police Command Officer's Association (DPCOA) filed a motion to intervene in the action. The trial court granted the motion to intervene on the basis of an agreement by the parties. Additionally, the trial court initially granted injunctive

relief to plaintiffs. The trial court's ruling regarding injunctive relief is not at issue on appeal.

[7] Although it was alleged that this order was not approved for signature, the order was indeed signed and can be found in the lower court record. There is no indication that the order was ever vacated.

[8] Review of the trial court's ruling reveals that it held that a due process violation occurred because defendant DFFA was not given notice of the Act 312 arbitration between plaintiff city and the DPOA nor the opportunity to be heard.

[9] Although we resolved the due process issue, the parties addressed the question on appeal in the context of an Act 312 proceeding and the principle of parity. Because of the manner in which the appeal has been briefed and because the application of Act 312 and the principle of parity has not been addressed in published case law, we will respond to the parties' concerns regarding these matters.

[10] Plaintiffs also alleged that the trial court erred in failing to hold that defendant unions improperly changed the existing terms and conditions of employment. However, this issue was not raised, addressed, or decided in the trial court. Miller v. Inghis, 223 Mich. App. 159, 168, 567 N.W.2d 253 (1997). Therefore, we do not address it.

[11] We remand because the lower court record is unclear about whether there was a consolidation of parties in this action. Moreover, the language of the order arguably trumps any Act 312 decision. The language of the order provides that there will be no change in the board until there is uniform agreement. On the contrary, if this issue is bargained and proceeds to be decided in an Act 312 arbitration, the change can be compelled if it is upheld in the circuit court. Moreover, there are other methods of obtaining a twelve-member board short of "agreement" by all four unions. Accordingly, on remand, the trial court should determine whether this portion of the order comports with the oral ruling, the parties joined in the litigation, and the requirements of an Act 312 arbitration ruling.

[1] See MCL 423.241.

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WCRA INJUNCTION BRIEF
EXHIBIT #8



Warren C. Evans
County Executive

February 10, 2016

Robert Grden
Executive Director
Wayne County Employees Retirement System
28 West Adams, Suite 2800
Detroit, MI 48226

RE: *WCERS Board Composition*

Dear Mr. Grden:

Wayne County and all its unions reached labor agreements (or, in the case of 3317, imposed under PA 436) that uniformly provide for a new WCERS Board composition as of October 1, 2015. Consequently, the old Board is without authority to act on or after October 1, 2015, and decisions made by this Board can be reviewed and considered by the new Board which will be constituted soon.

One of the actions approved by the old Board was a resolution authorizing the VMT law firm to take certain actions. A copy of the Resolution is attached. Since this action was resolved by the old Board after October 1, 2015, it has no force and effect.

As Corporation Counsel for the County of Wayne, I advise you not to take any action pursuant to the attached Resolution, including but not limited to paying attorney fees to the VMT law firm for any work they do per the Resolution.

If you have any questions regarding this letter, please do not hesitate to contact me.

Sincerely yours,



Zeyna Elhasan
Wayne County Corporation Counsel

Enclosure

cc: Tony Saunders
Gary Woronchak
Henry Wilson
Tina Turner
Dennis Martin
Elizabeth Misuraca
Hugh Macdonald
Jack Timmony, Esq.

DEPARTMENT OF CORPORATION COUNSEL
500 Griswold, 30th Floor Detroit, Michigan 48226 • (313) 224-5030
www.waynecounty.com

#306088

Be It Resolved, that the Retirement Commission hereby authorizes the VMT law firm to begin the appropriate legal action to challenge any County-imposed change(s) to the composition of the Retirement Commission which is/are contrary to the VMT opinion letter of 11-6-2015 (including a request for declaratory ~~relief~~ judgment), and that VMT is also authorized to request the County Administration and Corporation Counsel, to seek the declaratory ruling of the court.

- Sole trustee of the board - WZE - under 80% funded
- ST under CA provision and WZE

14 days.

**WAYNE COUNTY EMPLOYEES' RETIREMENT COMMISSION
SPECIAL MEETING**

**January 27, 2016
3:00 pm**

**28 WEST ADAMS, 18TH FLOOR
CONFERENCE ROOM
GRAND PARK CENTRE
DETROIT, MICHIGAN 48226**

Commissioners Present:

Tina Turner
Denis Martin (via conference call)
Henry Wilson
Elizabeth Misuraca
Hugh Macdonald

ELECTED MEMBERS TO THE BOARD

Tony Saunders
Office of the Wayne County Executive

EX-OFFICIO MEMBER

Gary Woronchak, Chairman
Wayne County Commission

EX-OFFICIO MEMBER

Others Present:

Robert Grden, Gerard Grysko, Kelly Tapper, Kevin Kavanagh, Alan Helmkamp, Jack Timmony, Robert Abb and Jacqueline Sobczyk.



**Wayne
County**
Employees' Retirement System
Robert J. Grden, Executive Director

January 27, 2016
Special Meeting

1. Call to Order at 3:00 pm.

2. Roll Call;

Present: Tina Turner, Denis Martin (via conference call), Henry Wilson, Elizabeth Misuraca, Hugh Macdonald, Tony Saunders and Gary Woronchak.

Mr. Wilson made a motion to go into Closed Session pursuant to the provisions of the Michigan Open Meetings Act, M.C.L.A. 15.243(1)(g), which permits a Public Body to discuss matters in closed session that are subject to Attorney-Client Privilege, noting that a roll call is required for this motion. This is not subject to disclosure under The Freedom of Information Act, M.C.L.A. 15.231 *et seq.* The agenda item to be discussed is #3.

The motion was supported by Ms. Misuraca and carried 7-0 with a roll call vote, Tina Turner - yes, Denis Martin - yes, Henry Wilson - yes, Elizabeth Misuraca - yes, Tony Saunders - yes, Gary Woronchak - yes and Hugh Macdonald - yes.

The Board went into closed session at 3:03 pm.

The Board came out of closed session at 3:54 pm.

3. Consideration of a legal report from VanOverbeke, Michaud & Timmony, P.C. regarding the implementation of Collective Bargaining Agreements-Changes in composition of the Retirement System Board of Trustees.

Mr. Woronchak moved the adoption of the following resolution:

Be it Resolved, by the Wayne County Employees' Retirement Commission, to Authorize VanOverbeke, Michaud & Timmony, P.C. to approach the County Administration on behalf of the Retirement Commission (Board of Trustees) in an attempt to reach consensus on controlling legal issues on Retirement Commission composition, and in the event that effort proves unsuccessful, to ask the County Administration to join in a declaratory judgment action to resolve those issues, and to report those discussions to the Retirement Commission within 14 days to seek further direction.

The motion was supported by Mr. Saunders and carried 5-2 with Ms. Turner and Mr. Macdonald voting no.

Mr. Macdonald moved the adoption of the following resolution:

Be it Resolved, by the Wayne County Employees' Retirement Commission, to Authorize VanOverbeke, Michaud & Timmony, P.C. to promptly take legal action if these efforts fail.

The motion was supported by Mr. Wilson and carried 4-3 with Ms. Misuraca, Mr. Woronchak and Mr. Saunders voting no.



4. Public Comment.

There was no public comment.

5. Adjournment.

Mr. Macdonald moved to adjourn the meeting.

The motion was supported by Mr. Wilson and carried unanimously 7-0.

There being no further business to come before the Board the meeting was adjourned at 4:27 pm subject to the call of the Chair.

Respectfully submitted,



Robert J. Grden, Executive Director
Wayne County Employees' Retirement System



WCRA INJUNCTION BRIEF
EXHIBIT #9

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AFSCME Council 25, and its
Affiliated Locals,

Plaintiffs,

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

v.

Charter County of Wayne and
Warren Evans,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO AMEND THE COMPLAINT [27]**

Plaintiffs, unions impacted by actions that defendant Wayne County and its Chief Administrative Officer, Warren Evans, took under Michigan's Emergency Manager law, 2012 Mich. Pub. Acts 436, sued on September 16, 2015, seeking to enjoin those actions as unconstitutional and in violation of federal law. (Dkt. 1.) Plaintiffs filed a motion for a temporary restraining order on September 17, 2015. (Dkt. 2.) Plaintiffs amended their complaint as of right on September 21, 2015, pursuant to Fed. R. Civ. 15(a)(1). (Dkt. 9.)

(SE PAGES 7-8)

On October 8, 2015, plaintiffs filed a motion for leave to amend their complaint a second time, pursuant to Fed. R. Civ. P. 15(a)(2). (Dkt. 27.) On October 16, 2015, the Court granted defendants' motion to dismiss the first amended complaint. (Dkt. 30.)

Defendants filed their response to the motion for leave to amend on October 15, 2015, (Dkt. 29), and plaintiffs filed their reply on October 28, 2015. (Dkt. 33.)

Plaintiffs' original complaint contained three enumerated counts: 1) violation of First Amendment rights to petition the government and redress grievances; 2) unconstitutional deprivation of property interest without due process; and 3) federal preemption under the bankruptcy code. (See Dkt. 9.) It also contained an unenumerated count alleging violation of the Contract Clause of the United States Constitution. (Id. at 6.) The Court dismissed all of these claims as pleaded with prejudice in its October 16, 2015. (See Dkt. 30.) Plaintiffs' proposed amended complaint contains the above-referenced counts, along with a new fourth enumerated count alleging violation of their First Amendment right to freedom of speech. (Dkt. 27 at 21.)

Under Fed. R. Civ. P. 15(a)(2), “[t]he court should freely give leave [to amend a complaint] when justice so requires” when, as here, plaintiffs have already amended their pleadings once as a matter of course. “A motion to amend a complaint should be denied if the amendment is brought in bad faith, for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile.” *Crawford v. Roane*, 53 F.3d 750, 753 (6th Cir. 1995).

A proposed amendment to a complaint is futile and must be denied if the amendment could not survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss. *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000). This standard does not foreclose the filing – or grant – of a properly filed motion to dismiss in response to an amended complaint. Instead, the Court’s task is to determine whether, from the face of the amended complaint, it appears that the “proposed claim [would] be able to withstand a motion to dismiss[.]” *Thiokol Corp. v. Dept. of Treasury, State of Mich., Revenue Div.*, 987 F.2d 376, 383 (6th Cir. 1993).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that

is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plausible claim need not contain “detailed factual allegations,” but it must contain more than “labels and conclusions” or “a formulaic recitation of the elements of a cause of action[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Reviewing the amended complaint under this standard, the Court denies the motion to amend as to Count I (right to petition and assembly) and Count III (bankruptcy preemption), and the unenumerated Contracts Clause claim.

The Court dismissed plaintiffs’ First Amendment petition and assembly claim because it failed to allege “*any* specific manner in which Act 436 impairs their rights to assemble or to petition the government[.]” (Dkt. 30 at 9.) Further, plaintiffs did not allege acts by defendants that could be construed as violations of either of those rights guaranteed by the First Amendment. In their amended complaint, plaintiffs have not pleaded any additional allegations concerning the violation of their First Amendment rights. Instead, plaintiffs have inserted a set of allegations that Evans is not permitted to exercise

certain power under Act 436, and that Act 436 is “facially unconstitutional.” (Dkt. 27 at 11-14.)

These additional allegations are insufficient to establish a violation of the First Amendment’s rights to petition the government and assemble, and would not survive a motion to dismiss. To the extent the amended count alleges something new, it is a violation of due process as guaranteed by the Fourteenth Amendment, not violation of rights guaranteed by the First Amendment. The remainder of the amended count is identical to the count already dismissed. For this reason, it would not survive a motion to dismiss.

The Court dismissed plaintiffs’ Contract Clause claim because it alleged only that non-defendant the Michigan state legislature violated the Contract Clause, and, furthermore, because plaintiff failed to allege any fact supporting such a claim. (Dkt. 30 at 10 n.1.) In their amended complaint, plaintiffs again allege that the Michigan state legislature violated the Contract Clause by passing Act 436. (Dkt. 27 at 14-15.) Plaintiffs then allege that M.C.L. § 141.1552(1)(ee) was used by Evans to invalidate contracts, and that the section is “facially invalid . . . and a direct and facial Legislative assault upon the contracts which were in

effect and terminated on September 21, 2015 by Defendant Evans, as the Chief Administrative Officer.” (Dkt. 27 at 15.) Further, plaintiffs allege that Act 436 does not permit “the County Executive to impose non-economic terms of employment upon Plaintiffs.” (Id.)

“A Contract Clause claim must be based on a legislative act because the clause’s prohibition ‘is aimed at the legislative power of the state, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals.’” *City of Pontiac Retired Employees Ass’n v. Schimmel*, 751 F.3d 427, 431 (6th Cir. 2014) (citing *New Orleans Water-Works Co. v. La. Sugar Ref. Co.*, 125 U.S. 18, 30 (1888)).

Plaintiffs do not allege that Evans or Wayne County were acting in a legislative capacity, or that their acts were “legislative in character and effect.” *City of Pontiac Retired Employees Ass’n*, 751 F.3d at 431. Instead, plaintiffs allege a legislative act – the passage of Act 436 by the Michigan state legislature – and a series of acts taken by an executive officer pursuant to that statute. Despite the additional allegations in this claim, plaintiffs have again argued that a non-party to this case,

the Michigan state legislature, violated the Contracts Clause. Accordingly, this claim would not survive a motion to dismiss.

Plaintiffs have reasserted their claim that the federal Bankruptcy Code preempts Act 436 without amendment. (Dkt. 27 at 20-21.) For the reasons set forth in the Court's October 16, 2015 order, this claim would not survive a motion to dismiss. (Dkt. 30 at 14-15.)

Plaintiffs have amended Count II to allege that they were deprived of certain property rights without due process of law. These property rights include duty disability pension, five years of retirement vesting, grievance arbitration, Act 312 arbitration, and the right to prohibit the restructuring of the pension system. (Dkt. 27 at 17-20.)

"To establish a procedural due process claim pursuant to § 1983, plaintiffs must establish three elements: (1) that they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, (2) that they were deprived of this protected interest within the meaning of the Due Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest." *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999).

“Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). “A contract, such as a collective bargaining agreement, may create a property interest.” *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000).

As the Court set forth in its prior opinion, procedural rights are not property interests. (Dkt. 30 at 13.) Accordingly, plaintiffs cannot claim that their rights to arbitration constituted property rights. Plaintiffs may, however, allege that their rights to pensions and vested retirement benefits, as well as their rights to representation on the governing public employee pension board are property rights, and that the rights to arbitration are procedural rights owed before plaintiffs are deprived of their property rights.

Defendants incorporate their arguments from their motion to dismiss in support of their contention that plaintiffs have failed to state a claim for violation of their due process rights. (Dkt. 29 at 14; Dkt. 16

at 26-33.) However, as defendants noted in their first motion, "Plaintiff[s] fail[ed] to adequately plead the specific contractual rights and entitlements that they allege will be deprived" in their first amended complaint. (Dkt. 16 at 27.) Defendants made no arguments as to the validity of the specific property rights plaintiffs now assert they were deprived of without due process. Accordingly, the Court cannot rely on those arguments as grounds to find that the amended due process claim would be futile.

Plaintiffs' amended due process claim, at this juncture, appears to be able to survive a motion to dismiss.

Plaintiffs assert a new count in their amended complaint: retaliation for exercise of their free speech rights as guaranteed by the First Amendment. Plaintiffs allege that, after filing this lawsuit on September 16, 2015, defendants on September 21, 2015 unilaterally revoked a series of proposals and made unusual and punitive provisions that were not imposed on any other union with which defendants were negotiating. (Dkt. 27 at 22.)

A plaintiff asserting a retaliation claim must establish the following: 1) the plaintiff has engaged in conduct protected by the

Constitution or by statute; 2) the defendant took an adverse action against the plaintiff; and 3) the adverse action was taken, at least in part, because of the protected conduct. *Thaddeus-X v. Blatter*, 175 F.3d 378, 386-87 (6th Cir. 1999). The right of access to courts has been held to rest on a variety of constitutional grounds, including the First Amendment Petition Clause. See *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (collecting cases establishing the right of access to courts under the Privileges and Immunities Clause, and the First, Fifth, and Fourteenth Amendments to the United States Constitution).

Plaintiffs have plausibly pleaded the elements of a retaliation claim. Their lawsuit is conduct that is protected by the Constitution, the defendants' alleged imposition of unjust terms is an adverse action, and plaintiffs have alleged that the defendants' imposition was taken because of their lawsuit.

In response, defendants argue that they do not dispute the facts as pleaded, and argue that the claim would not survive a motion for summary judgment under Fed. R. Civ. P. 56. In doing so, defendants establish the plausibility of this claim. Defendants say that plaintiffs "took the risk and pushed the envelope, choosing to resist and

eventually to litigate rather than agree to terms.” (Dkt. 29 at 13.) Further, defendants argue that the imposition of the adverse terms is “the result of [plaintiffs’] own actions[.]” (Id.)¹

Because defendants do not dispute the facts as plaintiffs have pled them, and because those facts sufficiently and plausibly plead a claim for relief, the Court grants plaintiffs leave to amend their complaint to include their retaliation claim.

For the reasons set forth above, it is hereby ordered that:

Plaintiffs’ motion for leave to amend their complaint (Dkt. 27) is GRANTED as to Count II’s claims that the deprivation of property rights consisting of pension rights, vested retirement rights, and pension board representation have been deprived without due process, and Count IV’s claim that plaintiffs were unconstitutionally retaliated against for filing this lawsuit;

Plaintiffs’ motion for leave to amend their complaint is DENIED as to all other claims; and

¹ Defendants fashion this section as a motion for summary judgment, which is procedurally inappropriate at this stage for two reasons. First, the Rule 15 standard requires the Court to determine whether a claim could survive a motion to dismiss under Rule 12(b)(6), not a motion for summary judgment under Rule 56. Second, defendants cannot seek summary judgment before a complaint has been filed on the docket.

Plaintiffs are given until **December 11, 2015** to file an amended complaint asserting only those counts outlined above, without any further amendment to the language or allegations in the complaint.

IT IS SO ORDERED.

Dated: December 4, 2015
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 4, 2015.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager

WCRA INJUNCTION BRIEF
EXHIBIT #10

CONSENT AGREEMENT

This consent agreement is between WAYNE COUNTY, a Michigan body corporate (the "County") and STATE TREASURER N.A. KHOURI, a Michigan state officer (the "State Treasurer").

A financial emergency exists within the County under the Local Financial Stability and Choice Act, 2012 PA 436, as amended, MCL 141.1541 to MCL 141.1575 ("Act 436"), as detailed in the report provided by the review team appointed for the County under Act 436 (the "Review Team").

The legislative authority of the County is vested in a county commission (the "County Commission"), which is the legislative body of the County and the governing body of the County under Act 436.

On August 6, 2015, the County Commission adopted a resolution selecting the consent agreement option under section 8 of Act 436 to address the County's financial emergency.

The County's chief executive officer (the "County Executive") is the chief administrative officer of the County under Act 436 and therefore may negotiate and sign a consent agreement with the State Treasurer under section 8 of Act 436.

The County Commission, County Executive, and State Treasurer want the County to undertake remedial measures to address the County's financial emergency and provide for the financial stability of the County (the "Remedial Measures") to: (1) improve the County's cash position; (2) reduce the underfunded amount needed to pay future pension obligations for participants in the Wayne County Employees Retirement System (the "WCERS") and other post-employment benefit ("OPEB") commitments; and (3) eliminate the County's \$52 million structural deficit.

Actuarial reports indicate that the WCERS is underfunded by \$910.5 million, with assets available to cover only approximately 45% of money needed to assure full payment of pension obligations.

As recognized by the Review Team, the County Executive earlier this year estimated the County's unfunded healthcare-related liabilities to be \$1.3 billion and that less than 1% of the amount needed to satisfy the liabilities has been set aside.

The parties acknowledge that obligations of the County under employment agreements between the County and its employees or representatives, including both economic and non-economic provisions of those agreements and provisions relating to pensions and OPEB, have contributed to the County's structural deficit.

In the process of undertaking Remedial Measures to address the County's financial emergency the County Commission and the County Executive want to retain their respective authority to exercise power for and on behalf of the County under the County's home rule charter (the "Charter") and, thereby, avoid the need for a state-appointed emergency manager.

The parties therefore agree as follows:

1. **Remedial Measures.** (a) The County shall implement the Remedial Measures necessary to address the financial emergency within the County and provide for the financial stability of the County, consistent with the requirements of this agreement. The parties intend the Remedial Measures

to have the objective of assuring that the County is able to provide or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the County.

(b) Unless otherwise inconsistent with this agreement and Act 436:

- (1) the County Commission and the County Executive retain their respective authority under the Charter and other applicable law to exercise their respective powers, duties, functions, and responsibilities;
- (2) powers, duties, functions, and responsibilities within the exclusive authority of the County Commission or not subject to approval or rejection by the County Executive under the Charter or applicable law remain within the exclusive authority of the County Commission; and
- (3) powers, duties, functions, and responsibilities within the exclusive authority of the County Executive or not subject to approval or rejection by the County Commission under the Charter or applicable law remain within the exclusive authority of the County Executive.

(c) In addition to and separate from powers retained by the County Commission and the County Executive under section 1(b), the County Commission and the County Executive are hereby jointly granted the powers prescribed for emergency managers under section 12(1) of Act 436 and may exercise the powers using the same procedure under which a resolution is adopted by the County Commission, transmitted to the County Executive, and becomes effective and enforceable by the County Executive under the Charter, subject to the following:

- (1) the County Commission and the County Executive may not jointly exercise powers prescribed for emergency managers under sections 12(1)(k), 12(1)(l), 12(1)(q), 12(1)(z), 12(1)(bb), and 12(1)(dd) of Act 436;
- (2) only when jointly exercising power under this section 1(c), the County Commission and the County Executive shall not sell an asset of the County valued at more than \$50,000.00 without the approval of the State Treasurer, consistent with the requirements of section 15(1) of Act 436;
- (3) the County Commission and the County Executive shall not exercise or transfer the powers, duties, functions, or responsibilities of the governing body of a public airport authority under chapter VIA of the Aeronautics Code of the State of Michigan, 1945 PA 327, as amended, MCL 259.108 to 259.125c ("Chapter VIA"), but are not restricted from exercising a power granted to the County Commission, the County Executive, or both under Chapter VIA;
- (4) a resolution adopted by the County Commission providing for the joint exercise of one or more powers authorized under this section 1(c) must be signed by the County Executive and filed with the clerk of the County Commission to be effective.

(d) In addition to and separate from powers retained under section 1(b) and granted under section 1(c), the County Commission is hereby granted the powers prescribed for emergency managers under section 12(1)(ff) of Act 436 to remove, replace, appoint, or confirm individuals appointed by a county commission to an office, board, commission, authority, or other entity that is within or is a component unit of the County, including appointments approved or confirmed by a

county executive. The exercise of a removal power by the County Commission under this section 1(d) is not subject to veto by the County Executive and does not require approval by the County Executive.

(e) In addition to and separate from powers retained under section 1(b) and granted under section 1(c), the County Executive is hereby granted the powers prescribed for emergency managers under section 12(1)(ff) of Act 436 to remove, replace, appoint, or confirm individuals appointed by a county executive to an office, board, commission, authority, or other entity that is within or is a component unit of the County, including appointments approved or confirmed by a county commission. The exercise of a removal power by the County Executive under this section 1(e) is not subject to veto by the County Commission and does not require approval by the County Commission. However, the appointment of an individual to fill a vacancy caused by a removal under this section 1(e) is subject to the requirements of section 4.385 of the Charter.

2. **Employee Relations.** (a) In addition to and separate from powers retained and granted under section 1, the County Executive is hereby granted the powers prescribed for emergency managers under section 12(1)(l) of Act 436 to act as the sole agent of the County in collective bargaining with employees or representatives and approve any contract or agreement.

(b) Consistent with section 8(11) of Act 436, beginning 30 days after the effective date of this agreement the County is not subject to section 15(1) of 1947 PA 336, as amended, MCL 423.215, for the remaining term of this agreement.

(c) Beginning 30 days after the effective date of this agreement, if a collective bargaining agreement has expired, the County Executive may exercise the powers prescribed for emergency managers under section 12(1)(ee) of Act 436 to impose by order matters relating to wages, hours, and other terms and conditions of employment, whether economic or noneconomic, for County employees previously covered by the expired collective bargaining agreement. Matters imposed under this section 2(c) will remain in effect for those employees until a new collective bargaining agreement for the employees takes effect under 1947 PA 336, as amended, MCL 423.201 to MCL 423.217, or other applicable law. The authority described in this section 2(c) is in addition to the powers retained and granted under sections 1 and 2(a).

(d) If a two-year budget is implemented for the County under section 11 that includes contractual and employment agreements, the contractual and employment agreements, and any provisions of those contractual and employment agreements relating to wages, hours, or other terms and conditions of employment for County employees will remain effective while the two-year budget is effective and may not be amended while the two-year budget is effective without the approval of the State Treasurer consistent with section 21 of Act 436. However, until a new collective bargaining agreement is effective, the terms and conditions of employment established in contractual and employment agreements included with a two-year budget under section 11 will remain in effect.

(e) A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty may not be impaired under this agreement.

(f) Consistent with section 8(10) of Act 436, this agreement does not grant to the County Executive, the County Commission, or any other officer of the County the powers prescribed for emergency managers under section 12(1)(k) of Act 436.

3. Enforcement. (a) In addition to the powers retained and granted under sections 1 and 2, the County Executive is hereby granted the powers prescribed for emergency managers under section 10 of Act 436 to issue and enforce orders necessary to accomplish the purposes of Act 436 and this agreement, but the County Executive shall not issue an order applicable to, or enforce an order against, the County Commission, a member of the County Commission, or an officer, employee, agent, or contractor of the legislative branch of County government.

(b) County elected and appointed officials and County employees, agents, and contractors shall promptly and fully provide the assistance and information necessary and properly requested by the County Commission, the County Executive, or both when exercising powers prescribed for emergency managers under Act 436 and granted under this agreement. In addition to the powers retained and granted under sections 1, 2, and 3(a), the County Executive is hereby granted the powers prescribed for emergency managers under section 27 of Act 436 to enforce this section 3(b), except against the County Commission, a member of the County Commission, or an officer, employee, agent, or contractor of the legislative branch of County government.

(c) In addition to the powers retained and granted under sections 1, 2, 3(a), and 3(b), the County Commission and the County Executive each are hereby granted the powers prescribed for emergency managers under section 16 of Act 436.

(d) The State Treasurer states that the exercise of powers prescribed for emergency managers under Act 436 by the County Commission, County Executive, or both, under sections 1(c) to 1(e), 2(a), 2(c), 3(a) to 3(c), and 11(a) consistent with this agreement are necessary or convenient to enable the County to achieve the goals and objectives of this agreement during the term of this agreement.

4. State Assistance. To assist the County in alleviating the County's financial emergency, the Michigan Department of Treasury ("Treasury") may provide the County with financial management and technical assistance as requested by the County Executive, including assistance in implementing the revenue estimating process described in section 5. Assistance under this section 4 is subject to the mandate under Const 1963, art 9, § 17 that no money may be paid out of the state treasury except in pursuance of appropriations made by law. County officers, employees, agents, and contractors shall promptly and fully provide the assistance and information necessary for the provision of state assistance under this section 4 as requested by an officer, employee, agent, or contractor of Treasury.

5. Revenue Estimating. (a) The County shall hold a revenue estimating conference (a "Conference") in the first week of February and in the first week of June of each year through the end of the last fiscal year in any two-year budget adopted by the County under section 11.

(b) The principals of each Conference will be the County's chief financial officer, the chief fiscal advisor of the County Commission's office of fiscal agency, and the County's treasurer or a deputy treasurer designated by the County's treasurer.

(c) Each Conference shall adopt an official forecast of anticipated revenues of the County after considering the most recent economic forecast adopted by the state revenue estimating conference under sections 367a to 367f of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1367a to 18.167f.

(d) The official forecast of revenue for each Conference must be determined by consensus among the Conference principals for the County fiscal year in which the Conference is held

and the next two County fiscal years. Each Conference also shall forecast general fund revenue trend-line projections for the County for an additional two fiscal years. Each Conference must base its forecast of revenues upon the assumption that law and administrative procedures then effective will remain effective throughout the forecast period.

(e) A Conference may request from County officers, departments, agencies, and authorities of the County the assistance and data needed to enable the Conference to fulfill its duties. County officers, departments, agencies, and authorities shall cooperate with a Conference in the exercise of its duties under this section 5. In determining forecasts, a Conference may consult with persons with expertise in economic and government revenue forecasting, including Treasury and state institutions of higher education.

(f) A principal shall preside over conference sessions, convene conference sessions, and specify topics to be included on the conference agenda. The responsibility of presiding over sessions of the conference shall be rotated annually among the principals, with the initial chairperson being elected by the principals. The chairperson presiding over a conference is responsible for setting the conference date and preparing and distributing the necessary documents before the conference, including comparisons between alternative information where a comparison is warranted. Upon the written request of a principal, a conference shall be convened by the chairperson.

(g) Except as provided in section 5(h), any final action of a Conference establishing an official forecast will require the unanimous support of all principals. Otherwise, the principals of a Conference shall determine procedures to be used by the Conference, including procedures for Conference sessions and presentations by persons. Each Conference shall complete its work within five days unless extended for an additional 5 days by the unanimous support of all principals.

(h) If a Conference does not establish an official forecast with the unanimous support of the principals within the time period required under section 5(g), the State Treasurer shall adopt the official forecast of revenue for the County. Within a time period established by the State Treasurer, each principal may provide information to the State Treasurer relating to the adoption of an official forecast under this section 5(h) and the State Treasurer shall consider the information submitted within that time period before adopting an official forecast under this section 5(h).

(i) Meetings of a Conference must be open to the public and held in a manner that complies with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275, (the "Open Meetings Act"). A document or other record prepared, owned, used, in the possession of, or retained by the Conference in the performance of an official function is subject to the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

(j) A Conference shall distribute its revenue forecasts to the County Executive, the County Commission, and the State Treasurer. The County shall publish the forecasts under this section 5 on the County's website.

(k) The County Executive and other elected County officers shall use the then current revenue forecasts adopted under this section 5 when proposing a County budget, appropriations act, or amendment of either. The County Commission shall use the then current revenue forecasts adopted under this section 5 when adopting a County budget, appropriations act, or amendment of either.

(l) Each budget or budget amendment adopted by the County must provide for:

- (1) conducting all aspects of the operations of the County within the resources available to the County according to the then current revenue forecast under this section 5; and
- (2) the timely deposit of required payments to the WCERS.

(m) The State Treasurer recommends the County formally adopt a revenue estimating process based upon sections 5(a) to 5(l) for use after the term of this agreement.

6. **Audits.** (a) For each County fiscal year ending after the effective date of this agreement the County shall retain a recognized independent certified public accounting firm to perform an annual audit of the County (the "Independent Auditor").

(b) The annual audit required under this section 6 must:

- (1) comply with the professional standards and guidance included in government auditing standards issued by the Comptroller General of the United States ("Generally Accepted Government Auditing Standards");
- (2) include an opinion as to whether the County's financial statements for the fiscal year were prepared in accordance with the uniform minimum standards of and guidelines for financial accounting and reporting standards for state and local governments issued by the Governmental Accounting Standards Board ("GASB"), including GASB's hierarchy of generally accepted accounting principles for state and local governments ("Generally Accepted Accounting Principles"); and
- (3) comply with the requirements of the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a (the "Budget Act"), and other applicable law.

(c) The County shall make available for inspection and duplication all records required by the Independent Auditor to perform the annual audit required under this section 6. The County shall make its officers and employees available to, and shall cooperate with, the Independent Auditor to facilitate timely completion of the annual audit by the Independent Auditor.

7. **Reports.** (a) By the 15th day of each month after August 2015, the County shall submit monthly reports on the County's cash position and cash flow in a form prescribed by the State Treasurer.

(b) Beginning October 15, 2015 and ending on the Release Date under section 11(a), the County Executive shall transmit to the State Treasurer, with a copy to the County Commission, a quarterly written report in a form prescribed by the State Treasurer indicating the status of the County's implementation of Remedial Measures during the prior quarter. If a Remedial Measure involves reductions in payments to the WCERS, changes in benefits provided to WCERS participants, or OPEB changes, reported savings from the changes must be verified by an independent actuary acceptable to the State Treasurer.

(c) Consistent with section 8(1) of Act 436, beginning on October 15, 2015, the County Executive shall transmit a quarterly financial status report for the prior three months in the form prescribed by the State Treasurer, with a copy to the County Commission and each state senator and state representative representing the County.

(d) Beginning October 15, 2015, the County Executive shall transmit to the State Treasurer, with a copy to the County Commission, a quarterly report listing pending lawsuits or other legal actions in which the County is a party during the prior three months. For each listing, the County shall detail: (1) the name of the plaintiff or plaintiffs; (2) the name of the defendant or defendants; (3) the name of the court and judge with jurisdiction; (4) the name of the attorney representing the County; (5) the cause of action; (6) the length of time pending; (7) an estimate of the budgetary impact on the County if the County does not prevail; (8) the details of any settlement agreement; and (9) any applicable insurance coverage.

(e) By January 31, 2016, the County Executive shall transmit to the State Treasurer a report that includes a plan addressing the projected needs of the County's adult detention system that complies with all laws and court orders related to the housing of adult inmates by the County. The plan must be based upon reasonable trends and classifications for the adult inmate population, the continuation and implementation of programs developed under agreements with the circuit court for the County, and projected available financial resources. The plan must not be inconsistent with any budget adopted by the County and must not exacerbate the County's structural deficit or result in a new projected structural deficit. The plan also must:

- (1) identify the projected cost of capital improvements necessary to continue to operate each of the County's then operating adult detention facilities over the next five to 20 years;
- (2) assess resources, after accounting for any operational cost increases or decreases, available to the County to fund the construction or renovation of adult detention facilities; and
- (3) outline a project plan to adequately meet the County's needs for adult detention facilities, including construction and renovations necessary to meet the projected number of beds needed during the years covered by the project plan.

(f) The State Treasurer also may require the County to produce and transmit other financial reports to assure that Treasury has access to accurate and timely financial information about the County and regarding the County's procedures for cash control and cash management, including procedures for timely collection, securing, depositing, balancing, and expending of cash, and designation of appropriate fiduciaries.

8. Debt. (a) The County shall not issue or incur Debt without the approval of the State Treasurer. The County may enter into agreements with creditors or other persons or entities for the payment of existing Debts, including the settlement of claims by the creditors. The County also may enter into agreements with creditors or other persons or entities to restructure Debt on terms, at rates of interest, and with security as agreed among the parties, subject to approval by the State Treasurer. The County shall make timely principal, interest, and other Debt service or other payment obligations on all County Debt. As used in this section 8, "Debt" means that term as defined in section 103 of the Revised Municipal Finance Act, 2001 PA 34, MCL 141.2103, and also includes all of the following:

- (1) capital lease transactions and certificates of participation entered into by or on behalf the County;
- (2) lease transactions for amounts exceeding \$3,000,000.00, installment purchase transactions, certificate of participation transactions, or contractual payment obligations supporting indebtedness issued or incurred by or on behalf of the County; and

(3) any other indebtedness issued or incurred by or on behalf of the County that obligates the County under Generally Accepted Accounting Principles, excluding future projected pension and OPEB obligations of the County.

(b) The County shall comply with the Emergency Municipal Loan Act, 1980 PA 243, as amended, MCL 141.931 to 141.942, (the "Loan Act") and the terms and conditions of any emergency loan to the County or agreement between the county and the state or a political subdivision of the state under the Loan Act.

(c) The County Commission and the County Executive shall not take any action or fail to take an action that would impair or impede one or more of the following:

- (1) the payment of money from the County's delinquent tax revolving fund under section 87b(3) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.87b(3);
- (2) the deposit of the proceeds of delinquent tax notes issued by the County under section 87c of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.87c, in the County's delinquent tax revolving fund established under section 87b(3) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.87b(3);
- (3) the payment of interest or repayment of principal due on delinquent tax notes issued by the county under section 87c of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.87c; or
- (4) other obligations of the county under section 87c of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.87c, or notes issued under that section.

(d) Section 8(c) does not otherwise alter the authority of the County to transfer a surplus in the County's delinquent tax revolving fund to the County's general fund.

9. **Bankruptcy.** The County shall not initiate an action under Chapter 9 of Title 11 of the United States Code, 11 USC 901 to 946.

10. **Term.** This agreement is effective beginning on the effective date under section 20 and remains effective until the Release Date under section 11(a) or an uncured material breach is declared and not cured, except that sections 2(b) to 2(f) and 5, and the requirement to adopt and implement a two-year budget under section 11 survive the Release Date under section 11(a) and continue in effect for the remaining term of this agreement, which expires at the end of the last County fiscal year after the Release Date covered by the two-year budget adopted under section 11.

11. **Release.** (a) The County is released from this agreement and the requirements of section 8 of Act 436 upon written notification from the State Treasurer to the County Executive and clerk of the County Commission that the County has complied with this agreement (the "Release Date"). Consistent with section 21(1) of Act 436, the State Treasurer shall require the County Commission and the County Executive, and both are hereby jointly authorized, to exercise the powers prescribed for emergency managers under section 21(2) of Act 436 to adopt and implement using Charter procedures a two-year budget for the County, including all contractual and employment agreements, effective beginning on the first day of a fiscal year beginning after the Release Date. The County is not required to adopt a two-year budget before the Release Date. The County will be deemed by the State Treasurer to have complied with this agreement and the State Treasurer shall release the County from the

requirements of section 8 of Act 436 if the County Executive certifies in writing to the State Treasurer, and the State Treasurer concurs in writing, that all of the following conditions are satisfied:

- (1) the fiscal stability of the County has been restored as demonstrated by action taken by the County after December 31, 2014 that will eliminate the County's \$52 million structural deficit, with reductions (if any) resulting from reductions in payments to the WCERS, changes in benefits provided to the WCERS participants, or OPEB changes, verified by an independent actuary acceptable to the State Treasurer;
- (2) the County has paid all outstanding amounts owed by the County to the Michigan Department of Health and Human Services ("MDHHS") relating to the County's child care fund or has entered into a written agreement with MDHHS relating to amounts owed by the County and the director of MDHHS confirms that the County is in compliance with that agreement; and
- (3) based upon an audited financial statement for a fiscal year ending after December 31, 2014, the County is not required to submit a financial plan under section 21(2) of the Glenn Steil State Revenue Sharing Act of 1971, 1971 PA 140, as amended, MCL 141.921(2).

(b) After the Release Date, the County shall not amend any two-year budget adopted for the County under section 11(a) without the approval of the State Treasurer, and shall not revise any order issued by the County Executive under this agreement before one year after the Release Date. The State Treasurer recommends the County continue using a two-year budgeting process after the expiration of this agreement.

12. **Compliance and Breach.** (a) The County is bound by and shall comply with this agreement. Failure of the County to comply with this agreement is a breach of this agreement. Violation of state or federal law with respect to any matter relating to this agreement, including the Open Meetings Act, the Budget Act, or the Loan Act by the County, the County Commission, the County Executive or another officer of the County also is a breach of this agreement. Except as provided in section 15, the obligations of the County under this agreement are not subject to waiver or discharge for any reasons other than an Uncontrolled Event, including missed due dates, clerical errors, computer failures, late mailings or deliveries. For purposes of this section 12(a), "Uncontrolled Event" means with respect to the County, an event or circumstance, regardless of foreseeability, not caused by the County and that prevents the County from complying with an obligations under this agreement, except that an Uncontrolled Event does not include a strike or other labor unrest that affects only the County, an increase in prices, or a change in law.

(b) **Material Breach.** An uncured breach of this agreement is a material breach of this agreement if the State Treasurer determines that any of the following apply:

- (1) the uncured breach materially impairs the timely and complete implementation of the Remedial Measures;
- (2) the uncured breach materially impairs the ability of the County Commission, the County Executive, or both, to perform their respective functions and responsibilities under this agreement; and
- (3) the uncured breach materially impairs the implementation of this agreement because the County or a County officer has contested, through a legal proceeding or otherwise, the constitutionality, validity, or enforceability of Act 436, this agreement, or the powers or

jurisdiction of the State Treasurer or other state officers under Act 436, other applicable law, or this agreement.

(c) **Notice of Material Breach.** If the State Treasurer determines that a material breach of this agreement has occurred or is occurring, the State Treasurer shall immediately notify the County Commission and the County Executive of that determination. The County shall take all lawful steps necessary to cure the material breach within 14 days and report to the State Treasurer the steps taken to cure the material breach, unless the State Treasurer determines that the material breach is of a nature that cannot be cured within 14 days. If the State Treasurer determines that the material breach cannot be cured within 14 days, the State Treasurer shall provide the County with a longer period to cure the material breach and the County shall report the steps taken to cure the material breach within the longer period provided by the State Treasurer. If the State Treasurer determines that a material breach must be cured in less than 14 days to address a projected deficiency in the County's cash flow, the State Treasurer shall require the County cure the deficiency in a shorter time period and the County shall report the steps taken to cure the material breach within the time period provided by the State Treasurer.

(d) **Statutory Declaration of Material Breach.** Notwithstanding sections 12(a) to (c), and consistent with section 8(1) of Act 436, the State Treasurer may, in the State Treasurer's sole discretion, declare a material breach of this agreement, including a declaration of a material breach, for any of the following reasons:

- (1) repeated failure of the County to provide accurate and timely financial reports;
- (2) repeated failure of the County to meet a deadline or due date under this agreement;
- (3) delay by the County in addressing a projected deficiency in the County's cash flow;
- (4) action by an officer, employee, agent, or contractor of the County to impede or hinder implementation of this agreement; or
- (5) repeated delays or other action by the County inconsistent with advice or guidance provided by the State Treasurer or other action or inaction by the County inconsistent with the goals and objectives of this agreement.

(e) **Uncured Material Breach.** If a material breach is declared and not cured, one of the following will occur, as required by section 8(1) of Act 436:

- (1) the governor may place the County in receivership as defined under section 2(q) of Act 436 and the County shall not contest the placement in receivership or the resulting appointment of an emergency manager under Act 436; or
- (2) the governor may place the County in the neutral evaluation process as defined under section 2(o) of Act 436 and the County shall not contest the placement in the neutral evaluation process and will initiate the neutral evaluation process as required by and consistent with section 25 of Act 436.

13. **Due Dates.** If a due date under this agreement falls on a Saturday, Sunday, or state holiday, then the due date will be the next day that is not a Saturday, Sunday, or state holiday. If a

report, listing, or other document is provided to Treasury by the County Executive, the report, listing, or other document will be deemed to have been received by Treasury from the County.

14. Treasury Designees. The State Treasurer may designate an individual within Treasury to perform the State Treasurer's functions and responsibilities under this agreement. The State Treasurer may designate an individual or agency, division, or other organizational unit within Treasury to receive reports or other notifications under this agreement and will notify the County Executive of a designation under this section 14.

15. Modification; Waiver. No amendment to this agreement will be effective unless it is in writing and signed by both parties. The County is not authorized to sign an amendment unless the amendment is approved by the County Commission. The State Treasurer may waive a provision of this agreement if the State Treasurer determines that the County demonstrates good cause for the waiver, including a material breach of this agreement caused by a nonparty. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the State Treasurer and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation under this agreement.

16. Counterparts. If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

17. Governing Law. The laws of the state of Michigan, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this agreement.

18. Entire Agreement. This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements relating to the County's financial emergency, whether written or oral, between the parties.

19. Severability. The parties intend as follows:

- (1) that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (2) that if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, the entire agreement will be held unenforceable;
- (3) that if an unenforceable provision is modified or disregarded in accordance with this section 19, then the rest of the agreement will remain in effect as written; and
- (4) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

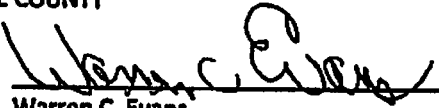
20. Effectiveness; Date. This agreement will become effective after approval by the County Commission and when all the parties have signed it. The date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party's signature.

Each party is signing this agreement on the date stated opposite that party's signature.

Date: Aug. 17th, 2015

WAYNE COUNTY

By:


Warren C. Evans
County Executive

Date: 8/21, 2015


STATE TREASURER N.A. KHOURI

CERTIFICATION

I, John Pfeffer, acting clerk of the Wayne County Commission, certify all of the following:

- (1) that this consent agreement was approved and the signing of the consent agreement by the Wayne County Executive was authorized on behalf of the Wayne County Commission by a resolution adopted at a regular meeting of the Wayne County Commission held on August 12, 2015.
(regular/special)
- (2) that the resolution remains in effect;
- (3) that the meeting was held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275; and
- (4) that the minutes of the meeting were kept and have been or will be made available as required by the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275.

Date: August 13, 2015


John Pfeffer
Acting Clerk of the Wayne County Commission

[Final negotiated agreement as of 08/10/2015]

LAN01385758.14

WCRA INJUNCTION BRIEF
EXHIBIT #11

HOME RULE CHARTER FOR THE COUNTY OF WAYNE



As adopted June 16, 1981
by the Wayne County Charter Commission
Approved July 22, 1981
By Governor William G. Milliken

•

Approved by the Voters
November 3, 1981

•

Amended by the Voters
August 7, 1984
November 4, 1986
November 3, 1992
November 5, 1996
August 4, 1998
August 3, 2004
November 6, 2012

With Compiler's Comments to December 14, 2012

7.112 Initiative, Referendum and Recall

(a) The people of Wayne County reserve the power to amend and revise this Charter, the power to recall elective officers, and the powers of initiative and referendum.

(b) The scope of these reserved powers are the same as comparable powers under the State Constitution. The procedures for the exercise of these reserved powers may be established by ordinance. In the absence of an ordinance establishing procedures, the procedures provided by law for the exercise of the reserved rights under the State Constitution are applicable. Petitions must be signed by registered voters constituting not less than 10% of the base vote to amend or revise the Charter; not less than 25% of the base vote to recall an elected officer; not less than 8% of the base vote to invoke the initiative; and not less than 5% of the base vote to invoke the referendum. The base vote is the total vote cast in the County or the affected district for all candidates for Governor at the last gubernatorial election. The petitions must be filed with the County Clerk.

COMPILER'S COMMENTS:

As of November 2012, the County Commission has not adopted an ordinance which would modify the procedures for the exercise of reserved rights.

7.113 Public Meetings

Meetings of the Commission and all other County boards and commissions are open to the public as provided by law.

COMPILER'S COMMENTS:

The requirements of the Open Meetings Act (Public Act 267 of 1976) are found in MCL 15.261 et seq, MSA 4.1800(11) et seq.

7.114 Freedom of Information

County records are public and open to inspection as provided by law.

COMPILER'S COMMENTS:

The requirements of the Freedom of Information Act (Public Act 442 of 1976) are found in MCL 15.231 et seq; MSA 1801(1) et seq.

The requirements of the Bullard - Plawecki Employee Right to Know Act (Public Act 397 of 1978) are in MCL 423.501 et seq; MSA 17.62(1) et seq.

WCRA INJUNCTION BRIEF
EXHIBIT #12

WCRA Note #5

Chapter 32 - COUNTY BENEFITS¹¹

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- **Sec. 32-1. - Citation.**
- **This chapter may be cited as the county benefits ordinance.**

(Ord. No. 2013-500, § 1, 8-8-13)

- **Sec. 32-2. - Definitions. Modified**
- **For purpose of this chapter words, terms and phrases shall have the following meanings:**

Benefit means a healthcare; retirement; pension; insurance; leave time; bonus; severance; lump sum payment; loan or similar compensation, arrangement, accommodation or incentive of a financial nature excluding wages or salary.

Bonus means any lump sum monetary payment received once in a fiscal year in addition to an employee's wages or salary, or an increase in an employee's wages or salary that is reduced within 60 days of implementation of the increase.

Contractor means a person, business, corporation, partnership, sole proprietorship, joint venture or other private legal entity that has an agreement, no matter what it is called, to provide goods, services, supplies, or construction to the County of Wayne.

Elected official means a person who is elected to the office of chief executive officer, county commissioner, county clerk, register of deeds, prosecuting attorney, sheriff, treasurer, circuit court judge or probate court judge within the County of Wayne.

Employee means any person who receives wages or a salary from the County of Wayne regardless of the number of hours worked by or the position of employment held by the person.

Leave time means vacation, annual, sick, holiday, personal business or other similar time compensated by the County of Wayne.

- **Sec. 32-3. - Commission findings.**
- **(a)The Wayne County Commission finds that the chief executive officer has specifically tailored, offered and provided special benefits and/or accommodations to individuals who serve as appointees in his administration.**
- **(b)The Wayne County Commission finds that the expenditure of public funds requires great responsibility and stewardship to maintain public confidence.**

(Ord. No. 2013-500, § 1, 8-8-13)

- **Sec. 32-4. - County benefits.**

- (a)The County of Wayne shall not provide any benefit to, or any change to an existing benefit, for an elected official, employee or contractor without prior approval, by a majority vote, of the Wayne County Commission.

(b)Notwithstanding subsection (a) of this section, the County of Wayne shall not offer or provide a benefit to an elected official, employee or contractor, unless the benefit is offered or provided on the same terms and at the same time to one of the following groups:

(1)All elected officials;

(2)All union employees within a local;

(3)All non-union or appointed employees within the executive branch of county government;

(4)All non-union or appointed employees within the legislative branch of county government;

(5)All non-union or appointed employees within the judicial branch of county government; or

(6)All similarly situated contractors.

(c)Notwithstanding subsections (a) or (b) of this section, the County of Wayne may provide an elected official, employee or contractor with a benefit, if the benefit is specifically provided by the Wayne County Charter, law, resolution, ordinance, or a court of competent jurisdiction.

(d)The chief executive officer or his/her designee shall prepare and implement policies and procedures to provide for concurrence, uniformity and consistency in the application of this chapter.

(e)No employee may receive monetary compensation that will result in him or her exceeding the salary range for his or her position that is in effect on January 1 of that year without approval of the Wayne County Commission.

(Ord. No. 2013-500, § 1, 8-8-13)

- **Sec. 32-5. - Existing contractual rights.**

- This chapter shall not impair any rights under a collective bargaining agreement or contract of employment with respect to benefits or other compensation in effect on the date the ordinance from which this chapter is derived becomes effective.

(Ord. No. 2013-500, § 1, 8-8-13)

- **Sec. 32-6. - Delegation of authority.**

- The provisions of this chapter shall supersede any authority delegated by the Wayne County Commission to execute contracts or otherwise legally bind the County of Wayne to obligations, except authority delegated by resolution of the county commission to the department of corporation counsel and the commission chairperson to settle legal matters.

(Ord. No. 2013-500, § 1, 8-8-13)

- Sec. 32-7. - Penalties.

- (a) In addition to any remedies or penalties provided by law, a person who violates this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for a period not exceeding 90 days, or both.

- (b) The office of corporation counsel or the office of commission counsel may institute a civil action in the appropriate district court or in the Third Circuit Court against a person who violates this chapter to recover any financial loss on behalf of the county.

(Ord. No. 2013-500, § 1, 8-8-13)

- Sec. 32-8. - Application.

This chapter shall apply to any benefit or change in benefit, provided after the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2013-500, § 1, 8-8-13)

WCRA INJUNCTION BRIEF
EXHIBIT #13

HOME RULE CHARTER FOR THE COUNTY OF WAYNE



As adopted June 16, 1981
by the Wayne County Charter Commission
Approved July 22, 1981
By Governor William G. Milliken

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August 4, 1998
August 3, 2004
November 6, 2012

With Compiler's Comments to December 14, 2012

ARTICLE VI RETIREMENT

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

COMPILER'S COMMENTS:

The Wayne County Retirement Ordinance was republished on November 20, 1986 (Ordinance 86-486) to incorporate all prior amendments, conform the ordinance with federal law, remove outdated provisions, and reconcile inconsistent terminology. This was done again on November 17, 1994 in Ordinance 94-747, which has since been amended by Ordinances 97-728, 98-335, 2000-536, 2002-1103, 2002-1147, 2003-124, 2005-924 and 2010-514. (Code Chapter 141)

It has been ruled that those provisions of the Wayne County Retirement Ordinance which provided for "20 and out" benefits for non-union employees were invalid because in conflict with MCL 46.12a which requires that a county employee have at least 25 years of service to become eligible for retirement benefits if less than 60 years of age. (Donald Gray vs. Wayne County Retirement System, et al Civil Action No. 84-401 649 CK, August 31, 1984, Third Circuit Judge Roland Olzark presiding.)

6.112 Retirement Commission

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordinance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System. The costs of administration and management of the Retirement System shall be paid from the investment earnings of the Retirement System.

COMPILER'S COMMENTS:

In Opinion 88-012, the Corporation Counsel advised that the Retirement Commission was without authority to amend the Retirement Ordinance or to expand benefits beyond those authorized by the Ordinance.

At the general election held on November 6, 2012, voters rejected by a vote of 302,104 (yes) to 321,515 (no) a proposed amendment to this Section. The ballot question certified to the County Clerk read:

"Shall Section 6.112 of the Wayne County Home Rule Charter be amended to expand the Wayne County Retirement Commission's membership from 8 to 9, adding as a member the Wayne County Treasurer or his or her designee; and also to authorize the Chairperson of the Wayne County Commission, who is also a member of the Wayne County Retirement Commission, to appoint a person to serve as his or her designee on the Retirement Commission; and further to allow employees and retirees of the Wayne County Airport Authority to vote for and serve as members of the Wayne County Retirement Commission with no more than one member being an airport employee or retiree until such time as the Airport Authority establishes its own retirement system or pension plan?"

6.113 Financial Management

The financial objective of the Retirement System is to establish and receive contributions each fiscal year which, as a percentage of active member payroll, are designed to remain approximately level from year to year. Specifically, contributions shall be sufficient to (i) cover fully costs allocated to the current year by the actuarial funding method, and (ii) liquidate over a period of years the unfunded costs allocated to prior years by the actuarial funding method. The period of years used in the application of item (ii) shall not exceed 35 years for unfunded amounts in existence December 1, 1982, 25 years for unfunded amounts resulting from benefit changes effective on or after December 1, 1982, and 15 years for experience gains and losses during years ending after November 30, 1981. Contributions made after November 30, 1981, which are in excess of the minimum requirement, may be used to reduce contribution requirements in a subsequent fiscal year. The actuarial funding method must produce contribution requirements which are not less than those produced by the individual-entry-age-normal-cost-actuarial method.

6.114 Employment of Actuary

The actuary employed by the Retirement System must have 5 years experience as a practicing actuary.

(3) Membership or participation in the retirement system has been terminated for at least ten days. If an individual dies and no pension is or will become payable on account of the death, the individual's accumulated member or participant contributions shall be paid to the refund beneficiary on file with the retirement system. If no refund beneficiary survives the individual or if a refund beneficiary is not on file with the retirement system, the accumulated member or participant contributions shall be paid to the individual's estate.

(c) Refunds of member and participant accounts.

- (1) An individual's account and vested employer account shall be paid to the individual upon meeting each of the following conditions:
 - a. The individual applies to the retirement system for payment;
 - b. Membership or participation in the retirement system has been terminated for at least ten days.
- (2) If an individual dies and no pension is or will become payable on account of the death, the individual's account and vested employer account shall be paid to the refund beneficiary on file with the retirement system. If no refund beneficiary survives the individual or if a refund beneficiary is not on file with the retirement system, the account shall be paid to the individual's estate.

(Ord. No. 94-747, §§ 28.01—28.03, eff. 12-2-94; Ord. No. 2014-679, § 1, 11-20-14)

Sec. 141-35. - Retirement commission.

(a) Composition.

- (1) The retirement commission shall consist of the following eight individual trustees:
 - a. The chairperson of the county commission.
 - b. The county executive or the individual designated by the executive to serve in the executive's place. The designation shall be in writing and filed with the retirement commission.
 - c. Four members of the retirement system, who are residents of the county, to be elected by the members of the retirement system. Each member trustee shall be from a different county department, as provided in the county Charter on January 1, 1987, that is: the county commission; prosecuting attorney; sheriff; county clerk; county treasurer; register of deeds; corporation counsel; personnel; management and budget; health; public works; office of public services; and senior citizens. Employees of all other county agencies shall be considered collectively to be employees of one additional county department for the purposes of this provision. This restriction upon eligibility to serve as a trustee shall not be affected by changes made in the organization and administration of executive departments by an executive reorganization plan. The elections shall be conducted in accordance with procedures adopted by the retirement commission.
 - d. Two retired members, who are residents of the county, to be elected by the retired members and beneficiaries. The elections shall be conducted in accordance with procedures adopted by the retirement commission.
- (2) Retirement commission trustees shall serve without compensation for their service as a retirement commissioner but shall be reimbursed by the retirement system for their actual and necessary expenses incurred in the performance of the duties of retirement commissioner. Absence from work on account of retirement commission duties is authorized and shall be

treated so that the individual suffers no loss of pay or benefits.

(b) *Term of office; oath of office; vacancies.*

- (1)** The term of office of the elected member trustees shall be four years, one such term of office to expire at the end of each calendar year. The term office of the elected retired member trustees shall be four years, one such term to expire at the end of each even-numbered calendar year.
- (2)** Each trustee shall, prior to taking office, take an oath of office administered by the county clerk.
- (3)** A vacancy shall occur on the retirement commission if a member elected trustee ceases to be a member or becomes employed in a county department in which is employed another member elected trustee or ceases to be a county resident or resigns.
- (4)** A vacancy shall occur on the retirement commission if a retired member trustee ceases to be a retired member or ceases to be a county resident or resigns.
- (5)** A vacancy shall be filled according to the retirement commission election policy.

(c) *Meetings.* The retirement commission shall schedule sufficient meetings to effectively carry out its duties and shall designate the time and place of each meeting. The retirement commission shall adopt rules of procedure. The retirement commission shall select from its membership a chairperson and a vice-chairperson.

(d) *Quorum; record of proceedings.* Four trustees shall constitute a quorum at any meeting of the retirement commission. At least four concurring votes shall be required for a valid action by the retirement commission. The retirement commission shall keep a written record of its proceedings.

(e) *Executive director.* The retirement commission shall appoint an executive director. The executive director shall be the secretary of the retirement system and shall be the administrative officer of the retirement system. The duties of the executive director shall be established by the retirement commission.

(f) *Employees of retirement commission; employment of outside services.*

- (1)** The retirement commission may employ persons in the county classified service.
- (2)** The corporation counsel shall be the legal advisor to the retirement commission.
- (3)** The retirement commission shall designate an actuary who shall advise the board on the actuarial operation of the retirement system and on such other subjects as the retirement system may determine. "Actuary" shall mean a member of the American Academy of Actuaries or an individual who has demonstrated the educational background necessary to effectively render actuarial advice to the retirement system and who has at least five years of relevant public employee retirement system actuarial experience. A partnership or corporation may be designated as actuary if the duties of actuary are performed by or under the direct supervision of an individual who meets the preceding requirements.
- (4)** The retirement commission shall employ a medical director who is licensed by the State of Michigan to engage in the practice of medicine.
- (5)** The retirement commission is authorized and empowered to employ such other persons and services as it requires to effectively carry out its duties.

(g) *Reports.*

- (1)** The retirement commission shall prepare an annual report for each fiscal year. The annual report shall contain information about the financial, actuarial and other activities of the retirement system during the fiscal year. A copy of the annual report shall be furnished the county commission within 300 days of the end of the fiscal year.

- (2) A summary of the annual report shall be made available to the members, vested former members, retired members and beneficiaries of the retirement system.
- (h) *Investment authority.* The retirement commission is the trustee of the assets of the retirement system. The retirement commission has the authority to invest and reinvest the assets of the retirement system subject to all terms, conditions, limitations and restrictions imposed by the state on the investments of public employee retirement systems. The retirement commission may employ investment counsel to advise the board in the making and disposition of investments. In exercising its discretionary authority with respect to the management of the assets of the retirement system, the retirement commission shall exercise the care, skill, prudence, and diligence, under the circumstances then prevailing, that an individual of prudence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and similar objectives.
- (i) *Use of retirement system assets; prohibited actions.*
- (1) The assets of the retirement system shall be held and invested for the sole purpose of meeting the obligations of the retirement system and shall be used for no other purpose.
- (2) Members of the retirement commission and its employees are prohibited from:
- Having a beneficial interest, direct or indirect, in an investment of the retirement system.
 - Borrowing from the defined benefit trust.
 - Receiving any pay or emolument from any individual or organization, other than compensation for personal services or reimbursement of authorized expenses paid by the retirement system, providing services to the retirement system.
- (3) No payment shall be made unless it has been authorized in advance by a specific or continuing resolution of the retirement commission. Authorized payments shall be made by county voucher signed by two persons designated by the retirement commission. An attested copy of the resolution designating the persons and specimen signatures shall be filed with the county treasurer.

(Ord. No. 94-747, §§ 29.01—29.09, eff. 12-2-94; Ord. No. 2014-679, § 1, 11-20-14)

Sec. 141-36. - Financial objective; contribution certification.

Defined benefit plan.

(a) *Financial objective.*

- (1) The financial objective of the retirement system is to receive contributions each fiscal year which, as a percentage of member payroll, are designed to remain level from year to year and are sufficient to (i) fund the actuarial cost allocated to the current year by the actuarial cost method, and (ii) fund unfunded actuarial costs to prior years by the actuarial cost method as provided by law.
- (2) Contribution requirements for defined benefits shall be determined by annual actuarial valuation. The actuarial cost method shall be one which produces a contribution requirement not less than the contribution requirement produced by the individual entry-age normal cost method.
- (3) The excess of actual contributions made for periods after November 30, 1981, over the minimum required by subsections (a)(1) and (2) of this section may be used to reduce contributions required for subsequent fiscal years.

Certification of contribution requirement. The retirement commission shall certify to the county executive the amount of annual contribution needed to meet the financial objective.