

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. 8,**  
**INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY AS**  
**TRUSTEES OF THE WAYNE COUNTY EMPLOYEES'**  
**RETIREMENT SYSTEM,** jointly and severally,  
Defendants

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**JAMIL AKHTAR P.C.**  
By **Jamil Akhtar**  
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Onsted, MI 49265  
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-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  
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**PLAINTIFF'S MOTION FOR EX PARTE TEMPORARY  
RESTRAINING ORDER**

Plaintiffs, Wayne County Retirees Association, Inc, AFSCME Sub-Chapter 38 and the Named Plaintiffs by and through its attorney, Jamil Akhtar P.C. by Jamil Akhtar and Mark Porter moves that this Court grant an Ex Parte temporary restraining order pursuant to Rule 65(C) of the Federal Rules of Civil Procedure.

**SIXTH CIRCUIT AUTHORITY FOR GRANTING PRELIMINARY  
INJUNCTION UNDER SIMILAR FACTS**

On May 5, 2014 the 6th Circuit released its en banc decision in the matter of the **City of Pontiac Retirees Association, et al v Louis Schimmel**, et al, 751 F3d 427 (6th Cir 2014). The issues and facts closely parallel this complaint now before the Court. (Exhibit 1).

**REQUEST FOR PRELIMINARY INJUNCTION**

1. Plaintiff, Wayne County Retirees' Association, Inc. and AFSCME Sub-Chapter 38, between them, represents approximately 1,700 of the 5000 retired employees who are entitled to receive medical benefits as part of their retirement package. The retired plaintiffs represented by the WCRA and Sub-Chapter 38, under the terms of the collective bargaining agreement which was in effect on the date they retired, were entitled to receive "mirror" healthcare and prescription benefits equal to those benefits provided to active employees of Wayne County.

On September 21, 2015 defendant, Wayne County Executive, Warren Evans, under the provisions of Act 436, PA 2012 (the Emergency

Manager Act of the State of Michigan) forced the County Unions to enter into new collective bargaining agreement, which among other things, would change the employees' medical benefits to a High Deductible Healthcare Plan (HDHP) (\$1,300-\$2,600.00 first dollar deductible) medical benefit plan; further, the forced changes to the Labor Agreements now allowed defendant Evans, to change the composition of the Wayne County Employees' Retirement Commission.

2. On December 16, 2015, Warren Evans published a Memorandum, advising all County employees that as of January 1, 2016 their medical insurance would be converted to the High Deductible Healthcare Plan and that employees would also be required to pay 25% of the cost for their medical benefits. (Wayne County is self- insured and uses Blue Cross Blue Shield as its third party administrator)

At the same time, County Executive Evans, will pay active employees a cash bonus of up to \$1,300.00 per year to help pay for the costs associated with the High Deductible Healthcare Plan.

Based upon good faith information and belief, Defendant Evans, on February 23, 2016 will run the March 1, 2016, retirement checks and will deduct the 25% medical cost sharing from retirees' monthly pension checks. This would amount a deduction will be about \$130.00 to \$320.00 per retiree, depending on their family status.

Under the terms of the Collective Bargaining Agreement, which was in effect on the date of the plaintiff-member's retirement date, the retirees were

only required to pay a premium of 10% of the blended rate for medical/prescription benefits.

By applying the standards set forth by the 6th Circuit en bac decision in City of Pontiac Retirees' Ass'n, et al v Louis Schimmel, et al, 751 F3d 427 (6th Cir 2014), the issuance of a preliminary injunction to stop changes in retiree medical insurance is a favored and otherwise permissible action by the District Court. (Exhibit 1).

3. Defendant, County Executive Evans has also published a letter dated February 10, 2016, stating that as of October 1, 2015, he had the unilateral right to change the composition of the Wayne County Employees' Retirement Commission (Exhibit 2). Under the provisions of the County Charter and County Code of Ordinances, retirees are to elect two members to the eight member Wayne County Employees' Retirement Commission. Under the Evans' plan, one of the two retiree positions is to be eliminated; further, that any action taken by the Retirement Board to challenge County Executive Evans' authority has been declared to be a nullity.

4. Plaintiffs' complaint, with the exception of Count IV (Breach of Contract) all allege a deprivation of a property right protected under Amendment 14 of the United States Constitution as actionable under 42 U.S.C. 1983.

5. The damages are irreparable, in that the imposed financial action - which have been self described by defendant Evans as "draconian" are designed to be beyond "economic". They 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 **Basiccomputer Corp v Scott**, 973 F3d 507, 512 (6th Cir. 1992).

6. The plaintiff's 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 v Michigan Brick, Inc.**, 679 F2d 100, 105 (6th Cir 1982).

7. The issuance of a preliminary injunction supports the public interest. For instance, plaintiffs' vested rights to lifetime medical benefits have been in place and relied upon by the plaintiffs for decades. The benefit of the CBA, at the time of retirement will not be merely reduced, but have become so expensive 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 F3d 1071, 1079 (6th Cir 1994).

**WHEREFORE, PLAINTIFFS REQUEST** that this Honorable Court grant an injunction as requested herein.

Dated: February 16, 2016

/s/Jamil Akhtar  
Jamil Akhtar P39597  
Attorney for Plaintiffs

/s/Mark A. Porter  
Mark A. Porter P42280  
Attorney for Plaintiffs

# **WCRA MOTION FOR INJUNCTION**

## **EXHIBIT#1**

**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.

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**ORDER**

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**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.

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CONCURRENCE

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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 MOTION FOR INJUNCTION**

## **EXHIBIT#2**





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,



Anna 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, 30<sup>th</sup> Floor Detroit, Michigan 48226 · (313) 224-5030  
[www.waynecounty.com](http://www.waynecounty.com)

#306088

It is 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 ~~and~~ 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 name CA provision - and WZE

14 days.

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

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

**28 WEST ADAMS, 18<sup>TH</sup> 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.



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



**Wayne**  
County

Employees' Retirement System  
Robert J. Grden, Executive Director

January 27, 2016  
Special Meeting