

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – DETROIT**

In re:

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Hon. Thomas J. Tucker

Case No. 13-53846

**CITY OF DETROIT WATER AND SEWERAGE DEPARTMENT’S  
MOTION FOR ORDER TO SHOW CAUSE AGAINST THE  
ASSOCIATION OF MUNICIPAL ENGINEERS, THE ASSOCIATION OF  
DETROIT ENGINEERS, THE SANITARY CHEMISTS AND  
TECHNICIANS ASSOCIATION AND JOHN RUNYAN AND MOTION  
FOR SANCTIONS AGAINST THE ASSOCIATION OF MUNICIPAL  
ENGINEERS AND JOHN RUNYAN FOR VIOLATION OF THE  
DISCHARGE INJUNCTION**

NOW COMES the City of Detroit Water and Sewerage Department (“DWSD”), by and through its attorneys Kilpatrick & Associates, P.C., and for its Motion for an Order to Show Cause Against the Association of Municipal Engineers (“AME”), the Association of Detroit Engineers (“ADE”) and the Sanitary Chemists and Technicians Association (“SCATA”) and John Runyan and its Motion for Sanctions Against the Association of Municipal Engineers (“AME”), and John Runyan for Violation of the Discharge Injunction states as follows:

1. On July 18, 2013 (“Petition Date”), the City filed a petition for relief in this Court, commencing a Chapter 9 bankruptcy case.



2. On November 21, 2013, this Court issued its *Order, Pursuant to Sections 105, 501, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [**See Doc. No. 1782**] (“Bar Date Order”), establishing deadlines to file certain proofs of claim in this case. The Bar Date Order set the deadline to file proofs of claim as February 21, 2014, at 4:00 p.m., Eastern Time.

3. On December 24, 2013, the Court issued an Order, Pursuant to Sections 105 and 502 of the Bankruptcy Code, Approving Alternative Dispute Resolution Procedures to Promote the Liquidation of Certain Prepetition Claims (the “ADR Order”) [**See Doc. No. 2302**]

4. The City’s Plan of Adjustment was confirmed on November 7, 2014; the Order confirming the Plan of Adjustment (the “Plan”) was entered on November 12, 2014. [**See Doc. No. 8272**] The Plan became effective December 10, 2014.

#### BACKGROUND ON AME CLAIM

5. On February 21, 2014, AME timely filed its proof of claim pursuant to the Bar Date Order, asserting as the basis for its claim employee compensation and benefits for which it had filed a pre-petition grievance with the Michigan Bureau of Employment Relations Commission (“MERC”), challenging DWSD’s implementation of City Employment Terms for All Non-Uniform Employees (“CET”). [**See Claim Number 3125**]. Although it filed its grievance prior to the

Debtor's bankruptcy case, however, AME neglected to include in its proof of claim two pending Unfair Labor Practice Charges (the "Charges") filed on behalf of AME with the MERC, Case Numbers C10 F-144 and C10 C-060.

6. Pursuant to the ADR Order, the grievance was submitted to binding arbitration and on February 19, 2016, the United States District Court for the Eastern District of Michigan, in accordance with the findings of arbitrator Paul Glendon, dismissed the grievance. A true and correct copy of the District Court's judgment and the arbitrator's decision are attached hereto as Exhibit A.

7. On July 29, 2016, an administrative law judge issued orders related to the Charges and gave the charging party, AME, twenty-one (21) days to notify the judge that it wanted to proceed with the Charges. True and correct copies of the two orders are attached hereto as Exhibit B.

8. On August 2, 2016, Partho Ghosh, the President of AME, notified the judge that it wished to proceed with the Charges. A true and correct copy of the August 2, 2016, correspondence from Mr. Ghosh to Judge Peltz is attached hereto as Exhibit C.

9. The MERC Unfair Labor Practice Charges were resolved by binding arbitration on February 19, 2016 (*see*, paragraph 6, *supra*) and arose from the same facts and circumstances that are part of AME's proof of claim.

10. On October 14, 2016, this Court entered an Order disallowing Claim 3125 filed by the AME. **[See Doc. Number 11627]**

11. Despite the various court rulings disallowing AME's claims and charges, AME persists in prosecuting pre-petition claims before MERC.

12. AME has exchanged correspondence with an Administrative Law Judge in which it continues to prosecute pre-petition charges rather than dismiss the charges in light of this Court's October 14, 2016, Order disallowing Claim 3125. True and correct copies of correspondence from Administrative Law Judge Julia C. Stern to Mr. Runyan on January 9, 2017 and to Mr. Ghosh on January 30, 2017 are attached hereto as Exhibit D.

13. By refusing to dismiss the charges before MERC, AME and its attorney, John Runyan ("Mr. Runyan") are forcing DWSD to spend time and money responding to the ongoing litigation before MERC.

14. On February 8, 2017, DWSD's co-counsel, Steven H. Schwartz ("Mr. Schwartz"), sent an email to both Partho Ghosh, AME's President, and Mr. Runyan, giving them until February 15, 2017, to dismiss the pending charges before MERC. As of the date of this Motion, neither DWSD nor its attorneys have received a dismissal of the MERC charges. A true and correct copy of the email sent by Mr. Schwartz to Partho Ghosh and John Runyan is attached hereto as Exhibit E.

15. Pursuant to section 524(a) of the Bankruptcy Code:

(a) A discharge in a case under this title – ...

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

11 U.S.C. §524(a)(2).

16. The ongoing prosecution by AME of the charges before MERC is unwarranted because this Court disallowed AME's claim on October 14, 2016; any potential pre-petition cause of action held by AME for unfair labor practices that existed or could have existed was extinguished by that Order.

17. As a result of AME's continued litigation before MERC, Mr. Schwartz has had to defend DWSD's interests, unnecessarily and at increased cost to DWSD, in the MERC litigation. Likewise, the undersigned counsel has worked with Mr. Schwartz and has filed the instant Motion to protect DWSD's interests.

WHEREFORE, the Detroit Water Sewerage Department prays that this Court enter an Order granting its Motion, enter an Order to Show Cause against the Association of Municipal Engineers and John Runyan as to why they should not be held in contempt, enter an Order for Sanctions for violation of the discharge injunction of section 524(a)(2) against the Association of Municipal Engineers and John Runyan and grant such other relief as this Court deems just and proper.

### BACKGROUND OF ADE AND SCATA CLAIMS

18. DWSD repeats paragraphs 1 through 17 and incorporates them by reference hereinbelow.

19. On February 21, 2014, both ADE and SCATA timely filed their proofs of claim pursuant to the Bar Date Order, asserting as the basis for their claims employee compensation and benefits. [**See Claim Numbers 3206 and 2425**].

20. Pursuant to the ADR Order, the grievances were submitted to binding arbitration. On February 19, 2016, the United States District Court for the Eastern District of Michigan, in accordance with the findings of arbitrator Paul Glendon, dismissed the grievances. *See Exhibit A, supra*.

21. On October 14, 2016, this Court entered an Order disallowing Claim 3206 filed by the ADE and disallowing Claim 2425 filed by the SCATA. [**See Doc. Number 11627**]

22. SCATA subsequently filed a motion for reconsideration of the Court's October 14, 2016, Order disallowing its claim. [**See Doc. Number 11633**]

23. The Court denied SCATA's motion for reconsideration on October 24, 2016. [**See Doc. Number 11640**]

24. Undaunted, SCATA returned to MERC with ADE and with Mr. Runyan's assistance on February 25, 2017, filed Written Exceptions to the Decision and Recommended Order of Administrative Law Judge on Motions for Summary Disposition (the "Written Exceptions") regarding unfair labor practices. A true and correct copy of the Written Exceptions is attached hereto as Exhibit F.

25. As with AME's potential cause of action that existed or could have existed pre-petition, both ADE's and SCATA's potential causes of action for unfair labor practices that existed or could have existed pre-petition were extinguished by the Court's October 14, 2016, Order disallowing their claims.

26. The stubborn and willful refusal by ADE and SCATA to dismiss their charges before MERC is costing DWSD time and money to defend.

27. Although Mr. Schwartz's February 8, 2017, email to Partho Ghosh and John Runyan specifically references AME's ongoing litigation before MERC, Mr. Runyan certainly was put on notice that claims that had been adjudicated by this Court should not be subsequently prosecuted in another forum.

28. Mr. Runyan knew or should have known that the continued prosecution of the charges held by ADE and SCATA before MERC were in defiance of this Court's October 14, 2016, Order disallowing their claims as well as the discharge injunction of section 524(a)(2).

29. Although made aware of the Court's rulings on ADE's and SCATA's claims and the Court's denial of SCATA's motion for reconsideration on October 24, 2016, Mr. Runyan continues to collaterally attack the Court's rulings by prosecuting ADE's and SCATA's charges before MERC.

30. Due to Mr. Runyan's assistance with the Written Exceptions of ADE and SCATA filed with MERC on February 25, 2017, DWSD has had to spend time and money defending its position before MERC.

31. "The purpose of the permanent injunction is to effectuate one of the primary purposes of the Bankruptcy Code: to afford the debtor a financial 'fresh start.'" *In re Miller*, 247 B.R. 224, 228 (Bankr. E.D. Mich. 2000). "Any civil court action that is intended to further the collection of pre-petition debt, or whose legal or practical result will be to accomplish such collection, is enjoined. This is so regardless of how the action is styled in terms of substance, and regardless of its posture as to procedure; regardless of the nominal alignment of the initiating and responding parties, and regardless of the specificity or vagueness of the relief requested in the pleadings or papers that commence the proceeding." *In re Borowski*, 216 B.R. 922, 924 (Bankr. E.D. Mich 1998) (quoting *In re Atkins*, 176 B.R. 998 (Bankr. D. Minn 1994)). *See also, Lassiter v. Moser*, 2010 Bankr. LEXIS 3996 (6<sup>th</sup> Cir. 2010); *Vazquez v. Sears, Roebuck & Co.*, 221 B.R. 222 (N.D.Ill. 1998).

32. Concurrence was not sought in this matter because it was impractical.



**WHEREFORE** the Detroit Water Sewerage Department prays that this Court enter an Order granting its Motion, enter an Order to Show Cause against the Association of Detroit Engineers, the Sanitary Chemists and Technicians Association and John Runyan as to why they should not be held in contempt, enter an Order for Sanctions pursuant to the discharge injunction of 11 U.S.C. §524(a)(2) against John Runyan and grant such other relief as this Court deems just and proper.

**KILPATRICK & ASSOCIATES, P.C.**

/s/ Richardo I. Kilpatrick

RICHARDO I. KILPATRICK (P35275)

JAMES M. McARDLE (ARDC 6203305)

Attorney for City of Detroit Water  
and Sewerage Department

615 Griswold, Suite 1305

Detroit, MI 48226

(313) 963-2581

[ecf@kaalaw.com](mailto:ecf@kaalaw.com)

Dated: April 19, 2017

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – DETROIT**

In re:

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Hon. Thomas J. Tucker

Case No. 13-53846

**ORDER GRANTING MOTION FOR ORDER TO SHOW CAUSE  
AGAINST THE ASSOCIATION OF MUNICIPAL ENGINEERS, THE  
ASSOCIATION OF DETROIT ENGINEERS, THE SANITARY CHEMISTS  
AND TECHNICIANS ASSOCIATION AND JOHN RUNYAN AND  
MOTION FOR SANCTIONS AGAINST THE ASSOCIATION OF  
MUNICIPAL ENGINEERS AND JOHN RUNYAN FOR VIOLATION OF  
THE DISCHARGE INJUNCTION**

This matter having come before the Court on the Motion for an Order to Show Cause Against the Association of Municipal Engineers (“AME”), the Association of Detroit Engineers (“ADE”) and the Sanitary Chemists and Technicians Association (“SCATA”) and John Runyan and its Motion for Sanctions Against the Association of Municipal Engineers (“AME”), and John Runyan, due notice having been provided and the Court being otherwise fully advised in the premises;

**IT IS HEREBY ORDERED** that the Motion is granted;

**IT IS FURTHER ORDERED** that an order to show cause why they should not be held in contempt is issued to the Association of Michigan Engineers, the

Association of Detroit Engineers, the Sanitary Chemists and Technicians

Association and John Runyan; and

**IT IS FURTHER ORDERED** that sanctions are awarded to the Detroit Water and Sewerage Department and against the Association of Michigan Engineers and John Runyan in the amount of \$\_\_\_\_\_.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – DETROIT**

In re:

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Hon. Thomas J. Tucker

Case No. 13-53846

**NOTICE OF CITY OF DETROIT WATER AND SEWERAGE  
DEPARTMENT’S MOTION FOR ORDER TO SHOW CAUSE AGAINST  
THE ASSOCIATION OF MUNICIPAL ENGINEERS, THE ASSOCIATION  
OF DETROIT ENGINEERS, THE SANITARY CHEMISTS AND  
TECHNICIANS ASSOCIATION AND JOHN RUNYAN AND MOTION  
FOR SANCTIONS AGAINST THE ASSOCIATION OF MUNICIPAL  
ENGINEERS AND JOHN RUNYAN FOR VIOLATION OF THE  
DISCHARGE INJUNCTION**

**PLEASE TAKE NOTICE THAT** the City of Detroit Water and Sewerage Department, by and through its undersigned counsel, has filed its Motion for an Order to Show Cause Against the Association of Municipal Engineers, the Association of Detroit Engineers and the Sanitary Chemists and Technicians Association and John Runyan and its Motion for Sanctions Against the Association of Municipal Engineers and John Runyan for failing to dismiss charges and written exceptions presently pending before the Michigan Employment Relations Commission.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you have any objections to the relief sought in the Motion, within fourteen (14) days, or on or before May 3, 2017 you or your attorney must:

1. File with the Court a written response or an answer, explaining your position at:<sup>1</sup> United States Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan 48226.

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above. You must also mail a copy to:

Richardo I. Kilpatrick, Attorney for Detroit Water and Sewerage Department,  
Kilpatrick & Associates P.C., 615 Griswold, Suite 1305, Detroit, Michigan 48226

United States Trustee, 211 W. Fort Street, Suite 700, Detroit, Michigan 48226

**If you or your attorney do not take these steps, the Court may deem that you do not oppose the objection to your claim, in which event the hearing will be canceled, and the objection sustained.**

Respectfully submitted;

KILPATRICK & ASSOCIATES, P.C.

/s/ Richardo I. Kilpatrick

RICHARDO I. KILPATRICK (P35275)

JAMES M. McARDLE (ARDC 6203305)

Attorneys for Detroit Water and Sewerage  
Department

615 Griswold, Suite 1305

Detroit, Michigan 48226

(313) 963-2581

ecf@kaalaw.com

Dated: April 19, 2017

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<sup>1</sup> Response or answer must comply with Fed. R. Civ. P. 8(b), (c) and (e).

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN THE MATTER OF:**

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Hon. Thomas J. Tucker

Case No. 13-53846

**PROOF OF SERVICE**

**Kelisha Smith** states that on this 19<sup>th</sup> day of April 2017 she served a copy of the DETROIT WATER AND SEWERAGE DEPARTMENT'S MOTION FOR ORDER TO SHOW CAUSE AGAINST THE ASSOCIATION OF MUNICIPAL ENGINEERS, THE ASSOCIATION OF DETROIT ENGINEERS, THE SANITARY CHEMISTS AND TECHNICIANS ASSOCIATION AND JOHN RUNYAN AND MOTION FOR SANCTIONS AGAINST THE ASSOCIATION OF MUNICIPAL ENGINEERS AND JOHN RUNYAN FOR VIOLATION OF THE DISCHARGE INJUNCTION, the PROPOSED ORDER and this PROOF OF SERVICE upon the following parties with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Richardo I. Kilptrick                      ecf@kaalaw.com

Office of the U.S. Trustee              via ecf email

And by depositing same in a United States postal box located in Detroit, Michigan, with the lawful amount of postage affixed thereto and addressed to:

Association of Municipal Engineers	John Runyan
Detroit Water & Sewerage Department,	Sachs, Waldman, P.C.
New Administration Building, Room 420	2211 East Jefferson, Suite 200
9300 West Jefferson	Detroit, Michigan 48207
Detroit, Michigan 48209	
Attn: Partho Ghosh	

Sanitary Chemists and Technicians  
Association  
P.O. Box 530353  
Livonia, Michigan 48153  
Attn: Saulius Simoliunas

Association of Detroit  
Engineers  
P.O. Box 2241  
Detroit, Michigan 48321  
Attn: Sanjay Patel

/s/ Kelisha Smith

**Kelisha Smith**, an employee of  
KILPATRICK & ASSOCIATES, P.C.  
Attorneys for Detroit Water and Sewerage  
Department  
615 Griswold, Suite 1305  
Detroit, Michigan 48226  
(313) 963-2581  
ecf@kaalaw.com

Dated: April 11, 2017

# EXHIBIT A



## **ARBITRATION**

DETROIT WATER AND  
SEWERAGE DEPARTMENT

-and-

Consolidated FMCS  
Cases No. 15-00471,  
15-00488 and 15-00492

ASSOCIATION OF DETROIT  
ENGINEERS (ADE), ASSOCIATION  
OF MUNICIPAL ENGINEERS (AME),  
SANITARY CHEMISTS AND  
TECHNICIANS ASSOCIATION (SCATA)

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### **SUBJECT**

Arbitrability of grievances challenging imposition of City Employment Terms.

### **ISSUE**

Are the Unions' grievances challenging DWSD's imposition of City Employment Terms upon their members in October 2012 arbitrable?

### **CHRONOLOGY**

Grievances submitted: October 24 and November 9, 2012

Stipulated facts, exhibits and briefs received: November 24, 2015

Decision issued: January 27, 2016

### **APPEARANCES**

For the Employer: Steven H. Schwartz, Attorney For  
the Unions: John R. Runyan, Attorney

### **SUMMARY OF FINDINGS**

The grievances are not arbitrable, because the Master Agreements from which the arbitrator derives his authority limit it to "interpretation, application or enforcement of [their] provisions" and the issue the grievances present is whether it was *unlawful* for DWSD to impose City Employment Terms in these bargaining units, which is not a matter that can be decided in this forum.

## EVIDENCE AND ARGUMENT

The Unions involved in this matter are three among more than twenty representing different groups of employees of the Detroit Water and Sewerage Department (DWSD), a "unitary department" of the City of Detroit that is funded (per City Charter) not by the City's general fund but by fees for services paid by Detroit residents and businesses and other municipalities that purchase them. The last Master Agreements between the City and these Unions were for original terms of 2001-2005 (ADE and AME) and 2005-2008 (SCATA), but they continued to govern the parties' relationships and terms and conditions of bargaining unit members' employment, pending negotiation of successor agreements, until the complicated series of events that led to this arbitration.

As a result of decades-long litigation related to DWSD violation of the federal Clean Water Act, the Department operated under supervision of the U. S. District Court, first for many years by Judge John Feikens; then, during times relevant to this matter, Judge Sean Cox. On November 4, 2011, Judge Cox issued an order imposing certain "labor terms" on DWSD and the various unions representing its employees to provide operational relief from "certain CBA provisions and work rules [that] have limited DWSD from maintaining long-term environmental compliance." Judge Cox's order kept all current (or, in these cases, rather ancient but still effective) CBAs covering DWSD employee in place but it struck and enjoined any of their provisions and work rules "that threaten short-term compliance," ordered DWSD thenceforth to "negotiate and sign its own CBAs that cover only DWSD employees," and prohibited "future DWSD CBAs from containing certain provisions that threaten long-term compliance." It also contained thirteen specific orders, the last of which was this:

The Court enjoins the Wayne County Circuit Court and the Michigan Employment Relations Commission from exercising jurisdiction over disputes arising from the changes ordered by this Court. The Court also enjoins the unions from filing any grievances, unfair labor practices, or arbitration demands over disputes arising from the changes ordered by this Court.

Confusion and disagreement ensued about the scope of such injunctions after the City and Michigan Treasury Department entered into a Financial Stability Agreement based on recommendations from a review team appointed by the governor under authority of the

Local Government and School District Fiscal Accountability Act (Public Act 4, 2011, MCL 141.1501). Pursuant to that Agreement and failure to negotiate or impose new labor agreements with unions that had expired contracts by July 16, 2012, the City adopted new "City Employment Terms for All Non-Uniform Employees" (CET), which included major economic downgrades including 10% wage reduction, elimination of merit and step increases, and health care plan design changes.

Before the City imposed the CET on any employee group, the Board of Water Commissions (BOWC) passed certain resolutions on June 27, 2012, including this one that in effect prospectively adopted the CET for the Unions involved in this arbitration:

... the Board of Water Commissioners acknowledges that for any union whose contract has expired without having a new ratified collective bargaining agreement, that union's terms and conditions of employment shall be deemed to include all terms and conditions of employment imposed by the City of Detroit pursuant to applicable laws and the Financial Stability Agreement including Annex D [addressing the CET] and with the addition of terms required and/or prohibited by the November 4, 2011 order of the Honorable Sean F. Cox until such time as either (1) a new Collective Bargaining Agreement is ratified for that union or (2) DWSD reaches impasse and imposes its own terms and conditions of employment upon that union.

In July the City imposed the CET on non-DWSD bargaining units, but despite the BOWC resolution prospectively adopting them for the DWSD, it did not impose them on DWSD units due to uncertainty about whether such action would violate Judge Cox's labor terms injunction. Judge Cox eliminated that uncertainty in a lengthy opinion and order issued on October 5, 2012 that included this declaration: the Court "DECLARES that the BOWC's June 26 [sic], 2012 Resolution is in accordance with this Court's November 4th Order and shall be effective and controlling until this Court orders otherwise." The City then imposed the CET on the DWSD unions still without new settled CBAs, including these three, which filed grievances challenging that action.

Judge Cox further clarified his October 5 declaration in an Opinion and Order issued on December 4, 2012. By then there had been other complicating legal developments: most significantly a referendum to repeal Public Act 4 had been certified for inclusion on the November 2012 general election ballot by the Board of State Canvassers on August 8, 2012, pursuant to an August 3, 2012 order by the Michigan Supreme Court. That suspended Public Act 4 pending the result of the referendum, and voters approved its repeal

on November 6. Judge Cox took note of those developments in his December 4 order clarifying his October 5 declaration that the BOWC resolution for prospective CET implementation was “in accordance with” his November 2011 order and “effective and controlling until this Court orders otherwise,” as follows:

In so declaring, this Court’s intent was to confirm that this Court’s November 4, 2011, Order does not stand as an obstacle to the DWSD implementing the CETs for DWSD employees — if permitted to do so under otherwise applicable law. The Court’s intent was to confirm that if the City of Detroit may impose the CETs on unions with CBAs with the City, pursuant to Public Act 4, the City’s Financial Stability Agreement with the State of Michigan, or some other authority, then the DWSD is not prohibited from doing so by virtue of this Court’s November 4, 2011 Order. In other words, the Court’s intent was to rule that, with respect to the ability to impose CETs, the DWSD-specific unions stand in the same shoes as other unions that have CBAs with the City of Detroit. At the time that the Court issued its October 5, 2012, Opinion and Order, there appeared to be no dispute that the City could impose its CETs.

After this Court’s October 5, 2012 Opinion & Order was issued, however, Public Act 4 was repealed by voter referendum. As the RCC notes in its Plan of Clarification, “the repeal of Public Act 4 and some Charter amendments in the City of Detroit lead to some uncertainty over the future of the City’s financial stability agreement and the potential impacts on imposed terms and conditions of employment that may take substantial time to resolve.”

This Court believes that it is now appropriate to clarify its ruling and shall declare that this Court’s November 4, 2011 Order does not stand as an obstacle to the DWSD implementing the CETs for DWSD employees — if permitted to do so under otherwise applicable law. As to this issue, the DWSD-unions stand in the same shoes as other unions with CBAs with the City of Detroit.

Also in December 2012, the legislature enacted Public Act 436, the Local Financial Stability and Choice Act, effective in March 2013. It created a new statutory structure for municipal financial emergency management and provided that actions of the state treasurer, governor and review teams taken under PA 4 were effective under the new statute and “need not be reenacted or reaffirmed in any manner to be effective under this act.”

The Unions’ challenge to CET imposition in October 2012 was that such action was taken without legal authority. That was explicit in SCATA’s grievance, which said “The imposition is unlawful, since there was no impasse in negotiations.” The AME grievance made the same point, albeit somewhat differently, claiming DWSD violated the Master Agreement “by unilaterally implementing changes in [its] terms and conditions . . . pursuant to City Employment Terms promulgated by the City . . . pursuant to PA 4 [and] this unilateral action is not excused by the provisions of [PA 4] or other state or federal laws.” For some reason the ADE grievance only addressed a single issue, cancellation of election day as a holiday, but that action was part of CET imposition and when the cases

were consolidated for arbitration that complaint became part of the broader argument that the wholesale reduction of benefits embodied in the CET was unlawful.

The Unions filed separate requests for FMCS arbitration panels for their grievances, which DWSD opposed, but after lengthy back-and-forth among the parties and FMCS, the parties agreed to consolidate the three grievances for decision by one arbitrator, but with DWSD reserving the right to contest arbitrability "either in court or before the arbitrator." It has done the latter, arguing the grievances are not arbitrable because the arbitrator lacks authority to rule on the issues they present, which are entirely *legal*, not contractual, in nature and thus should be adjudicated by MERC or a court. It bases this argument on these identical provisions in all the Master Agreements:

The arbitrator shall limit his/her decision strictly to the interpretation, application or enforcement of the provisions of this Agreement and shall be without power and authority to make any decision:

- a. Contrary to, or inconsistent with or modifying in any way, the terms of this Agreement [or doing several other things, none involved in this case] . . .

In the event a case is appealed to an arbitrator and he/she finds that he/she has no power or authority to rule on such case, the matter shall be referred back to the parties without decision or recommendation on the merits of the case.

The Unions' opposition to DWSD's challenge to arbitrability is three-fold, but ignores the contractual crux of that challenge in these Master Agreement provisions. First, they argue there is no basis for such a challenge in Judge Cox's various orders. Second, they argue there is no support for it in 2012 PA 436, because it was not intended to and could not retroactively validate actions purportedly taken pursuant to PA 4 *after that statute had been suspended* pending the November 2012 election. Third, they argue the right to arbitrate grievances under the Master Agreements was not eliminated by termination of those agreements upon CET imposition. The Union also presented thorough, erudite arguments about why such imposition was unlawful, and DWSD counter-argued that even though there should be no ruling on that issue, it *was* lawful under the Financial Stability Agreement and Public Acts 4 (2011) and 436 (2012). It is not necessary to further describe or analyze the parties' arguments on the merits, however, for the following reasons.

## DISCUSSION AND FINDINGS

As noted earlier, Judge Cox eventually clarified that his labor orders were not meant to preclude adjudication of *other* labor matters in other forums, including arbitration. He clarified that point again in a Final Stipulated Order Regarding Labor Matters issued on December 14, 2015, after that case finally was closed in other respects, as follows: "the injunction previously issued is modified to return jurisdiction to Wayne County Circuit Court, MERC and grievance arbitrators for those claims challenging DWSD actions which were neither ordered nor specifically permitted by Labor Orders." Judge Cox's orders did not endow this arbitrator with jurisdiction or authority beyond that conferred upon him by the CBAs that are the sole source of his authority, however, so DWSD's focus on the power and authority of arbitrators under the three Master Agreements involved in this arbitration is entirely appropriate.

Its reading of the limits of that authority also is entirely correct. The Agreements say "the arbitrator shall limit his/her decision strictly to the interpretation, application or enforcement of the provisions of this Agreement," has no power or authority to make any decision contrary to its terms, and shall refer back to the parties any case on which he finds has "no power or authority to rule." Only by disregarding and acting in contravention of that limitation could I decide anything other than a dispute about the meaning and application of *the provisions of the Master Agreement*.

The Unions argue these grievances *are* about interpretation, application or enforcement of contract provisions, in that since CET imposition the DWSD has violated scores of such provisions that were eliminated or modified to employees' disadvantage by the CET. Even approaching it that way does not make this a case of contract interpretation or application, however, because there is no dispute about the *meaning* of any provision of any of the Master Agreements, and whether or not all of their provisions should continue to *apply* to bargaining unit employees is a legal, not contractual, issue. DWSD unilaterally ceased compliance with many aspects of the Master Agreements when it imposed the CET. That is not in dispute, but it would be a pointless exercise for the arbitrator to rule that such action violated each of the affected provisions, because the real issue presented, as stated

explicitly in the SCATA grievance and only slightly less explicitly in the AME grievance, is whether imposition of the CET that replaced or significantly modified such contract provisions was *unlawful*.

That simply is not an issue the arbitrator has *contractual* power and authority to decide, so the grievances must be and hereby are referred back to the parties without decision or recommendation on their merits.



Paul Glendon, Arbitrator  
January 27, 2016

# EXHIBIT B



Date: August 2, 2016

To: David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System  
3026 W. Grand Blvd., Suite 2-700  
Detroit, MI 48202

RE: Case No.: C10 F-144  
Case No.: C10 C-060

Fax: 313-456-3681

From: Partho Ghosh, MS, PE  
President  
Association of Municipal Engineers (AME)  
WWTP, NAB, Room # 420  
9300 W. Jefferson  
Detroit, MI 48209

cc: John R. Runyan  
Steven Schwartz

**TOTAL 4 PAGES INCLUDING THIS PAGE**

Please acknowledge the receipt of this FAX by emailing to [ghoshpartho@hotmail.com](mailto:ghoshpartho@hotmail.com)

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 10-000075-MERC**

**Detroit, City of,  
Respondent**

**Case No.: C10 F-144**

**v  
Association of Municipal Engineers,  
Charging Party**

**Agency: Michigan Employment  
Relations Commission**

**Case Type: MERC Unfair Labor  
Practice**

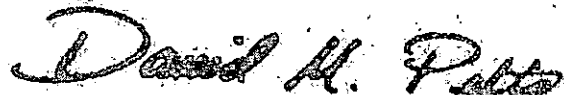
**ORDER REGARDING INACTIVE CASE FILE**

**TO: Association of Municipal Engineers**

Our records indicate that this case has been in inactive status for some time. As Charging Party, if you wish to proceed with this matter, please notify the Administrative Law Judge in writing within twenty-one (21) days. If you want the matter to remain in inactive status, you must provide a specific reason in writing and contact the other side and indicate whether or not they agree with your request.

If our office does not receive a written response by August 19, 2016, an Order closing the case will be issued.

**DATED: 7/29/2016**



**David M. Peltz**

**ADMINISTRATIVE LAW JUDGE**

Direct correspondence to the ALJ at:  
Michigan Administrative Hearing System  
3026 W. Grand Boulevard  
2nd Floor Annex, Suite 2-700  
Detroit, Michigan 48202  
Phone: 313.456.2713  
FAX: 313.456.3681

**COPY TO:**

Partho Ghosh  
John R. Ruriyan  
Lamont Satchel  
Steven Schwartz

10-000075

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Detroit, City of,  
Respondent**

**v**

**Association of Municipal Engineers,  
Charging Party**

**Docket No.: 10-000074-MERC**

**Case No.: C10 C-060**

**Agency: Michigan Employment  
Relations Commission**

**Case Type: MERC Unfair Labor  
Practice**

**ORDER REGARDING INACTIVE CASE FILE**

**TO: Association of Municipal Engineers**

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Phone: 313.456.2713  
FAX: 313.456.3681

**COPY TO:**

**John R. Runyan  
Lamont Satchel  
Steven Schwartz  
Partho Ghosh**

**10-000074**

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 10-000074-MERC**

**Detroit, City of,  
Respondent**

**Case No.: C10 C-060**

**v**

**Agency: Michigan Employment  
Relations Commission**

**Association of Municipal Engineers,  
Charging Party**

**Case Type: MERC Unfair Labor  
Practice**

**ORDER REGARDING INACTIVE CASE FILE**

**TO: Association of Municipal Engineers**

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**DATED: 7/29/2016**



**David M. Peltz**

**ADMINISTRATIVE LAW JUDGE**

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3026 W. Grand Boulevard  
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Detroit, Michigan 48202  
Phone: 313.456.2713  
FAX: 313.456.3681

**COPY TO:**

**John R. Runyan  
Lamont Satchel  
Steven Schwartz  
Partho Ghosh**

**10-000074**

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 10-000075-MERC**

**Detroit, City of,  
Respondent**

**Case No.: C10 F-144**

**v**

**Agency: Michigan Employment  
Relations Commission**

**Association of Municipal Engineers,  
Charging Party**

**Case Type: MERC Unfair Labor  
Practice**

**ORDER REGARDING INACTIVE CASE FILE**

**TO: Association of Municipal Engineers**

Our records indicate that this case has been in inactive status for some time. As Charging Party, if you wish to proceed with this matter, please notify the Administrative Law Judge in writing within twenty-one (21) days. If you want the matter to remain in inactive status, you must provide a specific reason in writing and contact the other side and indicate whether or not they agree with your request.

If our office does not receive a written response by August 19, 2016, an Order closing the case will be issued.

**DATED: 7/29/2016**



**David M. Peltz  
ADMINISTRATIVE LAW JUDGE**

Direct correspondence to the ALJ at:  
Michigan Administrative Hearing System  
3026 W. Grand Boulevard  
2<sup>nd</sup> Floor Annex, Suite 2-700  
Detroit, Michigan 48202  
Phone: 313.456.2713  
FAX: 313.456.3681

**COPY TO:**

**Partho Ghosh  
John R. Runyan  
Lamont Satchel  
Steven Schwartz**

**10-000075**

# EXHIBIT C

August 2, 2016

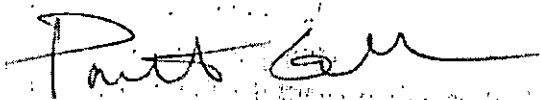
Honorable David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System  
Michigan Employment Relations Commission (MERC)  
3026 W. Grand Blvd., Suite 2-700  
Detroit, MI 48202

RE: Case No.: C10 F-144  
Case No.: C10 C-060

Dear Judge Peltz:

Association of Municipal Engineers (AME) has received the subject documents (attached). Please be advised that AME wish to proceed with both the subject matters.

Sincerely,



Partho Ghosh, MS, PE  
President  
Association of Municipal Engineers (AME)  
WWTP, NAB, Room # 420  
9300 W. Jefferson  
Detroit, MI 48209

# EXHIBIT D





RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

CHRIS SEPPANEN  
DIRECTOR

January 9, 2017

John R. Runyan  
Sachs Waldman  
2211 E Jefferson Ave Ste 200  
Detroit, MI 48207-4160

Re: City of Detroit -and- Association of Municipal Engineers  
Case No. C11 E-111; Docket No. 11-000837-MERC

To the Parties:

The above unfair labor practice charge was filed on July 14, 2011, by the Association of Municipal Engineers against the City of Detroit. The charge was assigned to me. At the time the charge was filed, Charging Party represented a bargaining unit of engineering employees employed in several City of Detroit departments, including the Department of Water & Sewerage (DWSD). The parties were attempting to negotiate a new collective bargaining agreement and Respondent was demanding that Charging Party agree to certain concessions that had been accepted or imposed upon other bargaining units of City employees. Charging Party was resisting concessions, arguing, among other things, that its situation was different because the DWSD's revenues came from fees charged for its services rather than taxes. The charge in Case No. C11 E-111/ Docket No. 11-000837-MERC alleged that Respondent violated its duty to bargain by failing to respond to Charging Party's information requests. I have attached a copy of the charge and its attachments to this letter.

At the time this charge was filed, the parties were awaiting decision on another unfair labor practice charge filed by Charging Party against Respondent, Case No. C10 A-012, which also alleged that Respondent had unlawfully failed to provide Charging Party with information. This charge was assigned to and had been heard by Administrative Law Judge (ALJ) David Peltz. Because the information requests attached to the charge in Case No. C11 E-111/ Docket No. 11-000837-MERC were similar to some of the information requests at issue in Case No. C10 A-012, I did not schedule a hearing on the new charge. On September 9, 2011, ALJ Peltz issued a Decision and Recommended Order in Case No. C10 A-012 in which he recommended that the charge be dismissed. The ALJ based his decision on several grounds, including that Charging Party had not established that any of the information that it had not received was relevant to collective bargaining or contract administration. On October 11, 2011, Charging Party filed exceptions to this decision with the Commission.

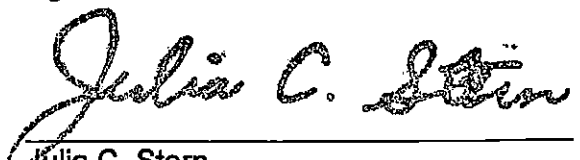
That charge was still pending before the Commission, and I had not yet scheduled a hearing for C11 E-111/ Docket No. 11-000837-MERC, in July 2013, when Respondent filed a petition for bankruptcy. Both charges were then put on hold pending completion of the bankruptcy proceeding.

On August 26, 2015, I wrote to the parties notifying them the charge in Case No. C11 E-111/ Docket No. 11-000837-MERC, like other charges pending before me that had been in adjourned without date because of the bankruptcy proceeding, were being returned to active status. This letter stated:

If any party believes that placing this case back on our active docket would be in contravention of an order issued by the U.S. Bankruptcy Court or any other lawfully issued order, that party shall notify the ALJ assigned to the case of its position in writing and provide supporting documentation no later than twenty-eight days from [the date of the letter.] . . . If there is no response to this order, the ALJ will schedule an evidentiary hearing or a prehearing conference, or, if applicable, place this matter on the decisional docket.

Although there was no response to this order, I did not schedule a hearing or conference because Case No. C10 A-012 was still pending. However, on December 15, 2016, the Commission issued an order dismissing that charge. A copy of that order and ALJ Peltz's Decision and Recommended Order is also attached to this charge.

Although there are several charges currently pending involving these parties, it appears to me that subsequent events and the passage of time have likely made this particular charge moot. If Charging Party wants to proceed with the charge, it should notify me in writing, along with an explanation of why the charge in Case No. C11 E-111/ Docket No. 11-000837-MERC is not moot, within twenty days of the date of this letter. If I do not receive a response to this letter, the charge will be closed as withdrawn.



Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

cc: Partho Gosh  
Steven Schwartz  
Michael Hall, Director

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RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

CHRIS SEPPANEN  
DIRECTOR

January 30, 2017

Partho Ghosh, President  
Association of Municipal Engineers  
WWTP, NAB, Room #420  
9300 W. Jefferson  
Detroit, MI 48209

Re: City of Detroit (Department of Water & Sewerage) -and- Association of Municipal Engineers  
Case No. C11 E-111; Docket No. 11-000837-MERC

Dear Mr. Ghosh:

I received your response to my January 9, 2017, letter asking if Charging Party still wanted to proceed with this charge and, if so, why the charge was not moot. Your response identifies some of the information initially requested as relevant to a pending charge "regarding imposition of furloughs." It appears that AME has a pending charge on this subject of which I was not aware. According to ALJ Peltz, the charge is Case No. C10 C-60; Docket No. 10-000074-MERC, was initially assigned to ALJ O'Connor, and was reassigned to him after ALJ O'Connor left State employment. According to ALJ Peltz, during a telephone conference he held in August 2016, the parties to Case No. C10 C-60 asked him to put the charge in adjourned without date status pending a ruling by the Bankruptcy court on the scope of the proof of claims the AME filed with the Court during the City's bankruptcy. I believe that Mr. Runyan represented the AME during this conference. Since ALJ Peltz has not received any further communication about Case No. C10 C-60, that charge remains open but adjourned without date. Given these circumstances, I will keep Case No. C11 E-111; Docket No. 11-000837-MERC open but adjourned without date until Case No. C10 C-60 is either closed or reactivated.

Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

CC: Steven Schwartz  
Michael Hall  
Case file in Case No. C10 C-60; Docket No. 10-000074-MERC

FEB 01 2017

# EXHIBIT E

## James M. McArdle

---

**From:** Steven H. Schwartz <[steven@shslawyers.com](mailto:steven@shslawyers.com)>  
**Sent:** Wednesday, February 08, 2017 12:25 PM  
**To:** John Runyan; Partho Ghosh  
**Cc:** Peltz, David (LARA); Stern, Julia (LARA); James M. McArdle; Richardo I. Kilpatrick  
**Subject:** AME Cases Pending Before MERC

This is in response to Judge Stern's January 30, 2017 letter to Mr. Ghosh regarding Case C11 E-111. In that letter, she alludes to Case C10 C-60, an AME case pending before Judge Peltz. In our October 14, 2016 email (Subject: MERC cases subject to Bankruptcy Court Order), we attached the Bankruptcy Court's October 14, 2016 Order and asserted that MERC Cases No. C10 C-060/C10 F-144 are barred by that Order.

If AME does not voluntarily dismiss its Unfair Labor Practice Charges in Case No. C11 E-111 and Case No. C10 C-60/C10 F-144, by Wednesday, February 15, 2017, DWSD will file an objection in front of the U. S. Bankruptcy Court to these Unfair Labor Practice Charges and will ask the Court to award attorney's fees and sanctions against AME and Mr. Runyan, if he represents AME in any of those cases.

Steven H. Schwartz  
26555 Evergreen Road, Suite 1240  
Southfield, MI 48076  
Email: [steven@shslawyers.com](mailto:steven@shslawyers.com)  
Phone: (313) 965-8919  
Fax: (313) 965-4480  
Cell: (313) 590-3395

# EXHIBIT F

EXHIBIT F

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT WATER AND SEWERAGE DEPARTMENT ,  
Respondent-Public Employer,

-and-

ALJ Travis Calderwood

SANITARY CHEMISTS AND TECHNICIANS  
ASSOCIATION, Charging Party-Labor Organization,  
Case No. C16 F-068; Docket No. 16-018889-MERC

-and-

ASSOCIATION OF DETROIT ENGINEERS, Charging  
Party-Labor Organization, Case No. C16 F-070;  
Docket No. 16-018890-MERC.

---

APPEARANCES:

Steven H. Schwartz & Associates, P.L.C., by  
Steven H. Schwartz for Respondent

Sachs Waldman, P.C. by  
John R. Runyan for Charging Parties

---

**WRITTEN EXCEPTIONS OF CHARGING PARTIES TO DECISION  
AND RECOMMENDED ORDER OF ADMINISTRATIVE  
LAW JUDGE ON MOTIONS FOR SUMMARY DISPOSITION**

Charging Parties Sanitary Chemists and Technicians Association (SCATA) and Association of Detroit Engineers (ADE) file these written exceptions pursuant to Rule 423.176 of the General Rules of the Department of Licensing and Regulatory Affairs, Employment Relations Commission; to the Decision and Recommended Order of the Administrative Law Judge dated February 3, 2017 on Motions for Summary Disposition.

As explained in more detail in the attached brief, which is incorporated herein by reference, Charging Parties except to the Decision and Recommended Order of the Administrative Law Judge on the following grounds:

1. The Administrative Law Judge erred in deciding Charging Parties' unfair labor practice charges on Respondent's Motions for Summary Disposition instead of conducting a full hearing on the charges;

2. The Administrative Law Judge erred in concluding that the "only exception to the strict six month statute of limitations as set forth in Section 16(1) of the Act, is to allow a public employee who is prevented from filing a charge because of service in the armed forces, six months from the date of discharge from service and not from (the) date that the public employee knew or should have known (of) the acts giving rise to the charge." (Decision and Recommended Order, p. 6).

3. The Administrative Law Judge erred in concluding that the six months statute of limitations for filing an unfair labor charge was unaffected by United States District Judge Sean F. Cox's November 4, 2011 Order, enjoining "the Michigan Employment Relations Commission from exercising jurisdiction over disputes arising from the changes ordered by this Court." (Exhibit C to Brief, p. 7).

4. The Administrative Law Judge erred in concluding that the six months statute of limitations for filing an unfair labor practice charge was unaffected by United States District Judge Sean F. Cox's November 4, 2011 Order which "enjoins the unions from filing any . . . unfair labor practice (charges) . . . over disputes arising from the changes ordered by this Court." (Exhibit C to Brief, p. 7).

5. The Administrative Law Judge erred in concluding that the six months statute of



limitations for filing unfair labor practice charges was unaffected by the July 25, 2013 Order of United States Bankruptcy Judge Steven W. Rhodes which stayed any judicial, administrative or other proceeding against the City of Detroit.

6. The Administrative Law Judge erred in concluding that the six month statute of limitations for filing unfair labor practice charges was unaffected by Respondent DWSD's consistent position that its unilateral implementation of the City of Detroit Employment Terms (CET) was pursuant to Judge Cox's Order and that Charging Parties Association of Detroit Engineers (ADE) and Sanitary Chemists and Technicians Association (SCATA) were enjoined from challenging the same.

7. The Administrative Law Judge erred in replying upon the Local Government and School District Fiscal Accountability Act, MCLA §141.1501 *et seq.* [Public Act 4] and the Local Financial Stability and Choice Act, Public 436 of 2012 (PA 436).

8. The Administrative Law Judge erred in relying upon the fact that the Charging Parties had filed fact finding petitions with MERC during the time that Judge Cox injunction remained in effect – suggesting that this action undermined their claim for tolling the six month statute of limitations for filing unfair labor practice charges (Decision and Recommended Order, p. 6) – because fact finding is an integral part of the collective bargaining process which was ordered by rather than enjoined by Judge Cox.

SACHS WALDMAN, P.C.

BY: 

JOHN R. RUNYAN (P19763)

Attorneys for Charging Parties-Labor Organizations

2211 E. Jefferson Ave., Ste. 200

Detroit, Michigan 48207

(313) 496-9435

Dated: February 25, 2017