

**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

**MOTION OF THE GREAT LAKES WATER AUTHORITY AS
SUCCESSOR IN INTEREST TO THE CITY OF DETROIT WATER AND
SEWERAGE DEPARTMENT FOR ENTRY OF AN ORDER ENFORCING
THE PLAN OF ADJUSTMENT INJUNCTION AND THE BAR DATE
ORDER AGAINST THE ASSOCIATION OF MUNICIPAL ENGINEERS
AND PARTHO GHOSH**

NOW COMES the Great Lakes Water Authority as successor in interest to the City of Detroit Water and Sewerage Department (“GLWA”), by and through its attorneys Kilpatrick & Associates, P.C., and for its Motion for Entry of an Order Enforcing the Plan of Adjustment Injunction and the Bar Date Order Against the Association of Municipal Engineers and Partho Ghosh states as follows:

I. Introduction

1. On February 21, 2014, the Association of Municipal Engineers (“AME”) and Partho Ghosh (“Mr. Ghosh”), AME’s President, 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 GLWA'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 chose not to include in its proof of claim three pending Unfair Labor Practice Charges (the "Charges") filed on behalf of AME with the MERC, Case Numbers C10 F-144, C10 C-060, and C11 E-111.

2. 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.

3. 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.

4. On August 2, 2016, Mr. Ghosh 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.

5. The Charges before MERC arose from AME's challenge to DWSD's elimination of longevity pay and furlough days, but were not included in AME's proof of claim.

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

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

8. Despite various court rulings, 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 AME's then-attorney John Runyan on January 9, 2017 and to Mr. Ghosh on January 30, 2017 are attached hereto as Exhibit D.

9. On February 8, 2017, GLWA'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 GLWA nor its attorneys have received a dismissal of the MERC charges filed by AME. A true and correct copy

of the email sent by Mr. Schwartz to Partho Ghosh and John Runyan is attached hereto as Exhibit E.

II. Background

A. The City's Bankruptcy Case

10. On July 18, 2013 ("Petition Date"), the City filed this chapter 9 case.

11. On October 10, 2013, the City filed its Motion Pursuant to Section 105, 501 and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), for Entry of an Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof ("Bar Date Motion"). **[Doc. No. 1146]**.

12. On November 21, 2013, this Court entered an order approving the Bar Date Motion ("Bar Date Order"). **[Doc. No. 1782]**. The Bar Date Order established February 21, 2014 ("General Bar Date") as the deadline for filing claims against the City. Paragraph 6 of the Bar Date Order states that the

following entities must file a proof of claim on or before the Bar Date...any entity: (i) whose prepetition claim against the City is not listed in the List of Claims or is listed as disputed, contingent or unliquidated; and (ii) that desires to share in any distribution in this bankruptcy case and/or otherwise participate in the proceedings in this bankruptcy case associated with the confirmation of any chapter 9 plan of adjustment proposed by the City...

Bar Date Order ¶ 6.

13. Paragraph 22 of the Bar Date Order also provided that:

Pursuant to sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2), **any entity that is required to file a proof of claim in this case pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Order with respect to a particular claim against the City, but that fails properly to do so by the applicable Bar Date, shall be forever barred, estopped and enjoined from: (a) asserting any claim against the City or property of the City** that (i) is in an amount that exceeds the amount, if any, that is identified in the List of Claims on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature or a different classification or priority than any Scheduled Claim identified in the List of Claims on behalf of such entity (any such claim under subparagraph (a) of this paragraph being referred to herein as an “Unscheduled Claim”); (b) voting upon, or receiving distributions under any Chapter 9 Plan in this case in respect of an Unscheduled Claim; or (c) with respect to any 503(b)(9) Claim or administrative priority claim component of any Rejection Damages Claim, asserting any such priority claim against the City or property of the City.

Bar Date Order ¶ 22 (emphasis added).

14. In accordance with the Bar Date Order, notice of the General Bar Date was published in the Detroit News, the Detroit Free Press, USA Today and the Wall Street Journal. **[Doc. Nos. 3007, 3008, 3009].**

15. On October 22, 2014, the City filed its Eighth Amended Plan of the Adjustment of Debts of the City of Detroit (October 22, 2014) (“Plan”). **[Doc. No. 8045].**

16. On November 12, 2014, this Court entered an order confirming the Plan (“Confirmation Order”). **[Doc. No. 8272].**

17. The discharge provision in the Plan provides:

Except as provided in the Plan or in the Confirmation Order, the rights

afforded under the Plan and the treatment of Claims under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims arising on or before the Effective Date. Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date, discharge the City from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (ii) the Holder of a Claim based on such debt has accepted the Plan.

Plan, Art. III.D.4.

18. The Plan injunction set forth in Article III.D.5 also provides in pertinent part:

Injunction

On the Effective Date, except as otherwise provided herein or in the Confirmation Order,

a. all Entities that have been, are or may be holders of Claims against the City...shall be permanently enjoined from taking any of the following actions against or affecting the City or its property...

1. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against or affect the City of its property...

5. proceeding in any manner in any place whatsoever that does not conform or comply with the provisions of the Plan or the settlements set forth herein to the extent such settlements have been approved by the Bankruptcy Court in connection with Confirmation of the Plan; and

6. taking any actions to interfere with the

implementation or consummation of the Plan.

Plan, Article III.D.5 (emphasis supplied).

19. The Court retained jurisdiction to enforce the Plan injunction and to resolve any suits that may arise in connection with the consummation, interpretation or enforcement of the Plan. Plan, Art. VII. F, G, I.

B. AME and Mr. Ghosh Continued to Prosecute Pre-Petition Causes of Action Despite Losing at Arbitration, Having Their Grievance Dismissed by the District Court and Having Their Claim Disallowed by the Bankruptcy Court

20. AME and Mr. Ghosh filed the Charges in 2010 and 2011 with the Michigan Bureau of Employment Relations Commission (“MERC”).

21. AME and Mr. Ghosh subsequently filed a proof of claim based on the pre-petition grievances on February 21, 2014.

22. GLWA, successor in interest to the Detroit Water & Sewerage Department, appeared before MERC and informed MERC of the pending chapter 9 bankruptcy.

23. On February 19, 2016, the United States District Court for the Eastern District of Michigan dismissed AME’s grievance after an arbitrator found that it lacked jurisdiction to hear the grievance. *See*, Exhibit A, *supra*.

24. Despite this, when an administrative law judge with the MERC issued orders on July 29, 2016, related to the three Charges filed by AME with the MERC, Case Numbers C10 F-144, C10 C-060, and C11 E-111, that were not

included in AME's proof of claim, AME and Mr. Ghosh on August 2, 2016, informed the MERC judge that they wished to proceed with the Charges. *See*, Exhibits B and C, *supra*.

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

26. As of the date of the filing of this Motion, AME and Mr. Ghosh continue to prosecute their pre-petition claims before the MERC.

27. Again, on August 11, 2017, an administrative law judge issued an Order Regarding Inactive Case File to AME for cases C 10-C-060 and C 10 F-144, and gave the charging party, AME, twenty-one (21) days to notify the judge that it wanted to proceed with the Charges. Mr. Ghosh responded by resending the August 2, 2016, letter indicating that AME wanted to proceed on both subject matters. True and correct copies of Judge Peltz's letter, the two orders and Mr. Ghosh's response on behalf of AME are attached hereto as Exhibit F.

28. A hearing is set for November 1, 2017, before MERC administrative law judge David Peltz, on the three Charges to consider the merits and the monetary remedies requested by AME.

III. Argument

29. AME and Mr. Ghosh violated the Plan injunction and discharge provisions when it failed to dismiss the charges against GLWA/DWSD pending

before the MERC. It continues to violate them by continuing to prosecute the charges before the MERC. AME's claims against GLWA/DWSD are discharged and it is enjoined from, among other things, commencing any action against GLWA/DWSD with respect to those claims. *See*, Plan, Art. III.D.4, p. 50; Plan, Art. III.D.5 pp. 50-51.

30. Furthermore, AME filed a proof of claim that was disallowed by this Court on October 14, 2016. [***See Doc. Number 11627***]

31. The charges still pending before the MERC relate to pre-petition actions that should have been included in the proof of claim that AME filed in this case.

IV. Conclusion

32. GLWA/DWSD respectfully requests that this Court enter an order in substantially the same form as the one attached as Exhibit 1 (a) granting the Motion; (b) requiring AME and Mr. Ghosh to dismiss, or cause to be dismissed, with prejudice, the charges pending before the MERC; and (c) permanently barring, estopping and enjoining AME and Mr. Ghosh from asserting any claims or charges described in the pending charges or relating to any alleged pre-petition conduct by GLWA/DWSD forming the basis for the charges before the MERC, against the GLWA/DWSD or its property. Concurrence to the relief was not sought because it was impractical.

KILPATRICK & ASSOCIATES, P.C.

/s/ James M. McArdle

RICHARDO I. KILPATRICK (P35275)

JAMES M. McARDLE (ARDC 6203305)

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successor in interest to the City of Detroit Water
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Detroit, MI 48226

(313) 963-2581

ecf@kaalaw.com

Dated: November 1, 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 OF THE GREAT LAKES WATER
AUTHORITY AS SUCCESSOR IN INTEREST TO THE CITY OF
DETROIT WATER AND SEWERAGE DEPARTMENT FOR ENTRY OF
AN ORDER ENFORCING THE PLAN OF ADJUSTMENT INJUNCTION
AND THE BAR DATE ORDER AGAINST THE ASSOCIATION OF
MUNICIPAL ENGINEERS AND PARTHO GHOSH**

This matter having come before the Court on the Motion of Great Lake Water Authority as successor in interest to the City of Detroit Water and Sewerage Department for the entry of an Order (I) Enforcing the Plan of Adjustment Injunction and Bar Date Order and (II) Requiring the Association of Municipal Engineers and Partho Ghosh to Dismiss with Prejudice their charges pending before the Michigan Bureau of Employment Relations Commission, 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 within five (5) days of the entry of this Order, the Association of Municipal Engineers and Partho Ghosh shall dismiss, or

cause to be dismissed, with prejudice Case Numbers C10 F-144, C10 C-060, and C11 E-111 (the “Charges”), filed with and presently pending before the Michigan Bureau of Employment Relations Commission;

IT IS FURTHER ORDERED that the Association of Municipal Engineers and Partho Ghosh are permanently barred, estopped and enjoined from asserting any claims described in the Charges, including but not limited to Case Numbers C10 F-144, C10 C-060, and C11 E-111, or the alleged conduct forming the basis for the Charges, against the Great Lakes Water Authority as successor in interest to the Detroit Water and Sewerage Department or property of the Great Lakes Water Authority as successor in interest to the Detroit Water and Sewerage Department or in any other action or proceeding; and

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

**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 THE GREAT LAKES WATER AUTHORITY AS
SUCCESSOR IN INTEREST TO CITY OF DETROIT WATER AND
SEWERAGE DEPARTMENT'S MOTION OF THE GREAT LAKES
WATER AUTHORITY AS SUCCESSOR IN INTEREST TO THE CITY OF
DETROIT WATER AND SEWERAGE DEPARTMENT FOR ENTRY OF
AN ORDER ENFORCING THE PLAN OF ADJUSTMENT INJUNCTION
AND THE BAR DATE ORDER AGAINST THE ASSOCIATION OF
MUNICIPAL ENGINEERS AND PARTHO GHOSH**

PLEASE TAKE NOTICE THAT the Great Lakes Water Authority as successor in interest to the City of Detroit Water and Sewerage Department, by and through its undersigned counsel, has filed its Motion for Entry of an Order Enforcing the Plan of Adjustment Injunction and the Bar Date Order Against the Association of Municipal Engineers and Partho Ghosh. Through this Motion, the Great Lakes Water Authority as successor in interest to the City of Detroit Water and Sewerage Department

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 you or your attorney must:

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

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

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/ James M. McArdle

RICHARDO I. KILPATRICK (P35275)

JAMES M. McARDLE (ARDC 6203305)

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successor in interest to Detroit Water and

Sewerage Department

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Dated: November 1, 2017

**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

Gloria Vicari states that on this 1st day of November 2017 she served a copy of the GREAT LAKES WATER AUTHORITY AS SUCCESSOR IN INTEREST TO THE DETROIT WATER AND SEWERAGE DEPARTMENT'S MOTION OF THE GREAT LAKES WATER AUTHORITY AS SUCCESSOR IN INTEREST TO THE CITY OF DETROIT WATER AND SEWERAGE DEPARTMENT FOR ENTRY OF AN ORDER ENFORCING THE PLAN OF ADJUSTMENT INJUNCTION AND THE BAR DATE ORDER AGAINST THE ASSOCIATION OF MUNICIPAL ENGINEERS AND PARTHO GHOSH, 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. Kilpatrick 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
Detroit Water & Sewerage Department,
New Administration Building, Room 420
9300 West Jefferson
Detroit, Michigan 48209

Attn: Partho Ghosh

/s/ Gloria Vicari

Gloria Vicari, an employee of
KILPATRICK & ASSOCIATES, P.C.

Attorneys for the Great Lakes Water Authority as
successor in interest to Detroit Water and
Sewerage Department

615 Griswold, Suite 1305

Detroit, Michigan 48226

(313) 963-2581

ecf@kaalaw.com

Dated: November 1, 2017

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD HAYES,

Plaintiff,

v.

CITY OF DETROIT WATER &
SEWERAGE DEPARTMENT,

Defendant.

Case No. 14-14622

Honorable Laurie J. Michelson

Magistrate Judge Mona K. Majzoub

JUDGMENT

In accordance with the Court's Order dated February 19, 2016, the Court hereby
DISMISSES WITHOUT PREJUDICE the claims remaining in this case following this
Court's November 25, 2015 opinion. The case is DISMISSED.

s/Laurie J. Michelson

LAURIE J. MICHELSON

UNITED STATES DISTRICT JUDGE

Dated: February 19, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys
and/or parties of record by electronic means or U.S. Mail on February 19, 2016.

s/Jane Johnson

Case Manager to

Honorable Laurie J. Michelson

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)

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

EXHIBIT B

**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. Pelz

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. Runyan
Lamont Satchel
Steven Schwartz

10-000075

**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

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DATED: 7/29/2016



David M. Peltz

ADMINISTRATIVE LAW JUDGE

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Michigan Administrative Hearing System
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2nd Floor Annex, Suite 2-700
Detroit, Michigan 48202
Phone: 313.456.2713
FAX: 313.456.3681

COPY TO:

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

10-000074

EXHIBIT C

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.

August 2, 2016

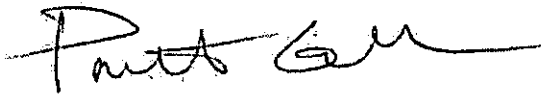
Honorable David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System
Michigan Employment Relations Commission (MERC)
3026 W. Grand Blvd., Suite 2-700
Detroit, MI 48202

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

**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

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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

COPY TO:

Partho Ghosh
John R. Runyan
Lamont Satchel
Steven Schwartz



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: 313.456.3881

10-000075

**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**

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DATED: 7/29/2016



David M. Peltz

ADMINISTRATIVE LAW JUDGE

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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:

John R. Runyan
Lamont Satchel
Steven Schwartz
Partho Ghosh

10-000074

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.

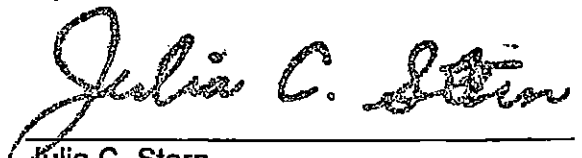
That charge was still pending before the Commission, and I had not yet scheduled a hearing for C11 E-111/ Docket No. 11-000837-MERC, in July 2013, when Respondent filed a petition for bankruptcy. Both charges were then put on hold pending completion of the bankruptcy proceeding.

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

EXHIBIT E

James M. McArdle

From: Steven H. Schwartz <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
Phone: (313) 965-8919
Fax: (313) 965-4480
Cell: (313) 590-3395

EXHIBIT F

Date: August 11, 2017

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

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

cc: Steven Schwartz

TOTAL 7 PAGES INCLUDING THIS PAGE

Please acknowledge the receipt of the documents by emailing to ghoshpartho@hotmail.com

August 11, 2017

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. Please note that AME, in the past, responded to proceed with both the subject matters as indicated in AME's August 2, 2016 response (attached). Please note that City of Detroit and DWSD (not GLWA) were involved for both the cases.

Sincerely,



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

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 10-000074-MERC

**City of Detroit and Water & Sewerage
Department
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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If our office does not receive a written response by August 15, 2017, an Order closing the case will be issued.

DATED: 7/25/2017



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: 313.456.4790

COPY TO:

**Partho Ghosh
Steven Schwartz**

10-000074

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 10-000075-MERC

**City of Detroit and Water & Sewerage
Department
Respondent**

Case No.: C10 F-144

v

**Agency: Michigan Employment
Relations Commission**

**Association of Municipal Engineers,
Charging Party**

**Case Type: MERC Unfair Labor
Practice**

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Detroit, Michigan 48202
Phone: 313.456.2712
FAX: 313.456.3681

**COPY TO:
Partho Ghosh
Steven Schwartz**

10-000075

August 2, 2016

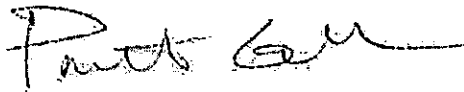
Honorable David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System
Michigan Employment Relations Commission (MERC)
3026 W. Grand Blvd., Suite 2-700
Detroit, MI 48202

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

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Sincerely,



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

**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**


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David M. Peltz

ADMINISTRATIVE LAW JUDGE

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COPY TO:

Partho Ghosh
John R. Runyan
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Steven Schwartz

10-000075

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 10-000074-MERC

**Detroit, City of,
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