

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

In re: Bankruptcy Case No. 13-53846  
City of Detroit, Michigan, Judge Thomas J. Tucker  
Debtor. Chapter 9  
\_\_\_\_\_ /

**MOTION OF DETROIT FIRE FIGHTERS ASSOCIATION (DFFA)  
FOR THE ENTRY OF AN ORDER ENFORCING THE PLAN OF  
ADJUSTMENT AGAINST:**

**CHRISTOPHER MCGHEE  
NORMAN BROWN  
CRAIG BROWN  
JAMES WASHINGTON  
SHANNON FERGUSON  
JUNIUS PERRY, AND  
ORLANDO POTTS**

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## GUIDE TO PARTIES AND CITATIONS

For purposes of readability and concision, the following abbreviations, acronyms, and citations are used in this Motion:

1. “**Bankruptcy Court**” refers to the United States Bankruptcy Court, Eastern District of Michigan.

2. “**CBA**” refers to collective bargaining agreements generically.

3. The “**2014 CBA**” refers specifically to the 2014-2019 collective bargaining agreement and its extension to July 2020, between the DFFA and the City. *See POA below.*

4. “**City**” refers to the City of Detroit.

5. “**FAC**” refers to Plaintiffs’ First Amended Complaint, Ex. 6A. References to the FAC are cited by paragraph, such as “¶ 50.”

6. “**Confirmation Order**” or “**CO**” refers to the Order Confirming Eighth Amended Plan for the Adjustment of Debts for the City of Detroit, Docket #8272. The CO and Plan of Adjustment (see no. 15 below) are collectively referred to as the “**POA**.”

7. “**DFD**” refers to the Detroit Fire Department.

8. “**DFFA**” or “**Movant**” is the Defendant Detroit Fire Fighters Association, Local 344.

9. “**DFFA Officers**” refer to Defendant DFFA President Thomas Gehart, Vice President William Harp, Secretary John Cangialosi, Treasurer Christopher Smith, and former president Michael Nevin.

10. “**Effective Date**” is December 10, 2014, the date the POA became effective. (Docket #8649).

11. “**EM**” refers to Emergency Manager Kevin Orr who was appointed by the Governor in March 2013 pursuant to MCL 141.1549(1).

12. “**Grand Bargain**” refers to a significant, complicated feature of the confirmed POA, that provided, among other things, that the PFRS (see below) would be funded by other entities than the City, including the State. (*See, e.g.,* Docket #8272, pp. 33, 38-39, 65; Docket #8993, pp. 40-41, 104, 117).

**13. “PFRS”** refers to Police and Fire Retirement System of the City of Detroit.

**14. “Plaintiffs”** refer to Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts.

**15. “Plan Document”** refers to the POA-provided new plan for the PFRS, which is called the Combined Plan for the Police and Fire Retirement System of the City of Detroit, Michigan (Amendment and Restatement Effective July 1, 2014).

**16. “POA”**-- the City Bankruptcy Plan of Adjustment which included a ten (10) year injunction against any pension changes. (Docket #8045). By its terms, the 2014 CBA is incorporated into the POA.

**17. “WCCC”** -- Wayne County Circuit Court.

**18. “WCCC suit”** -- Plaintiffs’ WCCC lawsuit, *Christopher McGhee, et al., v. City of Detroit, et al.*, (WCCC No. 20-006272-CD).

- Q: [Defense Counsel]...you ask the Court to give you, restore the seniority that existed before you went on duty disability [2005], *to award you 15 years of seniority while you were on duty disability* [2005 to 2018], *and to increase your pension benefits based on the new calculations of your seniority*. That's one of the things you want from the Court. Am I correct on that?

A: Yes.

-- Ex. 6H, *Plaintiff Orlando Potts*, deposition testimony at p. 62 in WCCC suit (emphasis added)

- “. . . the POA altered the previously-existing pension-related rights and other rights of many of the City's active and retired employees.”

-- Hon. Thomas J. Tucker,  
United States Bankruptcy Judge

*In re: City of Detroit, Michigan*  
(Case No. 13-53846), Docket  
#13274, p. 18.



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The DFFA (“DFFA” or “Movant”) files this *Motion for the Entry of an Order Enforcing the POA* (“Motion”) against Plaintiffs.

In support of this Motion, the Movant respectfully state as follows:

## **I. INTRODUCTION**

This is a Motion to bar a pending WCCC suit.

The suit was filed by seven (7) current and former fire fighters. Each Plaintiff took extended duty disability retirements from the City *prior to* the City’s bankruptcy and the effective dates of the POA and the 2014 CBA. Plaintiffs have either returned to the City employment or taken a general retirement. One (1) Plaintiff remains on duty disability retirement.

The DFFA asks, among other things, that the Court hold each Plaintiff and their counsel in contempt of Court for violating the POA and, in particular, the POA’s pension-related injunction.

Plaintiffs’ WCCC suit is an effort to circumvent the POA and the 2014 CBA, which was negotiated with mediation assistance ordered by the Bankruptcy Court. The Hon. Victoria Roberts mediated the negotiation of the 2014 CBA, which is incorporated into the POA.

Plaintiffs' lawsuit is operative: the 2014 CBA, Plaintiffs claim, is an "*illegal document . . . created pursuant to a conspiracy . . . with the intent and purpose of violating . . . Plaintiffs' civil rights* (emphasis added)." <sup>1</sup>

It seeks relief that would improperly amend the POA -- by changing the "terms, conditions, and rules of operation. . . that govern the calculation of pension benefits." Similarly, Plaintiffs wish to amend the 2014 CBA seniority and pension provisions.

Beyond what is permitted by the POA and the 2014 CBA, Plaintiffs wish to increase their pension benefits based upon the extended periods of time during which each Plaintiff was on duty disability retirement from the City.

The lead Plaintiff, Christopher McGhee, is emblematic of Plaintiffs' POA-prohibited and sensibility-offending demands: for sixteen (16) years, McGhee was a duty disabled retiree, *i.e.*, not working for the City. He now demands seniority, rank, and increased pension benefits calculated on the sixteen (16) years he was on duty disability retirement from the City.

Bereft of any legal basis, Plaintiffs' WCCC suit simply seeks to avoid the inevitable and, admittedly, unpleasant seniority and pension reductions incident to the City's bankruptcy -- reductions shared by countless other City employees.

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<sup>1</sup> The 2014 CBA was not only negotiated with the Hon. Victoria Roberts' mediation assistance, it is incorporated into this Court-approved POA, and was approved by the EM and the Michigan State Treasurer. (Exs. 6D and 6E).

This WCCC suit is a POA-prohibited challenge to one of the “many ways in which the POA altered...previously-existing pension-related rights...”

Plaintiffs seek this relief despite clear POA injunction and exculpation language and equally-clear 2014 CBA language regarding duty disability seniority and pension benefits. And, despite a recent, unrelated but probative arbitration decision (2021) that specifically confirmed the 2014 CBA’s two (2) year seniority limitation for duty disability retirees who return to City employment.

Plaintiffs’ claims improperly burden the PFRS with pension expenses that defy the POA and the 2014 CBA and jeopardize the Grand Bargain. They are a textbook example of the type of pension benefit extravagance -- indeed, profligacy -- that the POA, and its component agreements, specifically sought to eradicate.

Plaintiffs’ effort to avoid the effect of the bankruptcy, the POA, and the Bankruptcy Court-mediated 2014 CBA, is a civil contempt matter properly before this Court. Absent relief from this Court, the City and the DFFA face the “devastating possibility that a state court could grant relief that effectively amends the [POA]” and jeopardizes the “Grand Bargain.” (Docket # 13385, p. 4).

## **II. FACTS**

1. On July 18, 2013, the City filed this Chapter 9 case.

## **A. The POA**

2. The POA was confirmed on November 12, 2014. It consists of the “Eighth Amended Plan for the Adjustment of Debts for the City of Detroit,” and all of its exhibits, filed October 22, 2014,<sup>2</sup> and the “Order Confirming Eighth Amended Plan for the Adjustment of Debts for the City of Detroit,” filed November 12, 2014.<sup>3</sup>

3. The POA became effective on December 10, 2014.<sup>4</sup>

4. The treatment of pension claims in the City’s proposed POA was a “significant issue” in the bankruptcy. (Docket #8993, pp. 38-39).

5. A significant number of pension creditors -- *e.g.*, retirees and future retirees -- objected to any reduction or impairment of pension claims. (Docket #8993, p. 39).

6. “A substantial majority” of PFRS creditors (read: retirees and future retirees) voted in favor of the City’s POA and “accepted the necessity of shared sacrifice for the common good of the City.” (Docket #8993, pp. 40-41).

7. The POA changed the “previously-existing pension-related rights and other rights of many of the City’s active and retired employees,” including fire fighters. (Docket #13274, pp. 4, 18).

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<sup>2</sup> Docket #8045.

<sup>3</sup> Docket #8272.

<sup>4</sup> See Notice of (I) Entry of Order Confirming Eighth Amended Plan for the Adjustment of Debts for the City of Detroit and (II) Occurrence of Effective Date, filed December 10, 2014 (Docket #8649).

8. The POA contains a “very broad” injunction with respect to litigation that challenges the POA. (Docket #13274, p. 14). It precludes, among other things, litigation that “does not conform . . . or comply with . . .” the terms of the POA or “the settlements” contained in the POA and approved by the Bankruptcy Court. It bars too litigation that interferes with the “implementation and consummation” of the POA:

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 affecting the City or its property...*

*5. proceeding in any manner in any place whatsoever that does not conform to 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.*

POA, Article III.D.5, pp. 50-51 (emphasis altered); see also Docket #13274, pp. 14-15.

9. More specifically, the POA enjoins any action that amends the “terms [and] conditions . . . of the PFRS,” including those terms that govern the “calculation or amount of PFRS benefits”:

Except as may be required to maintain the tax-qualified status of the PFRS or to comply with the terms of the Plan, the City, *the trustees of the PFRS and all other persons or entities shall be enjoined from and against the subsequent amendment of the terms, conditions and rules of operation of the PFRS*, or any successor plan or trust, *that govern the calculation of pension benefits* (including the PFRS Adjusted Pension Amount, accrual of additional benefits, the DIA Proceeds Default Amount, the Prior PFRS Pension Plan, the PFRS Restoration Payment, the New PFRS Active Pension Plan Formula and the terms of the New PFRS Active Pension Plan) or against any action that governs the selection of the investment return assumption described in Section II.B.3.q.ii.B, the contribution to the PFRS *or the calculation or amount of PFRS pension benefits for the period ending June 30, 2023*, notwithstanding whether that subsequent amendment or act is created or undertaken by contract, agreement (including collective bargaining agreement), statute, rule, regulation, ordinance, charter, resolution or otherwise by operation of law.

POA, Article II.B.3.q.ii.G (emphasis altered).

10. The POA also contains a broad -- *i.e.*, “to the fullest extent permitted” -- exculpation provision that protects the City and City-affiliated parties who



negotiated and implemented the POA, the pension settlement, and CBAs negotiated in service of the POA and the pension settlement:

From and after the Effective Date, *to the fullest extent permitted under applicable law and except as expressly set forth in this Section, neither the City, its Related Entities (including the members of the City Council, the Mayor and the Emergency Manager), to the extent a claim arises from actions taken by such Related Entity in its capacity as a Related Entity of the City, the State, the State Related Entities, the Exculpated Parties nor the Released Parties shall have or incur any liability to any person or Entity for any act or omission in connection with, relating to or arising out of the City's restructuring efforts and the Chapter 9 Case, including the authorization given to file the Chapter 9 Case, the formulation, preparation, negotiation, dissemination, consummation, implementation, confirmation or approval (as applicable) of the Plan, the property to be distributed under the Plan, the settlements implemented under the Plan, the Exhibits, the Disclosure Statement, any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan or the management or operation of the City....*

POA, p. 51 (emphasis added).

11. All Plaintiffs received Court-approved timely notice of the POA terms.<sup>5</sup>

## **B. The 2014 CBA**

12. Incorporated into the POA, the 2014 CBA is one of the “key settlements that are the result of extensive arm’s length negotiations (often conducted within the context of Court-ordered mediation) . . . .” (Docket #8272, p. 20).

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<sup>5</sup> Docket #2823, #9000.

13. The 2014 CBA is subject to “post-confirmation ongoing jurisdiction of the Bankruptcy Court.” (Ex. 6E).

14. The POA-incorporated 2014 CBA requires that fire fighters, who are *rehired* by the City after a duty disability retirement of over two (2) years, must restart their City seniority at zero.

15. Arbitrator George Roumell affirmed this clear 2014 CBA language in his May 12, 2021 decision. (Ex. 6D).

16. Seniority is a variable in the calculus of fire fighters’ pension benefit. (Ex. 6E).

17. Earlier, *pre-bankruptcy* CBAs were more seniority-generous -- and therefore, more pension expensive -- for returning-to-work duty disability retirees, *i.e.*, these earlier *pre-bankruptcy* CBAs permitted duty disability fire fighters to “freeze” their pre-disability retirement seniority service and, for many years, “earn” virtually unlimited seniority even while on duty disability retirement from the City. (Ex. 6D).

18. Later -- but still *pre-bankruptcy* -- CBAs “capped” the amount of seniority a fire fighter could “earn” while on duty disability retirement. (Ex. 6D).

19. The 2014 CBA changed this generous, costly pension benefit. This change was designed to lower City and PFRS costs.<sup>6</sup>

### **C. Plaintiffs' WCCC Suit**

20. In July 2020, Plaintiffs -- all current and former fire fighters who took duty disability retirement from the City -- sued the City, several City officials, the DFFA, its current officers, and a former DFFA officer.<sup>7</sup>

21. Some Plaintiffs returned to City employment after their duty disability retirement. Others did not.

22. All Plaintiffs, who returned to work, did so *after* the 2014 CBA's effective date.

23. Plaintiffs were on, or have been on, duty disability retirement from the City for periods between three (3) to seventeen (17) years.<sup>8</sup>

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<sup>6</sup> The City's PFRS indebtedness, which created significant PFRS underfunding issues, was cited as one of the main reasons for the City's bankruptcy. See, *e.g.*, Docket #13090 pp. 13-15, citing Docket #8272, pp. 35-36.

<sup>7</sup> The 7 Plaintiffs sued 11 Defendants. The Plaintiffs' FAC contains 13 state and federal counts, 254 paragraphs, and seeks \$10 million in "damages." (Ex. 6A).

<sup>8</sup> Plaintiffs' duty disability periods were as follows: McGhee (**16 years**); Craig Brown (**4 years**); Norman Brown (**15 years**); Washington (**nearly 4 years**); and Perry (**9 years**); Potts (**15 years**); and Ferguson (**over 17 years**). (See ¶¶56-155).

24. Two (2) Plaintiffs, who did not return to work, were on disability retirement for fifteen (15) and seventeen (17) years. One took a general retirement after his duty disability (Potts) and the other remains on duty disability (Ferguson).<sup>9</sup>

25. All Plaintiffs concede -- in their pleadings and their testimony -- that their suit challenges:

- a. *how* the 2014 CBA was negotiated;
- b. the 2014 CBA's substantive terms, in particular its seniority and pension terms as they related to duty disability retirements; and
- c. the City's and DFFA's observance -- current, retroactive, and prospective -- of the 2014 CBA terms regarding seniority and pensions. (*See, e.g.*, Ex. 6I).

26. Plaintiffs claim they were not given the same seniority advantages as fire fighters who took duty disability retirement *prior to* the POA and bankruptcy-mediated 2014 CBA, and who later returned to work or took general retirement. (Ex. 6F, p. 3).

27. This difference in treatment, Plaintiffs contend, has damaged them in the form of lost wages and lower pension benefits upon retirement. (*E.g.*, Ex. 6A, FOC ¶¶ 51, 164, 175).<sup>10</sup>

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<sup>9</sup> Potts was on a disability retirement for 15 years, but rejected the City's offer to return him to work and "converted his disability retirement to a general retirement." (¶¶136-155). Ferguson has been on duty disability since 2003 -- over 17 years. (¶¶106-125).

<sup>10</sup> Plaintiffs also claim compensatory damages.

28. Plaintiffs demand that the earliest, *pre-bankruptcy* and most favorable CBA duty disability retirement terms should apply to them -- regardless of the POA, the clear 2014 CBA language or the declared mission of the City bankruptcy.<sup>11</sup> (*E.g.*, Ex. 6G, p. 35).

29. They are entitled, Plaintiffs claim, to the higher ranks, higher pay, and *increased pensions* that follow a fire fighter's seniority under the pension and seniority terms of the earliest and most generous *pre-bankruptcy* CBAs. (*Id.*).

**D. Plaintiffs' and Plaintiffs' Counsel Had Notice of Conflict Between Plaintiffs' WCCC Suit and the POA**

30. Plaintiffs have known about the POA and its injunction terms since at least 2014 (*See, e.g.*, Certificates of Service, Docket #2823 and #9000).

31. Plaintiffs and their counsel have specifically known -- for some time -- about the conflict between their pension benefits-driven WCCC suit and the POA. (*E.g.*, Ex. 6C).<sup>12</sup>

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<sup>11</sup> One Plaintiff's case demonstrates Plaintiffs' WCCC suit: Plaintiff Norman Brown, a fire fighter with only 6 years' active duty, suffered a duty disability injury (wrist) in 2003, at 33 years old. Thereafter, he was on duty disability retirement for **15 years** -- until January 2018. While on duty disability, he declined surgery, was never hospitalized, and failed to engage in any physical therapy. (Ex. 6G, N. Brown 10, 108, 127, 129). Now, in his WCCC suit, he seeks **21** years of seniority credit, a higher rank, and the increased pay and *increased pension* that would follow a 21-year City employee (6 years active + **15 years** duty disability retirement).

<sup>12</sup> In addition to Exhibit 6C, a letter, DFFA reiterated this notice in other correspondence.

32. Plaintiffs and their counsel ignored the specific notices of this conflict. (*E.g.*, Ex. 6C).

33. Instead, Plaintiffs and their counsel continue to pursue their WCCC litigation that seeks to compel the City, DFFA, and the PFRS to, among other things, violate the confirmed POA and its dramatic pension settlement terms.

34. As a result, the Movant asks this Court for an Order that:

- (i) bars and permanently enjoins the Plaintiffs from asserting and prosecuting the claims asserted in their WCCC suit;
- (ii) requires Plaintiffs to dismiss the WCCC suit *with prejudice*; and
- (iii) assesses against Plaintiffs and their counsel damages incurred by the DFFA as a direct result of Plaintiffs' wrongful pursuit of their WCCC suit, in particular because Plaintiffs and their counsel were given specific notice of the conflict between their WCCC suit and the POA.

35. The DFFA anticipates that the City and, perhaps, the PFRS will join with the DFFA in this Motion. (See Docket #13385, p. 4).

### **III. JURISDICTION**

36. The Court has subject matter jurisdiction over this Chapter 9 bankruptcy case and this contested matter under 28 U.S.C. §1334(b), 157(a) and 157 (b)(1), and Local Rule 83.50(a) (E.D. Mich.).

37. This is a core proceeding under 28 U.S.C. §157(b)(2)(O), because it is a proceeding “affecting...the adjustment of the debtor-creditor...relationship.” This

is also a core proceeding “arising in” a case under Title 11, within the meaning of 28 U.S.C. §1334(b).

38. As this Motion seeks to enforce the confirmed Chapter 9 POA, it is a proceeding “arising in” a case under Title 11. It is a proceeding that “by its very nature, could arise only in bankruptcy cases.” *Allard v. Coenen (In re Trans-Indus., Inc.)*, 49 B.R. 21, 27 (Bankr. E.D. Mich. 2009).

39. The Court retained jurisdiction under the POA to enforce the POA pension injunctions and to resolve any suits that may arise in connection with the consummation, interpretation or enforcement of the POA. POA, Article VII.F, G, I, p. 72.

40. The City and City officials are included within the definition of Exculpated Parties. POA Article I.A.180, pp. 14-15.

41. The Bankruptcy Court has the authority to require Plaintiffs to dismiss its WCCC suit. See, e.g., Docket #13274, p. 29.

## IV. ARGUMENT

### A. The Issue -- Plaintiffs' WCCC Suit Violates the POA And Its Injunctions

The issue before this Court is whether Plaintiffs' WCCC suit violates the POA and its injunctions. (See Docket #13274, pp. 18-19).<sup>13</sup>

Plaintiffs' WCCC suit seeks to undue the POA's plain terms, and those of the 2014 CBA. It seeks to impose upon the PFRS additional costs that were intentionally reduced in the POA and the 2014 CBA -- a contract negotiated in the extraordinary context of an EM and Bankruptcy Court-ordered mediation.<sup>14</sup>

This Court has addressed and summarily rejected similar post-bankruptcy pension-implicated claims -- also brought in WCCC by aggrieved fire fighters -- that

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<sup>13</sup> This issue in this case is *not* the fairness of the POA's -- and the POA-incorporated 2014 CBA's -- alteration of pre-2014 seniority and pension benefits for duty disabled retirees. See Docket #13274, pp. 18-19 ("But any issue about whether the POA's alteration of Respondents' rights was fair or just is not properly before the Court in this contempt proceeding. The issue is whether Respondents violated the POA and its injunction.").

<sup>14</sup> In their WCCC suit, Plaintiffs argue that the City's initial inadvertent application of *pre-bankruptcy*, *pre-POA*, and *pre-2014 CBA* duty disability seniority terms to some Plaintiffs created a "right" for all Plaintiffs. This is a "right" that removed them, Plaintiffs assert, from the plain terms of the 2014 CBA. This is a non-starter. For several reasons, Plaintiffs' claims are simply wrong. No matter. How the City complied with the POA and 2014 CBA -- even belatedly -- is of no moment. The timing of the City's compliance does not create for Plaintiffs seniority rights and pension rights that conflict with the POA and 2014 CBA. The only issue before the Court is whether Plaintiffs' WCCC suit violates the POA and its injunctions. (See Docket #13274, pp. 18-19).



sought to avoid the uncomfortable pension-related changes wrought by the POA and the 2014 CBA. (Docket #13274 and #13275.)

In Docket #13274 and #13275, this Court found that plaintiffs' WCCC suit, *Salkowski, et al. v. City of Detroit, the Detroit Police and Fire Pension Board, and Detroit Fire Fighters Association Local 344*, WCCC Case No. 2019-009993-CL (Judge John A. Murphy), was an "effort to avoid" changes in pension benefits that were a function of the POA and the 2014 CBA. As such, this Court found plaintiffs' suit in *Salkowski, et al.* to be in violation of the POA and its injunctions. (Docket #13274 and #13275).

This Court found the *Salkowski* Plaintiffs in civil contempt of this Court "for violating the injunction contained in the confirmed" POA.

Plaintiffs' WCCC suit is not unlike *Salkowski, et al.*

Plaintiffs' WCCC suit here is barred by the heavily-negotiated and binding pension settlement enshrined in the POA -- a settlement that was "[t]he final component" of a significant and difficult negotiation. (Docket #8993, pp. 35-36 (citations omitted)).

Under Section 944(a) of the Bankruptcy Code, the Plaintiffs are bound by the POA and all its applicable terms.

**B. Plaintiffs' and Plaintiffs' Counsel Liability for Costs and Fees**

The Court may award compensatory damages, including attorneys' fees and costs, when a creditor violates a discharge injunction despite having knowledge or it. *Holley v. Oliver, PLLC*, 473 B.R. 212, 215-216 (Bankr. E.D. Mich. 2012).

For a court to impose compensatory sanctions, it must be shown by clear and convincing evidence that the creditor had knowledge of a definite and specific order yet still violated it. *Id.* at 215.

Once a knowing violation of an order by a creditor has been shown, the burden shifts to the creditor. To avoid sanctions, the creditor must show that it "took all reasonable steps within [its] power to comply with the court's order." *Id.* (citation and internal quotation marks omitted).

Here, Plaintiffs and their counsel were timely given notice of the POA and its injunctions' terms, as well as the POA-incorporated 2014 CBA. Still, they pursued their seniority- and pension-driven WCCC suit.

Plaintiffs and their counsel cannot show that they "took all reasonable steps" when they knowingly filed their FAC despite the POA injunctions. *Holley*, 473 B.R. at 215. Claiming, as Plaintiffs do, that the 2014 CBA is an "illegal document. . . created pursuant to a conspiracy" to violate Plaintiffs' civil rights prevents the Plaintiffs from arguing an "all reasonable steps" defense.

The undisputed pedigree and origins of the POA-incorporated 2014 CBA impeach any such defense for Plaintiffs.

## V. CONCLUSION

The DFFA respectfully requests that the Court enter an order, in substantially the same form as attached Exhibit 1, that:

- (i) bars and permanently enjoins the Plaintiffs from asserting and prosecuting the claims asserted in their WCCC suit;
- (ii) requires Plaintiffs to dismiss the WCCC suit *with prejudice*; and
- (iii) assesses against Plaintiffs and their counsel damages incurred by the DFFA as a direct result of Plaintiffs' wrongful pursuit of their WCCC suit, in particular because Plaintiffs and their counsel were given specific notice of the conflict between their WCCC suit and the POA.

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August 30, 2021

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

In re: Bankruptcy Case No. 13-53846  
City of Detroit, Michigan, Judge Thomas J. Tucker  
Debtor. Chapter 9  
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***EXHIBIT LIST TO:***

**MOTION OF DETROIT FIRE FIGHTERS ASSOCIATION (DFFA)  
FOR THE ENTRY OF AN ORDER ENFORCING THE PLAN OF  
ADJUSTMENT AGAINST:**

**CHRISTOPHER MCGHEE  
NORMAN BROWN  
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ORLANDO POTTS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
Exhibit 1	Proposed Order
Exhibit 2	Notice of Opportunity to Object
Exhibit 3	None
Exhibit 4	Certificate of Service
Exhibit 5	None
Exhibit 6A	WCCC - First Amended Complaint
Exhibit 6B	Emergency Manager Order 44 and Exhibit C
Exhibit 6C	April 23, 2021 Letter to Plaintiffs' Counsel
Exhibit 6D	May 12, 2021 Roumell Opinion and Award, Gr. No. 20-20
Exhibit 6E	CBA Excerpts (duration clause and MOU)
Exhibit 6F	Plaintiffs' Initial Disclosures

Exhibit 6G	Norman Brown Transcript Excerpts (pgs 10, 35, 108, 127, 129)
Exhibit 6H	Orland Potts Transcript Excerpts (p. 62)
Exhibit 6I	Norman Brown's and Plaintiff's Counsel's Request for Admissions Response, Excerpt

# EXHIBIT 1

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

In re:	Bankruptcy Case No. 13-53846
City of Detroit, Michigan,	Judge Thomas J. Tucker
Debtor.	Chapter 9
_____ /	

**ORDER GRANTING MOTION OF DETROIT FIRE  
FIGHTERS ASSOCIATION (DFFA) FOR THE ENTRY OF  
AN ORDER ENFORCING THE PLAN OF ADJUSTMENT AGAINST:**

**CHRISTOPHER MCGHEE  
NORMAN BROWN  
CRAIG BROWN  
JAMES WASHINGTON  
SHANNON FERGUSON  
JUNIUS PERRY, AND  
ORLANDO POTTS**

This case is before the Court on the *Motion of Detroit Fire Fighters Association (DFFA) for the Entry of an Order Enforcing the Plan of Adjustment Against: Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts*. (Docket # \_\_\_\_\_), upon proper notice and a hearing, the Court being fully advised in the premises, and there being good cause to grant the relief requested,

**THE COURT ORDERS THAT:**

1. The Motion (Docket # \_\_\_\_\_) is GRANTED.
2. Plaintiffs are barred and permanently enjoined from asserting and prosecuting the claims asserted in Plaintiffs' WCCC lawsuit, *Christopher McGhee, et al., v. City of Detroit, et al.*, (WCCC No. 20-006272-CD).
3. Plaintiffs shall immediately dismiss their WCCC suit, *Christopher McGhee, et al., v. City of Detroit, et al.*, (WCCC No. 20-006272-CD), with prejudice; and
4. Plaintiffs and their counsel shall pay damages incurred by the DFFA as a direct result of Plaintiffs' wrongful pursuit of their WCCC suit.
5. The Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.



# EXHIBIT 2

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

In re: Bankruptcy Case No. 13-53846  
City of Detroit, Michigan, Judge Thomas J. Tucker  
Debtor. Chapter 9

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**NOTICE OF OPPORTUNITY TO OBJECT TO MOTION OF DETROIT  
FIRE FIGHTERS ASSOCIATION (DFFA) FOR THE ENTRY OF AN  
ORDER ENFORCING THE PLAN OF ADJUSTMENT AGAINST:  
CHRISTOPHER MCGHEE, NORMAN BROWN, CRAIG BROWN, JAMES  
WASHINGTON, SHANNON FERGUSON, JUNIUS PERRY, AND  
ORLANDO POTTS**

The DFFA has filed papers with the Court requesting the Court to enforce the Plan of Adjustment Against Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts.

**Your rights may be affected. You should read these papers carefully  
and discuss them with your attorney.**

If you do not want the Court to enter an Order granting the *Motion of Detroit Fire Fighters Association (DFFA) for the Entry of an Order Enforcing the Plan of Adjustment Against: Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts*, within 14 days, 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 St., Suite 1900  
Detroit, Michigan 48226

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

Miller, Canfield, Paddock & Stone, PLC  
Attn: Marc N. Swanson  
150 West Jefferson, Suite 2500  
Detroit, Michigan 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time, and location of that hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.**

/s/Megan B. Boelstler  
Christopher P. Legghio (P27378)  
Megan B. Boelstler (P79125)  
Legghio & Israel, P.C.  
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mbb@legghioisrael.com

August 30, 2021

Attorneys for DFFA

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

**EXHIBIT 3 - NONE**

# EXHIBIT 4

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

In re:	Bankruptcy Case No. 13-53846
City of Detroit, Michigan,	Judge Thomas J. Tucker
Debtor.	Chapter 9

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 30, 2021, she served a copy of the foregoing ***Motion of Detroit Fire Fighters Association (DFFA) for the Entry of an Order Enforcing the Plan of Adjustment Against: Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts*** upon counsel for Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts, via first class mail and e-mail to the following:

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/s/Christopher P. Legghio  
Christopher P. Legghio (P27378)  
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August 30, 2021

Attorneys for DFFA

**EXHIBIT 5 - NONE**

# EXHIBIT 6A



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

CHRISTOPHER MCGHEE, NORMAN BROWN,  
CRAIG BROWN, JAMES WASHINGTON,  
SHANNON FERGUSON, JUNIUS PERRY,  
and ORLANDO POTTS

Plaintiffs,

v.

Case No. 20-006272-CD

Judge: Sheila Gibson

CITY OF DETROIT,  
ERIC JONES - EXECUTIVE FIRE COMMISSIONER,  
REGINALD JENKINS – 2<sup>ND</sup> DEPUTY COMMISSIONER,  
ROBERT DISTELRATH - CHIEF OF DEPARTMENT  
FIRE FIGHTING DIVISION,  
KEMIA CROSSON – EMPLOYEE SERVICES CONSULTANT,  
DETROIT FIRE FIGHTERS ASSOCIATION LOCAL 344,  
MICHAEL NEVIN – FORMER PRESIDENT  
THOMAS GEHART – PRESIDENT,  
WILLIAM HARP – VICE PRESIDENT,  
JOHN A. CANGIALOSI – SECRETARY  
CHRISTOPHER A. SMITH - TREASURER  
*In their Individual and Official Capacities,  
Jointly & Severally,*

Defendants.

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**Herbert A. Sanders (P43031)**  
**The Sanders Law Firm, P.C.**  
Attorney for Plaintiffs  
The Ford Building  
615 Griswold, Suite 913  
Detroit, Michigan 48226  
(313) 962-0099 (Phone)  
(313) 962-0044 (Fax)  
haslawpc@gmail.com

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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this court.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

NOW COME the Plaintiffs, by and through their Attorney, Herbert A. Sanders of THE SANDERS LAW FIRM, P.C., and for their First Amended Complaint they state as follows:

1. This is an action to enforce civil rights and contractual rights arising out of the Plaintiffs' relationship with their Union, and their Employer.

### **PARTIES**

2. Plaintiff Christopher McGhee is a resident of the City of Detroit, County of Wayne, State of Michigan.
3. Plaintiff Norman Brown is a resident of the City of Southfield, County of Oakland, State of Michigan.
4. Plaintiff Craig Brown is a resident of the City of Sterling Heights, County of Macomb, State of Michigan.
5. Plaintiff James Washington is a resident of the City of Warren, County of Macomb, State of Michigan.
6. Plaintiff Shannon Ferguson is a resident of the City of Detroit, County of Wayne, State of Michigan.
7. Plaintiff Junius Perry is a resident of the City of Warren, County of Macomb, State of Michigan.
8. Plaintiff Orlando Potts is a resident of the City of Romulus, County of Wayne, State of Michigan.
9. At all times relevant hereto, Plaintiffs were employed by the Defendant City of Detroit, in the County of Wayne, City of Detroit, State of Michigan.

10. At all times relevant hereto, Plaintiffs were members of the Detroit Fire Fighters Association, Local 344.
11. At all times relevant hereto, Defendant City of Detroit (also referred to herein as the City) was and is a municipal corporation located in Wayne County, Michigan operating under, and subject to, the Constitution and laws of the State of Michigan and the United States.
12. Defendant Eric Jones, Executive Fire Commissioner, at all times relevant hereto was an employee and agent of the City of Detroit, and the City of Detroit is therefore vicariously liable for his actions.
13. Defendant Reginald Jenkins – 2<sup>nd</sup> Deputy Commissioner, at all times relevant hereto was an employee and agent of the City of Detroit, and the City of Detroit is therefore vicariously liable for his actions.
14. Defendant Robert Distelrath, Chief of Department Fire Fighting Division, at all times relevant hereto was an employee and agent of the City of Detroit, and the City of Detroit is therefore vicariously liable for his actions.
15. Defendant Kemia Crosson, Employee Services Consultant, at all times relevant hereto was an employee and agent of the City of Detroit, and the City of Detroit is therefore vicariously liable for her actions.
16. Defendant City of Detroit had a Respondent Superior relationship with all of the named Defendant City employees.
17. At all times relevant hereto, Defendant Detroit Fire Fighters Association, Local 344 (also referred to herein as DFFA and/or the Union) was chartered with the

International Association of Fire Fighters (IAFF), and is the union representative of fire fighters that are employed by the City of Detroit.

18. Defendant Michael Nevin, Former President, at all times relevant hereto was an employee and agent of the Detroit Fire Fighters Association, and the Detroit Fire Fighters Association is therefore vicariously liable for his actions.
19. Defendant Thomas Gehart, President, at all times relevant hereto was an employee and agent of the Detroit Fire Fighters Association, and the Detroit Fire Fighters Association is therefore vicariously liable for his actions.
20. Defendant William Harp, Vice President, at all times relevant hereto was an employee and agent of the Detroit Fire Fighters Association, and the Detroit Fire Fighters Association is therefore vicariously liable for his actions.
21. Defendant John A. Cangialosi, Secretary, at all times relevant hereto was an employee and agent of the Detroit Fire Fighters Association, and the Detroit Fire Fighters Association is therefore vicariously liable for his actions.
22. Defendant Christopher A. Smith, Treasurer, at all times relevant hereto was an employee and agent of the Detroit Fire Fighters Association, and the Detroit Fire Fighters Association is therefore vicariously liable for his actions.
23. Defendant DFFA had a Respondent Superior relationship with the named Defendant Union officers.

#### **JURISDICTION**

24. The amount in controversy is in excess of \$10,000,000.00 exclusive of interest, costs, and attorney fees.

25. This Court has jurisdiction of this matter pursuant to the Elliot-Larsen Civil Rights Act and the Public Employment Relations Act 336 of 1947. See *Demings v. City of Ecorse*, 423 Mich. 49 (Mich. 1985).

### **GENERAL ALLIGATIONS**

26. The events giving rise to this cause of action occurred in the City of Detroit, County of Wayne, State of Michigan.
27. Prior to 2014, the Collective Bargaining Agreement (CBA) had between the City and DFFA allowed a fire fighter that had retired as a result of a duty disability to maintain his/her accumulated seniority if they returned to the employ of the City of Detroit as a fire fighter.
28. Additionally, the CBA allowed an employee that returned to work after a duty disability retirement to achieve and assume the rank of his/her class on an accelerated basis.
29. Specifically, the 2001-2008 CBA had between DFFA and the City stated in part:

#### ***Section 9. Seniority - C. Forfeitures 8 (a)-(b)***

*(a) Seniority credit for promotions to any position in the Department shall be frozen and cease to accumulate for any member on a disability retirement for three (3) years or more. In the event such person is returned to active service, he/she shall be reinstated with his/her frozen seniority.*

*(b) Persons who return to active service from duty disability retirement after one (1) or more years of absence must attend and successfully complete a re-entry training program including a performance physical evaluation that is conducted by the Fire Training Division and approved by the Chief of Fire Operations and Executive Fire Commissioner.*

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**Section 9. Seniority - E. Promotions and Transfers - Fire Fighting Division**

*1. General: Promotions in the Fire Department shall be based on length of service therein. The officers or employee thereof having served the longest period in any position shall be advanced to fill any vacancy in the next higher position, if he/she shall have the qualifications therefore.*

*a. Promotions shall be based solely upon seniority provided the senior employee shall satisfy qualifications for the position for which he/she is to be promoted<sup>1</sup>. See Exhibit 1<sup>2</sup>.*

30. Prior to 2014, in reliance upon the longstanding disability retirement policy, a litany of fire fighters, including the Plaintiffs, retired with a duty disability injury, and sometime thereafter returned to the employ of the City of Detroit as a fire fighter.
31. Those individuals were allowed to return as fire fighters, maintain their seniority, and advance to the rank of their entry class.
32. On November 6, 2014, the City and the DFFA entered into a new CBA 2014-2019. See Exhibit 2.
33. **Article 12 Seniority - D (2) of the 2014-2019 CBA**, states that employees who retire from service as a result of a duty disability, shall lose their seniority.
34. Pursuant to the new CBA provision, they shall no longer be allowed to return to the employ of the City and maintain their accumulate seniority, or advance to the rank of their original class.

<sup>1</sup> Based upon information and belief, the 2001-2008 CBA was mutually extended through 2013.

<sup>2</sup> The Exhibits referenced in Plaintiffs' First Amended Complaint are identical to the Exhibits referenced in Plaintiffs' initial Complaint and are already a part of the Court record. Consequently, Plaintiffs have not reattached the Exhibits to the First Amended Complaint.

35. However, after implementation of the new CBA provision in 2014, no duty disability retired fire fighter was ever notified by the City or the Union that they would lose all of their seniority if they returned to work for the City.
36. To the contrary, after negotiation of the 2014-2019 CBA, the City continued to return many fire fighters to duty with their previous seniority in tack, without objection from the Union; and officers were allowed to assume the rank that their original class had achieved.
37. The Defendants had conspired to selectively enforce the new provision of the 2014-2019 CBA.
38. In fact, after 2014 the City and the Union agreed to allow some fire fighters to return from duty disability retirement, maintain their previous seniority, be promoted in accordance with their class ranking, and retire after receiving the promotion with a pension based upon the ranking that they had achieved with their original class.
39. Thereafter, in continuation of the conspiracy to selectively enforce the new provision of the 2014 CBA, in May 2019, the Union filled a grievance maintaining that the City had violated the CBA by returning fire fighters to duty with their seniority after a disability retirement.
40. The grievance was filed in violation of the CBA years after the Union first became aware that fire fighters were returning from a duty disability and being allowed to maintain their previous seniority.
41. In accordance with the 2014-2019 CBA; *“Any grievance not filed within ten (10) calendar days of the occurrence of the alleged violation or within ten (10) calendar*

*days of an Employee or the Association becoming aware of an alleged violation will be considered untimely and will not be processed”.*

42. However, in furtherance of their conspiracy, the Defendants conspired to ignore the CBA statute of limitations, and the grievance was recognized and acknowledged by the City.
43. Thereafter, without cause, the Defendants agreed to take disciplinary action against the Plaintiffs.
44. The Defendants put in place an alleged blanket demotion of all disability retirement returnees that had returned to work for the City after 2014.
45. As a result, the Plaintiffs were stripped of the seniority they had accumulated prior to their retirement, and in many instances demoted.
46. The Plaintiffs were not afforded any type of hearing prior to the disciplinary actions taken against them.
47. The Defendants' goal was to strip the Plaintiffs of their seniority, and take away any promotion which was the result of the systematic seniority promotion.
48. The disparate treatment and lack of due process in which the stripping of seniority and promotions occurred was presented to the Union on numerous occasions by those victimized, however they refused to assist the Plaintiffs, or provide them with representation.
49. The Plaintiffs filed grievances and wrote letters to both the Union and the City in an effort to address the disparate treatment; however, their efforts fell on deaf ears.
50. The City nor the Union made any effort to address the injustice that was being done to the Plaintiffs.



51. Defendants intentionally deprived the Plaintiffs of the opportunity to collect a larger pension.
52. All of the Plaintiffs affected by the conspiracy of the Defendants, which deprived them of their seniority and promotions (or promotional opportunities) were over the age of 40.
53. All of the Plaintiffs affected by the conspiracy of the Defendants, which deprived them of their seniority and promotions (or promotional opportunities) were formerly disabled.
54. In accordance with the CBA discipline and demotions shall only occur when there is just cause.
55. The Defendants did not have just cause to discipline and/or demote the Plaintiffs.

**Allegations as to Plaintiff Christopher McGhee**

56. Plaintiff McGhee's date of birth is June 24, 1963.
57. McGhee became employed with the Detroit Fire Department on or about March 9, 1992.
58. McGhee underwent a disability retirement on or about December 26, 1999.
59. After undergoing surgery and therapy as a result of his injury, McGhee was rehired by the City of Detroit, and returned to work on or about June 21, 2016.
60. After returning to work, he was promoted through the seniority system, achieved the rank of Lieutenant on October 10, 2019, in accordance with his class ranking, and was earning a salary of \$72,000/year.

61. McGhee was stripped of the seniority he had earned prior to his disability retirement, and demoted on or about January 27, 2020 to the position of Fire Fighter at a pay rate of \$59,417.00/year.
62. The disciplinary action taken against McGhee was without just cause.
63. McGhee requested through Defendant Harp that a grievance be pursued on his behalf.
64. However, Defendant Harp and the Union refused to pursue the grievance.

### **Allegations as to Plaintiff Norman Brown**

65. Plaintiff Norman Brown's date of birth is January 26, 1969.
66. N. Brown underwent a disability retirement in 2003.
67. After rehabilitation, he returned to work in January 2018 as a fire fighter.
68. Thereafter he was promoted through testing (as opposed to the seniority system) to the rank of Lieutenant on July 30, 2018 and was earning approximately \$71,000/year.
69. On or about October 10, 2019, N. Brown wrote a letter to the DFFA expressing his concern that he had been informed by the City of Detroit that his seniority would be reduced and he would be demoted as a result of a grievance filed by the DFFA concerning promotions received by him and other fire fighters.
70. N. Brown further expressed that the grievance was not filed in a timely manner.
71. N. Brown requested that a grievance be filed on his behalf, and he further requested an opportunity to meet with a Union representative.
72. On December 20, 2019, N. Brown wrote a letter to Defendant Harp in which he expressed:

*I am writing today in the hopes of clearing up any confusion as it pertains to my potential demotion resulting from your May 2019 Grievance. The Grievance stated the City was in violation of (seniority) Article 12 Section 7 found on Pages 17 & 18 of the CBA which states:*

*An employee shall lose his seniority due to absence from work for any reason in excess of two (2) years.*

*As you know, my position with Fire Prevention is not the result of seniority. Bulletin #4/18 gives clear requirements for the position to Fire Prevention which state:*

*\*Are you a current Detroit Fire Employee  
\* Do you have 5 years experience in the  
Fire Fighting Division on Active Duty*

*I met all requirements and was selected in June 2018. There were no grievances from members nor rejections from the Union. (See Application & Selection, Page 25) Since we are not using the promotional provisions found on pages 19-24 of the CBA, seniority has no bearing on my position and, as a dues-paying member in good standing, I will need assistance with this matter before any adverse action is taken against me.*

73. N. Brown's inquiry was ignored.
74. He was demoted January 27, 2020 to the position of Fire Fighter, at a pay rate of approximately \$59,000/yr.
75. The disciplinary action taken against N. Brown was without just cause.
76. On or about February 3, 2020, N. Brown filed a grievance concerning his demotion.
77. On or about March 11, 2020, N. Brown wrote to Defendant Gehart.
78. At that time, he reiterated his concern that he believed he and others had been discriminated against on the basis of their prior disability.
79. N. Brown expressed concern that the Union had not followed the CBA when processing the Union grievance.

80. N. Brown expressed concern that there are other areas of the CBA that the City has not complied with, and the Union has failed to seek consistent universal enforcement.
81. His inquiries were ignored, and he was informed by the Union that they would not pursue the grievance that he had filed concerning his demotion.
82. Once again on March 16, 2020, N. Brown wrote a letter to Defendant Gehart in which he stated in part:

*...my promotion to Fire Prevention was based on the administered examination results and the oral interview.*

*Another situation that I found to be disturbing is my demotion from FFD to Fire Fighter. Prior to my duty disability status, I met the department's requirements to apply for and become a Fire Fighter Driver applicant. I was later promoted to the classification of FFD after satisfactorily meeting the departments mandatory standards. When I returned to duty, my classification according to the department was FFD and, during my retraining period at the RTC, Chief Green ordered Pump Apparatus Operator and Qualified Driver's Training classes which I completed and was certified.*

*Over the past few months, during my inquiries I found that I am not "similarly situated" as the City suggests. For example, several members were returned to the Fire Fighting Division, systemically promoted, and later retired.*

83. His inquiries to the Union were ignored.

### **Allegations as to Plaintiff Craig Brown**

84. Plaintiff Craig Brown's date of birth is April 29, 1973.
85. C. Brown became employed with the Detroit Fire Department on or about January 25, 1999.
86. C. Brown underwent a disability retirement on or about May 6, 2013.

87. C. Brown underwent treatment for his injury, and was returned to work on or about May 8, 2017.
88. After returning to work, on or about January 27, 2020, C. Brown was stripped of his prior 11 years of seniority and given a new seniority date with 2 years and 8 months of seniority.
89. The disciplinary action taken against C. Brown was without just cause
90. On or about February 6, 2020, C. Brown filed a grievance challenging the loss of his seniority.
91. However, the Union refused to pursue the grievance.
92. C. Brown sent a letter to Defendant Harp requesting an explanation as to why the Union was refusing to pursue his grievance, however, he did not receive a response to his inquiry.
93. Further, on or about March 21, 2020, C. Brown complained to the Union Executive Board and Defendant Crosson that his Return to Duty Seniority Adjustment had been miscalculated.
94. He indicated that his duty disability date was incorrect, as well as his indicated previous service time.
95. However, he never received any response from the Union or Ms. Crosson as it relates to the concerns he expressed.

#### **Allegations as to Plaintiff James Washington**

96. Plaintiff James Washington's date of birth is November 30, 1961.
97. Washington became employed with the Detroit Fire Department on or about August 10, 1992.

98. Washington underwent a disability retirement on or about March 15, 2013.
99. Washington underwent treatment for his injury and was rehired by the City of Detroit on or about September 26, 2016.
100. After returning to work, he was promoted through the seniority system, achieved the rank of Fire Sergeant, and was earning \$68,547.00/year.
101. Washington was demoted on or about January 27, 2020 to the position of Fire Fighter at a pay rate of \$59,417.00/year.
102. The disciplinary action taken against Washington was without just cause
103. Washington filed a grievance concerning his loss of seniority and demotion on or about January 27, 2020.
104. On or about February 11, 2020, Washington sent separate letters to Defendant Gehart, Defendant Harp, Defendant Cangialosi, and Defendant Smith seeking that the Union represent him concerning his loss of seniority and demotion.
105. The Union refused to honor his request.

#### **Allegations as to Plaintiff Shannon Ferguson**

106. Plaintiff Shannon Ferguson's date of birth is December 19, 1967.
107. Ferguson became employed with the Detroit Fire Department on or about August 1994.
108. Ferguson underwent a disability retirement in 2003.
109. Ferguson submitted a request to return to work letter February 2018.
110. Ferguson received a letter from the City in September 2018 clearing him to return to duty.

111. Ferguson spoke with Defendant Crosson, and she told him she would contact him after she scheduled his return to work.
112. He had several conversations with Defendant Crosson in 2018 and 2019 in which she stated that she was working on his return to work.
113. On March 10, 2020, Ferguson received a certified letter from the City.
114. The letter was dated February 27 2020, and postmarked March 5, 2020.
115. The letter informed him that he must return to work by March 3, 2020 or be considered a voluntary quit.
116. Ferguson spoke with Defendant Crosson, however, she was unaware how to direct him to return to work.
117. She advised Ferguson that there was a new CBA that would prevent him from retaining his seniority status upon return to work.
118. She indicated that Ferguson would return as a new hire, with no seniority.
119. Defendant Crosson also stated that she was unclear if the new CBA would affect Ferguson's ability to return to work, and that she would seek clarification and contact him.
120. Defendant Crosson never gave Ferguson further instructions on how to complete the return to work process.
121. Ferguson made additional attempts to contact Crosson for instructions on how to return to work, however, Defendant Crosson never responded to his inquiries.
122. On or about March 20, 2020 Ferguson received a call from Kelly Tapper concerning his return to work.

123. She stated that because Ferguson had reached the 25th anniversary of his seniority date on August 8, 2019, he was no longer eligible to be considered to return to work.
124. If Ferguson had been allowed to return to work, he should have been promoted through the seniority system, achieved the rank of Fire Sergeant, and been earning \$68,547.00/year.
125. The denial of his right to return to work was disciplinary action, and it was without just cause.

#### **Allegations as to Plaintiff Junius Perry**

126. Plaintiff Perry's date of birth is December 19, 1976.
127. Perry became employed with the Detroit Fire Department on or about January, 1999.
128. Perry underwent a disability retirement in 2010.
129. Perry underwent treatment as a result of his injury.
130. Perry sent a letter to the City of Detroit seeking to return to work on or about June 2019.
131. Perry was found to be fit to return to work by the City on or about July 18, 2019.
132. Perry was finally allowed to return to work in March 2020.
133. Perry was denied the opportunity to maintain the seniority he had accumulated prior to his disability, and he was returned to work in the position of Fire Fighter at a pay rate of \$59,417.00/year.



134. Perry should have been promoted through the seniority system and achieved the rank of Fire Sergeant upon his returned to work, at a rate of pay of \$68,547.00/year.
135. The disciplinary action taken against Perry was without just cause.

**Allegations as to Plaintiff Orlando Potts**

136. Plaintiff Orlando Pott's date of birth is April 23, 1971.
137. Potts became employed with the Detroit Fire Department on or about March 11, 1991.
138. Potts underwent a disability retirement in June 2005.
139. Potts was approved to return to work on or about June 21, 2018.
140. Potts made several attempts to speak to Ms. Crosson about arranging to return to work.
141. He finally spoke to her on July 23, 2018, at which time Ms. Crosson responded and indicated that she would get back to him about the process of returning to work.
142. He continued to call and left several voice messages in hopes of expediting the process of reinstatement .
143. On or about August 27, 2018 he received a voicemail from Ms. Crosson stating that she was waiting to hear from another department.
144. Mr. Potts began to email Ms. Crosson inquiring as to when he could return to work.
145. His initial email was on September 19, 2018 and several emails followed.
146. However, he continued to receive no direction from Ms Crosson.

147. On or about May 23, 2019, Potts emailed Ms. Crosson , and she replied and stated that the Department was addressing a grievance regarding the matter, and when the grievance process was completed, she would be in touch with him.
148. On or about March 4, 2020 Potts received a letter stating to return to work no later than Monday, March 3, 2020.
149. Potts attempted to call Ms. Crosson to gain clarity concerning the letter he had received.
150. Several days thereafter, Potts was contacted by Ms. Crosson, and she informed him that he had to return to work, and start his career over.
151. She stated he would lose all of his seniority; and if he didn't return, his pension checks would stop, and would be considered a Voluntary Quit .
152. Thereafter, Potts converted his disability retirement to a general retirement.
153. At the time Potts went out on a disability retirement, he was a lieutenant in the Fire Marshall Division earning \$63,251.00/year.
154. Potts should have been allowed to return to work with his accumulated seniority.
155. If he had been allowed to return to work with his accumulated seniority, he would have achieved the rank of Captain, and been earning over \$80,000/year.

**COUNT I**  
**VIOLATION OF DUTY OF FAIR REPRESENTATION**  
**BY THE UNION AND THE DEFENDANT UNION OFFICERS,**  
**PAST AND PRESENT**

156. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.

157. The acts of Defendants as described herein violated the Public Employment Relations Act (PERA), MCL 423.201 et seq.; MSA 17.455(1) et seq.
158. The Union (through the representation of the named Defendant Union Officers) had a duty of fair representation to the Plaintiffs who were members of the bargaining unit it represented and/or beneficiaries of the Union's representation of its members.
159. The exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.
160. The Union was obligated to refrain from engaging in conduct that was arbitrary, discriminatory or in bad faith.
161. As the exclusive bargaining agent, the Union had a duty to fairly represent both members and non-members who were within the bargaining unit.
162. The duty of fair representation included the Union's responsibility to bargain for and to enforce the collective bargaining agreement, as well as process meritorious grievances filed by the employees within the bargaining unit in a manner that was not arbitrary, discriminatory, or in bad faith.
163. The Union breached each obligation owed to the Plaintiffs as delineated pursuant to the above facts.
164. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained

mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice all of which damages continue into the future.

**COUNT II  
BREACH OF FIDUCIARY DUTY  
BY THE UNION AND THE DEFENDANT UNION OFFICERS,  
PAST AND PRESENT**

165. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.
166. There was a fiduciary relationship had between the Union (as represented by its officers, who are named Defendants) and the Plaintiffs.
167. A fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another.
168. The Union as fiduciary owed the Plaintiffs duties of loyalty, honesty, due care, good faith, and fair dealing.
169. The Plaintiffs relied upon the judgment, advice and actions of the Union to their detriment.
170. The Union breached the fiduciary duty it owed to the Plaintiffs.
171. As a result of the breach by the Defendant Union, the Plaintiffs were caused to suffer damages.
172. Relief is warranted wherein the Union's position of influence was abused and/or confidences have been reposed and/or betrayed.

173. The Union as the fiduciary had a duty to act for the benefit of the Plaintiffs regarding matters within the scope of the relationship.
174. The violation of the fiduciary duty was a proximate cause of the damages the Plaintiffs have suffered.
175. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice all of which damages continue into the future.

**COUNT III  
BREACH OF CONTRACT  
VIOLATION BY ALL DEFENDANTS**

176. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.
177. The Plaintiffs were parties to, and/or beneficiaries of a valid, enforceable contract/collective bargaining agreement had between the Union, and the City of Detroit.
178. As delineated above, the Defendants breached the contract by either refusal to perform and/or performance that does not conform to the contract's requirements.
179. As a result of the breach of the contract/collective bargaining agreement, the Plaintiffs suffered damages.

180. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice all of which damages continue into the future.

**COUNT IV  
VIOLATION BY ALL DEFENDANTS OF  
JUST CAUSE EMPLOYMENT AGREEMENT**

181. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.

182. Plaintiffs were disciplined without just without cause.

183. Pursuant to the City of Detroit Corrective Disciplinary Action Guidelines, all disciplinary actions shall be for just cause.

184. Pursuant to the CBA had between the Union and the City all disciplinary actions shall be for just cause.

185. There was a contractual promise for just cause discipline only; and/or the employer's policies, words, or actions instilled a legitimate expectation of just-cause employment within the Plaintiffs.

186. Yet, as delineated above, the Plaintiffs were disciplined without just cause.

187. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained

mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice all of which damages continue into the future.

**COUNT V  
PROMISSORY ESTOPPEL  
VIOLATION BY ALL DEFENDANTS**

188. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.
189. Defendants promised the Plaintiffs who all retired as a result of a duty disability, that they would maintain their accumulated seniority if they returned to the employ of the City of Detroit as a fire fighter.
190. Additionally, Defendants promised the Plaintiffs that upon return to work after a duty disability retirement that they would assume the rank of their hiring date class on an accelerated basis in accordance with the CBA under which they assumed a disability retirement.
191. Defendants' promises were clear, definite, and unequivocal and were specifically made to induce Plaintiffs to render the contemplated services and actions for the stated period for Defendants' benefit.
192. In reliance on the promise, and to their substantial detriment, Plaintiffs performed all that was expected of them in their various capacities.
193. Plaintiffs faithfully rendered these services to Defendants in reliance upon the promises made within their contract/collective bargaining agreement.

194. To avoid injustice, this court must specifically enforce Defendants' promises to Plaintiffs.
195. At the time of making the promise and inducing the action on Plaintiffs' part, Defendants could reasonably foresee that their failure to perform pursuant to the promises made to the Plaintiffs would cause the damages Plaintiffs have suffered.
196. Plaintiffs are entitled to a judgment of this court compelling specific performance by Defendants to grant Plaintiff's their loss seniority, positions, and financial damages.
197. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.

**COUNT VI**  
**VIOLATION BY ALL DEFENDANTS OF MICHIGAN'S**  
**PERSONS WITH DISABILITIES CIVIL RIGHTS ACT**  
**Act 220 of 1976**

198. Plaintiffs hereby incorporate by reference each allegation in each of the previous paragraphs as if fully restated herein.
199. At all relevant times, Plaintiffs were individuals with a *disability (or former disability)* within the meaning of *MCL 37.1101 et. seq., Michigan's Persons with Disabilities Civil Rights Act*.



200. Under said statute, Defendants had a duty not to fail or refuse to hire, recruit, or promote an individual because of a disability they have or had that is unrelated to the individual's ability to perform the duties of a particular job or position; not to discharge, retaliate against or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position; not to limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an individual of employment opportunities or otherwise adversely affects the status of an employee because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position; not to fail or refuse to hire, recruit, or promote an individual on the basis of a disability, former disability, physical or mental examinations that are not directly related to the requirements of the specific job; not to discharge, retaliate against or take other discriminatory action against an individual on the basis of a disability, former disability, physical or mental examinations that are not directly related to the requirements of the specific job; not to fail or refuse to hire, recruit, or promote an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job; not to discharge or take other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.
201. Defendants breached each and every duty owed to the Plaintiffs as delineated above.

202. Notwithstanding said duties and in willful violation thereof, Defendants discriminated against Plaintiffs and harassed them, by subjecting them to humiliation, and discrimination to which other workers were not subject, all because of their disabilities, or former disabilities as delineated above.
203. Plaintiffs had a physical impairment that substantially limited one or more major life activities, had a record of the impairment, and were regarded by Defendants as having the impairment.
204. Upon return to duty or seeking to return to duty after their disability retirement, the Plaintiffs could perform the essential functions of their jobs with or without accommodation.
205. Defendants harassed Plaintiffs because of their disability.
206. Defendants disciplined the Plaintiffs because of their disability.
207. Defendants breached each and every duty owed to the Plaintiffs as delineated herein, by denying Plaintiffs the benefits of the services, programs, or activities of the City of Detroit, and/or by subjecting them to discrimination.
208. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.

**COUNT VII  
AGE DISCRIMINATION  
AS TO THE CITY OF DETROIT  
AND THE NAMED CITY OF DETROIT DEFENDANT EMPLOYEES  
IN VIOLATION OF THE MICHIGAN CIVIL RIGHTS ACT**

209. Plaintiffs hereby incorporates by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
210. At all times relevant hereto, Plaintiffs were employees and Defendants were an employer within the meaning of *MSA 3.548 (101) et. seq.*, *MCLA 37.2101 et. seq.*, *the Michigan Civil Rights Act*.
211. Under said statute, Defendants had a duty to Plaintiffs not to discriminate against them or to harass them with respect to their employment, compensation, terms, conditions or privileges of employment because of their age, or to limit, segregate or classify Plaintiffs in a way which deprived or tended to deprive them of employment opportunities, or otherwise to adversely affect the employment status of Plaintiffs because of their age.
212. Notwithstanding said duties and in willful violation thereof, Defendants discriminated against the Plaintiffs and harassed them, by subjecting them to humiliation, and discrimination to which other workers were not subject, all because of their age, as delineated above.
213. As a direct and proximate result of the Defendants' violations as described above, Plaintiffs have suffered loss of earnings, and other benefits of employment; loss of earning capacity; embarrassment and humiliation, mental and emotional distress with physical manifestations; expenses for medical care and treatment; loss of fringe and pension benefits; loss of career opportunities; and loss of the ordinary

pleasures of everyday life, including the right to seek and pursue a gainful occupation of choice; all of which damages continue into the future.

**COUNT VIII  
AGE DISCRIMINATION  
AS TO THE DFFA  
AND THE NAMED DFFA DEFENDANT EMPLOYEES  
IN VIOLATION OF THE MICHIGAN CIVIL RIGHTS ACT**

214. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
215. At all times relevant hereto, Plaintiffs were employee labor union members and Defendants, were a labor union within the meaning of *MCLA 37.2204 et. seq.*, the *Michigan Civil Rights Act*.
216. Under said statute, Defendants had a duty to Plaintiffs not to exclude or expel from membership, or otherwise discriminate against, a member or applicant for membership because of their age, or to limit, segregate, or classify membership or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive that individual of an employment opportunity, or which would limit an employment opportunity, or which would adversely affect wages, hours, or employment conditions, or otherwise adversely affect the status of an employee or an applicant for employment, because of their age, or cause or attempt to cause an employer to violate the Michigan Civil Rights Act, or fail to fairly and adequately represent a member in a grievance process because of their age.
217. Notwithstanding said duties and in willful violation thereof, Defendants discriminated against the Plaintiffs and harassed them, by subjecting them to

humiliation, and discrimination to which other workers were not subject, all because of their age, as delineated above.

218. As a direct and proximate result of the Defendants' violations as described above, Plaintiffs have suffered loss of earnings, and other benefits of employment; loss of earning capacity; embarrassment and humiliation, mental and emotional distress with physical manifestations; expenses for medical care and treatment; loss of fringe and pension benefits; loss of career opportunities; and loss of the ordinary pleasures of everyday life, including the right to seek and pursue a gainful occupation of choice; all of which damages continue into the future.

**COUNT IX  
TORTIOUS INTERFERENCE  
WITH A BUSINESS RELATIONSHIP OR EXPECTANCY  
AS TO THE DFFA AND THE NAMED DFFA DEFENDANT EMPLOYEES**

219. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
220. The Plaintiffs had a business relationship and expectancy with the City of Detroit.
221. The Union Defendants had knowledge of the business relationship or expectancy that the Plaintiffs had with the City of Detroit.
222. The Defendants intentional and improperly interfered with the business relationship and expectancy the Plaintiffs had with the City of Detroit.
223. The Defendants committed per se wrongful acts and/or lawful acts with malice and without justification for the purpose of invading the business relationship of the Plaintiffs, inducing or causing a breach, disruption, or termination of the business relationship or expectancy.

224. As a direct and proximate result of the Defendants' violations as described above, Plaintiffs have suffered loss of seniority, loss of earnings, and other benefits of employment; loss of earning capacity; embarrassment and humiliation, mental and emotional distress with physical manifestations; expenses for medical care and treatment; loss of fringe and pension benefits; loss of career opportunities; and loss of the ordinary pleasures of everyday life, including the right to seek and pursue a gainful occupation of choice; all of which damages continue into the future.

**COUNT X  
VIOLATION OF THE FOURTEENTH AMENDMENT  
TO THE U.S. CONSTITUTION BY DISCRIMINATION AND RETALIATION  
AS TO ALL DEFENDANTS  
ACTIONABLE PURSUANT TO 42 USC §1983**

225. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.

226. Pursuant to the Fourteenth Amendment:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

227. Pursuant to 42 USC § 1983:

*Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law*

*shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress...*

228. Defendants, through their own actions and/or policies, practices, procedures and supervision, or lack thereof, violated clearly established law and no reasonable official would believe the actions described herein were lawful.
229. At all times relevant to this Complaint, Defendants, had in effect policies, practices, and customs that condoned and fostered the unconstitutional conduct as delineated above.
230. Defendants violated Plaintiffs' federal constitutional rights secured by the 14th amendment to be free from discrimination and retaliation as a result of their illness/disability.
231. Defendants are liable for the violation of Plaintiff's federal constitutional rights pursuant to 42 U.S.C. § 1983 in failing to provide proper supervision and training to prevent this type of unlawful, discriminatory abuse.
232. As a direct and proximate result of the violation of Plaintiff's rights as alleged, Plaintiffs have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits, mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.
233. As a result of the willful violation of the Plaintiffs' constitutional rights, they are entitled to punitive damages.

**COUNT XI**  
**VIOLATION OF THE FOURTEENTH AMENDMENT**  
**TO THE U.S. CONSTITUTION BY DEPRIVATION OF A PROPERTY INTEREST**  
**WITHOUT DUE PROCESS OF LAW**  
**AS TO ALL DEFENDANTS**  
**ACTIONABLE PURSUANT TO 42 USC §1983**

234. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
235. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures.
236. As public employees, Plaintiffs had a property interest in their employment, which was entitled to due process protection.
237. As public employees, prior to being disciplined and denied and/or deprived of seniority and/or promotional opportunities, the Plaintiffs should have received notice of the charges against them, an explanation of the employer's evidence, and an opportunity to present their side of the story.
238. The Plaintiffs were required to be given the opportunity for a hearing by the decision makers before being deprived of any significant property interest.
239. Further, the Plaintiffs were entitled to a full post denial/deprivation hearing.
240. At a minimum, the Plaintiffs should have been permitted to attend a hearing, to have the assistance of counsel, to call witnesses and produce evidence on their own behalf, and to know and have an opportunity to challenge the evidence against them.
241. The Plaintiffs were denied each and every right which should have been afforded to them, as delineated above.



242. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.
243. As a result of the willful violation of the Plaintiffs' constitutional rights, they are entitled to punitive damages.

**COUNT XII**  
**MUNICIPAL LIABILITY FOR CONSTITUTIONAL VIOLATIONS**

244. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
245. Defendant City of Detroit established, promulgated, and implemented the customs, usages, practices, policies and procedures which resulted in the deprivation of Plaintiffs' Constitutional rights.
246. At all times relevant to this Complaint, Defendant City of Detroit, acting through its Fire Department, Human Resources Department and the named City of Detroit Defendants had in effect policies, practices, and customs that condoned and fostered the unconstitutional conduct of all the individual Defendants, and were a direct and proximate cause of the damages and injuries complained of herein.
247. Those practices, policies, and/or procedures were inclusive of, but not limited to denying and/or depriving fire fighters who had been disabled of previously guaranteed seniority and promotional opportunities without due process of law.

248. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.
249. As a result of the willful violation of the Plaintiffs' constitutional rights, they are entitled to punitive damages.

**COUNT XIII  
CIVIL CONSPIRACY**

250. Plaintiffs hereby incorporate by reference each and every allegation in the preceding paragraphs as though fully set forth herein.
251. The Defendants engaged in a civil conspiracy.
252. The facts as delineated above reveal that there was a concerted action by the Defendants to accomplish a criminal or unlawful purpose or a lawful purpose by criminal or unlawful means.
253. As a result of the civil conspiracy engaged in by the Defendants, the Plaintiffs suffered damages.
254. As a direct and proximate result of the violation of Plaintiffs' rights as alleged, they have suffered loss of seniority, loss of earnings and earning capacity, past and future lost earnings, the value of fringe and pension benefits; they have sustained mental and emotional distress, embarrassment, humiliation, anxiety about the

future, damage to their good name and reputation, and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful occupation of their choice, all of which damages continue into the future.

PLAINTIFFS REQUEST that this Court enter judgment against Defendants as follows:

1. Legal Relief

- a. A judgment for lost wages and benefits, past and future, in whatever amount they are found to be entitled;
- b. Compensatory damages in whatever amount they are found to be entitled;
- c. Damages for emotional distress and mental anguish;
- d. Punitive and exemplary damages commensurate with the wrong and Defendants' ability to pay, and award of interest, and costs;
- e. An award of interest, costs, and reasonable attorney fees.

2. Equitable Relief

- a. An injunction prohibiting any further acts of discrimination or retaliation;
- b. An order directed to the Union for it to cease and desist its breach of the duty of fair representation;
- c. An order compelling the Union to proceed on grievances which it had wrongfully refused to handle;
- d. An order reestablishing the seniority level that the Plaintiffs are rightly entitled to;
- e. An order placing each of the Plaintiffs in their rightful and lawful position at their appropriate rank;

- d. Back pay and or lost earnings to which the Plaintiffs are entitled;
- e. An order compelling the Union to post a notice on its breach of the duty of fair representation in conspicuous places;
- f. An award of interest, costs, and reasonable attorney fees;
- g. Whatever other equitable relief appears appropriate at the time of trial.

WHEREFORE, Plaintiffs requests the Court to enter a judgment against Defendants in an amount exceeding \$10,000,000.00, exclusive of costs and interest, and also award to Plaintiffs such other relief as may be applicable under statutory and common law, including interest, costs and attorney fees associated with this action.

#### **JURY DEMAND**

Plaintiffs, through their Attorney, Herbert A. Sanders of The Sanders Law Firm, P.C., hereby requests a trial by jury.

Respectfully submitted,

Dated: July 8, 2020

/s/ Herbert A. Sanders  
Herbert A. Sanders (P43031)  
The Sanders Law Firm, P.C.  
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# EXHIBIT 6B

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**EMERGENCY MANAGER  
CITY OF DETROIT**

**ORDER No. 44**

**FINAL EMERGENCY MANAGER ORDER**

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**BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER  
FOR THE CITY OF DETROIT  
PURSUANT TO MICHIGAN’S PUBLIC ACT 436 OF 2012,  
KEVYN D. ORR, THE EMERGENCY MANAGER,  
ISSUES THE FOLLOWING ORDER:**

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*Whereas*, on March 28, 2013, Michigan Public Act 436 of 2012 (“PA 436”) became effective and Kevyn D. Orr became the Emergency Manager (the “EM”) for the City of Detroit (the “City”) with all of the authority, powers and duties provided under PA 436; and

Pursuant to Section 9(2) of PA 436, the EM “shall act for and in the place and stead of” the City’s Mayor (the “Mayor”) and the Detroit City Council (the “Council”); and

Section 9(2) of PA 436 also grants the EM “broad powers in receivership to rectify the financial emergency and assure the fiscal accountability of the [City] and the [City’s] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare;” and

Section 10(1) of PA 436 provides, in part, that “[a]n emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely implementation of a financial and operating plan..., or to take actions or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under this section is binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom it is issued. Local elected and appointed officials and employees, agents, and contractors of the local government shall take and direct those actions that are necessary and advisable to maintain compliance with the financial and operating plan;” and

The EM has developed and implemented a written financial and operating plan for the City consistent with the requirements of Section 11 of PA 436, the objective of which has been to enable City officials to provide, or cause to be provided, governmental services essential to the public health, safety and welfare of residents of the City, and assure the fiscal accountability of the City; and

Section 12 of PA 436 authorizes the EM, “notwithstanding any charter provision to the contrary,” to exercise certain rights and powers, along with the other rights, duties and powers set forth in PA 436; and

Section 21 of PA 436 states, “[b]efore the termination of receivership and the completion of the emergency manager’s term, or if a transition advisory board is appointed under section 23, then before the transition advisory board is appointed, the emergency manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership;” and

On July 18, 2013, consistent with the authorization of the Governor of the State of Michigan (the “Governor”) provided under Section 18(1) of PA 436, the City filed a petition for relief pursuant to chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as it may be amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”); and

By an order dated December 5, 2013 (Docket No. 1945) (the “Eligibility Order”), the Bankruptcy Court determined that the City is eligible for relief under chapter 9 of the Bankruptcy Code; and

On October 22, 2014, the City filed the Eighth Amended Plan for the Adjustment of Debts of the City of Detroit in the Bankruptcy Court (Docket No. 8045) (as it may be further amended, modified or supplemented, the “Plan of Adjustment”);<sup>1</sup> and

By an order dated November 12, 2014 (the “Confirmation Order”) (Docket No. 8272), the Bankruptcy Court confirmed the Plan of Adjustment pursuant to the Bankruptcy Code; and

In connection with the Plan of Adjustment, the City, Title Source, Inc. (the “Title Company”), The Detroit Institute of Arts (the “DIA”) and the Foundation for Detroit’s Future (“FDF”) have entered into that certain Deposit Escrow Agreement dated September 19, 2014 (the “Deposit Escrow Agreement”), whereby the parties thereto have agreed to deposit certain agreements relating to the conveyance of the assets of the Detroit Institute of Arts to the DIA to be held in perpetual charitable trust, including, but not limited to, the Omnibus Transaction Agreement by and among the City, the DIA and the FDF (the “Omnibus Agreement”); the Settlement Conveyance and Charitable Trust Agreement by and between the City and the DIA (the “Conveyance Agreement”); the Quit Claim Deed from the City to the DIA granting the DIA the City’s interest in the cultural center garage (the “Garage Deed”); the Quit Claim Deed from the City to the DIA granting the DIA the City’s interest in the real property of the Detroit

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Plan of Adjustment.

Institute of Arts (the “DIA Deed”); the Bill of Sale by and between the City and the DIA (the “Bill of Sale”); and the Intellectual Property Transfer Agreement by and between the City and the DIA (together with the Omnibus Agreement, the Conveyance Agreement, the Garage Deed, the DIA Deed, the Bill of Sale and any other document referenced in Schedule 1 of the Deposit Escrow Agreement, the “DIA Transfer Documents”); and

The City also is entering into various settlement agreements and other resolutions as set forth in the Plan of Adjustment and the exhibits thereto (collectively, the “Plan Settlements”), which will be effective upon effective date of the Plan of Adjustment (the “Effective Date”), including, without limitation, the following (as further defined or described in the Plan of Adjustment): (a) the UTGO Settlement Agreement, in substantially the form as Exhibit I.A.360 to the Plan of Adjustment, (b) the LTGO Settlement Agreement, in substantially the form as Exhibit I.A.237 of the Plan of Adjustment, (c) the 36th District Court Settlement, as outlined in Exhibit I.A.9 to the Plan of Adjustment; (d) the settlement of OPEB Benefits, as set forth in Section IV.G of the Plan of Adjustment and the Retiree Health Care Settlement Agreement attached as Exhibit I.A.298 to the Plan of Adjustment; (e) the DIA Settlement, as outlined in Exhibit I.A.126 of the Plan of Adjustment and pursuant to the DIA Settlement Documents substantially in the form as Exhibit I.A.127 of the Plan of Adjustment; (f) the State Contribution Agreement in substantially the form as Exhibit I.A.332 of the Plan of Adjustment (the “State Contribution Agreement”); (g) matters relating to the DWSD Authority; (h) the Syncora Settlement, including the Syncora Development Agreement in substantially the form as Exhibit I.A.340 of the Plan of Adjustment and the other Syncora Settlement Documents in substantially the forms as Exhibit I.A.344 of the Plan of Adjustment; (i) the FGIC/COP Settlement, including the FGIC Development Agreement in substantially the form as Exhibit I.A.198 to the Plan of Adjustment and the other FGIC/COP Settlement Documents in substantially the forms as Exhibit I.A.197; and (j) all other compromises and settlements included in, incorporated into or related to the Plan of Adjustment; and

On September 25, 2014, in accordance with Section 9(6)(c) of PA 436, the Council voted unanimously to remove the EM as of the Effective Date (the period from the appointment of the EM through such removal, the “EM Tenure”). By a letter to the Governor, the Mayor approved of the Council’s vote on the same day; and

On September 25, 2014, in connection with the vote of Council to, and the Mayor’s approval of, the removal of the EM as of the Effective Date, the EM adopted and issued his Order No. 42. By Order No. 42, the EM, among other things, (a) restored the authority of the Mayor and the Council over day-to-day operations and activities effective immediately as permitted by PA 436, (b) agreed not to exercise his powers under PA 436 to interfere with the powers restored to the Mayor and the Council and (c) agreed that he will exercise his powers through the conclusion of the EM Tenure only with respect to any action (or the prevention of any action) that is necessary or convenient for (i) the management of the case captioned “*In re City of Detroit, Michigan*, Case No 1353846” (the “Bankruptcy Case”) and related bankruptcy proceedings and (ii) the implementation of the Plan of Adjustment; and



The EM has concluded that, as of and conditioned on the occurrence of the Effective Date, the financial conditions of the City will have been corrected in a sustainable fashion consistent with the requirements of Section 9(7) of PA 436; and

Section 22(1) of PA 436 provides that “[i]f an emergency manager determines that the financial emergency that he or she was appointed to manage has been rectified, the emergency manager shall inform the governor and the state treasurer;” and

By letter dated December 8, 2014, the EM will notify the Governor and the Treasurer of the State of Michigan (the “State Treasurer”) of the EM’s determination that the financial emergency he was appointed to manage within the City will have been rectified as of, and conditioned on the occurrence of, the Effective Date; and

As the EM Tenure approaches its conclusion and in anticipation of the Effective Date, the EM has determined that this Order is appropriate to: (a) promote the successful conclusion of the City’s restructuring efforts and its capacity to provide or cause to be provided necessary governmental services essential to the public health, safety and welfare; and (b) otherwise fulfill the intents and purposes of PA 436 and chapter 9 of the Bankruptcy Code; and

As part of this Order, the EM has determined, among other things, that the terms hereof are appropriate to provide for a smooth transition at the conclusion of the EM Tenure and to promote the long-term financial recovery of the City and the health, safety and welfare of the public; and

Pursuant to Order No. 42, the EM has consulted with the Mayor and the Council regarding the terms of this Order.

**It is hereby ordered that:**

*Restoration of City Governance*

1. To the extent not already restored pursuant to the EM’s Order No. 42, and except as provided by this Order or other or applicable Michigan or Federal statute, the powers and authority of the Mayor and the Council previously exercised by the EM shall be restored as of, and conditioned upon the occurrence of, the Effective Date.

*Cooperation and Compliance by City Officials*

2. The Mayor, Council members, department heads and other employees, agents and contractors of the City shall promptly and fully do all of the following:
  - a. Cooperate with the EM through the end of the EM Tenure to the extent necessary to effectuate the implementation of a Plan of Adjustment, the Confirmation Order or other orders entered or that may be entered in connection therewith by

the Bankruptcy Court in the Bankruptcy Case or in any related proceeding or appeal from any order entered or that may be entered by the Bankruptcy Court.

- b. Comply with requests from the Michigan Financial Review Commission (the “Commission”) created by Michigan Public Act 181 of 2014 (“PA 181”), known as the Michigan Financial Review Commission Act, to the extent necessary or appropriate to effectuate the purposes of PA 181. Such compliance shall include, at a minimum and without limitation, all of the following:
  - i. Providing to the Commission any documents, records or other information requested of City officials by the Commission or its staff, including any documents, records or other information specifically required by PA 181.
  - ii. Appearing before the Commission to provide testimony, documents, records or other information as and when requested by the Commission or its staff.
  - iii. Providing to the Commission upon its request verification of compliance by the City with all of the following consistent with the requirements of Section 6(3) of PA 181:
    - A. Section 8 of Michigan Public Act 152 of 2011, the Publicly Funded Health Insurance Contribution Act;
    - B. Sections 4i, 4p, 4s and 4t of Michigan Public Act 279 of 1909, the Home Rule City Act;
    - C. Michigan Public Act 34 of 2001, the Revised Municipal Finance Act; and
    - D. Michigan Public Act 2 of 1968, the Uniform Budgeting and Accounting Act;

*provided that* nothing herein shall limit, modify or excuse the City's obligation to comply with the applicable law, whether or not listed herein.

#### *Plan of Adjustment Matters*

- 3. Without limiting the terms of paragraph 2 above, the Mayor, the Council and all City officers, department heads and other employees, agents and contractors shall take such steps as are necessary or appropriate from and after the Effective Date to pursue the prompt implementation of the Plan of Adjustment, the Confirmation Order and all agreements necessary thereto, including the Plan Settlements. For the avoidance of doubt, such steps include, without limitation, the following:

- a. The City shall defend any appeals of the Confirmation Order and any appeals of the Eligibility Order or other orders of the Bankruptcy Court necessary for the success of the Plan of Adjustment.
  - b. On or promptly after the Effective Date and provided that the conditions set forth in the Deposit Escrow Agreement and the DIA Transfer Documents have been otherwise satisfied, the City shall provide the certification described in Schedule 2 of the Deposit Escrow Agreement to the Title Company, and, upon release of the DIA Transfer Documents in accordance with the Deposit Escrow Agreement, the City shall cause the transfer of the assets of the Detroit Institute of Art described in the DIA Transfer Documents and the governance thereof to The Detroit Institute of Arts in accordance with the DIA Transfer Documents.
  - c. The City shall comply with all covenants set forth in Sections 5.2 and 5.3 of the Omnibus Agreement.
  - d. Without limiting any other provision hereof, the City shall make such distributions and take such actions as are contemplated in the Plan of Adjustment for the establishment of and distribution to the Detroit General VEBA and Detroit Police and Fire VEBA (as such terms are defined in the Plan of Adjustment), in substantially the form provided in the Plan of Adjustment, and consistent with the measures set forth in the letter agreement filed at Docket No. 8183, all of which are hereby specifically adopted, approved and ratified in all respects.
  - e. Upon the negotiation of documentation mutually acceptable to the parties, the City shall be authorized and is directed to take such actions and sign such documents as are necessary or appropriate to establish the DWSD Authority (i.e., the Great Lakes Water Authority) and implement the DWSD Authority Transaction consistent with the Memorandum of Understanding (as defined in the Confirmation Order).
  - f. The City is authorized to enter into and implement, and the EM hereby approves, the *Memorandum of Understanding Between the City of Detroit and Wayne County Community College* in the form approved by the Council on December 8, 2014.
4. All Plan Settlements and related agreements (including, without limitation, the DIA Transfer Documents), to the extent not previously approved by an order of the EM, are hereby expressly adopted, approved and ratified in all respects.

#### *Restructuring Advisors*

5. The Mayor or his designee may determine whether to retain the restructuring advisors listed on the attached Exhibit A (collectively, the “Restructuring Advisors”) for such period as is necessary or appropriate to complete their work to implement the Plan of Adjustment and defend the appeals thereof (the “Restructuring Period”), subject to the terms of the Restructuring Advisors' contracts with the City, *provided that* the Mayor shall consult with the Commission with respect to any decision not to retain a Restructuring Advisor through the conclusion of the Restructuring Period.

6. The Emergency Manager, on behalf of the City, hereby restates and ratifies his approval of all fees and expenses for the City's restructuring professionals that have been subject to the Fee Examiner review process in the City's bankruptcy case (including the Restructuring Advisors) for services rendered through the Effective Date, subject to the Bankruptcy Court's independent review of reasonableness. The City is directed to continue to process and pay invoices of the City's restructuring professionals (including the Restructuring Advisors) for their work through the Effective Date based on the invoices presented, subject only to the Bankruptcy Court's independent review of reasonableness. For the avoidance of doubt, the City also shall pay any creditor advisors or court-appointed professionals and experts consistent with orders of the Bankruptcy Court. The City's Chief Financial Officer ("CFO") shall be responsible for the foregoing on behalf of the City, under the supervision of the Mayor.
7. Consistent with the foregoing, the City shall: (a) set aside a reserve account solely for the payment of restructuring fees consistent with full funding of the amounts identified for "Restructuring Professional Fees" in the City of Detroit Ten-Year Financial Projections; and (b) otherwise implement the fee provisions of the Plan of Adjustment, the Confirmation Order and any further orders of the Bankruptcy Court. The CFO shall be responsible for the foregoing on behalf of the City, under the supervision of the Mayor.

#### *Two-Year Budget*

8. Attached hereto as Exhibit B is the City's two-year budget consistent with the requirements of Section 21(1) of PA 436 (the "Two-Year Budget").
9. Consistent with the requirements of Section 21(2) of PA 436, the City shall not amend the Two-Year Budget without the written approval of the State Treasurer. In addition to approval by the State Treasurer, an amendment by the City to the Two-Year Budget shall not take effect unless approved by the Commission consistent with Section 7(c) of PA 181.

#### *Labor Matters*

10. All Collective Bargaining Agreements ("CBAs") set forth on Exhibit II.D.5 of the Plan of Adjustment and all CBAs identified on the attached Exhibit C (including CBAs relating to the Detroit Water and Sewerage Department), and any addenda, exhibits, schedules, appendices, supplements or related agreements through the date of this Order, are hereby adopted, approved and ratified in all respects. In addition to the foregoing, all City Employment Terms ("CETs") and other labor-related agreements approved or authorized by the EM are hereby adopted, ratified and approved in all respects, including, without limitation, the CETs and other agreements identified on the attached Exhibit C. The EM also ratifies and approves the CETs that were implemented prior to the EM Tenure and that remain in effect as of the date of this Order, including the CETs identified on the attached Exhibit C.

*Pension Plan Matters*

11. For the avoidance of doubt, and without limiting anything herein, the EM hereby expressly reaffirms his Order Nos. 25, 26, 29, 30 and 43 with respect to the changes to the City's pension plans and related ordinances, subject to the additional provisions below.
12. Pursuant to Section 16.4 of Component I of the Combined Plan for the General Retirement System of the City of Detroit, Michigan (the "Combined GRS Plan"), the EM, on behalf of the City, adopts the Combined GRS Plan, as amended and restated, in the form attached hereto as Exhibit D, which document (a) conforms the Combined GRS Plan to the terms of the confirmed Plan of Adjustment and (b) makes other clarifying modifications.
13. Pursuant to Section 17.5 of Component I of the Combined Plan for the Police and Fire Retirement System of the City of Detroit, Michigan (the "Combined PFRS Plan"), the EM, on behalf of the City, adopts the Combined PFRS Plan, as amended and restated, in the form attached hereto as Exhibit E, which document: (a) reflects changes in the terms and conditions of retirement benefits as provided in the CBAs and memoranda of understanding negotiated with certain of the employee representatives; (b) conforms the Combined PFRS Plan to the terms of the confirmed Plan of Adjustment; and (c) makes other clarifying modifications.
14. Copies of the Combined GRS Plan, as amended and restated, and the Combined PFRS Plan, as amended and restated, will be kept in the Office of the City Clerk for the City of Detroit and shall be available for public inspection.
15. The appropriate City officers, department heads and other employees shall cause the Boards of Trustees of the General Retirement System of the City of Detroit ("GRS") and the Police and Fire Retirement System of the City of Detroit ("PFRS") to timely file or cause to be filed on behalf of GRS and PFRS applications for Favorable Determination Letters with the Internal Revenue Service pursuant to Revenue Procedure 2014-6 (or any successor procedure) to obtain rulings that the Combined GRS Plan and the Combined PFRS Plan satisfy the requirements for favorable tax treatment under Sections 401(a) and 501(a) of the Internal Revenue Code. City officers, department heads and other employees, agents and contractors shall cooperate with and provide such information as the Boards of Trustees and their legal counsel may require in connection with such Favorable Determination Letter applications.
16. The Mayor, Council members and appropriate City officers, department heads and other employees shall cause the Boards of Trustees of the GRS and the PFRS to: (a) comply with the governance requirements set forth in Section 2 of the State Contribution Agreement (including, with respect to the GRS, the requirements of Exhibit A and, with respect to the PFRS, the requirements of Exhibit B) at all times during the 20-year period

following the disbursement to the GRS and the PFRS of the State Contribution (as defined in the State Contribution Agreement); and (b) establish and implement an income stabilization program that complies in all respects with Section 3 of the State Contribution Agreement.

#### *Other EM Orders and Bond Orders*

17. All prior Orders of the EM, to the extent that they are not otherwise inconsistent with this Order and have not previously been modified or rescinded (the “Prior Orders”), shall be incorporated by reference into this Order.
18. The reaffirmation herein of specific Orders of the EM shall not render the Orders not explicitly mentioned herein revoked, rescinded or altered in any way unless such Orders are otherwise inconsistent with this Order.
19. The bond orders issued by the EM, including the bond orders identified on the attached Exhibit F (collectively, the “Bond Orders”), are hereby ratified and affirmed.

#### *Administrative Matters*

20. The City shall maintain access to the EM page via the City’s website for a period of at least one year following the end of the EM Tenure.
21. Nothing in this Order shall be construed as contrary to applicable law.
22. Nothing in this Order shall be construed to restrict or impair the authority of the Governor, in the Governor’s sole discretion, to determine that the financial conditions of the City have not been corrected in a sustainable fashion as required by Section 9(7) of PA 436 and appoint a new emergency manager pursuant to Section 24 of PA 436.
23. If any provision of this Order is declared by a court of competent jurisdiction to be illegal, unenforceable or ineffective, such provision shall be deemed severable to the extent necessary so that all other provisions contained in this Order shall remain valid, enforceable and effective.
24. The City shall, and is directed to, maintain all insurance called for by Article 8 of the EM's Contract for Emergency Manager Services dated March 27, 2013 between Mr. Orr and the State of Michigan (the “EM Contract”), including, without limitation, any general liability, professional liability or errors and omissions policy under Sections 8.1 and 8.3 of the EM Contract, and any tail coverage for such insurance.
25. The City shall, and is directed to, fulfill its obligations under Section 8.2 of the EM Contract after the end of the EM Tenure, including, without limitation, by paying the costs of any judgment, settlement or attorneys' fees relating to any uninsured claim,

demand or lawsuit against the EM or any employee, agent, appointee or contractor of the EM for actions taken during the EM Tenure. If Mr. Orr is sued personally for any action performed within the scope of his official capacity as the EM, Mr. Orr shall have the right to direct the defense of any such action, and the Mayor, the Council, the Corporation Counsel and the other employees, officers, department heads and agents of the City shall not take any action contrary to, or to interfere with, Mr. Orr's right to direct such defense.

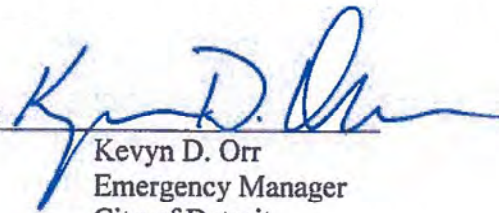
26. Prior to the Effective Date, and pursuant to Section 5.1 of the Financial Stability Agreement, as Amended and Restated on November 7, 2013 (the "FSA"), the EM hereby consents, with the mutual consent of the State Treasurer, to amend Section 6.1(c) of the FSA for the purpose of terminating the FSA as of the Effective Date. To that end, the *Addendum to the Financial Stability Agreement* in the form attached hereto as Exhibit G (the "FSA Amendment") is approved and ratified in all respects. For the avoidance of doubt, the mutual execution of the FSA Amendment by the EM and the State Treasurer shall not preclude the Council from voting to ratify execution of the FSA Amendment prior to the Effective Date.
27. This Order shall be distributed to the Governor, the State Treasurer, the Mayor, Council members, the CFO and all department heads.
28. This Order is effective immediately.

#### *Modification of This Order and Prior EM Orders*

29. Prior to the Effective Date, the EM may modify, amend, rescind, replace, supplement or otherwise revise this Order at any time. Further, nothing herein shall preclude the EM from issuing any other appropriate Orders, consistent with EM Order No. 42, prior to the Effective Date.
30. Pursuant to Section 21(2) of PA 436, the Council shall not revise this Order or any other Orders or ordinances implemented by the EM during his term, and that remain in effect, prior to one year after the termination of receivership. In addition, after the Effective Date, this Order, or any other Order issued by the EM that remains in effect, may be amended, modified or rescinded only by the following methods:
  - a. By a subsequent Order issued by an emergency manager appointed by the Governor under Section 9 of PA 436, including:
    - i. After a selection by the Council pursuant to Section 7(1)(b) of PA 436; or
    - ii. Pursuant to Section 24 of PA 436; or
  - b. By the City by resolution of the Council, approved by the Mayor and ratified by the Commission pursuant to Section 7(n) or 7(o) of PA 181.

Dated: December 8, 2014

By:



Kevyn D. Orr  
Emergency Manager  
City of Detroit

cc: Governor of the State of Michigan  
State Treasurer  
Mayor Michael Duggan  
Members of Detroit City Council  
Chief Financial Officer  
City Department Heads



## EXHIBIT C

### NONEXCLUSIVE SCHEDULE OF POSTPETITION COLLECTIVE BARGAINING AGREEMENTS AND CITY EMPLOYMENT TERMS

#### **I. FULLY APPROVED AGREEMENTS<sup>2</sup>**

##### **A. City of Detroit Collective Bargaining Agreements**

- 1) Master Agreement Between the City of Detroit and the Police Officers Association of Michigan (POAM), 2013-2018, dated November 12, 2013.
- 2) Master Agreement Between the City of Detroit and the International Brotherhood of Teamsters Local 214 2013-2018, dated December 18, 2013.
  - a. Supplemental Agreement Between the City of Detroit Police Department and Teamsters State, County and Municipal Workers, Local 214 2013-2018, dated December 18, 2013.
  - b. Supplemental Agreement Between the Department of Public Works and Teamsters Local 214 2013-2018, dated December 18, 2013.
  - c. Supplemental Agreement Between the General Services Department and Teamsters Local 214 2013-2018, dated December 18, 2013.
  - d. Supplemental Agreement between the City of Detroit Municipal Parking Department and Local 214 Teamsters State, County and Municipal Workers, 2013-2018, dated December 18, 2013.
- 3) Master Agreement Between the City of Detroit and the International Union of Operating Engineers (IUOE) Local 324 2013-2018, dated December 18, 2013.
- 4) Master Agreement Between the City of Detroit and the International Union of Operating Engineers (IUOE) Local 324 (Park Management) 2013-2018, dated December 18, 2013.
- 5) Master Agreement Between the City of Detroit and the International Union of Operating Engineers (IUOE) Local 324 (Principal Clerks) 2013-2018, dated December 18, 2013.
- 6) Master Agreement Between the Assistant Supervisors of Street Maintenance and Construction and the City of Detroit 2014-2018.

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<sup>2</sup> "Fully Approved Agreements" means those collective bargaining agreements that have been (i) ratified by the applicable bargaining unit or units, as necessary (ii) approved by the applicable City or DWSD bargaining representatives, (iii) approved by the Emergency Manager and (iv) approved by the Office of the Treasurer of the State of Michigan.

- 7) Master Agreement Between the City of Detroit and the Michigan Building and Construction Trades Council 2014-2018, dated May 1, 2014.
- 8) Master Agreement Between the City of Detroit and the Emergency Medical Service Officers Association 2014-2019, dated June 11, 2014.
- 9) Master Agreement Between the City of Detroit and Local 1863 of the American Federation of State County and Municipal Employees, AFL-CIO (Detroit Civilian Crossing Guards) 2014-2018, dated June 27, 2014.
- 10) Master Agreement Between the City of Detroit and Local 542 of the American Federation of State County and Municipal Employees, AFL-CIO (Motor City Seasonals) 2014-2018, dated June 27, 2014.
- 11) Master Agreement Between the City of Detroit and Local 1206 of the American Federation of State County and Municipal Employees, AFL-CIO (Detroit Forestry and Landscape Foreman's Union) 2014-2018, dated June 27, 2014.
- 12) Master Agreement Between the City of Detroit and Local 2394 of the American Federation of State County and Municipal Employees, AFL-CIO (Supervisory Unit) 2014-2018, dated June 27, 2014.
  - a. Supplemental Agreement Between the City of Detroit Elections Department and Local 2394 of the American Federation of State County and Municipal Employees, AFL-CIO (Supervisory Unit) 2014-2018.
  - b. Supplemental Agreement Between the City of Detroit Municipal Parking Department and Local 2394 of the American Federation of State County and Municipal Employees, AFL-CIO (Supervisory Unit) 2014-2018.
  - c. Supplemental Agreement Between the City of Detroit Police Department and Local 2394 of the American Federation of State County and Municipal Employees, AFL-CIO (Supervisory Unit) 2014-2018.
  - d. Supplemental Agreement Between the City of Detroit Recreation Department and Local 2394 of the American Federation of State County and Municipal Employees, AFL-CIO (Supervisory Unit) 2014-2018.
- 13) Master Agreement Between the City of Detroit and Local 6087 of the American Federation of State County and Municipal Employees, AFL-CIO (Paving Forepersons) 2014-2018, dated June 27, 2014.
- 14) Master Agreement Between the City of Detroit and the Detroit Police Command Officers Association 2014-2019, dated June 18, 2014.

- 15) Master Agreement Between the City of Detroit and the Detroit Income Tax Investigators Association 2014-2018.
- 16) Master Agreement Between the City of Detroit and the Association of Municipal Inspectors 2014-2018, dated June 27, 2014.
- 17) Master Agreement Between the City of Detroit and the Service Employees International Union Local 517-M (Supervisory Unit) 2014-2018, dated June 25, 2014.
- 18) Master Agreement Between the City of Detroit and the Service Employees International Union Local 517-M (Non-Supervisory Unit) 2014-2018, dated June 25, 2014.
- 19) Master Agreement Between the City of Detroit and the Service Employees International Union Local 517-M (Professional and Technical Unit) 2014-2018, dated June 25, 2014.
- 20) Master Agreement Between the City of Detroit and the Association of City of Detroit Supervisors 2014-2018, dated June 27, 2014.
- 21) Master Agreement Between the City of Detroit and the Association of Professional and Technical Employees 2014-2018, dated July 22, 2014.
- 22) Master Agreement Between the City of Detroit and the Senior Accountants, Analysts and Appraisers Association 2014-2018, dated May 27, 2014.
- 23) Master Agreement Between the City of Detroit and Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO (Non-Supervisory Bargaining Unit) 2014-2018.
  - a. Supplemental Agreement Between the City of Detroit Planning and Development Department and Local 23 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
  - b. Supplemental Agreement Between the City of Detroit Building and Safety Department and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
  - c. Supplemental Agreement Between the City of Detroit Department of Public Works and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
  - d. Supplemental Agreement Between the City of Detroit General Services Department and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.

- e. Supplemental Agreement Between the City of Detroit Human Resources Department and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- f. Supplemental Agreement Between the City of Detroit Information Technology Department and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- g. Supplemental Agreement Between the City of Detroit Municipal Parking Department and Local 62 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- h. Supplemental Agreement Between the City of Detroit Department of Public Works and Local 229 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- i. Supplemental Agreement Between the City of Detroit General Services Department and Local 229 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- j. Supplemental Agreement Between the City of Detroit General Services Department and Local 542 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- k. Supplemental Agreement Between the City of Detroit Fire Department and Local 542 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- l. Supplemental Agreement Between the City of Detroit Recreation Department and Local 542 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- m. Supplemental Agreement Between the City of Detroit Recreation Department and Local 836 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- n. Supplemental Agreement Between the City of Detroit Public Lighting Department and Local 2920 of the American Federation of State County and Municipal Employees, AFL-CIO 2014-2018.
- 24) Master Agreement Between the City of Detroit and the Detroit Police Officers Association, dated October 1, 2014.
- 25) Master Agreement Between the City of Detroit and the Association of Professional Construction Inspectors 2014-2018.



- 26) Master Agreement Between the City of Detroit and the United Automobile, Aerospace and Agricultural Implement Workers of America Local 212 – Police Commission Investigators 2014-2018, dated October 20, 2014.
- 27) Master Agreement Between the City of Detroit and the United Automobile, Aerospace and Agricultural Implement Workers of America Local 412 – Legal Assistants 2014-2018, dated October 20, 2014.
- 28) Master Agreement Between the City of Detroit and the Association of Detroit Engineers 2014-2018.
- 29) Master Agreement Between the City of Detroit, Local 1227 of the American Federation of State, County and Municipal Employees, AFL-CIO and the Michigan Building and Construction Trades Council 2014-2018.
- 30) Master Agreement Between the City of Detroit and the Detroit Fire Fighters Association 2014-2019.
- 31) Master Agreement Between the City of Detroit and the Detroit Police Lieutenants and Sergeants Association 2014-2019.
- 32) Master Agreement Between the City of Detroit and the Association of Municipal Engineers 2014-2018.

**B. Detroit Water and Sewerage Department Collective Bargaining Agreements**

- 1) 2012-2018 Master Agreement Between the Detroit Water & Sewerage Department and AFSCME, Michigan Council 25 Local 2920.
- 2) Master Agreement Between the City of Detroit and the Michigan Building and Construction Trades Council 2013-2016, dated June 26, 2013.
  - a. Memorandum of Agreement between the Detroit Water and Sewerage Department and the Michigan Building & Construction Trades Council to amend their June 26, 2013 - June 30, 2016 collective bargaining agreement.
- 3) 2013-2016 Master Agreement Between the Detroit Water & Sewerage Department and the Building Trades Foremen, dated June 26, 2013.
- 4) 2014-2016 Master Agreement Between the Detroit Water & Sewerage Department and the Detroit Senior Water Systems Chemists Association.
- 5) 2014-2019 Master Agreement Between the DWSD and Teamsters State, County and Municipal Workers, Local 214.

- 6) Memorandum of Agreement between the Detroit Water and Sewerage Department and the International Union of Operating Engineers, Local 324 to amend their March 25, 2013 - June 30, 2022 collective bargaining agreement.
- 7) Memorandum of Agreement between the Detroit Water and Sewerage Department and the Association of Professional Construction Inspectors to amend their March 26, 2013 - June 30, 2020 collective bargaining agreement.

## **II. CITY EMPLOYMENT TERMS**

### **A. City of Detroit City Employment Terms**

- 1) City Employment Terms implemented by the City of Detroit on the American Federation of State, County and Municipal Employees, AFL-CIO Local 1023 – Emergency Services Operators, dated August 23, 2013, December 26, 2013 and December 8, 2014.
- 2) Restructuring changes implemented by the City of Detroit impacting employees in the Law Department, dated May 5, 2014.
- 3) City Employment Terms implemented by the City of Detroit on the United Automobile, Aerospace and Agricultural Implement Workers of America Local 2211 – Public Attorneys Association, dated September 17, 2014.
- 4) City Employment Terms implemented by the City of Detroit on the Police Officers Labor Council – Detention Facility Officers, dated July 18, 2012, December 26, 2013 and December 4, 2014.

### **B. Detroit Water and Sewerage Department City Employment Terms**

- 5) City Employment Terms implemented by the City of Detroit on United Automobile, Aerospace and Agricultural Implement Workers of America Local 2200 – Waste Water Treatment Plant Supervisors, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 6) City Employment Terms implemented by the City of Detroit on the American Federation of State, County and Municipal Employees Local 2394 – Detroit Water and Sewerage Department Supervisors, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 7) City Employment Terms implemented by the City of Detroit on the American Federation of State, County and Municipal Employees Local 207 – Detroit Water and Sewerage Department Employees, dated July 18, 2012, December 26, 2013, and September 25, 2014.

- 8) City Employment Terms implemented by the City of Detroit on the Association of Professional and Technical Employees – Detroit Water and Sewerage Department Employees, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 9) City Employment Terms implemented by the City of Detroit on the Association of Detroit Engineers – Detroit Water and Sewerage Department Employees, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 10) City Employment Terms implemented by the City of Detroit on the Senior Accountants, Analysts, and Appraisers Association – Detroit Water and Sewerage Department Employees, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 11) City Employment Terms implemented by the City of Detroit on the Sanitary Chemists and Technicians Association, dated July 18, 2012, December 26, 2013, and September 25, 2014.
- 12) Letter from Emergency Manager Kevyn D. Orr, Esq. to Detroit Water and Sewerage Department Director Sue McCormick regarding the Detroit Water and Sewerage Department, dated December 30, 2013.

# EXHIBIT 6C



# LEGGHIO & ISRAEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

STUART M. ISRAEL  
CHRISTOPHER P. LEGGHIO  
KEVIN P. KALES  
JOHN G. ADAM  
MEGAN B. BOELSTLER  
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313.381.0806

April 23, 2021

**Via Email**

Herbert A. Sanders  
The Sanders Law Firm, P. C.  
The Ford Building  
615 Griswold, Suite 913  
Detroit, MI 48226  
haslawpc@gmail.com

RE: *Christopher McGhee, et al v. City of Detroit, et al*  
Wayne County Circuit Court 20-006272-CD  
**Pension Credited Service - Combined Plan for the Police and Fire  
Retirement System of the City of Detroit ("Plan")**

Dear Mr. Sanders:

This letter also confirms our telephone conversations on April 21, 2021. Earlier -- on April 21, 2021 by a 2:34 p.m. email -- I confirmed Plaintiffs' intention to withdraw their Motion to Compel with regard to the DFFA, which was scheduled for April 23 hearing.

As we discussed on April 21, the DFFA believes your clients earned Credited Service with the Plan ***while on duty disability***. All members may do so until they accrue up to twenty-five (25) years of Credited Service. This is so ***even when*** a member's seniority is terminated after more than two (2) years off the job on duty disability.

For your convenience, I have attached a pertinent highlighted excerpt from the Plan document. The City provided Plaintiffs with the entire Plan document in discovery.

LEGGHIO & ISRAEL, P.C.  
ATTORNEYS AND COUNSELORS AT LAW

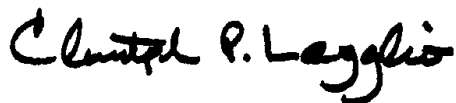
Herbert A. Sanders  
*Christopher McGhee, et al v. City of Detroit, et al*  
*Pension Credited Service*  
April 23, 2021  
Page 2

The DFFA urges Plaintiffs to review this language and, more specifically, to review their individual Credited Service “received” while they were/are duty disabled.

During our April 21, 2021 call, I also noted that the DFFA believes that Plaintiffs’ claims raise issues within the exclusive jurisdiction of the Bankruptcy Court, *i.e.*, that they are contrary to the Bankruptcy Court’s approved Plan of Adjustment (“POA”).

Finally, this letter also confirms that the DFFA will depose, pursuant to MCR 2.306(B)(3), the Police and Fire Retirement System. And, as we agreed, I will contact you early next week regarding additional dates for discovery.

Sincerely,



Christopher P. Legghio

Enclosure

cc: Megan B. Boelstler (mbb@legghioisrael.com)  
Shawndrica N. Simmons (simmonslegal@lawchic.com)  
Jason McFarlane (mcfaj@detroitmi.gov)

# EXHIBIT 6D

VOLUNTARY LABOR ARBITRATION TRIBUNAL  
Before George T. Roumell, Jr., Arbitrator

*In the Matter of the  
Arbitration Between:*

CITY OF DETROIT (FIRE  
DEPARTMENT)

-and-

DETROIT FIRE FIGHTERS  
ASSOCIATION

Gr. No. 20-20  
Stephen Henderson  
Christopher J. Smith

---

**ARBITRATOR'S OPINION AND AWARD**

**APPEARANCES:**

FOR THE CITY OF DETROIT:

Jason McFarlane, Asst. Corporation Counsel

FOR THE DETROIT FIRE FIGHTERS  
ASSOCIATION:

Megan Boelstler, Attorney

**The Grievance and Answers**

On June 23, 2020, Detroit Fire Fighters Association Vice President William M. Harp  
filed the following grievance on behalf of Stephen Henderson:

**Statement of Grievance:**

The DFFA grieves the loss of seniority for Stephen Henderson. He made application to the Pension Board prior to his 2<sup>nd</sup> anniversary of being on a Duty Disability. The Pension Board returned him to work on or about June 1, 2020. The department's HR representative Kemia Crosson failed to process his return timely. Demoted him without due process. Upon his return Ms. Crosson deemed him a new hire this being a violation of Article 1 A, B, C, D – Article 12 D 7 along with other applicable provisions of the CBA.

By letter dated June 30, 2020 to the President of the Association, Thomas Gehart, Robert Distelrath, Chief of Department-Fire Fighting Division, denied the grievance writing:

\* \* \*

The Department denies this grievance as Stephen Henderson was properly returned to duty per 12 D(2). Article 12 D(2) calls for the loss of seniority upon retirement. Article D states: Loss of Seniority: An employee loses seniority for the following reasons only: Sec. 2 Retirement. This is the sole Article and section of the CBA controlling Stephen Henderson's seniority. The Police and Fire Retirement System of the City of Detroit recognizes four types of retirement: Normal Retirement, Deferred Retirement (Vested Benefits), Duty Disability Retirement, and Non-Duty Disability Retirement. Stephen Henderson separated from the Department on a Duty Disability Retirement, therefore, he must be returned with no seniority.

At Step 2, Reginald T. Jenkins, Second Deputy Commissioner, denied the grievance, writing:

Stephen Henderson was properly returned to work, from a Duty Disability Retirement, in accordance with the CBA, Article 12(D)(2). The Retirement Systems did release Mr. Henderson from a Duty Disability Retirement status and notified the Fire Department's Human Resources Office of such, on or about June 1, 2020.

The date of notification to the Department is not a return to work date. Upon release by the Retirement Systems, there is a process that is followed when returning to work. Part of that process is going to the City's doctor for an examination and release to return to work. The return to work date is the actual date that the employee is returned to work. Stephen Henderson's actual return to work date was June 15, 2020.

Stephen Henderson was returned to work timely by H.R. and he was not demoted without due process. HR followed the provisions of the CBA, Article 12(D)(2); therefore, there is no violation of the CBA in this case. This grievance is denied.

By letter dated July 7, 2020 to Eric Jones, Executive Fire Commissioner, Vice President Harp announced an intent to arbitrate. Subsequently, by letter dated October 29, 2020 to Commissioner Jones, Vice President Harp wrote:

This letter serves as an amendment and clarification to Grievance #20-20, as this is an ongoing matter.

Grievance #20-20 is on behalf of Stephen Henderson and all other DFFA I employees similarly situated under DFFA I CBA,

including but not limited to Christopher J. Smith. All employees who applied to the Pension Board prior to their second anniversary of being on a duty disability, but were improperly denied seniority, are included in Grievance #20-20.

This arbitration followed.

### **Background**

The Detroit Fire Fighters Association represents employees in various classifications employed by the Detroit Fire Department, including employees assigned to the Fire Fighting Division. An employee who is injured on the job and is unable to perform the full duties of the employee's position may be put off active duty and put on what was described as J Status – injury on duty status and be treated for the injury. While on duty status, the employee could receive full pay. J Status can last up to a one year period at a time. (Tr. 21, 120).<sup>1</sup> Employees whose J time is approaching beyond the six month period are encouraged by the Association to seek a duty disability pension. (Tr. 22).

Employees who are approved for a duty disability pension by the Retirement System are paid 62 2/3 of their normal pay and receive treatment for their injuries. (Tr. 23, 24). Catastrophically injured employees receive additional health care benefits. (Tr. 60).

The duty disability pension is administered by the Board of Trustees of the Police and Fire Retirement System. An employee can continue to receive duty disability benefits until the employee's 25<sup>th</sup> anniversary, at which time the employee receives a duty disability benefit of 50% of pay until age 65 or can convert to service retirement. (Tr. 23). Employees can return to work either by applying to return to work or being eligible to return to work by the Pension Board's Medical Director who causes an annual re-examination to determine whether the employee is

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<sup>1</sup> "Tr." is a reference to the transcript of the arbitration hearing.

able to return to work. (Tr. 34).

### **The Seniority Issue**

Robert Shinske began as a Fire Fighter with the Department in 1986 and has served in various ranks including Deputy Chief and Chief of the Fire Division. From 2001 to 2009 Chief Shinske was the Union 7<sup>th</sup> Battalion Director. He was Treasurer of the Association from 2009 to 2015.

According to Chief Shinske, beginning in 1981 the parties' CBA, based upon a one-page document signed between the then President of the Association and the Mayor of the City of Detroit, anyone that went off on duty disability who returned to work even after 19 and 20 years would return to work based upon seniority accumulated while they were off work. (Tr. 113-114). This agreement was continued in the July 1, 1998 - June 30, 2001 Agreement between the parties.

It was explained that this benefit could mean that an employee who had worked for three years, gone on duty disability for 20 years, and then returned, based upon 23 years of seniority, as a Fire Officer as if the employee had never left, resulting in the benefits of higher rank, higher pay and increased pension upon retirement. (Tr. 114). According to Chief Shinske, some members believed this was a good benefit while others believed it was unfair, including Chief Shinske. As a result, according to Chief Shinske, he agitated at a Union meeting for a narrow seniority window for returning from duty disability; that he moved at a membership meeting for a three year seniority freeze window, which motion passed. (Tr. 114, 123).

This three year freeze represented by the motion whereby an employee on duty disability could continue to accrue seniority for three years at which point the employee's seniority is

frozen until return to active duty was set forth in the 2001-2008 CBA as follows:

## **9. SENIORITY**

\* \* \*

- C. Forfeitures:** An employee shall forfeit his seniority only for the following reasons:

\* \* \*

6. he/she retires on a regular service retirement or a reduced disability retirement, or if on a duty disability, reaches what would have been his twenty-fifth (25<sup>th</sup>) anniversary.

\* \* \*

8. (a) Seniority credit for promotions to any position in the Department shall be frozen and cease to accumulate for any member on a disability retirement for three (3) years or more. In the event such person is returned to active service, he/she shall be reinstated with his/her frozen seniority.

\* \* \*

Jeffery Pegg has served as Association Vice President (2012-2013) and President (2014-2015) during the time of the City's bankruptcy. Jeffery Pegg since 2005 has been elected a Pension Board Trustee of the Police and Fire Pension System. (Tr. 19-20). William Harp is the current Vice President and Grievance Chairperson of the Association. He previously served as Vice President. (Tr. 69, 79).

Harp, Pegg and Shinske all agreed that seniority is a top issue for Fire Fighters and is a "very closely watched issue with all membership" and has "been a strong point of contention among the membership". (Tr. 84, 113). Vice President Harp testified that seniority is a top issue for Fire Fighters in CBA negotiations. (Tr. 78).

### **Bankruptcy and the Retirement System**

On July 18, 2013, the City of Detroit filed for bankruptcy protection under Chapter 9 of the United States Bankruptcy Code in the Eastern District of Michigan. Among the results was the approval of the Court of a combined plan for the Police and Fire Retirement System of the



City of Detroit effective July 1, 2014. In the Collective Bargaining Agreement that was negotiated between the City and the Association for 2014-2019, there was attached to the Agreement a Memorandum of Understanding dated November 6, 2014 adopting the combined plan on behalf of the Detroit Fire Fighters Association.

Pension Board member Pegg correctly described the options under the Pension Plan. (Tr. 24-26). Article 5 of the combined plan is entitled “Eligibility for Retirement”. Consistent with Pegg’s testimony, Section 5.1, “Eligibility for Unreduced Normal Retirement Benefits”, refers to “any member who obtains his normal retirement age while employed by the City may retire ...”. Section 5.2, “Eligibility for Deferred Vested Retirement Benefits” begins with “any employee whose terminates employment with the City prior to satisfying the requirement for receipt of a retirement benefit under Section 5.1 ...”. Reading 5.1 and 5.2, it is clear that these types of retirements contemplate a permanent separation of employment from the Fire Department.

Section 5.3 is entitled “Eligibility for Disability Retirement Benefit – Duty Disability”. What follows is a detailed explanation referring to “totally disabled for duty by reason of injury, illness or disease resulting from the performance of duty”. Unlike the reference to normal retirements or vested retirements, the provisions for duty disability retirement in Section 5.3(5) provides that a person on duty disability benefits “shall continue to be credited with credited services until the member accrues 25 years of credited service”, suggesting that duty disability retirement is treated differently in the plan.

In Section 5.3(4), there is a reference to a member “on duty disability returns to active duty with the City”. This language recognizes that a person on duty disability pension, as contrasted to a normal retirement or vested retirement, is not necessarily considered having a

permanent separation from employment, but could return to employment. There is also in Section 5.3(4) a reference to a non-duty disability. In Section 5.5 there is a reference to disability retirement re-examinations. The point is in the combined plan a duty disability pension as explained by Pension Board member Pegg and as observed by this Arbitrator is formulated differently than a normal retirement or vested retirement in that there is a recognition of an employee returning to employment with the Fire Department after being on a duty disability retirement benefit.

### **The Issue and Contract Language**

There is no dispute that employees Henderson and Smith were injured on the job and applied for and received a duty disability retirement benefit and then, after doing so, returned to the Department for full duty. The issue becomes whether their respective returns were without any previous seniority credits or whether, if they return to employment by two years after receiving retirement benefits, they were entitled to receive all seniority up until the time of their return.

The issue to be resolved by this Arbitrator is not the benefits to be received pursuant to the combined plan for a duty disability retirement for, pursuant to Article G of the Memorandum of Understanding attached to the 2014-2019 contract as extended, this Arbitrator has no authority to issue an award or order contrary to the provisions of the benefits of the Retirement Plan. What this Arbitrator has authority to do is interpret the parties' agreement under their Collective Bargaining Agreement 2014-2019 as extended in terms of seniority rights as set forth in the CBA.

The 2014-2019 CBA was negotiated during the bankruptcy era. The resulting Article 12,

“Seniority”, in Section D provided:

Loss of Seniority. An Employee shall lose his/her seniority for the following reasons only:

1. Resignation.
2. Retirement.
3. Discharge.
4. If an Employee working 8- or 10-hour shifts fails to report to work for five (5) consecutive calendar days, an employee working 12-hour shifts fails to report to work for four (4) consecutive tours of duty, or an Employee working 24-hour shifts fails to report to work for two (2) consecutive tours of duty, without providing proper notice to the Department, unless the Employee, in the judgment of the Department, is completely incapacitated through no fault of his/her own or subject to some other emergency situation that, through no fault of his/her own, makes him/her unable to report said absence and is able to supply sufficient proof thereof.
5. If an Employee working 8- or 10-hour shifts fails to report within three (3) consecutive calendar days, or an Employee working 12- or 24-hour shifts fails to report to work within two (2) consecutive tours of duty, after leave of absence, vacation, or suspension.
6. Failure of a laid-off Employee to notify the Department of his/her intent to return to work within seven (7) days after notice has been sent by the Department to the laid-off Employee at his/her last address on the Department’s records at time of layoff.
7. Absence from work for any reason (including lay-off) in excess of two (2) years, except as set forth in Section B.1 of this Article.

The focus of the dispute between the parties in this grievance is that the City relies on 12.D.2, “Retirement”, whereas the Association relies on 12.D.7, “absence from work for any reason (including lay-off) in excess of two (2) years ...”.

The factual background of the dispute is that Stephen Henderson and Christopher Smith

were both injured while on duty and placed on a duty disability retirement. Henderson was approved for duty disability retirement on October 1, 2018. On April 28, 2020, Henderson petitioned the Pension Board to return to work and was so returned on June 15, 2020. Smith was approved for a duty disability retirement on April 14, 2018. The Pension Board approved Smith's return to work on April 16, 2020. Smith entered the Academy on July 13, 2020.

Both Henderson and Smith had significant seniority at the time each was placed on duty disability retirement. Relying on Article 12.D.2 and the definition of "retirement", both Henderson and Smith were returned by the Department without any prior seniority. The Association, relying on Article 12.D.7, maintains that both Henderson and Smith were not absent from work in excess of two years and are entitled to all their previous accumulated seniority including the time they were off on duty disability.

There are several basic principles of contract interpretation applicable to this dispute, two of which were long ago established by one of Michigan's great arbitrators of the past, Harry Platt. A contract must be read as a whole and not based upon a single word or phrase. *Riley Stoker Corp.*, 7 LA 764, 767 (Platt, 1947). Collective bargaining history can be used as a guide in interpreting contract language. *National Cash Register Co.*, 57 LA 341 (Platt, 1971).

It is also fundamental that an arbitrator, when interpreting the agreement, must attempt to glean from the contract and language used the parties' intent. *See, e.g., Philadelphia Orchestra Assn.*, 46 LA 513 (Gill, 1966).

There is also the recognition that there can be a latent ambiguity where the language of the contract appears clear on its face, but becomes unclear when an effort is made to apply the language to a given situation. *See, Midwest Reclaiming Co.*, 69 LA 198, 199 (Bernstein, 1977).

The reference to retirement in 12.D.2 when read in conjunction with 12.D.7 in the situation now faced by this Arbitrator has created a latent ambiguity requiring the application of the principles of contract interpretation just discussed.

As this Arbitrator pointed out, Article 5 of the combined plan for the Police and Fire Retirement System in Section 5.1, “Unreduced Normal Retirement”, and in Section 5.2, “Deferred Vested Retirement”, contemplates a permanent severance of employment from the Detroit Fire Department. Thus, the reference to 12.D.2, “Retirement”, is referencing a permanent separation from the Department voluntarily by the employee.

On the other hand, as noted, Section 5.3, “Duty Disability Retirement Benefits”, contemplates a possible return to work in the employment of the Detroit Fire Department bringing into play the concept of Article 12.D.7, “absent from work for any reason”.

The concept that a duty disability retirement benefit do not necessarily represent a permanent separation from employment is buttressed by several provisions of the 2014-2019 Collective Bargaining Agreement as extended. Employees on duty disability are not paid out for unused sick leave until normal full-duty retirement. Article 24(I)(7)(a)-(b). Employees on duty disability unlike retirees are covered by group life insurance policy. Article 24(C). Article 16.B of the CBA further emphasizes that employees on duty disability retirement are considered more of an absence rather than a permanent separation for the language reads: “Employees returning from leaves of absence lasting longer than one (1) year, including employees returning from duty disability, must pass the Physical Abilities Tests prior to returning to work”.

Reading the contract as a whole, considering the language that the parties have used in 12.D.2, “Retirement”, and 12.D.7, “Absent from work for any reason”, it becomes clear that an

employee does not lose seniority who is placed on duty disability retirement and then returns, consistent with the two year window noted in 12.D.7.

To check this conclusion, all one needs to do is to consider the context and historical negotiations involving seniority as previously discussed and as a continuing concern during the negotiations for the 2014-2019 CBA.

The negotiations for the 2014-2019 CBA were during the bankruptcy proceedings, the existence of emergency powers by the Emergency Manager resulting in the then City Counsel presenting an entirely new contract that was described as being “very large drastic changes to the contract ...”, being “a completely new contract”. (Tr. 62, 122-123). As noted, the City had powers under the Emergency Management law to impose terms.

The Union’s bargaining team included Robert Shinske, John Berlin, Theresa Singleton and Marty McClung as well as Jeffery Pegg. (Tr. 49-50).

The City initially proposed that an employee going on duty disability retirement would lose all previous seniority if the employee returned to duty. The Union rejected this proposal. (Tr. 62, 63). As Jeffery Pegg testified, “So we couldn’t accept a loss of total seniority for being off one day on a duty disability”. (Tr. 64).

The Union responded with the three year frozen language set forth in the 2001-2008 language which, according to then Vice President Pegg, referring to the City, “they came back with members would not have any seniority after being off on a duty disability”. (Tr. 39). The Union responded that “we are sticking to our three years”. (Tr. 39). This position ended up with the City proposing the 12.D.7 language which Pegg described as “you would lose your seniority after two years”. (Tr. 39). In regard to the 12.D language, Vice President Pegg, in discussing the

D.7 language that was proposed by the City, testified:

\* \* \*

Then we said we are sticking to our three years, and then they came back with after two years that members' seniority – you would accumulate seniority after two years. Then after that, you would lose your seniority after two years.

We discussed that on our side of the table. Then I made it clear, I said, "So this provision in the contract allows a member to be off for two years and then after that, they would lose seniority?" Then they said, "That's correct." Then we decided, okay, we would agree to that. (Tr. 39).

In this regard, Jeffery Pegg also testified, "Nothing was said that said we accept, you know, at the table one day of being off you lose all seniority. That was never discussed at the table that we agreed to that." (Tr. 64).

President Pegg, after testifying as to the evolution leading to the adoption of the Article 12.D.7 language and the clarification he believed was obtained from the City attorneys, testified that the bargaining team accepted this explanation from the City, recognizing that there was now a two year limitation and not the three year frozen language, believing that the modification was from three to two years. In explaining the understanding and the acceptance of the bargaining team of the 12.D.7 language, President Pegg testified:

Q No one said to you, "Jeff, we have got to really think about this, I don't think we're on the same page"?

A No. It was a hard decision to make. This issue was a very tenuous issue going back when we first got it into the contract. The membership was very torn about including language about frozen seniority on a duty disability. I remember it was a very passionate discussion at union meetings prior to the bankruptcy a long time ago.

Once we did decide on doing it, it was a tough decision. So that's why we wanted to keep that provision in there to say it was a frozen. When they came back with what they decided to do, because of the bankruptcy, because we knew they could just

wipe it away entirely, we decided we're not going to fight this one as hard as we want and accepted the city's proposal.

Q And when you are talking about the city could wipe it away, you are referring to the city's powers under the emergency manager law to impose terms?

A Correct.

Q So after the negotiations, the contract was ultimately TA'd, right?

A Yes. The contract was TA'd by both parties and we ratified it at two membership meeting.  
(Tr. 41-42).

Robert Shinske, who was on the Association's bargaining team and has since served as Chief of the Department, testified on behalf of the City as to the bargaining history. Chief Shinske was asked and answered:

Q And what is your understanding of 12-D-2?

A Well, 12-D-2 says that you lose your seniority when you retire.

I heard Jeff's testimony. I'll agree with a lot of what he said. I don't remember it the way he does. We took that language from the 2001 to 2008 contract that stated there would be a – you would – you would accrue seniority on a duty disability for three years and then be frozen.

We took that language and we put it on the table for Kevin Orr, just like we did it with a lot of the language when we were negotiating the blank pages of the contract that were put in front of us. They rejected it. They rejected it wholeheartedly then.

They didn't want anything to do with any kind of an accumulation of seniority when you are on duty disability. Okay. I don't remember how many days we talked about it. I know we had some discussion with them.

Then when we moved past it. We moved onto something else. Honestly, we talked about it and we had bigger fish to fry than that. We moved onto something else.

At some point I remember we were getting ready to sign the contract and we were going over certain pages of the contract



and our attorney pointed it out to us, you see that, right, you see what they're doing there? It's going to mean – you understand that that means you are going to – everybody is going to lose seniority. We all said we agree. We know. We had conversations amongst ourselves, are we okay with this? We were. Again, we had bigger fish to fry.

We weren't going to throw the contract away for that. We tried to get that language back in the contract. They wouldn't do it. They would not go there. So we got what we got.

Q So it was your understanding that when 12-D-2 referenced retirement, that was all types of retirement?

A Every type of retirement there is.

Q If there had been an exception for duty disability retirement, would that have been carved out?

A Yeah. I mean, listen, I wish we would have won that. I wish I could sit here and tell you we won that. We put the language for three years in there. If they were going to give us the two years, they had the opportunity to use the language we had on the table and change that three to a two. They refused to do it. They didn't want to go there.

(Tr. 116-118).

Later in his testimony, Chief Shinske continued to stress that employees returning from disability benefits lost all previous seniority even if returning within two years.

A careful analysis of the Shinske testimony dovetails with the Pegg testimony. The negotiations were difficult because of the City's insistence of substantially new contract language along with the dynamics of bankruptcy and the emergency management powers. Both Shinske and Pegg recognized this. Both agreed that the Association did not get the "frozen" language. Both agreed that the Association accepted the D-7 language. President Pegg asked for an explanation as to whether the language in effect would cover return from disability and received a positive answer. Though Chief Shinske mentions discussing the matter with the Association's attorney, it is far from clear from his testimony exactly what the attorney pointed out as to the

application of “absence from work for any reason” to returning from a duty disability pension. Pegg as the senior Union officer at the bargaining table was satisfied that the seniority rights of officers on disability benefits were protected for two years based on the responses of the City attorneys to his questions, agreed to accept the “for any reason” language in lieu of the “frozen” language, given the totality of the circumstances.

Based upon this analysis, this Arbitrator believes that the testimony of Vice President Pegg and Chief Shinske can be reconciled.

Furthermore, in the quote that this Arbitrator has set forth when Chief Shinske was asked about 12.D.2, his response was “every type of retirement there is”. Yet, as this Arbitrator has pointed out, as contrasted to a full retirement or a vested retirement contemplating a permanent severance of employment, a duty disability retirement by its nature, as outlined, contemplates a possible temporary absence. A return to duty from a duty disability retirement is a distinct possibility and has been a fact.

In the end, for the reasons outlined in this Opinion, an employee returning to duty with the Fire Department following a duty disability pension is, when the language is viewed in context, returning from an “absence from work for any reason”.

This conclusion as to the Pegg belief that was expressed across the table is buttressed by the fact that at the ratification meetings the Association membership was advised of the change from three years to two years and there was no discussion suggesting losing seniority on day one of a duty disability pension. (Tr. 74-75; 100). There was an extension of the 2014-2019 CBA in 2016 extending the contract to 2020. There were no negotiations or discussions regarding duty disability at that time highlighting that the negotiation history is limited on this subject to what

occurred during the negotiations for the 2014-2019 CBA.

Having concluded that an employee who went on a duty disability pension who then returns to full duty within two years of going on duty disability retirement is entitled to full seniority to be reinstated without loss of any seniority, including the time the employee was on duty disability retirement, the issue remains as to whether Grievants Henderson and Smith met the two year threshold.

In the case of Stephen Henderson, this is not by any calculation an issue. Henderson went on duty disability retirement on October 1, 2018. After petitioning the Pension Board to return to work on April 28, 2020 and the Pension Board advising the City on June 3, 2020 that Henderson was eligible for a return to full duty, Henderson was admitted to the Academy on June 15, 2020. By any definition, Stephen Henderson was not absent from work in excess of two years.

The City has raised the two year threshold issue as to Christopher Smith, noting that he went on duty disability on April 14, 2018 and did not re-enter the Academy until July 13, 2020, more than two years after going on duty disability retirement.

There are several reasons as to why the City's position as to Christopher Smith is not persuasive.

Review the nature of a duty disability retirement. As pointed out, a duty disability retirement contemplates re-examining the employee medically in an attempt to determine whether the employee can return to full, active duty. According to Pension Plan Board Member Pegg, the Medical Director of the Pension Board performs annual evaluations of employees on duty disability retirement. (Tr. 34).

If the Medical Director concludes that an individual can return to full duty, the Board of

Trustees approves the recommendation, advising the employee of the approval, and directing the employee to contact HR at the Detroit Fire Department to be processed for the return to duty. This is the process. The employee's ability to return to duty depends on this process which is controlled by the Pension Board and the City's Fire Department as to when the employee is returned to the Academy for training to return to assigned duties. It is the City's processes, whether it be the Pension Board or the Department's Human Resources, that determine, once the employee initiates the efforts to return to work, when the employee arrives at the Academy.

Dr. Vosburgh is the Pension Board's Medical Director who previously examined Christopher Smith and did write, "I consider him duty disabled and would recommend that we repeat his examination in one year as I do feel he will continue to improve". This is exactly what occurred.

In early March 2020, Christopher Smith received a letter advising him to schedule an appointment with Dr. Vosburgh for a re-evaluation. Christopher Smith testified that within 24 hours of receiving the letter in early March 2020, he scheduled an appointment with Dr. Vosburgh's office. The appointment was scheduled for March 19, 2020. The appointment was cancelled because Dr. Vosburgh was on the City's Covid-19 task force and was unavailable. (Tr. 109). As a result, Dr. Vosburgh sent Christopher Smith to a physical therapy evaluation and adopted the report of the evaluation and on March 25, 2020 advised the Board that Smith was capable of being returned to full duty. The Board on April 16, 2020 advised Mr. Smith that the Board had approved his return to work and directed that he contact Detroit Fire Department HR for processing.

This Arbitrator notes that Michigan's stay at home, stay safe lockdown order was

announced on March 23, 2020. Mr. Smith testified that as soon as he received the letter from the Pension Board and the telephone number set forth in that letter for HR, he began calling the phone number to process his return. Mr. Smith testified that he made numerous calls to HR but only received voicemail notices that his call would be returned and he could not make immediate contact, although he made the effort numerous times according to his testimony to do so, suggesting that HR was on lockdown. (Tr. 110). There was no rebuttal to this testimony of Mr. Smith.

This Arbitrator recognizes that the Pension Board's approval for a return to work was not until April 16, 2020, which is two days beyond two years from the date that Mr. Smith went on duty disability retirement on April 14, 2018. There are two points to be observed. There was at least a six day delay in obtaining the Medical Director's approval caused by Dr. Vosburgh's office cancelling the initial appointment due to Dr. Vosburgh's Covid-19 duties. There was a further delay at the Pension Board of approximately 23 days which the record does not reflect whether part of this delay was attributable to the Covid-19 lockdown. Certainly, the inability to contact HR was attributable to Covid-19.

Mr. Smith presumably would have been approved medically to return to work consistent with the procedures outlined in the duty disability retirement benefits on or about March 19, 2020, the date of the first scheduled appointment with Dr. Vosburgh, within two years of the date Smith originally went on duty disability. What remained was the processing within the structures set forth by the Pension Board and the City. In the view of this Arbitrator, Mr. Smith on these facts was returning to work within two years, consistent with the City's procedures. Then, too, if there was any delay, the evidence suggests that some of the delay could be attributable to the

Covid-19 lockdown.

The bottom line is that Christopher Smith, following City procedures, which would include the procedures of the Pension Board, established by law, promptly responded to take the required steps to return to work by promptly scheduling a medical re-evaluation all within two years. It was the City's procedures, along with Covid-19 issues, that resulted in Mr. Smith entering the Academy on July 13, 2020. The fact is Dr. Vosburgh, the Pension Board's Medical Director, approved medically the return of Mr. Smith on March 25, 2020 within two years. Any delay thereafter was by the nature of the procedure that is followed by the City in returning employees from duty disability retirement, coupled with Covid-19 delays.

There is no evidence on this record that Christopher Smith did not timely respond to the request for re-evaluation and did not promptly arrange for an appointment with Dr. Vosburgh. Mr. Smith on this record did everything within his power to comply with the two year threshold. Absent any evidence of any delay on his part, there is only one conclusion and that is by reporting for the evaluation on a timely basis and actually receiving medical approval by the Pension Board's Medical Director for a return to work prior to the two year period pursuant to the procedures that have been established by the City, this Arbitrator concludes for all the reasons discussed that Mr. Smith met the two year threshold as it was intended to apply.

Several days before the arbitration hearing, the Union presented to the City two comparables, namely, employees Koehn and Wright, as examples where employees who were returned from duty disability retirement benefits were granted their full seniority even though the physical return was past the applicable deadline. The City objected to these exhibits, Exhibits 11 and 12, based upon Article 9(C)(3) which reads: "The arbitrator will not consider any evidence

submitted by either party, which was not produced in the grievance procedure, unless such evidence was not then known to the party submitting the same.”

It is unfortunate that the parties were confronted with this procedural issue. Though the City has not raised this issue in previous Fire Fighter grievances, although the City has successfully argued this in other contracts. An argument can be made that presenting Exhibits 11 and 12 several days before the arbitration was still a production within the grievance procedure. Nevertheless, this Arbitrator chose not to rely on the Koehn and Wright examples for he believed that his analysis of the intent of 12.D.7 would in any event avoid a nonsensical result, namely, where an employee presents him or herself for re-evaluation within two years based on the structure of a duty disability retirement pension pursuant to the procedures implemented by the City, namely, a Pension Board, and is approved medically by the examining Pension Board physician to be able to return to full duty, then the employee has met the requirements of returning to work by two years as contemplated by the contract language used.

It is based upon the above analysis that this Arbitrator issues the following Award.

### **A W A R D**

1. The grievance of Stephen Henderson is granted and his seniority is hereby directed to be restored to the date of his first employment by the Detroit Fire Department, including the time he was off on duty disability retirement and he shall be made whole for any lost wages as a result of not being previously restored to duty with full seniority.

2. The grievance of Christopher Smith is hereby granted and his seniority is hereby directed to be restored to the date of his first employment by the Detroit Fire Department,

including the time he was off on duty disability retirement and he shall be made whole for any lost wages as a result of not being previously restored to duty with full seniority.

3. This Arbitrator will keep jurisdiction for a period of one hundred twenty (120) days from the date of this Opinion and Award to resolve any disputes concerning the implementation of the Award, including calculation of back seniority and wages.

*George T. Roumell, Jr.*  
GEORGE T. ROUMELL, JR.  
Arbitrator

May 12, 2021



# EXHIBIT 6E

# **MASTER AGREEMENT**

**BETWEEN THE**

## **CITY OF DETROIT**

**AND THE**

## **DETROIT FIRE FIGHTERS ASSOCIATION**

## **2014 - 2019**

### 30. DURATION

This Agreement shall be effective and binding on the Union and the City as of November 6, 2014 ("Effective Date"), and shall continue in full force and effect through June 30, 2019 (the "Term"). This Agreement, including the Term, shall be incorporated into and become a part of both the plan of adjustment and order confirming the plan of adjustment, and the Agreement shall be subject to the post-confirmation ongoing jurisdiction of the Bankruptcy Court for the full Term, including without limitation, whatever jurisdiction the Bankruptcy Court's retains to enforce the Term. This Agreement, including specifically, the Term, shall be duly authorized and approved by and consented to by the State Treasurer and the Mayor of the City of Detroit, with these consents reflected by duly authorized signatures.

If either party desires to modify this Agreement, it may give written notice to the other party during the month of March 2019.


In the event that the Department and the Association fail to arrive at an agreement on wages, fringe benefits, other monetary matters, and non-economic items by June 30, 2019, this Agreement will remain in effect on a day-to-day basis. Either party may terminate this Agreement by giving the other party a ten (10) day written notice on or after June 30, 2019.

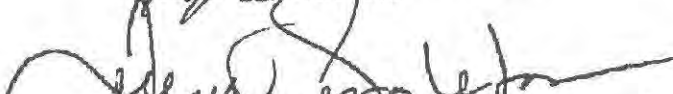
IN WITNESS WHEREOF, the parties hereto have affixed their signatures below:


Dated this 6 day of November, 2014.

DETROIT FIRE FIGHTERS ASSOCIATION: CITY OF DETROIT:

  
Jeffrey Pegg, President

  
Michael E. Duggan, Mayor

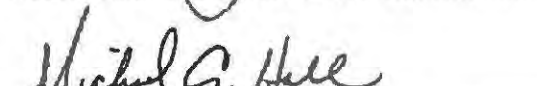
  
Teresa Singleton, Vice President

  
Kevyn Orr, Emergency Manager

  
Martin McClung, Secretary

  
Edsel Jenkins, Executive Fire Commissioner

  
Robert Shinske, Treasurer

  
Michael A. Hall, Labor Relations

  
Office of the State Treasurer, Michigan

**MEMORANDUM OF UNDERSTANDING  
REGARDING THE POLICE AND FIRE RETIREMENT SYSTEM  
BETWEEN  
THE CITY OF DETROIT  
AND  
THE DETROIT FIRE FIGHTERS ASSOCIATION**

This Memorandum of Understanding is made and entered into this 6 day of November, 2014, by and between the City of Detroit ("City") and the Detroit Fire Fighters Association ("DFFA" or the "Association").

WHEREAS, on July 18, 2013, the City filed for protection under Chapter 9 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1550; and

WHEREAS, on December 5, 2013, the U.S. Bankruptcy Court for the Eastern District of Michigan ("Bankruptcy Court") ruled that the City is eligible to be a debtor under Chapter 9 of the U.S. Bankruptcy Code; and

WHEREAS, the City's duty to bargain with the Association over changes to terms and conditions of employment has been suspended pursuant to Public Act 436, MCL § 141.1541 *et seq.*; and

WHEREAS, on August 16, 2013 the Bankruptcy Court ordered the City and the Association to participate in Court-supervised mediation regarding the terms of a successor collective bargaining agreement, including retirement benefits for current employees; and

WHEREAS, the City and the Association agree that it is in the best interests of the City and its employees for the City to provide fiscally responsible but high quality retirement benefits to its future retirees; and

WHEREAS, in connection with the mediation, the City and the Association have discussed ways to address the unfunded liabilities of the Police and Fire Retirement System ("PFRS") and to reach an agreement to provide sustainable retirement benefits to future retirees of the City; and

WHEREAS, benefit accruals under the PFRS ceased effective June 30, 2014, pursuant to Ordinance No. 12-14; and

WHEREAS, effective July 1, 2014, employees represented by certain City unions, including the DFFA, became eligible to participate in the Combined Plan for the Police and Fire Retirement System of the City of Detroit, Michigan (the "Combined Plan"), which consists of provisions relating to benefits accrued by members under PFRS prior to July 1, 2014 ("Old PFRS") and provisions relating to benefits accrued by members under PFRS on and after July 1, 2014 ("New PFRS"); and

WHEREAS, this Memorandum of Understanding supplements any collective bargaining agreements entered into between the City and the Association and/or any Act 312 Arbitration Award pertaining to the Association and the City until the expiration of this Memorandum of Understanding;

NOW, THEREFORE, it is agreed that the City and the Association have entered into this Memorandum of Understanding, and any proposals or counter-proposals made during related discussions by either the City or the Association, but not included in this Memorandum of Understanding, are hereby withdrawn. The City and the Association further agree as follows:

A. The Police and Fire Retirement System. During the term of this Memorandum of Understanding, pension benefits for eligible employees represented by the DFFA shall be in accordance with this Memorandum of Understanding, as follows:

1. City Contribution. The City shall contribute to New PFRS, on an annual basis, an amount equal to twelve and one-quarter percent (12.25%) of each eligible employee's base compensation. A portion of such contribution will be credited to a rate stabilization fund.
2. Employee Contribution. Eligible employees hired by the City on or before June 30, 2014 shall make pre-tax contributions equal to six percent (6%) of their base compensation to New PFRS (pre-risk shifting). Eligible employees hired or rehired by the City on and after July 1, 2014 shall make pre-tax contributions equal to eight percent (8%) of their base compensation to New PFRS (pre-risk shifting).
3. Plan Terms. Except as set forth herein, the following key terms relating to New PFRS shall apply to benefits accrued by eligible employees on and after July 1, 2014 and prior to January 1, 2024:

<b>BENEFIT FORMULA</b>	Final Average Compensation (average base compensation over last 5 consecutive years of employment) x Years of Service earned after June 30, 2014 x 2.0%. Average base compensation does not include overtime, unused sick leave, longevity payments, or any other form of bonus or additional compensation – just the employee's base salary.
	Actual time for benefit accrual is actual time served. For vesting service, an eligible employee must work 1,000 hours in a 12-month period to accrue a year of service.



<b>NORMAL RETIREMENT AGE</b>	Age 50 with 25 years of service, with the following 7 year transition period for New PFRS benefits only:	
	<u>Fiscal Year</u>	<u>Age and Service</u>
	2015	Age 43 and 20 years
	2016	Age 43 and 20 years
	2017	Age 44 and 21 years
	2018	Age 45 and 22 years
	2019	Age 46 and 23 years
	2020	Age 47 and 24 years
	2021 and thereafter	Age 50 and 25 years
	Unreduced frozen Old PFRS benefits are payable in accordance with the requirements of PFRS as in effect on June 30, 2014 (that is, when an employee reaches 20 or 25 years of credited service, whichever applied to the employee as of June 30, 2014 under Old PFRS).	
	10 Years of Service for vesting.	
	Deferred vested pension -- 10 years of service and age 55.	
	Duty Disability - consistent with Old PFRS.	
	Non-Duty Disability – consistent with Old PFRS.	
	Non-Duty Death Benefit for Surviving Spouse – consistent with Old PFRS.	
	Duty Death Benefit for Surviving Spouse – consistent with Old PFRS.	
<b>COLA</b>	1% compounded, variable.	
<b>DROP ACCOUNTS</b>	Available for frozen Old PFRS benefits and future accrued benefits under New PFRS for employees who are eligible to retire under concurrent eligibility requirements. No more than 5 years of DROP participation for employees not already in DROP as of June 30, 2014. DROP accounts will be managed by PFRS instead of ING, if administratively and legally feasible. If managed by PFRS, interest will be credited to DROP accounts at a rate equal to 75% of the actual net investment return of PFRS, but in no event lower than 0% or higher than 7.75%.	
<b>ANNUITY SAVINGS</b>	Voluntary Annuity Savings Fund contributions up to 10% of after-tax pay. Interest will be credited at the actual net investment rate of return for PFRS, but will in no event be lower than 0% or higher than 5.25%. No in-service withdrawals permitted.	
	Investment Return/Discount rate – 6.75%.	

Exhibit 6E -2 Continued

<b>RISK SHIFTING</b>	<p>If the funding level is less than 90% (using the fair market value of assets), COLAs will be eliminated (to the extent applicable).</p> <p>If the funding level is 90% or lower (using the fair market value of assets and a 3-year look back period), the following corrective actions will be taken in the order listed below, until the PFRS actuaries can state that by virtue of the use of corrective action, and a 6.75% discount rate and return assumption, the funding level is projected to be 100% on a market value basis within the next 5 years:</p> <ol style="list-style-type: none"><li>1. eliminate COLAs (if applicable);</li><li>2. use amounts credited to the rate stabilization fund to fund accrued benefits;</li><li>3. increase employee contributions by 1% per year (6% to 7% for current actives and 8% to 9% for new employees in year 1) for up to 5 years;</li><li>4. increase employee contributions (active and new employees) by an additional 1% per year;</li><li>5. increase employee contributions (active and new employees) by an additional 1% per year;</li><li>6. implement a 1 year COLA fallback;</li><li>7. implement a second 1 year COLA fallback;</li><li>8. increase employee contributions by an additional 1% per year; and</li><li>9. increase City contributions consistent with applicable actuarial principles and PERSIA.</li></ol>
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a) In accordance with the 2014-2019 collective bargaining agreement between the City and the DFFA ("CBA"), the ten percent (10%) cap on annual contributions to the Annuity Savings Account will not apply to payments of accrued sick leave into an Annuity Savings Account made pursuant to Article 24, Section I.8.c of the CBA.

b) Employees in the DFFA bargaining unit will have the option to participate in a one-time irrevocable "roll-in election" with respect to calculation of their frozen accrued benefits under Old PFRS. The purpose of this roll-in election is to give each eligible employee the option to allocate a portion of his or her unused sick pay bank to the employee's Average Final Compensation, which in turn will be used to determine the employee's frozen accrued benefits under Old PFRS as of June 30, 2014. If the employee elects to roll-in a portion of his or her unused sick pay, the employee's Average Final Compensation will include the portion of the employee's sick pay bank determined as of June 30, 2014 that would have been included in the member's Average Final Compensation in accordance with the terms of Old PFRS, as though the employee had retired on June 30, 2014 with 20 or 25 years of service (whichever applied to the employee as of June 30, 2014 under Old PFRS). In the event an employee terminates employment with the City prior to attaining 20 or 25

years of service (whichever applied to the employee as of June 30, 2014 under Old PFRS), the employee's roll-in election will be nullified. If an employee makes a roll-in election, the employee's unused sick leave bank will be reduced by the number of hours included in the employee's Average Final Compensation calculation and the employee may not use those hours for sick leave or receive the value in cash when the employee retires. The form for making a roll-in election will be available to employees on-line, and paper copies of the form will also be made available. An eligible employee wishing to roll-in a portion of his or her unused sick pay must sign the form in the presence of a witness and return the form to the PFRS office no later than November 15, 2014. The one-time roll-in election will have no impact on benefits accrued under New PFRS.

c) For avoidance of doubt, 'eligible to retire under concurrent eligibility requirements' of the Combined Plan means that an Association member with accrued benefits under Old PFRS may retire upon attaining 20 or 25 years of service (whichever requirement applied to the employee as of June 30, 2014 under Old PFRS), regardless of age. This member would immediately receive a frozen pension under Old PFRS. If the member does not meet the age and years of service requirements of the New PFRS, he or she will begin receiving an additional payment (actuarially reduced to reflect early commencement) based on his or her accrued benefit under New PFRS when he or she turns 55. He or she can begin receiving an unreduced normal retirement benefit under New PFRS when he/she reaches age 62.

The age 50 and 25 years of service requirements of New PFRS apply only to New PFRS and are subject to the 7 year transition period set forth above. The transition applies to New PFRS benefits as set forth below:

1. Under the transition, after July 1, 2014, an Association member who reaches 20 years of service and age 43 on or before June 30, 2015 can retire anytime after reaching 20 years of service and age 43, and he or she will immediately receive an unreduced accrued New PFRS benefit.
2. Beginning on July 1, 2015, an Association member who reaches 20 years of service and age 43 on or before June 30, 2016 can retire anytime after reaching 20 years of service and age 43, and he or she will immediately receive an unreduced accrued New PFRS benefit.
3. After June 30, 2020, an Association member must be at least 50 years old with 25 years of service to retire and immediately receive his or her unreduced accrued New PFRS benefit.



An Association member who does not meet these New PFRS requirements will not begin receiving his or her unreduced accrued New PFRS benefit until the Association member reaches age 62 and has been credited with 10 years of service. An Association member with 10 years of service may elect to retire at age 55 with an actuarially reduced benefit.

d) Section 1.4 (Board of Trustees – Membership; Appointment) of the New PFRS and Article III, Section 2 of the Old PFRS (Membership of Board) shall not be modified during the term of the CBA.

e) The City will remit to the New PFRS all contributions withheld from employees' pay checks.

The City shall promptly transfer these employees' contributions to the new PFRS, but in no event shall such City transfers be made later than the 15<sup>th</sup> day of the month following the month of the pay dates when the employees' contributions are withheld by the City (hereinafter "Contribution Due Date"). (By way of illustration and example only, the City must transfer to the New PFRS by no later than February 15 all of the employees' contributions withheld on the pay dates of the immediately preceding January.)

If the City does not transfer the employees' withheld contributions to the New PFRS by the Contribution Due Date, these contributions shall be deemed delinquent contributions (hereinafter "Delinquent Contributions"). The City shall be liable to the New PFRS in the amount of the Delinquent Contributions and any Lost Earnings ("Lost Earnings") on the Delinquent Contributions, which would have been earned on the employees' contributions, had the City timely made the transfer of these employees' contributions.

Notwithstanding the above, the City shall be liable for Lost Earnings in an amount not less than the applicable corporate underpayment rate(s), effective during the delinquency, established under Section 6621(a)(2) of the Internal Revenue Code.

B. Reservation of Rights by City. This Memorandum of Understanding shall in no way be construed to interfere with, or add additional requirements with respect to, the City's rights to modify the terms of any pension plan document currently in effect, or that may be in effect during the term of this Memorandum of Understanding, including but not limited to the Combined Plan; provided, however, that the City shall not modify the terms of the applicable pension plan(s), in any manner that conflicts with those terms set forth in Section A above, unless the City is ordered to do so by the Bankruptcy Court in the plan of adjustment dated August 20, 2014 (as it may be amended, modified or supplemented, "Plan of Adjustment") in the case *In re: City of Detroit*, Case No. 13-53846 or as set forth in Section D below.

C. Compliance with Plan of Adjustment. The terms of this Memorandum of Understanding are subject to confirmation of the Plan of Adjustment and may be modified therein to achieve confirmation of the Plan of Adjustment. Any proposed modification to the Plan of Adjustment is subject to the rights of the DFFA to object to same. During the term of this Memorandum of Understanding, the City shall not make any modifications to the terms of the Combined Plan that are contrary to the terms of the Plan of Adjustment as confirmed by the Bankruptcy Court.

D. Compliance with Public Act 183. Notwithstanding any provision of this Memorandum of Understanding that can be construed to the contrary, this Memorandum of Understanding will not be construed to require the City to fall out of compliance with the requirements of Public Act 183, House Bill 5568 ("PA 183"). In the event that the City determines that it has fallen out of compliance with, or is reasonably likely to fall out of compliance with PA 183, the City will provide written notice to the Association, and offer to meet and confer with the Association for a period not longer than thirty (30) days to discuss potential modifications to the terms of the Memorandum of Understanding in order to comply with the requirements of PA 183. To the extent that the City and the Association are unable to reach an agreement within thirty (30) days, the City may make any necessary modifications to ensure compliance with PA 183.

E. Duration. This Memorandum of Understanding will become effective upon approval by the Mayor of the City of Detroit and the Treasurer of the State of Michigan and shall remain in effect until December 31, 2023. The City and the Association hereby agree to waive any and all collective bargaining rights with respect to pension benefits, including but not limited to benefits provided under, and any other issues relating to, the Combined Plan (the "Waived Issues") from the date that this Memorandum of Understanding is executed through December 31, 2023. The parties acknowledge that they are enjoined from collective bargaining regarding the Waived Issues through June 30, 2023 and further agree to waive any right to raise any of the Waived Issues in any Act 312 arbitration proceeding. The City and the Association agree that they may engage in collective bargaining regarding the Waived Issues beginning June 30, 2023, but that no modifications may be made with respect to any Waived Issue until after December 31, 2023.


F. Grievance and Arbitration: Any dispute pertaining to the provision of benefits pursuant to this Memorandum of Understanding shall be subject to the grievance and arbitration procedures set forth in Articles 8 and 9 of the CBA or any comparable provision set forth in a successor collective bargaining agreement entered into between the City and the DFFA.


G. In resolving any dispute pertaining to provision of benefits pursuant to this Memorandum of Understanding, the Arbitrator shall be bound by the terms of this Memorandum of Understanding, the Combined Plan, and the Plan of Adjustment, and shall have no authority to issue any award or order that is contrary to the terms of these documents.


IN WITNESS WHEREOF, the parties hereto have affixed their signatures below:

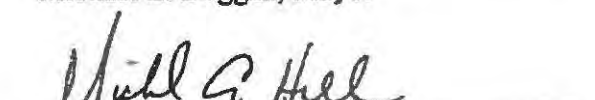
Dated this 6 day of November 2014.

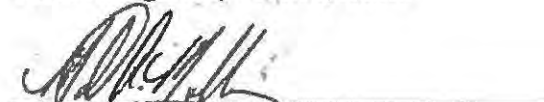
DETROIT FIRE FIGHTERS ASSOCIATION: CITY OF DETROIT:

  
Jeffrey Pegg, President


  
Michael E. Duggan, Mayor

  
Teresa Singleton, Vice President

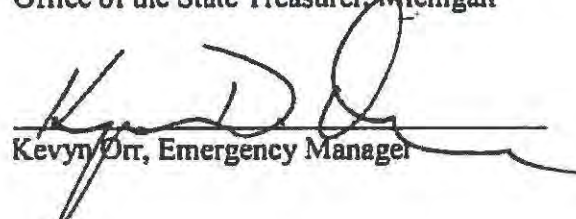
  
Michael A. Hall, Director of Labor Relations

  
Martin McClung, Secretary

  
Edsel Jenkins, Executive Fire Commissioner

  
Robert Shinske, Treasurer

  
Office of the State Treasurer, Michigan

  
Kevyn Orr, Emergency Manager

# EXHIBIT 6F

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

CHRISTOPHER MCGHEE, NORMAN BROWN,  
CRAIG BROWN, JAMES WASHINGTON,  
SHANNON FERGUSON, JUNIUS PERRY,  
and ORLANDO POTTS

Case No. 20-006272-CD  
Judge: Sheila Gibson

Plaintiffs,

v.

CITY OF DETROIT,  
ERIC JONES - EXECUTIVE FIRE COMMISSIONER,  
REGINALD JENKINS – 2<sup>ND</sup> DEPUTY COMMISSIONER,  
ROBERT DISTELRATH - CHIEF OF DEPARTMENT  
FIRE FIGHTING DIVISION,  
KEMIA CROSSON – EMPLOYEE SERVICES CONSULTANT,  
DETROIT FIRE FIGHTERS ASSOCIATION LOCAL 344,  
MICHAEL NEVIN – FORMER PRESIDENT  
THOMAS GEHART – PRESIDENT,  
WILLIAM HARP – VICE PRESIDENT,  
JOHN A. CANGIALOSI – SECRETARY  
CHRISTOPHER A. SMITH - TREASURER  
*In their Individual and Official Capacities,*

*Jointly & Severally,*

Defendants.

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**Herbert A. Sanders (P43031)**  
**The Sanders Law Firm, P.C.**  
Attorney for Plaintiffs  
The Ford Building  
615 Griswold, Suite 913  
Detroit, Michigan 48226  
(313) 962-0099 (Phone)  
(313) 962-0044 (Fax)  
haslawpc@gmail.com

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**Christopher P. Legghio (P27378)**  
**John G. Adam (P37205)**  
**Legghio & Israel, P.C.**  
Attys for Fire Dept Defendants  
306 S. Washington, Suite 600  
Royal Oak, MI 48067-3837  
(248) 398-5900  
cpl@legghioisrael.com  
jga@legghioisrael.com

**Jason T. McFarlane (P73105)**  
**Tiffany Boyd (P71481)**  
**City of Detroit, Law Department**  
2 Woodward Avenue, Suite 500  
Detroit, MI 48226  
(313) 224-4550  
mcfaj@detroitmi.gov  
boydti@detroitmi.gov

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**PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO MCR 2.302(A)**

**NOW COME** Plaintiffs, by and through their attorney, Herbert A. Sanders of THE SANDERS LAW FIRM, P.C., who submits the following disclosures in accordance with MCR 2.302(A):

**1. Factual Basis of Plaintiff's Claims, MCR 2.302(A)(1)(a)**

As set forth in Plaintiff's complaint, Prior to 2014, the Collective Bargaining Agreement (CBA) had between the City and DFFA allowed a fire fighter that had retired as a result of a duty disability to maintain his/her accumulated seniority if they returned to the employ of the City of Detroit as a fire fighter. Additionally, the CBA allowed an employee that returned to work after a duty disability retirement to achieve and assume the rank of his/her class on an accelerated basis. Specifically, the 2001-2008 CBA had between DFFA and the City stated in part:

**Section 9. Seniority - C. Forfeitures 8 (a)-(b)**

*(a) Seniority credit for promotions to any position in the Department shall be frozen and cease to accumulate for any member on a disability retirement for three (3) years or more. In the event such person is returned to active service, he/she shall be reinstated with his/her frozen seniority.*

*(b) Persons who return to active service from duty disability retirement after one (1) or more years of absence must attend and successfully complete a re-entry training program including a performance physical evaluation that is conducted by the Fire Training Division and approved by the Chief of Fire Operations and Executive Fire Commissioner.*

\*\*\*

**Section 9. Seniority - E. Promotions and Transfers - Fire Fighting Division**

*1. General: Promotions in the Fire Department shall be based on length of service therein. The officers or employee thereof having served the longest period in any position shall be advanced to fill any vacancy in the next higher position, if he/she shall have the qualifications therefore.*

*a. Promotions shall be based solely upon seniority provided the senior employee shall satisfy qualifications for the position for which he/she is to be promoted<sup>1</sup>. See Exhibit 1<sup>2</sup>.*

Prior to 2014, in reliance upon the longstanding disability retirement policy, a litany of fire fighters, including the Plaintiffs, retired with a duty disability injury, and sometime thereafter returned to the employ of the City of Detroit as a fire fighter. Those individuals were allowed to return as fire fighters, maintain their seniority, and advance to the rank of their entry class. On November 6, 2014, the City and the DFFA entered into a new CBA 2014-2019. See Exhibit 2. **Article 12 Seniority - D (2) of the 2014-2019 CBA**, states that employees who retire from service as a result of a duty disability, shall lose their seniority. Pursuant to the new CBA provision, they shall no longer be allowed to return to the employ of the City and maintain their accumulate seniority, or advance to the rank of their original class.

However, after implementation of the new CBA provision in 2014, no duty disability retired fire fighter was ever notified by the City or the Union that they would lose all of their seniority if they returned to work for the City. To the contrary, after negotiation of the 2014-2019 CBA, the City continued to return many fire fighters to duty with their previous seniority in tack, without objection from the Union; and officers were allowed to assume the rank that their original class had achieved.

The Defendants had conspired to selectively enforce the new provision of the 2014-2019 CBA. In fact, after 2014 the City and the Union agreed to allow some fire

<sup>1</sup> Based upon information and belief, the 2001-2008 CBA was mutually extended through 2013.

<sup>2</sup> The Exhibits referenced herein are identical to the Exhibits referenced in Plaintiffs' initial Complaint and are already a part of the Court record. Consequently, Plaintiffs have not reattached the Exhibits to the First Amended Complaint.

fighters to return from duty disability retirement, maintain their previous seniority, be promoted in accordance with their class ranking, and retire after receiving the promotion with a pension based upon the ranking that they had achieved with their original class.

Thereafter, in continuation of the conspiracy to selectively enforce the new provision of the 2014 CBA, in May 2019, the Union filed a grievance maintaining that the City had violated the CBA by returning fire fighters to duty with their seniority after a disability retirement. The grievance was filed in violation of the CBA years after the Union first became aware that fire fighters were returning from a duty disability and being allowed to maintain their previous seniority. In accordance with the 2014-2019 CBA; *“Any grievance not filed within ten (10) calendar days of the occurrence of the alleged violation or within ten (10) calendar days of an Employee or the Association becoming aware of an alleged violation will be considered untimely and will not be processed”*. However, in furtherance of their conspiracy, the Defendants conspired to ignore the CBA statute of limitations, and the grievance was recognized and acknowledged by the City.

Thereafter, without cause, the Defendants agreed to take disciplinary action against the Plaintiffs. The Defendants put in place an alleged blanket demotion of all disability retirement returnees that had returned to work for the City after 2014. As a result, the Plaintiffs were stripped of the seniority they had accumulated prior to their retirement, and in many instances demoted. The Plaintiffs were not afforded any type of hearing prior to the disciplinary actions taken against them. The Defendants’ goal was to strip the Plaintiffs of their seniority, and take away any promotion which was the result of the systematic seniority promotion.



The disparate treatment and lack of due process in which the stripping of seniority and promotions occurred was presented to the Union on numerous occasions by those victimized, however they refused to assist the Plaintiffs, or provide them with representation. The Plaintiffs filed grievances and wrote letters to both the Union and the City in an effort to address the disparate treatment; however, their efforts fell on deaf ears. The City nor the Union made any effort to address the injustice that was being done to the Plaintiffs.

Defendants intentionally deprived the Plaintiffs of the opportunity to collect a larger pension. All of the Plaintiffs affected by the conspiracy of the Defendants, which deprived them of their seniority and promotions (or promotional opportunities) were over the age of 40. All of the Plaintiffs affected by the conspiracy of the Defendants, which deprived them of their seniority and promotions (or promotional opportunities) were formerly disabled. In accordance with the CBA discipline and demotions shall only occur when there is just cause. The Defendants did not have just cause to discipline and/or demote the Plaintiffs.

## **2. Legal Theories on Which Plaintiffs' Claims Are Based, MCR 2.302(A)(1)(b)**

Plaintiffs' legal theories are (1) violation of duty of fair representation by the union and the defendant union officers, past and present; (2) breach of fiduciary duty by the union and the defendant union officers, past and present; (3) breach of contract violation by all defendants; (4) violation by all defendants of just cause employment agreement; (5) promissory estoppel violation by all defendants; (6) violation by all defendants of Michigan's Persons With Disabilities Civil Rights Act 220 of 1976; (7) age discrimination

as to the City of Detroit and the named City of Detroit defendant employees in violation of the Michigan civil rights act; (8) age discrimination as to the DFFA and the named DFFA defendant employees in violation of the Michigan civil rights act; (9) tortious interference with a business relationship or expectancy as to the DFFA and the named DFFA defendant employees; (10) violation of the Fourteenth Amendment to the U.S. Constitution by discrimination and retaliation as to all defendants actionable pursuant to 42 USC §1983; (11) violation of the Fourteenth Amendment to the U.S. Constitution by deprivation of a property interest without due process of law as to all defendants actionable pursuant to 42 USC §1983; (12) municipal liability for constitutional violations; and (13) civil conspiracy.

**3. Individuals with Discoverable Information and the Subjects of that Information, MCR 2.302(A)(1)(c)**

All of the below witnesses have information concerning the facts as alleged in Plaintiff's complaint, and the damages that they have suffered:

- a. Christopher McGhee
- b. Norman Brown
- c. Craig Brown
- d. James Washington
- e. Shannon Ferguson
- f. Junius Perry
- g. Orlando Potts
- h. All of Plaintiffs' treating physicians, past and present
- i. The City of Detroit, their agents, record keeper and employees.
- j. Eric Jones - Executive Fire Commissioner,
- k. Reginald Jenkins – 2<sup>nd</sup> Deputy Commissioner

- l. Robert Distelrath - Chief Of Department Fire Fighting Division
- m. Kemia Crosson – Employee Services Consultant
- n. Detroit Fire Fighters Association Local 344
- o. Michael Nevin – Former President
- p. Thomas Gehart – President
- q. William Harp – Vice President
- r. John A. Cangialosi – Secretary
- s. Christopher A. Smith – Treasurer
- t. The Detroit Fire Department, their agents, record keeper, and employees.

**4. Documents and ESI in Plaintiff's Possession Supporting Their Claims, MCR 2.302(A)(1)(d)**

The documents in Plaintiffs' possession supportive of their claim are those that were attached to the Plaintiffs' Complaint, and/or referenced in Plaintiffs' Complaint. Plaintiffs are searching to see if they have any additional records supportive of their claim.

**5. Documents and ESI Outside of Plaintiffs' Possession Supporting Their Claims, MCR 2.302(A)(1)(e)**

Plaintiffs anticipate that there are documents in the control of the Defendants that they do not have possession or control of at this time.

**6. Computation of Damages, MCR 2.302(A)(1)(f)**

*Noneconomic damages.* Emotional Distress and Mental Anguish. This will be determined by the jury.

*Economic damages.* Damages by category include the following:

Out of pocket expenses (amount unknown at this time)

Loss of earnings (continual in nature, amount unknown at this time)

Miscellaneous Expenses (amount unknown at this time)

**7. Anticipated Subject Areas of Expert Testimony, MCR 2.302(A)(1)(h)**

- a. Plaintiff is unaware at this time as to whether they will retain an expert.  
Plaintiffs' treaters are experts in the area of their profession.

**8. Executed Medical Authorizations, MCR 2.302(A)(3)**

Plaintiff will sign and forward to Defendant medical authorization forms upon receipt of same from Defendants.

9. These disclosures will be supplemented as additional documents and information are provided or obtained.

September 2, 2020

Respectfully Submitted,

By: /s/Herbert A. Sanders  
Herbert A. Sanders (P43031)  
The Sanders Law Firm, PC  
The Ford Building  
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Detroit, MI 48226  
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**PROOF OF SERVICE**

The undersigned certifies that on September 4, 2020, a copy of the foregoing instrument was served upon the Court and the attorneys of record of all parties to the above cause by electronic filing and/or email and/or first class mail of same to them at their respective business addresses as disclosed by the pleadings of record herein. I declare that the statement above is true to the best of my information, knowledge and belief.

/s/Herbert A. Sanders  
**Herbert A. Sanders**

# EXHIBIT 6G

CHRISTOPHER McGHEE, et al vs. CITY OF DETROIT, DFFA, et al  
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<p style="text-align: right;">Page 8</p> <p>1 A No.</p> <p>2 Q Have didn't have any conversations at any time with Mike</p> <p>3 Nevin, for example?</p> <p>4 A No.</p> <p>5 Q Have you ever had any conversations with Mike Nevin since</p> <p>6 you filed this lawsuit?</p> <p>7 A No.</p> <p>8 Q To your knowledge, has your attorney spoke with Mike</p> <p>9 Nevin since you filed this lawsuit?</p> <p>10 MR. SANDERS: Objection to the extent that</p> <p>11 would be attorney-client privileged information if I</p> <p>12 communicated something to him concerning our</p> <p>13 investigation and preparation for this case. It would</p> <p>14 also be attorney work product, so I would direct him not</p> <p>15 to answer any question as it relates to any conversation</p> <p>16 I have had with him as it relates to this litigation.</p> <p>17 MR. LEGGHIO: Okay. Fair enough. I am</p> <p>18 not asking about conversations. I am asking him does he</p> <p>19 know whether there's been any conversations between his</p> <p>20 attorney and Mike Nevin. I'm asking for anything that</p> <p>21 was said to him, any communication you made.</p> <p>22 Q (By Mr. Legghio) Do you have any knowledge, other than</p> <p>23 from your attorney about any discussion between your</p> <p>24 attorney and Mike Nevin?</p> <p>25 MR. SANDERS: You can answer.</p>	<p style="text-align: right;">Page 10</p> <p>1 Q So your first day of employment with the City, you didn't</p> <p>2 work in the Parks and Recs Department or anything like</p> <p>3 that? You first start at the Fire Department with the</p> <p>4 City and that's in September of 1996?</p> <p>5 A That's correct.</p> <p>6 Q And your position when you joined the City Fire</p> <p>7 Department was what?</p> <p>8 A Fire Fighter.</p> <p>9 Q Okay, and you worked for the City until about 2003?</p> <p>10 A Correct.</p> <p>11 Q In 2003 you became disabled, duty disabled?</p> <p>12 A Correct.</p> <p>13 Q Between 1996 and 2003, did you have any disabilities or</p> <p>14 were you off any time at all for disability for work?</p> <p>15 A Can you repeat that?</p> <p>16 Q Sure. Between 1996 when you had your first day of work</p> <p>17 to 2003 when you became duty disabled, were you off of</p> <p>18 work for any extended period of time related to</p> <p>19 disability?</p> <p>20 A No.</p> <p>21 Q Okay, so you just basically between '96 and 2003, you</p> <p>22 were just generally working every day?</p> <p>23 A Your questions are a little bit vague, but I was employed</p> <p>24 and receiving a paycheck from the Fire Department during</p> <p>25 that whole time, so I had an injury, but your information</p>
<p style="text-align: right;">Page 9</p> <p>1 THE WITNESS: I'm unaware. I'm not</p> <p>2 certain of any conversations that they had.</p> <p>3 Q (By Mr. Legghio) Any communications of any type?</p> <p>4 A I remember that they were supposed to dialogue or get</p> <p>5 together, but I don't know what the outcome, I haven't</p> <p>6 heard anything about that.</p> <p>7 Q And has that happened, did you understand that to have</p> <p>8 happened since you filed the lawsuit?</p> <p>9 A Correct. I think Nevin wanted to, yeah. I'm kind of</p> <p>10 sketchy on that. I really don't know too much about</p> <p>11 that.</p> <p>12 Q Did Mike Nevin reach out to you since you filed this</p> <p>13 lawsuit, you personally?</p> <p>14 A No, sir.</p> <p>15 Q Do you know whether he's reached out to any other</p> <p>16 Plaintiffs in the lawsuit personally, not to your</p> <p>17 attorney?</p> <p>18 A No.</p> <p>19 Q Okay. I want to go over your employment history with the</p> <p>20 City to make sure we have a clear record. When was your</p> <p>21 first day of work with the Detroit Fire Department?</p> <p>22 A September of '96.</p> <p>23 Q Did you have any City employment prior to September of</p> <p>24 '96 with the City of Detroit?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 11</p> <p>1 is vague. Your question is —</p> <p>2 Q My job today is to take all the vagueness out of it.</p> <p>3 Were you off work between '96 and 2003 for any injury</p> <p>4 related to your work?</p> <p>5 A Yes.</p> <p>6 Q How long were you off?</p> <p>7 A I am uncertain. That was a long time ago. Back</p> <p>8 injuries.</p> <p>9 REPORTER: Excuse me. You're speaking</p> <p>10 over each other.</p> <p>11 THE WITNESS: It was a long time ago.</p> <p>12 There have been injuries. Nothing serious during that</p> <p>13 period until I became disabled in 2003.</p> <p>14 Q (By Mr. Legghio) Okay, well, right now as I say, I want</p> <p>15 to make this deposition, take all the vagueness out of</p> <p>16 it. I'm still focusing on the period '96 to 2003. It</p> <p>17 sounds like that you were off work at least for some</p> <p>18 period of time during that timeframe for a back injury.</p> <p>19 Is that a fair statement?</p> <p>20 A I'll go with that.</p> <p>21 Q Okay.</p> <p>22 MR. SANDERS: I don't want you to guess,</p> <p>23 Norman. If you know, you know. If not, you don't.</p> <p>24 THE WITNESS: Off work is an unfair</p> <p>25 statement. If you're still on the payroll, you're not</p>

5 (Pages 8 to 11)

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<p style="text-align: right;">Page 32</p> <p>1 Complaint that's Exhibit 1, DFFA 0008. You said you read</p> <p>2 it. You said you read the Collective Bargaining</p> <p>3 Agreement and you concluded it didn't apply to you. What</p> <p>4 about that, if anything, made you conclude that losing</p> <p>5 your seniority was not an issue for you?</p> <p>6 MR. SANDERS: Object to the form and</p> <p>7 foundation. I think he gave a litany of reasons as to</p> <p>8 why he felt that way, but you're free to answer the</p> <p>9 question.</p> <p>10 Q (By Mr. Legghio) I'm focusing on the language now. The</p> <p>11 language. What about the language that made you think</p> <p>12 that?</p> <p>13 A Well, I went off under a different contract and other</p> <p>14 fire fighters in the past have been allowed to use that</p> <p>15 same past practice, so these things that were promised to</p> <p>16 me before I came back, I understood that these were</p> <p>17 things that would apply to me. The contract that I read</p> <p>18 was the contract that was in place after I returned, so I</p> <p>19 assumed that I would be promised or I would receive what</p> <p>20 I was promised.</p> <p>21 The language in that contract that you're</p> <p>22 explaining to me happened way after me coming back,</p> <p>23 almost four months after me coming back, three and a half</p> <p>24 months which would have been the first time that I even</p> <p>25 knew that that language had changed.</p>	<p style="text-align: right;">Page 34</p> <p>1 those provisions would apply to me, not the provisions of</p> <p>2 the 2014-2019 CBA. Is that fair?</p> <p>3 MR. SANDERS: Asked and answered. You can</p> <p>4 answer again.</p> <p>5 THE WITNESS: I had no knowledge of the</p> <p>6 2014-2019 content until I was already back working.</p> <p>7 Since I was back working, the fact that no one told me</p> <p>8 that the changes had occurred and people were still</p> <p>9 promoting, my assumption was that they were honoring the</p> <p>10 contract or the promises that they made to us.</p> <p>11 Q (By Mr. Legghio) Okay. You're complicating my question.</p> <p>12 There's no trap doors here. I just want to make sure</p> <p>13 I've got your concept. Your concept is that —</p> <p>14 MR. SANDERS: You're complicating your</p> <p>15 question and he's answering your question, Chris. You</p> <p>16 might not like the answer, but let's move on.</p> <p>17 MR. LEGGHIO: I'm not emotionally invested</p> <p>18 in his answer one way or the other. I just want to make</p> <p>19 sure I understand it.</p> <p>20 Q (By Mr. Legghio) I'm not asking you about who said</p> <p>21 anything to you or didn't. I'm just asking that am I</p> <p>22 correct in understanding you that you believed the terms</p> <p>23 of your return to work and the terms of any loss of</p> <p>24 seniority would be governed by the Collective Bargaining</p> <p>25 Agreement under which you went out on duty disability?</p>
<p style="text-align: right;">Page 33</p> <p>1 So, of course, there may have been more</p> <p>2 information in the contract, but I didn't assume that it</p> <p>3 would affect me because I would have thought that</p> <p>4 anything that would affect me would have been explained</p> <p>5 to me.</p> <p>6 Q Okay. I'm going to deal with some factual issues and</p> <p>7 make sure we're clear. You returned to work four years</p> <p>8 after the Collective Bargaining Agreement that began in</p> <p>9 2014. We're in agreement on that. Am I correct?</p> <p>10 A That's correct.</p> <p>11 Q And if I understand your testimony what you're suggesting</p> <p>12 and I want you to tell me if I'm wrong, is that whatever</p> <p>13 the language in the 2014 Collective Bargaining Agreement</p> <p>14 was with regard to returning to work after a duty</p> <p>15 disability, you believed that your return to work when</p> <p>16 returning from a duty disability would be governed by the</p> <p>17 Collective Bargaining Agreement that was in place when</p> <p>18 you went on duty disability. Is that fair?</p> <p>19 A That's fair simply because no one told me of any changes,</p> <p>20 not the Retirement Board, not the City, so yes. It's</p> <p>21 fair to assume that the only information that I had is</p> <p>22 the information that I relied on.</p> <p>23 Q Okay. I'm not interested in all of that, I just want to</p> <p>24 know, it sounds like what you're saying is I had this</p> <p>25 contract I went out on duty disability on, and I believe</p>	<p style="text-align: right;">Page 35</p> <p>1 How you got there, I'm not asking but that's what you're</p> <p>2 suggesting. Am I right?</p> <p>3 MR. SANDERS: Objection. Asked and</p> <p>4 answered. He's going to answer that question one more</p> <p>5 time. Then we're going to move on or we're going to</p> <p>6 discontinue the deposition.</p> <p>7 Mr. Brown, give your answer for the fourth</p> <p>8 time.</p> <p>9 THE WITNESS: I believe that the contract</p> <p>10 that I went off under was the information or was the</p> <p>11 content that applied to me.</p> <p>12 Q (By Mr. Legghio) Okay. All right. Now, I want you to</p> <p>13 look at Paragraph 36. This is on Exhibit 1. This is</p> <p>14 Bate stamped number DFFA 0008 and if you could read</p> <p>15 Paragraph 36 to yourself and let me know when you have</p> <p>16 completed that.</p> <p>17 A I'm done.</p> <p>18 Q Now, I am going to read it into the record. It says:</p> <p>19 "To the contrary, after negotiation of the</p> <p>20 2014-2019 CBA, the City continued to return</p> <p>21 many fire fighters to duty with their previous</p> <p>22 seniority in tack, without objection from the</p> <p>23 Union, and officers were allowed to assume the</p> <p>24 rank that their original class had achieved."</p> <p>25 Now, other than Mark Green, is there anyone else that</p>

11 (Pages 32 to 35)

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<p>1 A Yes.</p> <p>2 Q Now, in Paragraph 39 of Exhibit 1, this is Bates stamped</p> <p>3 0008. Will you take a look at that?</p> <p>4 MR. SANDERS: I'm sorry. Can you repeat</p> <p>5 where you're looking at?</p> <p>6 Q (By Mr. Legghio) Paragraph 39, Exhibit 1, page 0008.</p> <p>7 MR. SANDERS: I got you.</p> <p>8 Q (By Mr. Legghio) Have you read that, Mr. Brown?</p> <p>9 A I did.</p> <p>10 Q Can you put the witness on the screen? Now, Mr. Brown,</p> <p>11 you say in this paragraph:</p> <p>12 ". . . in continuation of the conspiracy to</p> <p>13 selectively enforce the new provisions of the</p> <p>14 2014 CBA, in May 2019, the Union filed a</p> <p>15 grievance maintaining that the City had</p> <p>16 violated the CBA by returning fire fighters to</p> <p>17 duty with their seniority after a disability</p> <p>18 retirement."</p> <p>19 Okay. Did anyone tell you that the Union would have</p> <p>20 filed a grievance, this grievance that you reference in</p> <p>21 Paragraph 39, that this was done to conspire, to</p> <p>22 selectively enforce the new provisions of the Collective</p> <p>23 Bargaining Agreement?</p> <p>24 A I was not told that.</p> <p>25 Q Okay. Do you have any facts other than the fact that</p>	<p>1 MR. LEGGHIO: Mr. Sanders, I would like to</p> <p>2 take a second. I think we have that and I want to see if</p> <p>3 I can pull it up.</p> <p>4 MR. SANDERS: Not a problem.</p> <p>5 MR. ADAM: It's Bates stamped 5455.</p> <p>6 MR. MCFARLANE: Do you want me to pull it</p> <p>7 up for you?</p> <p>8 MR. LEGGHIO: Yes, if you could pull it</p> <p>9 up. It's a February 27, 2019 letter.</p> <p>10 THE WITNESS: I'm sorry. That's not the</p> <p>11 letter. Oh, I'm sorry. Wait a minute.</p> <p>12 UNIDENTIFIED: Go to the next page also.</p> <p>13 Q (By Mr. Legghio) Have you read that, Mr. Brown?</p> <p>14 A I did.</p> <p>15 Q Now, is this the document that you're referencing in</p> <p>16 Paragraph 39 and Bates stamped number 0008 in which you</p> <p>17 say:</p> <p>18 "In continuation of the conspiracy to</p> <p>19 selectively enforce the new provisions of the</p> <p>20 CBA, the Union filed a grievance."</p> <p>21 A That's correct.</p> <p>22 Q Now, this is February 27, 2019. You returned to work in</p> <p>23 July of 2018?</p> <p>24 A January.</p> <p>25 Q January of 2018. Between January of 2018 and February of</p>
Page 41	Page 43
<p>1 they actually filed this grievance that you rely upon for</p> <p>2 the allegation that this grievance was in continuation of</p> <p>3 this conspiracy that you allege? Do you have any other</p> <p>4 facts?</p> <p>5 A Just the email, the letter between, I think it was an</p> <p>6 email that was published in the fire fighter magazine</p> <p>7 between the previous President Nevin and the, I think, I</p> <p>8 don't remember his position, Hakim Berry.</p> <p>9 Q Okay. By the way, if I told you that Mark Green returned</p> <p>10 to work in 2011, do you have any facts to dispute that?</p> <p>11 A No, I don't.</p> <p>12 Q So you don't know if he returned to work before the 2014</p> <p>13 contract?</p> <p>14 A I don't have the contract in front of me.</p> <p>15 Q It's not the contract I'm asking about. I'm not asking</p> <p>16 about the contract.</p> <p>17 A I understand. I don't have the list in front of me, so I</p> <p>18 don't know the date that he returned.</p> <p>19 Q Okay, so you say there was an email or a correspondence</p> <p>20 from the prior President. This is Mike Nevin?</p> <p>21 A Correct.</p> <p>22 Q And this was an email or a letter that he sent to whom?</p> <p>23 A I don't know if he sent it to Hakim Berry or Hakim Berry</p> <p>24 sent it to him, but it was posted in the magazine.</p> <p>25 Q Let me take a second.</p>	<p>1 2019, did you have any discussion with any Union officer</p> <p>2 regarding whether you would be able to keep your</p> <p>3 seniority, the seniority that predated your duty</p> <p>4 disability in 2003?</p> <p>5 A Negative. No, I did not.</p> <p>6 Q You did not. When you received this, when you saw this</p> <p>7 document, was this in a Fire Fighters Association</p> <p>8 magazine?</p> <p>9 A That's correct.</p> <p>10 Q Did you have any discussions with any Union officer after</p> <p>11 you saw this?</p> <p>12 A No.</p> <p>13 Q Did this document, Exhibit 1, DFFA 0055, did it raise</p> <p>14 concerns for you that your seniority would be affected?</p> <p>15 A I guess it did. It did to a degree.</p> <p>16 Q Okay. Well, given the fact that you thought it might</p> <p>17 affect your seniority to a degree, did it prompt you to</p> <p>18 have a discussion with anybody from the Union?</p> <p>19 A No, sir. It didn't apply to my promotion. I wasn't</p> <p>20 promoted based on the seniority system, so it didn't have</p> <p>21 any bearing on me.</p> <p>22 Q Okay. You raise a good question here. You say in your</p> <p>23 Complaint you weren't promoted based on the seniority</p> <p>24 system and I am going to refer you to Exhibit 1, Bates</p> <p>25 stamped number 0012, and in particular, Paragraph 72. If</p>

13 (Pages 40 to 43)



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<p style="text-align: right;">Page 108</p> <p>1 A In Novi.</p> <p>2 Q Novi, Michigan?</p> <p>3 A That's correct.</p> <p>4 Q Since 2001 until the present, have you ever been</p> <p>5 hospitalized for your wrist injury?</p> <p>6 A Not hospitalized. No, sir.</p> <p>7 Q How many surgeries have you had on your left wrist?</p> <p>8 A No surgeries.</p> <p>9 Q Can you show me your left wrist so I could just see it?</p> <p>10 A (Witness complied)</p> <p>11 Q Can you move your wrist? Can you move your hand?</p> <p>12 A Sure. Are you asking me to --</p> <p>13 MR. SANDERS: He's not asking you</p> <p>14 anything.</p> <p>15 Q (By Mr. Adam) I just want to see your left wrist.</p> <p>16 MR. SANDERS: Can you move it?</p> <p>17 Q (By Mr. Adam) And how old are you right now, Mr. Brown,</p> <p>18 your age?</p> <p>19 A Fifty-two</p> <p>20 Q Now, you were asked a few questions about your complaint</p> <p>21 of age discrimination in the lawsuit. What is the nature</p> <p>22 of the age discrimination?</p> <p>23 A That sounds a little vague? What's the nature of it?</p> <p>24 Q Right. Were you discriminated against are you saying</p> <p>25 because you're too old or you're too young or what?</p>	<p style="text-align: right;">Page 110</p> <p>1 answered. You can answer again.</p> <p>2 THE WITNESS: That is it specifically.</p> <p>3 All of the Union E-Board members including Harp, they</p> <p>4 knew of all of the returning members. They knew their</p> <p>5 ages. They knew their disabilities and under with my</p> <p>6 situation, he knows exactly my age and my disability and</p> <p>7 I just believe that he specifically discriminated against</p> <p>8 me.</p> <p>9 Q (By Mr. Adam) Mr. Brown, you testified that Nevin wrote a</p> <p>10 letter in February of 2019 and you saw that letter.</p> <p>11 Right?</p> <p>12 A That's correct.</p> <p>13 Q And he complained that the City was not causing employees</p> <p>14 when they came back from duty disability, that they were</p> <p>15 given prior seniority and he said that should stop.</p> <p>16 Right?</p> <p>17 A Repeat it one more time.</p> <p>18 Q You're aware that Mr. Nevin wrote the letter in February</p> <p>19 of 2019 complaining that the City was not properly</p> <p>20 applying Article XII of the contract. Right?</p> <p>21 A I remember a letter, yes.</p> <p>22 Q And in fact the Union filed a grievance in May of 2019</p> <p>23 complaining that the City was not applying Article XII,</p> <p>24 the Seniority provision of the contract, correctly.</p> <p>25 Correct? You're aware of that?</p>
<p style="text-align: right;">Page 109</p> <p>1 A No. I believe that the returnees who have all been over</p> <p>2 a certain age, they were specifically targeted. I was</p> <p>3 specifically targeted because of that and the disability.</p> <p>4 Q And is it because you're older or younger?</p> <p>5 A Older.</p> <p>6 Q For example, tell me how Mr. Nevin discriminated against</p> <p>7 you because of your age. Give me specific facts?</p> <p>8 A I can't answer that right now.</p> <p>9 Q Tell me how the Fire Commissioner discriminated against</p> <p>10 you because of your age. Give me specific facts as to</p> <p>11 how he did it?</p> <p>12 A The administration and the Commissioner, Kemia Crosson,</p> <p>13 they seemed to have targeted those who were previously</p> <p>14 disabled and the people that it appears to be disabled</p> <p>15 were over a certain age, 42, for instance.</p> <p>16 Q So what about Mr. Harp? Give me specific facts as to how</p> <p>17 you can show that he discriminated against you because</p> <p>18 you were what, 50 years old at the time?</p> <p>19 A I would have to go back to the original answer which is</p> <p>20 Mr. Harp knew all of the details of my current situation</p> <p>21 and he refused to do anything on my behalf.</p> <p>22 Q I'm asking specifically, I want a specific fact as to age</p> <p>23 discrimination what Mr. Harp specifically did that shows</p> <p>24 age discrimination?</p> <p>25 MR. SANDERS: Objection. Asked and</p>	<p style="text-align: right;">Page 111</p> <p>1 A I am aware of that.</p> <p>2 Q And that the City and the DFFA eventually agreed that</p> <p>3 individuals who came back from a duty disability who've</p> <p>4 been absent in your case for more than 15 years, that you</p> <p>5 should not have been given your seniority when you came</p> <p>6 back in January of 2018. Correct?</p> <p>7 A I apologize, Attorney Adam. I'm struggling. I can hear</p> <p>8 you, but your questions seem a little bit -- they're a</p> <p>9 little bit off, but please one more time for me.</p> <p>10 Q So you're aware that the DFFA and the City of Detroit</p> <p>11 agreed that you should not have been given your previous</p> <p>12 seniority when you came back to work in January of 2018.</p> <p>13 Correct?</p> <p>14 A Correct.</p> <p>15 Q And so the Union, the City agreed and therefore caused</p> <p>16 you to lose some of the prior seniority that you had.</p> <p>17 Correct?</p> <p>18 A Correct.</p> <p>19 Q And the City did that to other individual DFFA members.</p> <p>20 Right?</p> <p>21 A I believe that's correct.</p> <p>22 Q Well, in fact, this lawsuit involves other Plaintiffs,</p> <p>23 does it not?</p> <p>24 A Correct.</p> <p>25 Q And all of these individuals or at least some of the</p>

30 (Pages 108 to 111)

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<p>Page 124</p> <p>1 to your seniority?</p> <p>2 A My seniority, no. We didn't discuss my seniority. We</p> <p>3 never discussed my seniority.</p> <p>4 Q I'm referring to did you ever talk to him about what the</p> <p>5 City did with respect to taking away your prior</p> <p>6 seniority?</p> <p>7 A That's the same question. I never talked to him about my</p> <p>8 seniority.</p> <p>9 Q What did you talk to him about, about anything about what</p> <p>10 the City did?</p> <p>11 A I don't know because to me or to him or what are you</p> <p>12 asking, sir?</p> <p>13 Q Have you spoken to Mr. McGhee about what happened to you</p> <p>14 and what happened to him with respect to the City</p> <p>15 changing your seniority?</p> <p>16 A No. We didn't talk about what the City did to me as it</p> <p>17 pertains to seniority. Seniority wasn't a factor for me.</p> <p>18 Q Now, Mr. Brown, I want to show you Exhibit – oh, I just</p> <p>19 lost the page number on it. Sorry. Do you see it's</p> <p>20 January 22, 2020 letter to you from the City?</p> <p>21 MR. SANDERS: Would you state the number</p> <p>22 for the record?</p> <p>23 Q (By Mr. Adam) Bates stamp 81.</p> <p>24 A Okay.</p> <p>25 Q So you saw this letter. Correct?</p>	<p>Page 126</p> <p>1 MR. SANDERS: I'd object to the form of</p> <p>2 the question. I don't know if this witness is competent</p> <p>3 to determine whether the contract is legal or illegal,</p> <p>4 but with that stated, he's free to answer.</p> <p>5 THE WITNESS: You know, I apologize for</p> <p>6 repeating what Attorney Sanders said, but if it comes</p> <p>7 down to it being a legal or not, I really don't know if I</p> <p>8 could judge it either way.</p> <p>9 Q (By Mr. Adam) So, now you're saying after hearing your</p> <p>10 Counsel's objection you're not sure whether the 2014</p> <p>11 contract is illegal or not. Is that what you're saying?</p> <p>12 A No, sir. No, sir. You're fashioning that question in</p> <p>13 the form of a lie again. I never said that the contract</p> <p>14 was illegal. I don't remember ever saying that the</p> <p>15 contract was illegal and currently I'm saying that I</p> <p>16 can't say that it is illegal or it isn't illegal and the</p> <p>17 only way that I would know which of the two it is, is to</p> <p>18 confer with my attorney.</p> <p>19 He would let me know if he believes it's</p> <p>20 illegal, but that wasn't the basis of anything that I've</p> <p>21 said.</p> <p>22 Q I'm asking you if you are claiming that the 2014 CBA is</p> <p>23 illegal?</p> <p>24 MR. SANDERS: Same objection.</p> <p>25 THE WITNESS: I don't know, sir. I don't</p>
<p>Page 125</p> <p>1 A I did receive that.</p> <p>2 Q And at the time you received this letter, you were not</p> <p>3 actively working. You were on a, what do you call it, an</p> <p>4 absence of some sort. Correct?</p> <p>5 A I was on J's.</p> <p>6 Q And what does J stand for?</p> <p>7 A Injured.</p> <p>8 Q Mr. Brown, are you claiming that the 2014 contract is</p> <p>9 illegal?</p> <p>10 A No, sir, I'm not saying that it's illegal. I'm saying no</p> <p>11 one told me that it applied to me.</p> <p>12 Q And because no one told you it applied to you, why don't</p> <p>13 you think it applied to you because?</p> <p>14 A Because promises that were made to me prior to going off.</p> <p>15 The City informed me under the contract that the Union</p> <p>16 and the City agreed to, that at a certain point if I came</p> <p>17 back to work, I would be promised these things. They</p> <p>18 never told me that that promise was broken. They never</p> <p>19 told me that there would be a new promise.</p> <p>20 They just simply waited for a couple, I</p> <p>21 don't know, a year or so after I was back, almost two,</p> <p>22 and then they changed it and told me that, you know,</p> <p>23 basically this is it. This is what we're doing.</p> <p>24 Q So you're not claiming that the 2014 contract is illegal?</p> <p>25 You're just claiming it shouldn't apply to you. Correct?</p>	<p>Page 127</p> <p>1 know.</p> <p>2 Q (By Mr. Adam) Are you claiming that the 2014 CBA should</p> <p>3 not have applied to you? You're claiming that?</p> <p>4 A I am claiming that based on promises made to me.</p> <p>5 Q I'm now showing you Bates stamped 491.</p> <p>6 A Okay.</p> <p>7 Q And the first sentence says, it's from a doctor:</p> <p>8 "Mr. Norman Brown is requesting return to</p> <p>9 work as a Fire Fighter. He was granted a Duty</p> <p>10 Disability Retirement in 2003 following injury</p> <p>11 of the left thumb with rupture of the volar</p> <p>12 plate of the thumb. He reported being seen by</p> <p>13 Dr. Dietz who recommended surgical repair,</p> <p>14 which he declined."</p> <p>15 A At that time.</p> <p>16 Q Did you decline surgery for your wrist injury?</p> <p>17 MR. SANDERS: Objection. Asked and</p> <p>18 answered. You can answer again.</p> <p>19 THE WITNESS: I don't remember. No, I</p> <p>20 don't remember.</p> <p>21 Q (By Mr. Adam) Has your wrist injury prevented you from</p> <p>22 doing any sports? Let me ask you, do you do any sports?</p> <p>23 A No, sir.</p> <p>24 Q What physical activity do you do?</p> <p>25 MR. SANDERS: Objection. Form and</p>

34 (Pages 124 to 127)

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<p style="text-align: right;">Page 128</p> <p>1       vagueness, but you can answer.</p> <p>2               THE WITNESS: My activity is extremely</p> <p>3       limited.</p> <p>4       Q   (By Mr. Adam) You don't play any sports at all?</p> <p>5       A   Unfortunately, no.</p> <p>6       Q   Do you work out at all?</p> <p>7       A   No, sir.</p> <p>8       Q   And this all relates, it's all because you're claiming</p> <p>9       your left wrist injury. Right? Is that why?</p> <p>10      A   In part. For the most part, I don't do it because I</p> <p>11      don't want to reinjure it.</p> <p>12      Q   And how many times a week or months do you go to physical</p> <p>13      therapy let's say for the last two years?</p> <p>14      A   In the last two years, approximately four days a week.</p> <p>15      Q   Four days a week for your wrist?</p> <p>16      A   That's correct.</p> <p>17      Q   Every week?</p> <p>18      A   Whenever it was applied or whenever it was approved, yes,</p> <p>19      I made physical therapy.</p> <p>20      Q   And what is the form of the physical therapy? What do</p> <p>21      they do for your wrist four days a week?</p> <p>22      A   Strengthening to determine if a surgical procedure may be</p> <p>23      needed, but mostly strengthening, stretching and learning</p> <p>24      how to use it safely.</p> <p>25      Q   Do you have any movement of your hand at all? Can you</p>	<p style="text-align: right;">Page 130</p> <p>1       Q   And other than working for the City of Detroit for about</p> <p>2       18 months from January 2018 to July of 2019, you've not</p> <p>3       done any other work for anybody else in a business,</p> <p>4       etcetera. Right?</p> <p>5       A   That's correct.</p> <p>6       Q   Now, when you said you reinjured your wrist in 2019 in a</p> <p>7       car accident, were you hospitalized at all for that</p> <p>8       accident?</p> <p>9       A   I was only seen through Emergency the day that it</p> <p>10      happened and the following day.</p> <p>11      Q   And you were taken there by ambulance?</p> <p>12      A   That's correct.</p> <p>13      Q   And your injury there was the wrist was injured? That's</p> <p>14      why you were taken to the hospital?</p> <p>15      A   The scaphoid and there was nerve damage. Yes, sir.</p> <p>16      Wrist, hand, pretty much wrist hand and aggravation to</p> <p>17      the original volar plate.</p> <p>18      Q   Do you have any surgery planned, scheduled now for the</p> <p>19      wrist?</p> <p>20      A   No, sir. Not as of now.</p> <p>21      Q   And you've been approved as I understand it for duty</p> <p>22      disability a second time. Right?</p> <p>23      A   That's correct.</p> <p>24      Q   And how much will your payments be approximately?</p> <p>25      A   Monthly payment?</p>
<p style="text-align: right;">Page 129</p> <p>1       show me, you can move your hand?</p> <p>2       A   (Witness complied)</p> <p>3       Q   Make a fist?</p> <p>4       A   (Witness complied)</p> <p>5       Q   Move your wrist. Can you move your wrist?</p> <p>6       A   (Witness complied)</p> <p>7       Q   And who are your treating doctors now for your wrist</p> <p>8       injury?</p> <p>9       A   Dr. Bohm from Mendelson and Kornbloom. I believe it's B-</p> <p>10      o-h-m and Dr. King from Henry Ford Hospital.</p> <p>11      Q   And were these the people that treated you during your</p> <p>12      15-year absence from 2002 to 2018?</p> <p>13      A   No.</p> <p>14      Q   And who were those doctors that treated you during that</p> <p>15      15 years absence from working for the City?</p> <p>16      A   There was a Dr. Dietz and there was a Dr. McGill.</p> <p>17      Q   And during those 15 years, did you undergo physical</p> <p>18      therapy every week?</p> <p>19      A   No, sir. No, sir.</p> <p>20      Q   Did you undergo any physical therapy during those 15</p> <p>21      years?</p> <p>22      A   No.</p> <p>23      Q   So when you went off on the first duty disability in</p> <p>24      2002, you would have been what, 33 years old?</p> <p>25      A   That sounds about right.</p>	<p style="text-align: right;">Page 131</p> <p>1       Q   Yes.</p> <p>2       A   I have no idea.</p> <p>3       Q   What was your monthly payment when you were off let's say</p> <p>4       up until 2018?</p> <p>5       A   Thirty-three hundred a month.</p> <p>6       Q   Mr. Brown, I have in front of you Bates stamp 495. It's</p> <p>7       called a Retirement Application Checklist. This is a</p> <p>8       document you filled out. Right?</p> <p>9       A   That is my signature.</p> <p>10      Q   And I'm showing you just as an example, Bates stamp 506.</p> <p>11      This is an example of something you would submit to the</p> <p>12      Pension Board about income. Right?</p> <p>13      A   That is correct.</p> <p>14      Q   And you reported this NA means non-applicable. Right,</p> <p>15      meaning you didn't get anything. Correct?</p> <p>16      A   Correct.</p> <p>17      Q   Sorry. I'm trying to get back to this page. Hold on. I</p> <p>18      have in front of you Bates stamp 0031, Count X, Violation</p> <p>19      of the Fourteenth Amendment. Do you see that?</p> <p>20      A   Yes, I can see it.</p> <p>21      Q   Of your Complaint?</p> <p>22      A   Okay.</p> <p>23      Q   And that goes on for a couple of pages. Why are you</p> <p>24      suing DFFA and the DFFA officers for violation of the</p> <p>25      Fourteenth Amendment?</p>

35 (Pages 128 to 131)

CHRISTOPHER McGHEE, et al vs. CITY OF DETROIT, DFFA, et al  
Deposition of Norman Brown

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<p>1 Q So is this the first time you went to the psychologist?</p> <p>2 A Yes.</p> <p>3 Q And it talks about complaints of anxiety, stress and</p> <p>4 worry. Two months ago, a new supervisor took over who</p> <p>5 has much more of a military style. Who is that</p> <p>6 supervisor?</p> <p>7 A Calvin Harris. He had a – Calvin Harris.</p> <p>8 Q Did you provide this psychologist report to the City?</p> <p>9 A I don't remember. I can't recall.</p> <p>10 Q Did you use this psychologist report as a basis for</p> <p>11 stopping work in July of 2019?</p> <p>12 A No.</p> <p>13 Q Since July 2019, have you treated with a psychologist?</p> <p>14 A No.</p> <p>15 Q How many times did you see the psychologist, Edith</p> <p>16 Montgomery?</p> <p>17 A That was the first time.</p> <p>18 Q So how many times did you see her?</p> <p>19 A That was the one time.</p> <p>20 Q For one time how long was the meeting?</p> <p>21 A I don't remember.</p> <p>22 Q I mean, an hour, a half an hour?</p> <p>23 A I don't remember.</p> <p>24 Q Did you meet with her eight hours?</p> <p>25 A I don't remember. It wasn't this long.</p>	<p>1 highlighting right there. It says:</p> <p>2 "The referenced CBA was not collectively</p> <p>3 bargaining for wherein there was a lack of duty</p> <p>4 of fair representation. Consequently, an</p> <p>5 illegal document was created pursuant to a</p> <p>6 conspiracy, with the intent and purpose of</p> <p>7 violating my and the other Plaintiffs' civil</p> <p>8 rights."</p> <p>9 So, explain to me how the contract was illegal?</p> <p>10 A I've got to read it again. Let me see where it says that</p> <p>11 the contract wasn't legal.</p> <p>12 Q I am just asking you why are you saying the contract is</p> <p>13 illegal.</p> <p>14 A No. Are you suggesting that I'm saying that the CBA is</p> <p>15 illegal? I am reading it. It says:</p> <p>16 "The referenced CBA was not collectively</p> <p>17 bargaining for wherein there was a lack of duty</p> <p>18 of fair representation. Consequently, an</p> <p>19 illegal document was created pursuant to a</p> <p>20 conspiracy."</p> <p>21 Originally when I spoke to – I've probably answered this</p> <p>22 a lot of times now, but if the grievance was put in place</p> <p>23 that did not affect me and I explained to my Union that</p> <p>24 that action, that grievance that was put in place and</p> <p>25 it's harming me, I expected them to do something to</p>
Page 149	Page 151
<p>1 Q So you met her one time on one day then. Right?</p> <p>2 A That's correct.</p> <p>3 Q And you have not been back to her since. Correct?</p> <p>4 A That's correct.</p> <p>5 Q Have you been to another psychologist?</p> <p>6 A No, sir.</p> <p>7 Q Have you been to a psychiatrist?</p> <p>8 A No.</p> <p>9 Q How did you end up going to Ms. Montgomery?</p> <p>10 A I don't remember if it was a referral or how I found her,</p> <p>11 so I don't have an answer for that.</p> <p>12 Q Well, did you have a treating doctor that might have</p> <p>13 recommended the person?</p> <p>14 A No.</p> <p>15 Q So you have no idea how you ended up getting a meeting</p> <p>16 with the psychologist? You have no idea how you got her</p> <p>17 name?</p> <p>18 A I don't remember.</p> <p>19 Q And you don't remember whether you gave this to the City</p> <p>20 of Detroit. Right?</p> <p>21 A No, sir. I don't recall.</p> <p>22 Q Mr. Brown, I asked you some questions about whether you</p> <p>23 viewed the contract, the 2014 contract as illegal and I</p> <p>24 want to direct you now to Bates stamp 114, your Response</p> <p>25 to Request for Admissions, and take you to the part I'm</p>	<p>1 represent me or to assist me. They did nothing.</p> <p>2 They did nothing to assist me, so when I</p> <p>3 speak of the CBA, I speak of the Collective Bargaining</p> <p>4 Agreement that they told me would protect me when I went</p> <p>5 off. No one told me that there would be any changes or</p> <p>6 had been any changes. No one said anything.</p> <p>7 Q Well, Mr. Brown, did you ever ask for a copy of the CBA?</p> <p>8 A From who?</p> <p>9 Q Anybody, co-workers, anybody?</p> <p>10 A Well, that's how I got it in May or April of 2018.</p> <p>11 Q So you got it in May of 2018?</p> <p>12 A It may have been April.</p> <p>13 Q Well, how did you get it?</p> <p>14 A I got it from one of the previous Union representatives.</p> <p>15 Q So you had a copy of the 2014 contract before you went</p> <p>16 back to work?</p> <p>17 A Negative. I got that contract in 2018 about four months</p> <p>18 after I had returned.</p> <p>19 Q Oh. Got it. All right, so my question is you say the</p> <p>20 CBA was not collectively bargained. Do you see that</p> <p>21 sentence right there?</p> <p>22 A I see it.</p> <p>23 Q What do you mean "not collectively bargained?"</p> <p>24 A The contract that you're speaking of that you</p> <p>25 consistently speak of, the 2014-2019 contract, that's the</p>

40 (Pages 148 to 151)

# EXHIBIT 6H

CHRISTOPHER MCGHEE, et al vs. CITY OF DETROIT, DFFA, et al  
Deposition of Orlando Potts

Page 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In the Matter of:

CHRISTOPHER MCGHEE, NORMAN BROWN,  
CRAIG BROWN, JAMES WASHINGTON,  
SHANNON FERGUSON, JUNIUS PERRY,  
AND ORLANDO POTTS,

Plaintiffs,

Case No. 20-006272-CD  
Hon. Sheila A Gibson

CITY OF DETROIT, ERIC JONES -  
EXECUTIVE FIRE COMMISSIONER, ROBERT  
DISTELRATH - CHIEF OF DEPARTMENT  
FIRE FIGHTING DIVISION, KEMIA CROSSON -  
EMPLOYEE SERVICES CONSULTANT, DETROIT  
FIRE FIGHTERS ASSOCIATION LOCAL 344,  
MICHAEL NEVIN - FORMER PRESIDENT, THOMAS  
GEHART - PRESIDENT, WILLIAM HARP - VICE  
PRESIDENT, JOHN A CANGIALOSI - SECRETARY,  
CHRISTOPHER A. SMITH - TREASURER, In their  
Individual and Official Capacities,  
Jointly and Severally,

Defendants.

/

ZOOM VIDEO CONFERENCE DEPOSITION OF ORLANDO POTTS

Transcript of the deposition taken in  
the above-entitled matter by Zoom video conferencing,  
on Tuesday, March 9, 2021, commencing at 10:00 a.m.

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CHRISTOPHER MCGHEE, et al vs. CITY OF DETROIT, DFFA, et al  
Deposition of Orlando Potts

<p style="text-align: right;">Page 60</p> <p>1 A Correct.</p> <p>2 Q Do you have any facts to support the notion that the</p> <p>3 Union denied you an opportunity to, quote, "present your</p> <p>4 side of the story?"</p> <p>5 A Repeat.</p> <p>6 Q Do you have any facts to support the notion that the</p> <p>7 Union prevented you from presenting, quote, "your side of</p> <p>8 the story?"</p> <p>9 A I did not have a hearing or a time to be heard, but no, I</p> <p>10 have no facts.</p> <p>11 Q In other words, the City didn't say to you, you can come</p> <p>12 on down and present your side of the story? You don't</p> <p>13 have facts to suggest that the Union said no, no, we're</p> <p>14 going to interfere with that. You're not going to be</p> <p>15 able to do that? The Union didn't obstruct you in any</p> <p>16 way in presenting your position, did they?</p> <p>17 A No.</p> <p>18 MR. SANDERS: Objection, form.</p> <p>19 Q (By Mr. Legghio) Turn to 0035, Mr. Potts. If you could</p> <p>20 focus your attention on Paragraph 251 and 252. Read</p> <p>21 those to yourself and then when you finish, please let me</p> <p>22 know.</p> <p>23 A Okay.</p> <p>24 Q All right. In 251, you allege that the Union and its</p> <p>25 officers engaged in a civil conspiracy. Do you mean a</p>	<p style="text-align: right;">Page 62</p> <p>1 notion?</p> <p>2 A No facts.</p> <p>3 Q Count XIII, you ask for relief in Paragraph 254 of the</p> <p>4 First Amended Complaint and, among other things, I want</p> <p>5 to make sure we're clear, that you ask the Court to give</p> <p>6 you, restore the seniority that existed before you went</p> <p>7 on duty disability, to award you 15 years of seniority</p> <p>8 while you were on duty disability, and to increase your</p> <p>9 pension benefits based on the new calculations of your</p> <p>10 seniority. That's one of the things you want from the</p> <p>11 Court. Am I correct on that?</p> <p>12 A Yes.</p> <p>13 Q Now, I'm going to direct your attention —</p> <p>14 MR. LEGGHIO: Mr. Sanders, we're going to</p> <p>15 be working off of the second batch of exhibits, Volume 2,</p> <p>16 and in particular, I'm going to go to Exhibit 25.</p> <p>17 MR. SANDERS: How much more time do you</p> <p>18 anticipate?</p> <p>19 MR. LEGGHIO: I am going to be here for a</p> <p>20 little bit. Do you want to break here?</p> <p>21 MR. SANDERS: Okay. I thought we were</p> <p>22 near wrapping this up.</p> <p>23 MR. LEGGHIO: We can break here for a half</p> <p>24 hour, 40 minutes if you want?</p> <p>25 MR. SANDERS: All right. Why don't we do</p>
<p style="text-align: right;">Page 61</p> <p>1 conspiracy that involved just the Union or do you mean a</p> <p>2 conspiracy between the Union, its officers and someone</p> <p>3 with the City?</p> <p>4 A The Union and the City.</p> <p>5 Q Okay, and what facts do you have to support the notion</p> <p>6 that the Union and the City engaged in a civil conspiracy</p> <p>7 against you?</p> <p>8 A I don't have any facts.</p> <p>9 Q You say in Paragraph 252 that:</p> <p>10 "The facts as delineated above reveal that</p> <p>11 that there was a concerted action by the</p> <p>12 Defendants," the Union's I'm asking about, "to</p> <p>13 accomplish a criminal or unlawful purpose or a</p> <p>14 lawful purpose by criminal or unlawful means."</p> <p>15 What facts do you have that the Union engaged in</p> <p>16 concerted action to accomplish a criminal act?</p> <p>17 A I do not have any facts.</p> <p>18 Q Do you have any notion of what criminal act you're</p> <p>19 referring to in this paragraph of the Complaint?</p> <p>20 A No, I don't.</p> <p>21 Q Do you have any facts to support the claim that the Union</p> <p>22 engaged in concerted action for a lawful purpose by</p> <p>23 criminal or unlawful means, that they were going to do</p> <p>24 something lawful, but they were going to do it in a</p> <p>25 criminal way. Do you have any facts to support that</p>	<p style="text-align: right;">Page 63</p> <p>1 that.</p> <p>2 MR. LEGGHIO: Okay. Return back at 12:30?</p> <p>3 MR. SANDERS: That's fine.</p> <p>4 MR. LEGGHIO: Okay. Thank you.</p> <p>5 (At 11:46 a.m., recess taken)</p> <p>6 MR. LEGGHIO: Okay.</p> <p>7 (At 12:32 p.m., back on the record)</p> <p>8 Q (By Mr. Legghio) I am going to start with page 0627.</p> <p>9 Mr. Potts, I just want to make sure that given your</p> <p>10 testimony today that I'm not misunderstanding anything,</p> <p>11 so these are your responses to the Request for Admissions</p> <p>12 that were filed with you and I'm going to take you</p> <p>13 through a couple of them and I want you to first look on</p> <p>14 page 0627, number 2, and I am going to read it into the</p> <p>15 record.</p> <p>16 "Potts did not file a grievance regarding</p> <p>17 the matters alleged in the Complaint."</p> <p>18 Your response was:</p> <p>19 "Neither admits nor deny at this time."</p> <p>20 Now, I want to make sure we're clear. You never filed a</p> <p>21 grievance regarding any matter contained in your First</p> <p>22 Amended Complaint. Am I correct?</p> <p>23 A Correct.</p> <p>24 Q Looking at Paragraph 3, the admission that's requested is</p> <p>25 that before you filed your Complaint, you had no</p>

18 (Pages 60 to 63)

# EXHIBIT 6I



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

CHRISTOPHER MCGHEE, NORMAN BROWN,  
CRAIG BROWN, JAMES WASHINGTON,  
SHANNON FERGUSON, JUNIUS PERRY,  
and ORLANDO POTTS

Plaintiffs,

v.

CITY OF DETROIT, et al.

*In their Individual and Official Capacities,  
Jointly & Severally,*

Defendants.

Case No. 20-006272-CD

Judge: Sheila Gibson

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**PLAINTIFF NORMAN BROWNS'S RESPONSES TO DEFENDANT DFFA'S  
FIRST REQUEST FOR ADMISSIONS**

NOW COMES Plaintiff Norman Brown, by and through his attorney, who hereby submit the following responses to Defendants' Request for Admissions:

**GENERAL OBJECTIONS**

1. Plaintiff objects to Defendant's Request for Admissions to the extent they fail to relate to statements or opinions of fact or of the application of law to fact and thereby exceed the scope of Michigan Court Rules.

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2. Plaintiff objects to Defendant's Request for Admissions to the extent they seek information prepared in anticipation of litigation or which seek disclosure of the theories and opinions of Plaintiff counsel, on the grounds that such information is protected from disclosure by the attorney work product privilege.
3. Plaintiff objects to Defendant's Request for Admissions to the extent that, when read with the definitions and instructions, they are so vague, broad, general and all-inclusive that they do not permit a proper or reasonable response and are, therefore, unduly burdensome and oppressive.
4. Plaintiff objects to the Instructions and Definitions to the extent that they impose an obligation greater than that imposed by the provisions of the applicable rules.
5. Plaintiff objects to Defendant's Request for Admissions, to the extent that Defendant has employed requests to establish facts that are obviously in dispute.

**GENERAL RESPONSES**

1. Plaintiff's responses are made subject to all objections as to relevance, privilege, materiality, admissibility and any and all other objections and ground that would require exclusions of any statement contained herein if any request were asked of, or if any statement contained herein were made by, or if any documents reference here were offered by a witness present and testifying in court, all of which objections are reserved and may be interposed at the time of hearing.
2. The fact that Plaintiff has responded to any request for admission, interrogatories, or production of documents in whole or in part is not intended and shall not be construed as a waiver by Plaintiff of all or any part of any objection to any to same.
3. Plaintiff has not completed the investigation in this case, and additional facts may be discovered that are responsive to Defendant's requests. Plaintiff reserves the right to supplement the responses

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provided herein as appropriate during the course of discovery.

**REQUEST FOR ADMISSIONS**

1. Under the 2014-2019 CBA Article 12(D), “employees who retire from service as a result of a duty disability, shall lose their seniority” if they return to work for the City.

***RESPONSE:***

Deny: The 2014-2019 CBA Article 12(D), pages 17-18, DOES NOT mention Duty Disability NOR returning to work for the City. The referenced “CBA” was not collectively bargained for wherein there was a lack of duty of fair representation. Consequently, an illegal document was created pursuant to a conspiracy, with the intent and purpose of violating my, and the other Plaintiff’s civil rights.

2. Plaintiff Norman Brown was not entitled under the 2014-2019 CBA to get his prior years of seniority when the City returned him to work in 2018 from his disability retirement because the 2014-2019 CBA Article 12, Section D(2) and (7) provides that an employee “shall lose his/her seniority” in cases of “retirement” or “Absence from work for any reason (including lay-off) in excess of two (2) years.”

***RESPONSE:***

Deny: The referenced “CBA” was not collectively bargained for wherein there was a lack of duty of fair representation. Consequently, an illegal document was created pursuant to a conspiracy, with the intent and purpose of violating my, and the other Plaintiff’s civil rights. Further, the City, nor The DFFA notified me of any changes to the contract in which I was awarded disability benefits. Based on prior contractual promises as well as language in the current CBA, Article 12 (A) and {B} (2), which states: Seniority is defined as continuous service within The Department without interruption or breaks. And Continuous Service shall mean employment with the Department without interruption or breaks. The following shall not be considered breaks in service: Article 12 (B) (2), Absence from work due to injuries compensated for under the Workers Compensation Act of The State of Michigan.

3. Plaintiff underwent a disability retirement on or about 2003 and was rehired by the City of Detroit, and returned to work in January 2018.

***RESPONSE:***

Admits. Plaintiff was placed on duty disability status in 2003 for injuries compensated for under the Workers Compensation Act of the State of Michigan and was cleared by the City’s doctor to return to work to resume service in January 2018.

4. When plaintiff was rehired returned to work for the City on or about January 2018, he was not entitled to the seniority he had earned prior to his 2003 disability retirement, under the 2014-2019 CBA.

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***RESPONSE:***

Deny. The referenced “CBA” was not collectively bargained for wherein there was a lack of duty of fair representation. Consequently, an illegal document was created pursuant to a conspiracy, with the intent and purpose of violating my, and the other Plaintiff’s civil rights. Further, the City, nor The DFFA notified me of any changes to the contract in which I was awarded disability benefits. Based on prior contractual promises as well as language in the current CBA, Article 12 (A) and {B} (2), which states: Seniority is defined as continuous service within The Department without interruption or breaks. And Continuous Service shall mean employment with the Department without interruption or breaks. The following shall not be considered breaks in service: Article 12 (B) (2), Absence from work due to injuries compensated for under the Workers Compensation Act of The State of Michigan. Seniority is defined as continuous service in Article 12(A). Based on Article 12(B-2) of the current CBA and other contractual promises made to Plaintiff, Plaintiff is entitled to all seniority past and present.

5. The City wrote to plaintiff in an October 3, 2019 letter, Ex. A, that it had incorrectly applied his “previous seniority” when he returned to work. The City stated that DFFA “brought this matter to the City’s attention and indicated by way of numerous conversations—and ultimately filing a grievance—that the City was in violation” of the 2014 CBA “when it returned you (and other similarly situated employees) to work with your previous seniority.”

***RESPONSE:***

Admit that the City wrote me a letter on or about October 2019. Neither Admit nor Deny what the DFFA allegedly told the City of Detroit.

6. The City wrote in an October 3, 2019 letter, Ex. A, to Brown that “to rectify this situation and to avoid further violations of the CBA with regards to this matter,” “your seniority will be adjusted to reflect the date that you returned to duty with the Detroit Fire Department.”

***RESPONSE:***

Objection form. Admit that there was a letter received. However, the situation was not rectified.

7. DFFA told Brown on October 14, 2019 that DFFA would not take action or file any grievance over the City’s October 3, 2019 letter to Brown or over the City’s statement “your seniority would be adjusted to reflect that date” you returned to work.

***RESPONSE:***

Deny. There was no discussion in which the DFFA and Plaintiff addressed seniority adjustment. We discussed the DFFA’s May 2019 grievance and how it had the potential to harm while violating Article 8(C) of the CBA.

8. DFFA told Brown that DFFA “would not be representing me” to get back the seniority and “there is nothing we are willing to do to assist you in this matter.”

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***RESPONSE:***

Admit in part and Deny in part. During the October 2019 meeting with the DFFA we did not discuss getting back seniority. Plaintiff expressed concerns about the potential demotion from Fire Prevention. Plaintiff explained that the promotional opportunity found in Bulletin #4/18 did not mention seniority and since the promotional provisions found in the 2014-2019 CBA 12H(2) were not being implemented, the demotion should not apply to Plaintiff. Despite the proof Plaintiff provided, Vice President Harp stated, “there is nothing we are willing to do to assist you.”

9. After Brown wrote in his November 2, 2019 letter to DFFA “Unless I receive written verification [within ten days] that I am represented and you are my representation, I will proceed as an unrepresented member to protect my interests;” DFFA never wrote to Brown and did not change its position.

***RESPONSE:***

Deny. There was no November 2<sup>nd</sup> letter, only a November 4<sup>th</sup> letter.

10. The City did not demand from Brown that he reimburse the City for higher wages it paid to the plaintiff as a result of the City’s earlier action to return the plaintiff to work in 2018 with his previous seniority.

***RESPONSE:***

Admit.

11. Upon his reinstatement to work, plaintiff’s seniority should have started from his reinstatement date in January 2018 under the 2014-2019 CBA Art. 12.

***RESPONSE:***

Deny. The referenced “CBA” was not collectively bargained for wherein there was a lack of duty of fair representation. Consequently, an illegal document was created pursuant to a conspiracy, with the intent and purpose of violating my, and the other Plaintiff’s civil rights.

12. Brown cannot show that his “age” or former “disability” was a reason for the City’s adjusted his seniority to reflect to the date he returned to work in January 2018, after being absent from work since 2003.

***RESPONSE:***

Deny. See the Plaintiffs’ Complaint which establishes a prima facie case of age and disability discrimination. Further, see exhibit (A). The letter from The City stating that the demotion was a result of a former disability.

13. Brown’s “age” or former “disability” was not a reason for DFFA’s May 2019 grievance or DFFA’s decision not to process plaintiff’s grievance.

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***RESPONSE:***

Deny. See the Plaintiffs' Complaint which establishes a prima facie case of age and disability discrimination. Further, see exhibit (A). The letter from The City stating that the demotion was a result of a former disability.

14. Brown gave a copy his October 10, 2019 letter to DFFA, Ex. B, to other DFFA members around October 10, 2019.

***RESPONSE:***

Admit.

Respectfully Submitted,

/s/ Herbert A. Sanders  
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**PROOF OF SERVICE**

The undersigned certifies that on January 12, 2021, a copy of the foregoing instrument was served upon the Court and the attorneys of record of all parties to the above cause by electronic of same to them at their respective business addresses as disclosed by the pleadings of record herein. I declare that the statement above is true to the best of my information, knowledge and belief.

/s/Herbert A. Sanders  
**Herbert A. Sanders**