

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

Case No. 77-71100

v.

Hon. Sean F. Cox

CITY OF DETROIT,

Defendant

GEORGE B. WASHINGTON (P 26201)
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MONICA R. SMITH (P)
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DECLARATION OF JOHN RIEHL

John Riehl declares under the pains and penalties of perjury the following facts:

1. I have been the elected President of AFSCME Local 207 since 2000. Local 207 has 1004 members, almost all of whom work in the Detroit Water and Sewerage Department (DWSD) as operations and maintenance personnel. Local 207 is a signatory to the Master Agreement between AFSCME and the City of Detroit and has a Supplemental Agreement with DWSD.

2. My City of Detroit job title is Senior Sewage Plant Operator. I have worked for the DWSD in various job titles since 1979, two years after the Environmental Protection Agency filed suit against the City of Detroit for violations of the Clean Water Act.
3. I am filing this affidavit in support of Local 207's motion to intervene in this action, its motion for a stay and to dissolve this Court's November 4, 2011 Order, and its motion seeking the recusal of Judge Sean F. Cox from further decisions regarding the bargaining and other rights of City employees at DWSD because he has obviously and without evidence prejudged the merits of this case on those matters.
4. In general, as President of Local 207, I believe that the Court violated all proper procedure by accepting the City's ex parte claims that the union and its members were responsible for the City's three-decade long failure to live up to the Clean Water Act. In particular, it is unfair and insulting to the employees who have worked under deplorable conditions for decades to provide water and sewerage services to enter an order denying them hard-won rights without even offering the employees or their representatives notice of that order or an opportunity to respond to it before it was entered. As will be seen, the City's proposals—which were so quickly incorporated in an Order by the federal court—have absolutely nothing to do with providing clean water to the citizens.
5. As I will set out in detail below, the specific City proposals that this Court put in its Order on an ex parte basis were never raised with the Union. In particular, for three decades, through ten negotiations, the City never claimed that these proposals were needed to assure compliance with the Clean Water Act. The City raised them in secret with this Court at the last minute only to cover its own failure to comply with the Clean Water Act.

Local 207 and the Clean Water Act

6. I and other workers were hired into DWSD as part of a plan to resolve this lawsuit by adding more workers and providing more job training.
7. The first day I was hired I was asked to work overtime, before I had even been equipped with safety equipment or trained for the job. Many times since, most notably during power failures and storms, I and other workers have been forced to work in bad and sometime dangerous conditions simply to keep the plant going.
8. Shortly after I was hired, Judge John Feikens, the federal judge then in charge of the case, visited the plant and met with me and other DWSD workers. Judge Feikens told us that DWSD and the federal government were trying to improve the system by hiring more workers and providing more training.
9. When I was hired, training time was established at 8.3 percent of every employee's paid work time under Judge Feikens' mandate. DWSD had a dedicated training staff organized in its own section. Local 207 has always cooperated with and been supportive of the training and other programs designed to reduce pollution at DWSD.

The Real Root Causes of Water Pollution in DWSD Plant Operations and Maintenance

10. As reflected in the reports submitted to this Court, the real root causes of water pollution lie with the City administration. For years, it has not invested sufficient funds in capital improvements and equipment. And in recent years the situation has become worse.
11. Former Mayor Kwame Kilpatrick hired Victor Mercado to run the DWSD, and Mercado hired a private company, Infrastructure Management Group (IMG), to lay plans to privatize a good deal of DWSD daily work.

12. The Kilpatrick-Mercado policies led to a sharp reduction in staff, a shrinking fleet of vehicles, and significant privatization of daily maintenance and repair work, of some mechanical maintenance, and of some wastewater treatment operations.
13. Under Kilpatrick and Mercado, the training staff were laid off or reassigned and training disappeared from workers' paid work.
14. I and other Local 207 leaders were instrumental in exposing the disastrous policies of Mayor Kilpatrick and Director Mercado.
15. We were among the first to publicly oppose the Synagro contract and the corrupt scheme of kickbacks and payoffs that Synagro used to obtain the contract from the City administration and the City Council.
16. We were also the first to call for the resignation of Mayor Kilpatrick for the corruption and abuse of power, some of which ultimately resulted in the convictions of many City officials and the indictments now pending in this Court.
17. The Kilpatrick-Mercado policies increased the problems at DWSD.
18. Mayor Bing has not corrected the real problems at DWSD. As a result of his demands for concessions, including the furlough days, many DWSD workers have opted for early and immediate retirements with ten or more retirements every week since spring 2011. This has caused a brain drain at DWSD and weakened the collective expertise of DWSD workers.
19. The City has also not hired enough skilled personnel. And if the City Human Resources Department cannot post hiring notices or decide on promotions quickly enough, that is the fault of the City administration, not the workers, for we have never stood in the way of hiring qualified personnel.

20. As President of Local 207, I and the other officers of our Local have repeatedly opposed Mayor Bing's policies, including his policies at the Water Board.

21. The City's requests—so quickly incorporated in an Order by this Court—were its attempts to blame others for its failures and its attempt to cripple and silence its critics.

**The Court should not Scapegoat Local 207
and its Members for the City Administrations' Failings**

22. Insofar as pages 6 and 7 of this Court's November 4 Order restricts the rights of City employees and City unions, it does absolutely nothing to stop pollution and does a great deal to deprive our members of their rights.

23. Management has never raised any of the issues covered in this order with Local 207, verbally or in writing, in negotiations or in conferences, as pollution reduction issues or for any other purposes, before this Order was issued. During discussions over many years, Local 207's leadership has repeatedly recommended to both DWSD management and the City Council reinstating training, increasing the workforce and procuring advanced equipment. There has been very little action on any of these proposals.

24. By unilaterally incorporating management's proposals in a federal court order, the November 4 Order completely violates any notion of collective bargaining, in needless, senseless and unjustified violation of established contracts and state law.

25. By incorporating those provisions without notice to Local 207 or other AFSCME bodies, without giving those organizations a chance to be heard, and without any competent evidence at all, the November 4 Order also violates any notion of due process and fair procedure.

26. This order is a last-minute effort to blame Local 207, its officers and its members, for the mismanagement of various city administrations.

The Court's Order has allowed the City to attempt to silence its opponents and to deny City workers of the representation to which they are entitled.

27. For decades, Local 207 has had three representatives who worked full-time in representing the members of Local 207: the President and two Grievance Investigators.
28. The Local President and the Grievance Investigators file about 350 grievances a year. Because the grievance procedure is backed up, at any given time we have many more cases that are being handled.
29. Moreover, both the Local President and the Grievance Investigators do far more than attend grievance hearings and union negotiations. We have to investigate grievances before we meet with City representatives. Moreover, every day, we handle dozens of requests for information regarding sick leave, funeral leave, promotions, apprentice issues, personality conflicts on the job, job injuries, job assignments, FMLA, pensions and other issues. Part of our job is to resolve those issues without the need for grievances. In fact, if we were not able to do that, DWSD would lose even more personnel than it has already lost.
30. Finally, in my capacity as President, I have to learn about and speak out on dozens of issues that affect DWSD, including the orders of this and many other courts. As set forth above, I frequently have to appear before City Council and other bodies to speak on City and DWSD policies. Often, I have been the leading opponent of those policies, and, as shown by the sad experience with the Kilpatrick administration, our Local has been critical in assuring the adoption of at least some needed reforms.
31. Over many years, we have learned that our representatives cannot simply be released for negotiations and grievance meetings because of all the other duties they perform.

32. Moreover, there are so many grievances and issues, that it is completely unproductive for all sides to have representatives pulled from the job for hearings or meetings and then sent back for some small part of a shift.
33. In entering paragraph six on page 6 of its order without notice or evidence, this Court has handed the City a weapon to use in preventing our representatives from servicing the members in all of the ways set forth above and a weapon that the City can use to prevent us from testifying, speaking and opposing their policies.
34. None of this has any relation to ending pollution. But it has an enormous impact on the statutory and constitutional rights of our members. This Court should never have entered paragraph six without notice and hearing—and it should dissolve that Order now.

Local 207 Has a Right to citywide “Bumping Rights” to Avoid Layoff

35. Local 207 objects to the provisions of paragraph 4, page 6 of the November 4 Order banning the members of Local 207 from taking advantage of or being affected by “bumping rights” into or out of citywide job classifications for purposes of avoiding layoff.
36. Once again, if the Court knew the facts before issuing this Order, it would have known that this paragraph has nothing to do with ending pollution.
37. Bumping across department lines is only allowed when employees are on layoff. Moreover, most of Local 207’s members work in specialized classes for which there are no equivalents in the City and thus no bumping from other areas.
38. The classifications in Local 207 that employees can bump into and out of with more than 15 workers citywide include custodians (Building Attendants, who numbered 111

citywide) and General Auto Mechanics (who numbered 372 citywide two years ago).

These workers have nothing to do with decreasing pollution and the City Report's claim that they are "unqualified" because they were supposedly hired under residency requirements is factually wrong and insulting to the City employees and residents.

39. The other citywide job classifications with significant numbers of DWSD workers are those exclusive to DWSD by practice or design. Plant Maintenance Mechanics (60), Mechanical Helpers (30), and Repair Mechanics (20), whose jobs are critical to operations, are exclusive to DWSD so bumping rights are irrelevant to plant operations and reduction of pollution.
40. Moreover, there are many DWSD job classifications that do not exist citywide. These workers are obviously not affected by bumping rights. Significant numbers of workers are included; Water Systems Repair Workers (89), Water Systems Systems Mechanics, (25), Service Guards Public Utility (84), Water Systems Control Instrument Technicians (32), Water Plant Operators (28), Sewage Plant Attendants (135), and Sewage Plant Operators (83).
41. Denying City workers who are laid off of the right to bump into the AFSCME classifications at DWSD does absolutely nothing to lessen pollution. But for a Senior Building Attendant or General Automotive Mechanic who loses his job elsewhere in the City, this Court's ex parte order may condemn him or her to long-term unemployment for no reason whatever.

Local 207 Has a Right to Limit Subcontracting

42. Local 207 also objects to paragraph 5 on page 6 of the November 4 Order striking all provisions restricting the City's right to subcontract.

43. In fact, it is incredible that after the former Mayor and Director of the DWSD have been indicted precisely because of alleged bribery in connection with subcontracts at the DWSD, this Court has issued an Order giving the Mayor and the Director full power over subcontracting.
44. AFSCME's contracts have never limited the DWSD's ability to subcontract for construction projects.
45. On operations and maintenance, however, the contract has required the City to notify the union before a subcontract is issued and to avoid subcontracting that causes layoffs or reduction in overtime for existing workers.
46. These contract provisions also encourage management to maintain a full staff of regular workers capable of running the plant on a daily basis. Daily operations and maintenance are subjected to better quality control and greater collective knowledge and skills when this work is done in-house.
47. The Court's blanket Order banning any restrictions on subcontracting would open the field to more sweetheart deals and would harm, not help, the goal of reducing pollution.
48. The fact that the Court issued this Order without notice and without evidence simply reflects an ideological preference for contracting out without limits, subject only to management's whim, and not any analysis of the actual facts at DWSD.

Local 207 Has a Right to Protect Employees Against Unfair Discipline and Unfair Assignments of Overtime and Unfair Promotional Decisions

49. Local 207 objects to paragraphs 7-12 of this Court's order, defining how promotions, overtime, and job classifications will be handled, how long disciplinary actions will remain on members' work records, and what past practices will be protected.

50. As is apparent from the Court's Order, the Court did not even take evidence on what the provisions were before deciding to eliminate them.
51. The Court obviously accepted management's word on these issues without any consideration of the evidence.
52. Local 207 in particular objects to the Court's Order to disregard any past practices on operational issues when management initiates operational changes on operational issues. This order is so broad and so vague it is impossible to know what it means or what effect it will have.
53. Similarly, Local 207 objects to paragraph eight's carte blanche authority to management to reorganize classifications without bargaining with the union. As the DWSD has not even attempted to bargain with the union over these issues, there is simply no basis whatever for the Court's claim that management should have full power over these issues.
54. Coupled with the extraordinary Order enjoining the Wayne County Circuit Court and the Michigan Employment Relations Commission from exercising jurisdiction over disputes arising from the changes ordered by Judge Cox, this Court's Order is an attempt to leave Local 207 defenseless against a City management for no reason other than that management requested such relief.
55. Local 207 vigorously objects to being stripped of its right to defend its collective bargaining rights and CBA in grievances, unfair labor practices, and if necessary, in court.

Local 207 Has a Right to Bargain Collectively with the Rest of the City Workers

56. Finally, Local 207 objects to paragraph 3's decree that the DWSD should be excluded from the citywide collective bargaining agreement and limited only to a CBA with DWSD.
57. The City and AFSCME have bargained on a city-wide basis for over four decades and not once has the City suggested that this has interfered with its ability to control pollution.
58. Indeed, in reading the ex parte draft reports that appear to be the Court's only "evidentiary basis" for this Order, the City claims it needs separate bargaining primarily because it says its own personnel department cannot properly evaluate jobs or post vacancies.
59. The Master Agreement provides for Special Conferences and the Supplemental Agreements have always been used to address department-specific issues. There is no basis whatever for ending bargaining on a city-wide basis where the City has not even attempted to use any of these avenues.
60. There is no basis for denying a thousand employees their rights because the City cannot get its own Personnel Department to do its job.

**The Court has no right to implement the Republican agenda
for collective bargaining by an ex parte order**

61. Finally, I file this affidavit in support of the request that Judge Sean Cox disqualify himself from any further hearings on any orders involving the City workforce.
62. In all candor, Judge Cox's Order is simply an attempt to impose on an ex parte basis and without evidence a collective bargaining law like that proposed by Governor Kasich in Ohio and Governor Walker in Wisconsin.

63. In issuing such an order without notice, without hearing, and without evidence, Judge Cox has obviously pre-judged this matter and should in all fairness recuse himself from considering the motions to stay and dissolve those sections of his Order dealing with labor relations and City personnel.

I swear to and subscribe to the above Declaration under the pains and penalties of perjury. Executed in Detroit this 10th day of November 2011.



JOHN RIEHL
PRESIDENT, AFSCME LOCAL 207