

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

In re:

City of Detroit, Michigan,

Debtor.

Bankruptcy Case No. 13-53846

Honorable Thomas J. Tucker

Chapter 9

**CITY OF DETROIT’S SUPPLEMENTAL BRIEF REGARDING ITS MOTION
TO ENFORCE AGAINST CEDRICK COOK [DOC. NO. 10183]**

The Senior Accountants, Analysts and Appraisers’ Association (“SAAA”) argues that Cedrick Cook (“Cook”) cannot waive the right of SAAA to file a grievance alleging that Cook was discharged or disciplined without just cause in violation of the City Employment Terms (“CET”). Even if SAAA has the right to file and prosecute a grievance, Cook still had the ability to (and did) waive his right to any remedies that may flow to him individually from the successful prosecution of the Grievance.

Here, the remedies sought by SAAA in the Grievance will flow to Cook and not the SAAA. Grievance, Doc. No. 10183 at page 63 of 70. The Grievance requests “Restore Grievant work immediately....Restore Grievant pay and make whole.” *Id.* Even if SAAA still has the right to file and prosecute the Grievance, Cook waived his right to the remedies sought in the Grievance when he voted in favor of the Plan. *See* City’s Reply at 1-2 [Doc. No. 10285] (“The claims alleged in the grievance and the relief requested both fall within the scope of the release provision and the definition of ‘Liabilities’”).

The cases cited by the SAAA are not in conflict. *DeLapp* and *J.I.* provide that an individual employee may enter into a separate contract with his or her employer but may not waive any of the benefits of the collective bargaining agreement. *DeLapp v. Continental Can Co., Inc.*, 868 F.2d 1073, 1076 (9th Cir. 1989); *J.I. Case Co. v. N.L.R.B.*, 321 U.S. 332, 336

(1944). To begin with, neither case states that an employee is prohibited from waiving individual rights under a collective bargaining agreement by voting in favor of a bankruptcy plan pursuant to a Court ordered process. And, even if they could be read that broadly, neither states that an employee is prohibited from waiving any individual remedies that may flow to the employee from the union's successful enforcement of the collective bargaining agreement. Here, the contractual benefit is that Cook's employment not be terminated. Cook, however, waived any individual remedy that may result from a ruling in favor of SAAA on this issue and thus the arbitration is now moot.

Finally, at the hearing, the City withdrew its argument that claim was discharged even if it arose after the commencement of the City's bankruptcy case. The City now withdraws its argument that the claim was released if it arose after the commencement of the City's bankruptcy case. Thus, the City's remaining argument is that the grievance claim was discharged or released under the confirmed Plan of Adjustment if it arose prior to the commencement of the City's bankruptcy case.

December 16, 2015

Respectfully submitted,

By: /s/ Marc N. Swanson

Jonathan S. Green (P33140)

Marc N. Swanson (P71149)

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

150 West Jefferson, Suite 2500

Detroit, Michigan 48226

Telephone: (313) 496-7591

Facsimile: (313) 496-8451

green@millercanfield.com

swansonm@millercanfield.com

ATTORNEYS FOR THE CITY OF DETROIT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 16, 2015, the foregoing
*SUPPLEMENTAL BRIEF REGARDING ITS MOTION TO ENFORCE AGAINST CEDRICK
COOK [DOC. NO. 10183]* was filed and served via the Court's electronic case filing and notice
system and served on the parties listed below, via first class mail:

Cedric Cook
18500 Pinehurst St
Detroit, MI 48221-1990

Scheff & Washington PC
Attn: George B. Washington
615 Griswold St Ste 910
Detroit, MI 48226-3984

DATED: December 16, 2015

By: /s/ Marc N. Swanson
Marc N. Swanson
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 496-7591
Facsimile: (313) 496-8451
swansonm@millercanfield.com