

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

Sixth Cir. No. 11-2569

And

CITY OF DETROIT, et al.

E.D. Mich. No. 77-71100

Defendants-Appellees

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME) LOCAL 207, and the SENIOR
ACCOUNTANTS, ANALYSTS AND APPRAISERS'
ASSOCIATION,

Appellants

**AFSCME LOCAL 207 AND THE SENIOR ACCOUNTANTS' ASSOCIATION'S
MOTION FOR A STAY PENDING APPEAL OF THE DISTRICT COURT'S
NOVEMBER 4, 2011 SUA SPONTE PERMANENT INJUNCTION**

Pursuant to the Federal Rules of Appellate Procedure, the appellants Local 207 of the American Federation of State, County and Municipal Employees (AFSCME) (“Local 207”) and the Senior Accountants, Analysts and Appraisers Association (“SAAA”) move for a stay of the *sua sponte* permanent injunction that the District Court issued on November 4, 2011 for essentially the same reasons set forth in their pending Petition for Mandamus or Prohibition (Sixth Cir. No. 11-2517).

As grounds for this motion, the appellants state as follows:

1. On November 4, 2011, the United States District Court issued, *sua sponte*, a permanent injunction restraining the enforcement of numerous sections of the collective bargaining contracts with the City of Detroit to which, respectively, Local

207 and the SAAA are parties. The District Court's injunction also permanently changed the existing City wide bargaining units into bargaining units for the Department of Water and Sewerage (DWSD) alone and relieved the DWSD of the state law's requirement that it bargain over any new job classifications.

2. Local 207 and the SAAA were enjoined from filing grievances, unfair labor practice charges or legal actions to enforce their contracts in all of these areas even though neither was a party to the proceeding and even though neither had been notified that the Court was considering any of the specific provisions set forth in the November 4 permanent injunction.
3. On November 18, 2011, the District Court, without waiting for opposing briefs, denied a motion to intervene to challenge the November 4 injunction filed by Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), to which Local 207 is affiliated.
4. On November 28, 2011, Local 207 and the SAAA filed a motion to intervene, a motion to dissolve, or in alternative, stay the November 4, 2011 sua sponte permanent injunction, and a motion asking the district judge to recuse himself. Local 207 and the SAAA asked that their motion to dissolve the injunction, which was issued without notice to them and without a hearing or sworn evidence of any kind, be heard on 48 hours notice as provided in Rule 65(b)(4).
5. The District Court neither ruled on nor took any action on those motions for two weeks.
6. On December 13, 2011, Local 207 and the SAAA filed a petition for mandamus or prohibition asking this Court to order their motions to intervene be granted and asking

- that the November 4 permanent injunction be dissolve or stayed, pending notice and a hearing in the United States District Court. See Sixth Cir. No. 11-2517.
7. At 4:58 PM on December 13, 2011—about five hours after the District Court was notified of the petition for mandamus or prohibition—it issued an Opinion denying intervention and dismissing as moot the motions to dissolve and stay the injunction. The District Court’s opinion is an almost word-for-word repetition of the Order it issued on November 18 denying intervention to Michigan Council 25.
 8. Local 207 and the SAAA immediately filed a Notice of Appeal from that Order.
 9. For the reasons set forth in their Petition for a Writ of Mandamus or Prohibition, Local 207 and the SAAA request that this Court stay the eleven paragraphs of the order of November 4, 2011 described in their Petition.
 10. Local 207 and the SAAA further state that the need for action is particularly urgent. The City of Detroit is now bargaining with all of its unions asking to set aside the old contract and asking for a new contract to cover the period January 1, 2012 through December 31, 2014.
 11. The City is currently taking the position that the DWSD employees represented by Local 207 and by the SAAA may not be included in any contract that is reached.
 12. The Mayor is requesting that collective bargaining negotiations be concluded within one week.
 13. The District Court’s *sua sponte* permanent injunction—which was entered solely on the basis of a report prepared by representatives of the Mayor and the Detroit City Council—is now being used to alter the bargaining that is taking place between the

City of Detroit and the representatives from many unions who together represent approximately 10,000 employees.

14. Local 207 and the SAAA rely on the briefs they filed in support of their petition for a writ of mandamus, supplemented by the attached brief.

By Local 207 and the SAAA's attorneys,
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s/George B. Washington

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Dated: December 14, 2011

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ASSOCIATION,

Appellants

**AFSCME LOCAL 207'S AND THE SENIOR ACCOUNTANTS' ASSOCIATIONS'
BRIEF IN SUPPORT OF THEIR MOTION FOR A STAY PENDING APPEAL OF THE
DISTRICT COURT'S NOVEMBER 4, 2011 SUA SPONTE PERMANENT INJUNCTION**

In seeking a stay of the Order of November 4, 2011, the appellants Local 207 of the American Federation of State, County and Municipal Employees (AFSCME) (“Local 207”) and the Senior Accountants, Analysts and Appraisers Association (“SAAA”) rely on the reasons set forth in their briefs in support of their petition for a writ of mandamus or prohibition.

Local 207 and the SAAA supplement those reasons with a brief response to the District Court’s December 13, 2011 Opinion, which denied their motion to intervene and denied their motions to dissolve the injunction or in the alternative for a stay of the injunction on the grounds they were moot (R. 2422, at 34).

The District Court's Opinion denies Local 207 and the SAAA's motion to intervene solely on the basis of its alleged untimeliness. The District Court ignores the fact that Local 207 and the SAAA are necessary parties whom it had to notify, ignores the requirements of the All Writs Act, and says nothing about the Supreme Court decisions limiting its power to issue orders against parties who have not violated the underlying statute. Moreover, in response to the petitioners' assertions that the eleven paragraphs in the November 4 injunction were unlawful because they were based on nothing more than City officials' agreement and unsworn assertions that they had to violate state law in order to comply with federal law, the District Court relies on general statements in a series of reports, some of which are one to three decades old—and none of which say anything about the contracts to which these petitioners are parties or, even more clearly, say anything about the particular subjects covered in the eleven disputed paragraphs of the District Court's November 4 injunction (R. 2422, at 30 n. 4).

On the only issue the District Court does address—i.e., the alleged untimeliness of Local 207 and the SAAA's motion to intervene—the District Court claims that Local 207 and the SAAA received sufficient notice that the enforcement of large sections of their contracts would be enjoined on November 4, 2011 because of the following events:

- (1) A December 29, 1978 report that there was inadequate staffing at the Waste Water Treatment plant (R. 2422, at 2-3).
- (2) A 1997 Committee Report that stated that there was a chronic inability to staff the skilled trades, engineers and other professional positions and a general failure to provide training and succession planning (R. 2422, at 4).
- (3) A February 7, 2000 Order by Judge Feikens ordering the Mayor of Detroit, who had been appointed as Special Administrator, to review the existing labor contracts, job

descriptions and civil service rules and to make recommendations on the changes that the Mayor believed were necessary (R. 2422, at 5).

- (4) A May 2008 Order by Judge Feikens asking for briefs on the area of human resources and a report filed in response complaining in general about “hiring, career development, succession planning and compensation” and asserting that little had been achieved in “some” of these areas due to City “personnel policies, bargaining unit agreements, and civil service constraints.” (R. 2422, at 6-8).
- (5) A June 2010 Report by a monitor asserting that it “may be appropriate to consider more fundamental corrective measures” addressing “institutional problems” (R. 2422, at 8-9).
- (6) A July 2010 Report by the Engineering Society of Detroit asserting that the City’s Human Resources Department had provided “inconsistent or nonexistent services to the DWSD in the past” and asserting in general that the Human Resources Department believed it was hampered due to “real or perceived” requirements of civil service rules, requisition practices, and collective bargaining agreements (R. 2422, at 9-10).
- (7) A September 9, 2011 Order in which the District Court appointed a committee to propose solutions and declared that “*an effective remedy will require the Court to order structural changes regarding the DWSD that will likely override the City of Detroit’s Charter, its local ordinances, and/or some existing contracts.*” R. 2422, at 12-13)(emphasis in original).

How any of this provided notice to Local 207 and the SAAA that the Court was considering issuing a *sua sponte* injunction modifying large sections of the contracts of Local

207 and the SAAA the District Court does not say. Specifically, the District Court does not say how anyone would know that any of the foregoing reports or statements provided notice the District Court intended to strike the promotional, overtime, union release, discipline, subcontracting, and seniority clauses of the contracts to which these petitioners are parties—or how anyone would know that the District Court was considering suspending the Public Employment Relations Act as to scope of the bargaining units and as to the normal requirements that the DWSD management must bargain with the union regarding new job classifications and work rules.

Moreover, the District Court simply ignores the facts set forth in the Declarations of the Presidents of Local 207 and the SAAA, that during the time these various reports were issued, the City had bargained numerous contracts and not once attempted to change any of the provisions now at stake as a means for lessening water pollution. Indeed, as set forth in those Declarations, even the Root Cause Committee did not disclose the draconian proposals in its report to the unions. The unions learned of the Committee's recommendations *after* the District Court entered its *sua sponte* permanent injunction on Friday, November 4, at 4:45 PM (R. 2425-3, Dec of Riehl, paras 6-13; R. 2415-4, Dec of Glaser, paras 7-11).

Thus, the *only* notice and the *only* “evidence” supporting the supposed need for the eleven provisions of the District Court's *sua sponte* permanent injunction was the Root Cause Committee's report and the DWSD Draft report—and both were kept secret until the District Court issued its permanent injunction and both of which are the sole “evidentiary” support for the eleven specific provisions of the Order at issue here.

If, as the District Court states, these problems had existed for 37 years, there is no reason that the City *never* talked with the unions about them before—and no reason that the District

Court had, *sua sponte*, to suddenly order them into effect on November 4. Nor is there any reason for the District Court to ignore the usual requirements of notice to the parties to be restrained, a hearing, evidence and the other usual requirements of Due Process and the Federal Rules. Nor has the District Court offered any reason now for denying intervention and listening to evidence as to why its injunction was wrongly issued and should now be dissolved.

Local 207 and the SAAA assert that the November 4 injunction is an abuse of judicial power that will affect employees of Detroit for years to come. This permanent injunction is so far outside the normal bounds of the Federal Rules, the federal statutes, and Due Process that they ask this Court to dissolve or stay the November 4, 2011 permanent injunction. They further ask this Court to remand with instructions that if there are proper motions filed requesting any of the relief at issue here, the request for such relief should be heard by a Judge who has not so obviously prejudged the issues.

By Local 207 and the SAAA's attorneys,
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Dated: December 14, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 14, 2011, he served a copy of the foregoing PETITIONERS' MOTION FOR A STAY PENDING APPEAL OF THE DISTRICT COURT'S NOVEMBER 4, 2011 SUA SPONTE PERMANENT INJUNCTION and the accompanying brief in support on the following parties by depositing a copy in a United States mail receptacle, postage prepaid, addressed to the follow persons:

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