

UNITED STATES DISTRICT COURT
DISTRICT OF [REDACTED]

CITY OF [REDACTED]
Plaintiff

v.

[REDACTED]
Defendant

Civil Action No. _____

DEMAND FOR TRIAL BY JURY

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES plaintiff, the City of [REDACTED] ([REDACTED]) to respectfully request, in accordance with 28 U.S.C. §2201 (declaratory relief) and 28 U.S.C. §2202 (further relief based thereon) a declaration that: (1) it is not an “employer” as defined by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* (“ERISA”); (2) it is not an employer in an industry affecting commerce within the meaning of Labor Management Relations Act (“LMRA”), 29 U.S.C. §152(2); (3) its collective bargaining agreements with city employee crossing guards established a governmental plan for defined contributions exempt from ERISA regulation; (4) application of withdrawal liability to it under the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U.S.C. §1381 *et seq.* (“MPPAA”), would violate the United States Constitution, including but not limited to the Tenth Amendment; and (5) it is not subject to withdrawal liability under MPPAA for any one or more of the foregoing reasons.

[REDACTED] also respectfully requests that the [REDACTED]
[REDACTED] be preliminarily and permanently enjoined from

enforcing, by collection or otherwise, any part or whole of any alleged withdrawal liability assessed or to be assessed against [REDACTED]

OR IN THE ALTERNATIVE, [REDACTED] respectfully requests, in accordance with 28 U.S.C. §§2201 and 2202, a declaration that [REDACTED] has not completely withdrawn from the [REDACTED] under MPPAA, 29 U.S.C. §1383, because contributions have been suspended during a labor dispute involving its employees. [REDACTED] also respectfully requests that the [REDACTED] be preliminarily and permanently enjoined from enforcing by collection or otherwise any part or whole of any alleged withdrawal liability assessed or to be assessed against [REDACTED] during the pendency of such labor dispute.

JURISDICTION

1. This Court has original jurisdiction over this action under 28 U.S.C. §1331, typically referred to as “federal question jurisdiction,” because resolution will require statutory interpretation of ERISA, a federal statutory scheme.

VENUE

2. Venue is proper in the District of [REDACTED] under 28 U.S.C. §1391(b), because (1) the [REDACTED] is within the definition of “corporation” under 28 U.S.C. §1391(c), is an entity presently subject to personal jurisdiction in [REDACTED] and [REDACTED] and (2) a substantial part of the events or omissions giving rise to this action occurred, and a substantial part of property that is the subject of this action is situated, in [REDACTED].

PARTIES

3. [REDACTED] is a body corporate and politic, within the County of [REDACTED] State of [REDACTED], the inhabitants of which in their collective capacity are endowed with the right to exercise a part of the sovereign power of the [REDACTED]

██████████ ██████████ is not a for-profit or private business organization, but is rather incorporated solely as a political subdivision of the ██████████ ██████████ and is a governmental entity.

4. The ██████████ of ██████████, is an employee pension benefit provider founded by the ██████████ and certain employers of ██████████ members. The ██████████ holds itself out as an employee pension benefit plan and an employee benefit plan within the meaning of ERISA, 29 U.S.C. §§1002(2) and (3), and a multiemployer plan within the meaning of ERISA, 29 U.S.C. §§1002(37). The ██████████ holds itself out as a joint labor-management trust fund established and maintained pursuant to collective bargaining agreements in accordance with the LMRA, 29 U.S.C. §186(c)(5). The ██████████ holds itself out as subject to suit as an independent legal entity under ERISA, 29 U.S.C. §1132(d)(1).

STATEMENT OF FACTS

5. ██████████ executed and entered into a series of written collective bargaining agreements with the ██████████, on behalf of ██████████ ██████████, generally designed to act as employee and labor organizations within the meaning of ERISA, 29 U.S.C. §1002(4), and LMRA, 29 U.S.C. §152(5), on behalf of crossing guards employed by ██████████ though not acting as such in relation to ██████████

6. Beginning in 1983, each succeeding collective bargaining agreement established a defined contribution which ██████████ agreed to maintain to the ██████████ for the term of the agreement in order to provide retirement benefits based solely upon the amount contributed to employees covered by the collective bargaining agreement. See, e.g., **Exhibit A** at Article XII, pp. 11-12.

7. [REDACTED] exists pursuant to the Constitution of [REDACTED], and pursuant to a Home Rule Charter.
8. There is, and at all times pertinent hereto has been a mayor elected by the citizens of [REDACTED] who is responsible for negotiating labor contracts with unions representing municipal employees of [REDACTED]
9. There is, and at all times pertinent hereto has been an elected city council, vested with legislative responsibility for [REDACTED]. The [REDACTED] City Council is responsible for approving all contracts with municipal labor unions, and all contracts are not effective without approval of the [REDACTED] City Council.
10. [REDACTED] has the power to tax.
11. Crossing guard salaries and contributions to the [REDACTED] were paid from the [REDACTED] fisc, which is and has been funded in vast majority by the taxation of [REDACTED] inhabitants.
12. [REDACTED] relations with its crossing guards are purely intrastate activities not affecting interstate commerce, or even commerce within the [REDACTED], or [REDACTED] itself.
13. Employment of crossing guards is a public health, safety and welfare measure implemented in furtherance of [REDACTED] and the State of [REDACTED] core interest in protecting its citizens, including the school children of [REDACTED]
14. The [REDACTED] purports to enforce federal regulation against [REDACTED] fisc.
15. The [REDACTED] purports to apply federal regulation to local public health, safety and welfare matters that are indisputable attributes of sovereignty by design and history.

16. [REDACTED] compliance with ERISA and MPPAA would directly impair its ability to structure integral public health, safety and welfare operations, a traditional area of core local governmental function.

17. In its relations with its crossing guards, [REDACTED] was not engaged in commerce, nor a proprietary function. ERISA and MPPAA were premised on the federal authority to regulate commerce.

18. [REDACTED] is expressly or impliedly exempt from several related obligations imposed by Congress under the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, e.g. the Federal Power Act, the National Labor Relations Act, the Labor-Management Reporting and Disclosure Act, the Occupational Safety and Health Act, the Employee Retirement Income Security Act, and the Sherman Act. The consistency of these schemes evidences a pattern of exemption for political subdivisions that extends to MPPAA withdrawal liability.

19. Federal regulation of [REDACTED] is in no case permissible except as to matters in the United States Constitution specifically authorized or delegated to the United States. Any interference, except as thus permitted, is an invasion of the authority of [REDACTED] and the sovereignty of the [REDACTED], and to that extent a denial of state independence.

20. Application of MPPAA withdrawal liability to [REDACTED] and its relationship to the crossing guards, where there has been no other federal intervention or assistance, will handicap [REDACTED] public health, safety and welfare functions without countervailing justification.

21. [REDACTED] has no record showing it executed or entered into or adopted the [REDACTED] "Agreement and Declaration of Trust" ("Trust Agreement"), nor in any other manner agreed to

be bound by the provisions of said Trust Agreement or any amendment thereto, and therefore believes that it did not execute or enter into or adopt the Trust Agreement, nor in any other manner agree to be bound by the provisions of said Trust Agreement or any amendment thereto.

22. ██████ never designated, and has no record of ever being given the opportunity to designate employer representative members of the ██████ Board of Trustees.

23. The ██████ has failed to deliver to ██████ disclosures required by ERISA and accompanying regulations, including but not limited to 29 C.F.R. §2520.101-1 *et seq.*, and other disclosures such as the ██████ rules and plan documents and amendments thereto, or reports and analyses.

24. In April 2007 ██████ and the crossing guards through their representative began to negotiate a new collective bargaining agreement, as the then-existing contract was due to expire on June 30, 2007.

25. ██████ and the crossing guards through their representative continued to abide by all the terms of the last collective bargaining agreement after it expired on June 30, 2007, including the provisions governing pension contributions while negotiations continued. ██████ administration and the crossing guards through their representative reached a tentative agreement on a new collective bargaining agreement in November 2007. This agreement could only become binding by approval of the ██████ City Council.

26. After the ██████ City Council voted not to ratify the tentative agreement in November 2007, ██████ contracted for crossing guard services on a per diem basis.

27. As there was no longer a collective bargaining agreement in place, and ██████ had contracted out the work, no pension payments were made for the period after February 15, 2008.

28. The crossing guards through their representative filed charges with the [REDACTED] State Labor Relations Board, asserting that [REDACTED] unlawfully contracted out crossing guard work and insisting that all crossing guards be reinstated to their prior positions with full back pay and benefits. The [REDACTED] State Labor Relations Board has issued a complaint against [REDACTED] on these charges. This labor dispute is presently ongoing.

29. By letter dated June 27, 2008 the [REDACTED] notified [REDACTED] that it had allegedly completely withdrawn from the [REDACTED] under 29 U.S.C. §1383, and that on account thereof the [REDACTED] was assessing [REDACTED] an alleged withdrawal liability under MPPAA in the amount of \$198,444.00. See **Exhibit B**. This [REDACTED] liability is based on the [REDACTED] general liabilities to all its participants, and is not a reflection of any failure by [REDACTED] to fully pay all that it contracted to pay to the [REDACTED] on behalf of its employees.

30. The June 27, 2008 letter was received by [REDACTED] on July 1, 2008.

31. In the June 27, 2008 letter, the [REDACTED] provided a schedule of payments to begin on July 31, 2008, calling for \$9,769.00 per quarter for twenty-four (24) quarters, and a final payment of \$1,962.00, and setting forth twenty-four (24) separate due dates, for a total of \$236,418.00.

32. By letter dated September 26, 2008, and in accordance with 29 U.S.C. §1399(b)(2)(A), [REDACTED] contested the [REDACTED] assessment of withdrawal liability on numerous grounds, requested review of the alleged withdrawal liability on numerous grounds, and requested information from the [REDACTED]. See **Exhibit C**.

33. [REDACTED] has not made the first quarterly payment, purportedly due on July 31, 2008.

34. The [REDACTED] through its attorney, has threatened to accelerate [REDACTED] alleged obligations under 29 U.S.C. §1399(c)(5) despite [REDACTED] proper and timely contest and request for review, and has also threatened to subject [REDACTED] to suit under 29 U.S.C.

§1399(c)(2) to collect withdrawal liability payments allegedly past due, plus interest, costs, and attorneys' fees. See **Exhibit D**.

35. [REDACTED] is likely to succeed on the merits of this matter.

36. The [REDACTED] threatens [REDACTED] with the irreparable harm of expending public funds without cause or justification, for which there is no adequate remedy at law.

37. The balance of equities favors granting the injunction in this case.

38. The public's interest is served by granting [REDACTED] a preliminary injunction because it preserves judicial resources by putting into an efficient order the issues for resolution.

**DECLARATORY AND INJUNCTIVE
RELIEF REQUESTED**

WHEREFORE, [REDACTED] respectfully requests that this Court enter an order:

A. Declaring that [REDACTED] is a political subdivision, not an "employer" within the meaning of ERISA, 29 U.S.C. §§1002(5), or MPPAA, and therefore is not an entity against which withdrawal liability can be assessed under MPAA;

B. Declaring that [REDACTED] is not an employer in an industry affecting commerce within the meaning of LMRA, 29 U.S.C. §152(2), and therefore is not an entity against which withdrawal liability can be assessed under MPPAA;

C. Declaring that [REDACTED] established and maintained a defined contribution plan by successive written agreements and therefore is not subject to withdrawal liability under MPAA;

D. Declaring that [REDACTED] defined contribution plan is excepted from ERISA and MPPAA withdrawal liability as a "governmental plan" under ERISA, 29 U.S.C. §1002(32);

E. Declaring that MPAA withdrawal liability cannot be assessed against [REDACTED] as a governmental entity, and employer of only governmental employees;

- F. Declaring that application of MPPAA withdrawal liability to [REDACTED] under the circumstances presented would violate the United States Constitution, including but not limited to the Tenth Amendment;
- G. Declaring that [REDACTED] is not subject to MPPAA withdrawal liability;
- H. Preliminarily and permanently enjoining the [REDACTED] from enforcing, by collection or otherwise, any part or whole of any alleged withdrawal liability assessed or to be assessed against [REDACTED]
- I. Awarding [REDACTED] its attorneys' fees, and reasonable expenses and costs incurred in connection with seeking relief through this action; and
- J. Such other relief as this Honorable Court deems just and proper.

OR IN THE ALTERNATIVE:

- K. Declaring that under ERISA, 29 U.S.C. §1398(2), [REDACTED] has not withdrawn from the [REDACTED] because it has merely suspended contributions during a labor dispute involving its employees;
- L. Preliminarily and permanently enjoining the [REDACTED] from enforcing, by collection or otherwise, any part or whole of any alleged withdrawal liability assessed or to be assessed against [REDACTED] during the pendency of such labor dispute;
- M. Awarding [REDACTED] its attorneys' fees, and reasonable expenses and costs incurred in connection with seeking relief through this action; and
- N. Such other relief as this Honorable Court deems just and proper.

JURY DEMAND

[REDACTED] hereby makes demand for trial by jury.

[REDACTED]