STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
Branch 10

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
and JOHN WEIGMAN,

Plaintiffs,

v.

Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN, and
RODNEY G. PASCH,

Defendants.

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO STAY

Defendants Scott Walker, James R. Scott, Judith Neumann, and Rodney G. Pasch, by and through their attorneys, submit this reply brief in support of their motion for a stay of the Court's September 14, 2012 Order, pending Defendants' appeal.

INTRODUCTION

2011 Wisconsin Act 10 represents a policy decision made by the State of Wisconsin in the field of municipal employee collective bargaining. There is no doubt and no dispute that in this field the government has always regulated with whom an employer may bargain and prescribed and proscribed certain topics for negotiation. Such limitations cannot be considered burdens on the right of association. Accordingly, *Lawson* is inapplicable to this case. Moreover, the Court's Order has resulted in confusion and uncertainty for thousands of non-parties. The Court should grant Defendants' motion and stay its Order.

ARGUMENT

I. DEFENDANTS HAVE A SIGNIFICANT LIKELIHOOD OF SUCCESS ON APPEAL.

As the Defendants pointed out in their opening brief, the first factor, "success on the merits," requires a flexible application because any circuit court believing the party seeking the stay has a probability of success on appeal would have denied all of Plaintiffs' claims in the first place. *See, e.g., Scullion v. Wisconsin Power & Light Co.*, 2000 WI App 120, ¶ 18, 237 Wis. 2d 498, 614 N.W.2d 565 (noting that "it is not to be expected that a circuit court will often conclude there is a high probability that it has just erred"). Defendants provided a detailed explanation of why the Court's Order is likely to be overturned on appeal. Defendants will not repeat that here. But a few fundamental points bear highlighting.

A. *Lawson* Is Not Applicable To MERA, As Amended By Act 10.

The Parties and the Court all agree and acknowledge that there is no constitutional right to any level of collective bargaining. Indeed in the twin opinions of *Smith* and *Knight* the United States Supreme Court made it abundantly clear that governmental employers are free to choose with whom they will, or will not, negotiate. *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979) (noting that "the First Amendment does not impose any affirmative obligation on the government to listen, to respond or . . . to recognize [a public employee] association and bargain with it"); *Minnesota State Bd. For Community Colleges v. Knight*, 465 U.S. 271, 287 (1984) ("The conduct here is the converse of that challenged in *Smith*. There the government listened only to the individual employees and not to the union. Here the government 'meets and confers' with the union and not the individual employees. The applicable constitutional principles are identical …").

Instead of deciding Plaintiffs' claims within the framework of these cases, the Court took the novel approach of analyzing this case under the penalty-theory paradigm relied on in *Lawson v. Housing Authority*, 270 Wis. 269 (1955). Such an approach is not found in any other published collective bargaining cases. The absence of this theory from the collective bargaining case law is not surprising. As explained below, the penalty-theory simply does not fit within the context of a challenge to the modification of a collective bargaining system. If, as the case law makes plain, the complete *elimination* of collective bargaining altogether does not burden the speech or associational rights of unions or their members, it cannot be that *reduction* of collective bargaining privileges does. Moreover, *Lawson* is incompatible with the fact that government is given "significantly greater leeway in its dealings with citizen employees than . . . [with] citizens at large." *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 599 (2008).

In *Lawson* the plaintiff was receiving a tangible benefit (federally subsidized housing) that was discontinued solely on the basis of Lawson's exercise of his constitutional right to associate. *Id.* at 270-71 (noting that Lawson was a current tenant in subsidized housing and was facing eviction for his refusal to disclaim association with certain groups). In order to continue receiving the benefit of subsidized housing, Lawson had to give up his constitutional right to associate with those whom he shared views important to him. At Plaintiffs' invitation this Court has applied *Lawson* to this case. The court of appeals, however, is likely to reject the application of *Lawson* for several reasons.

First, Plaintiffs are not required to give up any constitutional rights in order the bargain collectively. Municipal employees and unions still possess the right to associate with others who share their views, whatever those may be. Plaintiffs are still free to meet, march, assemble, and speak about any issues, whether important or frivolous. Unlike the federal law struck down in

Lawson, MERA, as amended does not explicitly or implicitly require either the plaintiff employees or plaintiff unions to surrender any fundamental rights; nor does it they burden them.

Second, there is no "benefit" lost due to the decision to collectively bargain. According to the Order, Plaintiffs are required to give up their ability to "negotiate and receive wage increases greater than the cost of living" if they want to collectively bargain. Order, p. 15. No *individual* employee, however, has any statutory right to "negotiate or receive wage increases greater than the cost of living" adjustments. Instead, the employer is at all times free to ignore any such demands from any employee.[1] Accordingly, foregoing collective bargaining does not entitle or otherwise qualify an employee to force his employer to negotiate over, or receive, wage increases exceeding the cost of living. Thus, unlike *Lawson*, the plaintiffs are not forced to give up the constitutional right to associate, nor does the decision to exercise the statutory right to collectively bargain result in the loss of any tangible benefit.

Third, the facts of this case present the inverse of *Lawson* as those employees who do choose to collectively bargain through their unions *gain* a benefit not available to individual employees. They gain the statutory right to force their employer to "meet and confer at reasonable times, in good faith, with the intention of reaching an agreement … with respect to wages …". Wis. Stat. § 111.70(1)(a). Thus, MERA (even as amended) provides a benefit, the right to force the employer to negotiate in good faith, to *only* those employees who chose to bargain collectively. Accordingly, this Court's reliance on *Lawson* is misplaced and is likely to be overturned.

Finally, the court of appeals is likely to overturn the Order because, unlike the housing subsidy in *Lawson*, collective bargaining systems always requires a balancing of rights of the

[1] The affidavit of Plaintiff Johnnie Madlock demonstrates that this is exactly what the City of Milwaukee has done. Madlock Aff., ¶ 4 (stating that the City of Milwaukee "unilaterally" changed the wage scale of all employees in the bargaining unit).

individual versus the rights of the association. Assuming, *arguendo*, that the Court is correct that the inability to negotiate over a subject constitutes the impairment of a represented employees' speech and associational rights, it necessarily follows that MERA's provision of collective bargaining works the exact same infringement on the associational and speech rights of those employees who do not wish to associate with the union for the purpose of collectively bargaining. Once a certified bargaining agent is elected by the bargaining unit, the employer is legally prohibited from negotiating with individual employees over wages and any non-union employees suffer the same constitutional "harm." The *Lawson* Court did not have to navigate these competing rights and interests and its decision is therefore inapplicable to the present case.

B. The Annual Certification Provisions, Prohibition on Dues Deductions, and Elimination of Fair-Share Agreements Are Not Burdens On The Right Of Association.

The annual certification requirement is not a punishment for associating; rather, it is simply a mechanism designed to help the state determine whether the union has demonstrated a level of support sufficient to justify (a) eliminating the voice of the individual employees from the negotiations; and (b) forcing representation on employees who don't wish to be represented by a union. The fact that the union, the entity who wants to gain the favored status of excusive bargaining agent, is required to bear the costs of the certification process is not punitive.

Likewise, if the prohibition on fair-share agreements is a burden on the associational rights of the employees who wish to collectively bargain, it logically follows that the imposition of fair-share agreements burdens those who do not wish to collectively bargain. Indeed while fair-share agreements are constitutional, the United States Supreme Court has recognized that they burden the rights of those employees who do not wish to have union representation. *See Knox v. Service Employees Int'l Union, Local 1000,* 132 S. Ct. 2277, 2289-91 (2012) ("By

authorizing a union to collect fees from nonmembers … our prior decisions approach, if they do not cross, the limit of what the First Amendment can tolerate.")

Likewise MERA's dues-deductions provisions do not constitute an associational burden because there is no benefit being denied to the employees who wish to associate. Non-represented municipal employees do not enjoy any affirmative right under MERA to dues deductions of any kind.

C. The Equal Protection Claims Should Have Been Analyzed Under the Rational Basis Standard.

Because *Lawson* is inapplicable to this case, there are no fundamental rights at issue and this case should be analyzed under the rational basis standard. Under that standard, Act 10 is presumed constitutional and in the context of a motion for stay pending appeal this is enough to demonstrate a likelihood of success on the merits. *See State v. Gudenschwager*, 191 Wis. 2d 431, 441, 529 N.W.2d 225 (1995) (finding that despite the circuit court's determination that Wis. Stat. ch. 980 was unconstitutional, "the State has made a strong showing that it is likely to succeed on the merits" precisely because "regularly enacted statutes are presumed to be constitutional").

II. The Public And the State Will Be Harmed Absent A Stay.

A. The State Will Be Harmed.

Plaintiffs don't deny the potential harm to municipalities, but argue that it is not relevant because it is not harm to the state. Plaintiffs forget that Wisconsin's municipalities are arms of the State. *See City of Kenosha v. State of Wisconsin*, 35 Wis. 2d 317, 331, 151 N.W.2d 36 (1967) (noting that municipal corporations and quasi-municipal corporations are "arms of the state"). Thus, any harm suffered by the municipal employers is properly understood as harm to the State proper.

B. Absent A Stay Municipal Employers Will Face Uncertainty And Confusion.

Plaintiffs callously suggest that any confusion created by the Court's Order is unimportant, caused only by the fact that Defendants' motion to stay was filed before municipal employers had the opportunity to digest the Order, and they suggest that municipal employers need only consult their attorneys. (Pls. Br., pp. 22-23). However, Plaintiffs are wrong and the confusion now facing the municipal employers is not going to go away with time.

1. The Court's Order Is Not Universally Binding Nor Precedential.

Despite the assumed statewide effect of the Court's Order, (see Affs. of Charbareau; Lisak; Roling; Shambeau; Gray; Joch; Greco) it is undeniable that the only parties to this action are two public employee unions (MTI and Local 61) and their respective leaders, Governor Walker, and the three individual WERC Commissioners. This Court's Order has no binding legal effect on non-parties and, in fact, nothing would preclude a municipal employer from initiating a declaratory judgment action to establish its rights and obligations under MERA. For example, an employer in Brown County could seek a declaration from the Brown County Circuit Court as to its obligations and the limits of its authority under MERA. In that instance nothing would prevent that circuit court from entertaining the action and issuing a declaratory ruling contrary to this Court's Order.

Notably, a circuit court decision "may be persuasive because of [its] reasoning," but it is "*never* 'precedential.'" *Raasch v. City of Milwaukee*, 2008 WI App 54, ¶ 8, 310 Wis. 2d 230, 750 N.W.2d 492 (emphasis in original); *see also Kuhn v. Allstate Ins. Co.*, 181 Wis. 2d 453, 468, 510 N.W.2d 826 (Ct. App. 1993) ("a circuit court decision is neither precedent nor authority" though it may be "highly persuasive and helpful for [its] reasoning"); *Brandt v. LIRC*, 160 Wis. 2d 353, 365, 466 N.W.2d 673 (Ct. App. 1990) (noting that "the limited purposes for which . . .

unpublished circuit court decisions [may be] used" is "for any persuasiveness that might be found in their reasoning and logic"). Indeed, statewide uniformity on this issue cannot be achieved "without appellate review and without published appellate decisions that are precedential in all circuit and appellate courts." *Gentilli v. Bd. of Police and Fire Comm'rs*, 2004 WI 60, ¶ 38, 272 Wis. 2d 1, 19, 680 N.W.2d 335; *see also* Wis. Stat. § 752.41(2) ("Officially published opinions of the court of appeals shall have statewide precedential effect").

The fact that Plaintiffs named the WERC Commissioners as defendants in this action does not change the result. WERC and circuit courts have concurrent jurisdiction over public sector labor disputes. Wis. Stat. §§ 111.07(1); 111.70(4)(a). Thus, a municipal employer that is the subject of a prohibited practice claim, failure to bargain in good faith claim, or other complaint-based proceeding in front of WERC can seek a declaration of rights and obligations from a circuit court, as described above.

Here, Local 61 is a party but its employer, the City of Milwaukee, is not. Accordingly, the potential for confusion and additional litigation is real. This Court has declared the rights of Local 61's members but the City of Milwaukee as a non-party is not bound by this Court's decision. Moreover, Local 61 has made clear its desire to seek to compel the City of Milwaukee to collectively bargain in the wake of the Order. *See* Aff. of Madlock, Wherefore Clause (claiming Local 61 was harmed by the lack of collective bargaining "and that the harm will continue if a stay is granted.").[2] If the City of Milwaukee refused to bargain with Local 61, Local 61 might seek recourse through WERC. It is also possible that a non-union employee or a tax payer might seek an injunction from the Milwaukee County Circuit Court to prevent the City from bargaining.

[2] Other non-party municipalities are also facing demands to bargain in wake of the Order and pursuant to its terms. Examples of such requests are attached as exhibits to the Affidavits of Lisa Charbareau and Andrew Lisak, filed herewith.

Moreover, as Plaintiffs have pointed out two non-party municipalities have already entered into new contracts with their employee unions. (Pls. Br., n. 6). The legality of these contracts is already in doubt as none of the parties to those contracts are parties to this action. Additionally, even assuming these contracts are legal at the moment, a decision overturning the Order from the Court of Appeals or the Supreme Court will render them *ultra vires.* Likewise, at least one non-party union has taken the position that it will not execute collective bargaining agreements that have already been ratified by its membership because they are "illegal" pursuant to this Court's Order. (Aff. Miller. ¶ 4, Ex. A). The Court should grant a stay to avoid this uncertainty.

2. There Is No Clarity As To the Current Status Of Formerly Certified Bargaining Agents That Were Decertified Prior To The Date Of This Court's Order.

The Order does not address the current status of bargaining agents that were decertified prior to the entry of the Order. Plaintiffs' response brief and accompanying affidavit highlight the confusion that will ensue over the rights and obligations – if any – of decertified unions to represent the respective former bargaining units. According to Plaintiffs, Local 61 "was unable to" recertify as the exclusive bargaining agent for City of Milwaukee employees working as Operations Driver Workers in the City's Public Works Sanitation Section. (Aff. Madlock, ¶¶ 1, 7.) Nevertheless, Plaintiffs assert in their response brief that "[t]he Court's decision now allows Local 61 to meet with the City of Milwaukee at the bargaining table to discuss wages, hours and working conditions."[3] (Pls. Br. at 18.) Other decertified unions across the state have taken the same position. (Aff. Lisak, ¶ 4). Thus, the Order requires municipal employers to attempt to

[3] There can be no doubt that this is a statement of Local 61's intent to meet as the exclusive barging agent. Nothing in Act 10 would have prevented any such meetings between the employer and the union in any other setting.

determine whether the unions have any status as the exclusive bargaining representative for all bargaining unit employees.

Indeed, for those unions that stood for election and failed to get affirmative votes of the majority of the employees they seek to represent, there is a very serious question as to why they should automatically usurp the bargaining role for those employees who expressed their will at the recertification election. As noted in Defendants' initial brief, any municipal employer that "gets it wrong" in the unions' eyes faces the prospect of proceedings before WERC or a circuit court. Those that "get it right" face the prospect of undoing the money-saving reforms they implemented since June 2011, and to do so in the very midst of budgeting season.

While the claims in the federal action (*WEAC et al. v. Walker et al.*, W.D. Wis. Case No. 3:11-cv-428-wmc) were different, the Federal District Court recognized the potential for confusion regarding the status of decertified unions and specifically stayed the effect of its ruling as to those bargaining units that were decertified pursuant to Act 10 prior to the District Court's order. *See WEAC* Order, April 27, 2012. It did so out of recognition for the potential confusion among non-parties as to the status of such decertified unions. This Court should do the same.

3. The Scope Of "Wages" is Unclear.

The parties are in agreement that the result of the Order is that "wages" are the single mandatory subject of bargaining. Prior to the Order, bargaining over wages was limited to "total base wages" as described in Wis. Stat. § 111.70(4)(mb)1. Unfortunately, in the wake of the Order "wages" is now an undefined term. And, Plaintiffs' papers demonstrate exactly how broadly unions will attempt to define bargaining over wages. Plaintiffs contend that the duty to bargain over wages includes the duty to bargain over the impact on employee wages of every conceivable condition of employment. (*See* Pls. Br. at p. 18 asserting that the employer has a

duty to bargain over the impact on wages of "work rules," sick leave, vacation schedules and benefits, disciplinary procedures and grievance processes, and the elimination of an employee who served as "grievance processor.") In other words, this union is already on record as claiming the duty to negotiate over "wages" is really a duty to bargain over wages, hours, and conditions of employment. Thus, municipal employers will be faced with a choice between agreeing to bargain over these conditions of employment or risking a complaint for failing to bargain in good faith. Of course, if they choose to bargain they will run the risk that a non-union employee will seek an injunction preventing the employer for entering into an agreement.

Moreover, this lack of precision over the scope of bargaining is more than academic. Unions throughout the state have taken the position that all subjects beyond wages are bargainable as permissive subjects of bargaining. (See e.g. Affs. Lisak Exs. A-C; Alleman Ex. A). However, whether municipal employers may bargain anything other than wages is unclear. MERA, as affected by the Order, contains no provision addressing permissive subjects of bargaining for general municipal employees. Moreover, while Wis. Stat. § 111.70(1)(a) provides for collective bargaining between municipal employers and public safety employees with respect to wages, hours, and conditions of employment, it only for provides collective bargaining between municipal employers and general municipal employees with respect to wages." In contrast, Wis. Stat. § 111.70(4)(p) specifically provides for permissive subjects of bargaining for public safety and transit employees. Thus, clarity regarding what is within the subject of "wages" is paramount because a municipal employer may be without the power to bargain issues outside the subject.

4. The Availability Of Fair-Share Agreements Is Uncertain.

Despite finding the prohibition on fair-share agreements for general employees was an unconstitutional burden on the right of association, the version of MERA in place after the Order continues to prohibit fair-share agreements for general employees. The Court struck section 111.70(1)(f), which defined fair-share agreements as applying only to "public safety employees or transit employees." (Order, p. 16). However, the Court left untouched section 111.70(2)(a) which defines the rights of municipal employees under MERA. This section grants the right to negotiate fair-share agreements to "public safety employees or transit employee[s]" only. *Id.* It is black letter law that when "power is given by an affirmative statute, to a certain person, or class of persons, by the designation of those persons, all other persons are in general excluded from the exercise of the power." *See Conroe v. Bull*, 7 Wis. 408 (1858). Accordingly, even after the Order, fair-share agreements remain available only to transit and public safety employees.

Indeed, this conclusion is inescapable because Wis. Stat. § 111.70(2)(a) also states, "A general municipal employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit." There can be no dispute that the word "dues" includes fair-share payments. *Id.* ("A public safety employee or transit employee may be required to pay *dues* in the manner provided by a fair-share agreement").

If the employer agrees to a fair-share agreement any dissenting employee could bring a wage claim under Chapter 109 or a prohibited practice complaint. If the employer refuses to bargain over a fair-share agreement it may face a prohibited practice complaint from a represented employee. This is not a tenable position and municipal employers will face significant confusion and potential liability in the absence of a stay.

5. The Timing Of the Order Only Adds To The Harm.

All of this confusion is arising in the heart of municipal budgeting season.[4] Thus, the timing of the Order increases the harm caused by the uncertainty. Plaintiffs described the vast array of issues they understand Local 61 can now compel the City of Milwaukee to bargain over and "negotiate in good faith their impact on wages." Pls Br. at 18. Plaintiffs attempt to downplay the forcefulness of the good-faith bargaining requirement. Nevertheless, municipal employers have rarely, if ever, confronted the question of what good faith bargaining means in the context of a former contract, followed by lawful unilateral changes, followed by suspicion that the unilateral changes were infirm, followed by good faith bargaining over the "impact" of such changes "on wages."

Many municipal employers utilized the flexibility afforded by Act 10 to unilaterally impose substantial and necessary cost-saving measures. See Affs. of Charbareau, ¶¶5-10; Lisak, ¶¶ 6-11; Roling, ¶¶ 5-10; Shambeau, ¶¶ 4-9; Gray, ¶ 3, Joch, ¶ 3; Greco ¶ 3; Miller ¶¶ 5-10. Those employers surely have reason to be concerned about the unknown costs of either foregoing those measures or facing a failure to bargain in good faith claim. Indeed, issues such as the timing of the unilateral changes (unions may argue municipalities are required to reverse cost-saving measures retroactively) and the universe of workplace modifications that unions will assert "impact on wages" all enter the equation and add to the uncertainty of the true cost to individual employers of changing the bargaining regime this late in the budget-setting process. (*Id.*) Municipal leaders across the state have publically voiced the need for a stay to facilitate the budgeting process.[5] Faced with this uncertainty, Municipalities maybe forced to raise taxes (if

[4] Fall is the traditional beginning of budget season for Wisconsin municipalities. For example, the City of Madison's 2013 Operating Budget calender indicates that the mayor will introduce his executive budget on October 2, 2012. *See* http://www.cityofmadison.com/finance/documents/2013OpBud/calendarOp.pdf

[5] For example, the Chief of Staff to Milwaukee Mayor Tom Barrett stated, "We're concerned about the timing of this," Curley said. "A stay in this would get us through the budget." *See*

they have room to do so under the current statutory property tax caps) or lay off workers in to plan for the unknown costs.

CONCLUSION

For the reasons set forth above and in their initial brief, Defendants respectfully request that the Court grant Defendants' Motion for Stay of the Court's Order Granting Summary Judgment.

Dated this 28th day of September, 2012.

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http://www.jsonline.com/news/statepolitics/van-hollen-expected-to-see-stay-tuesday-on-union-ruling-m46tgch-170184446.html
And Black River Falls City Administrator Bill Arndt stated that the Order makes the budget process more uncertain. "It makes it extremely difficult — almost impossible to budget," he said. "It's hard to budget. Even with 35 years of experience, it's probably the worst one ever."
http://lacrossetribune.com/jacksoncochronicle/news/local/officials-brace-for-uncertain-future-after-judge-strikes-down-collective/article_20738cb6-0298-11e2-9066-001a4bcf887a.html

AFFIDAVIT OF Todd W. Gray

STATE OF WISCONSIN)
) ss
COUNTY OF Waukesha)

I, Todd W. Gray, being first duly sworn, state as follows:

1. I am Superintendent of the School District of Waukesha, a Wisconsin school district of 13,000 students, located in Waukesha, Wisconsin.

2. I make this affidavit based upon personal knowledge and review of relevant documents of maintained by the School District of Waukesha.

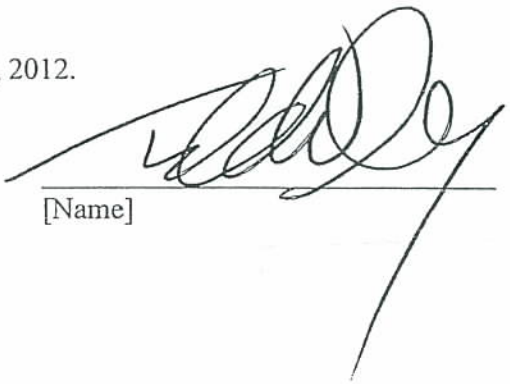
3. The recent decision by Judge Colas, regarding the potential unconstitutionality of a number of provisions in Act 10 has caused serious questions in our district about how we should and can govern our employees, as well as what kind of budget ramifications we might encounter. The primary question, does this ruling from Dane County even impact a district in Waukesha County? Assuming it may apply, many other questions and issues are being raised and it is unclear on how these changes will impact how we need to supervise staff, compensate staff, and budget for these potential changes. The timing of the decision at this time of the school year is very concerning and this has created a major distraction to the real work we need to do: provide a solid education to our students. In the end, it will be students who suffer from this distraction.

It has also caused delays in bargaining with our professional educators (teachers) due to the necessary time needed to understand how the ruling impacts our bargaining rights. Whichever interpretation we take right now with bargaining could put the District in the position

of violating the law, depending on the final outcome of Act 10 bargaining provisions as it winds its way through the courts, and for this reason we must delay this process.

Holding up bargaining sessions due to the uncertainty of what we can bargain for and how Act 10 might look many months from now is an unfair delay to our teachers and other professional educators.

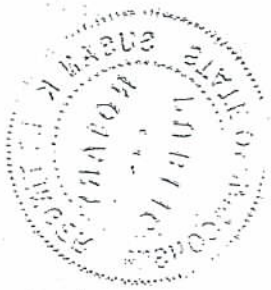
Dated this 27th day of September, 2012.



[Name]

SUBSCRIBED and sworn to before me
this 27th day of September, 2012.

Susan K. Ettinger
Notary Public, State of Wisconsin
My commission expires: April 19, 2015



AFFIDAVIT OF Patricia Fagan Greco, Ph.D.

STATE OF WISCONSIN

COUNTY OF Waukesha

I, Patricia Fagan Greco, being first duly sworn, state as follows:

1. I am a Superintendent of Schools of the School District of Menomonee Falls serve as the lead administrator of the school district responsible directly to the Board of Education. We have six schools and approximately 4400 students that we serve.

2. I make this affidavit based upon personal knowledge and review of relevant documents maintained by the School District of Menomonee Falls.

3. Regardless of one's political affiliation, it is widely recognized that the polarization of the parties in Madison has created challenges for appropriate school planning. We are directly responsible to our families, our taxpayers, our business community, and to ensure our students are prepared well for the expectations of college and the workforce. The inability to create a solid financial forecast has compromised our ability to appropriately plan for the sound education of our students.

Act 10 provided the flexibility for school systems to modify health carriers, share the impact of pension costs, and shift the bargaining requirements. Indeed, there are strong feelings on both sides of the aisle with respect to the authority and the manner in which Act 10 was passed. Equally, the revenue limits placed on public schools 19 years ago create significant challenges for us to adequately meet the demands of educating our students as costs continue to outpace the limits set. Again, both sides of the aisle own the responsibility for the decisions made. Judge Colas's recent decision regarding the conditions of Act 10 add another layer of complexity that should not compromise the current year budget.

The School District of Menomonee Falls reached a voluntary agreement with our association leaders. Our two year contract expires June 30, 2013. The contract does indeed mirror the requirements of ACT 10. Now, we too are placed in the situation of determining whether or not the ruling will overturn the conditions of our voluntary contract. We cannot continue to have the financial impact of millions of dollars reduce our ability to educate our students. Clearly we must also keep our staff members adequately compensated based on the market. The venom of the politics are not helping our students, our staff or our communities.

I will acknowledge that legislators from both parties have compromised our ability to effectively plan to meet the demands of increasing the performance of our students. If we lose the agreements reached, it will again impact our current year budget significantly. The ramifications will indeed compromise students and families. The only way to make these types of adjustment mid-year are to reduce our fund balance impacting our bond rating and increasing our borrowing, or reduce programming options for second semester for our families. These should not be the conversations in October for a budget year that started July 1st.

I would ask the ruling be stayed. I will also ask that both sides of the aisle figure out how to plan forward together. We need significant commitment and focus if we are indeed going to hit the target of raising student performance levels and ensuring our students are competitive in the market place for our community, our state and our nation.

Our district has lost 15% of state and federal aid within the last year. Our expectations for student performance are increasing. Our taxpayers are placed in the position to increase their contributions as the state commitment decreases. To again impact the current year budget, and each subsequent year budget, by millions for our district alone is not sound decision making.

I would ask all parties to consider the conditions of the stay as being responsible decision making.

I would also ask all parties to reexamine their commitment to educating our students to be prepared for the demands of the rapidly changing market. Dollars shifted from educating the majority of our children in our state will compromise this state's economy long-term. We are connected as a system as we are the providers of the workforce.

We have direct responsibility for preparing the students well for global readiness. We take that responsibility very seriously. We need the focus and commitment from our policy makers on that target as well. The boomerang impact of the politics is compromising every student, family, and business owner in the state as we prepare their future workforce.

Dated this 28th day of September, 2012.

Patricia Fagan Greco, Ph.D.

SUBSCRIBED and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin
My commission expires: 8/25/2013

AFFIDAVIT OF Christopher S. Joch

STATE OF WISCONSIN)
) ss
COUNTY OF RACINE)

I, Christopher Joch, being first duly sworn, state as follows:

1. I am Superintendent of the Waterford Graded Jt 1 School District. I am the chief administrator of the school district, comprised of 1500 students, 120 certified teaching staff, six administrators and approximately 40 clerical, paraprofessional and maintenance staff.

2. I make this affidavit based upon personal knowledge and review of relevant documents of maintained by the Waterford Graded Jt 1 School District.

3. The decision by Judge Colas presents many potential complications to the Waterford Graded School District. These complications include labor unrest, fiscal control and loss of flexibility. The complications are explained below.

The first complication the Judge Colas ruling poses relates to labor unrest. Waterford Graded School District's Board of Education had a reached a tentative agreement with the Waterford Elementary Teachers Association on September 13, 2012. Ratification votes were scheduled for Monday, September 17, 2012. The teacher's union decided to indefinitely table its vote on the tentative agreement. This causes labor uncertainty and fiscal uncertainty for the teachers and the school district.

Labor uncertainty stems from the standpoint of lingering issues from past school years with hopes of regaining benefits and working conditions. If the pieces causing uncertainty are indeed reinstated into permissive topics of bargaining, it would be problematic from a management standpoint since the collective bargaining agreement (CBA) expired June 30, 2011. In other words after all the work on employee handbooks and putting new structures into place

since the CBA was absent, where does one start? Reversal of expectations and fringe benefits would create a degree of adult chaos in an environment where our focus is student learning. The converse would be the case for the unions. Having collective bargaining pieces reinstated then potentially withdrawn due to another appeal, would foster more uncertainty and dips in morale.

Fiscal uncertainty for districts is paramount if Act 10 is not reinstated. The Waterford Graded School District is experiencing revenue reductions due to a combination of lower property values, declining enrollment and reduction in total state aid. Furthermore, the local board of education has been responsive to the community's tax payers and sluggish economy by advocating for minimal tax levy increases. The ability to explore and implement alternative fringe benefits has been extremely beneficial from the savings captured with new insurance programs.

A second component of fiscal concern relates to salaries. As mentioned above, the local union's decision to table the tentative agreement ratification is problematic. The back-pay for the 2011-12 school year could have been charged back to the 2011-12 fiscal year from a budget/audit perspective if ratified by September 30. Now any back pay from the 2011-12 school year becomes a liability on the 2012-13 school year because the union holds out hope of the previous bargaining environment returning with the ruling on September 14. Finally, with the expiration of WERC's emergency rules of collective bargaining, the clarity of fiscal bargaining parameters would seem ceiling-less. In the district's era of declining revenue, the fiscal guidelines for collective bargaining must be clear and realistic.

A potential loss of flexibility is key to understanding the benefits of Act 10 to a school district. As stated above, the district is experiencing revenue reductions. Significant modifications in fringe benefits, working conditions as well as wage compensation have taken place to address the revenue reductions. The flexibility in the timeframe of the necessary

modifications would have not been possible if Act 10 had not been enacted. To revoke Act 10 and revert to a more complex collective bargaining environment would be devastating from an operational perspective.

As one can see and understand, the removal of Act 10 would have a negative impact on a school district from labor, fiscal and management (reduced flexibility) angles.

Dated this 28th day of September, 2012.

Christopher D Jack

[Name]

SUBSCRIBED and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin
My commission expires: Dec. 21, 2014

STATE OF WISCONSIN CIRCUIT COURT Branch 10 DANE COUNTY

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
And JOHN WEIGMAN,

Plaintiffs,

v. Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN and
RODNEY G. PASCH,

Defendants.

AFFIDAVIT IN SUPPORT OF POSITION URGING COURT TO STAY IMPLEMENTATION OF ORDER PENDING APPEAL

STATE OF WISCONSIN)
) ss.
CALUMET COUNTY)

The undersigned, being first duly sworn, states as follows:

1. I am the County Administrator for the County of Calumet, Wisconsin, a municipal employer subject to Wis. Stat. § 111.70, and make this affidavit in support of the request that the Court stay implementation of its September 14, 2012, Order declaring certain statutes enacted pursuant to 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 unconstitutional and void ("Order.")

2. Prior to Act 10, Calumet County had entered into collective bargaining agreements with several unions representing Calumet County general municipal employees and

these agreements covered a myriad of topics surrounding wages, hours and conditions of employment. Since expiration of those agreements following the effective dates of Acts 10 and 32, Calumet County has implemented the changes mandated by Acts 10 and 32.

3. There is significant uncertainty surrounding the scope of a municipal employer's duty to bargain following the Court's Order. Specifically, it is unclear whether a municipal employer will be required to return to the "status quo" of wages, hours and conditions of employment that existed prior to the expiration date of the collective bargaining agreements last in effect preceding the effective dates of Acts 10 and 32. Moreover, if it is determined that a municipal employer must return to the "status quo" that existed prior to the effective dates of Acts 10 and 32, it is unclear whether a municipal employer must make general municipal employees whole for any loss in wages, hours or conditions of employment, or part thereof, for the time period from the effective dates of Acts 10 and 32 to present.

4. Calumet County, like all Wisconsin counties, is subject to limitations on the amount of money that it may raise through property taxation – commonly referred to as "levy limits." Act 32 makes levy limits on local governments permanent (previous levy limits had sunset dates). Act 32 sets the levy limit for 2011(12) and 2012(13) at 0 percent or the percentage increase in valuation due to net new construction, whichever is higher. The allowable base for each year will be based on the prior year's actual levy, with a provision established to allow counties to carry forward some allowable levy from the prior year; the carry-forward may increase the levy by no more than 0.5% and utilizing the carry-forward would require an affirmative supermajority vote by three-quarters of the county board. For debt issued prior to July 1, 2005, the allowable levy must also be reduced to reflect any reductions in debt service

payments; however, this reduction need not be made if a county does not utilize the carry-forward provision of unused levy capacity described herein.

5. Calumet County, also like all other Wisconsin counties, saw a significant decrease in the amount of revenue received from the State of Wisconsin, commonly referred to as "shared revenue," by virtue of Act 32. According to the Wisconsin Department of Revenue, Calumet County's decrease in shared revenue from 2011 to 2012 is estimated at approximately $232,621, representing a 25% decrease.

6. Despite Calumet County's inability to raise additional funds through taxes and the reduction in shared revenue, Calumet County's costs of operation continue to rise given normal inflationary pressures and enhanced demand for services.

7. Through implementation of the measures mandated by Acts 10 and 32, Calumet County has saved significant sums and has otherwise been able to create a balanced, and fiscally responsible, budget even with the levy limits and cuts to shared revenue.

8. If the Court's Order is interpreted to require either that Calumet County make its general municipal employees whole for any monetary loss an employee suffered or that Calumet County must return to the "status quo" under previous collective bargaining agreements, all of the savings generated through Acts 10 and 32 would be lost. In addition, going forward, Calumet County would begin its budgeting process with a significant structural deficit depending upon the interpretation and application of the Court's Order. Calumet County has already received correspondence from one of the bargaining agents representing a bargaining unit consisting of general municipal employees demanding to commence negotiations.

9. All of the uncertainty regarding the interpretation and application of the Court's Order will likely take months to resolve. In the meantime, Calumet County will not be able to

best manage its limited financial resources for the benefit of Calumet County citizens, taxpayers and employees.

10. Calumet County would benefit from the imposition of a stay pending appeal to promote certainty and consistency in its dealings with Calumet County employees. Moreover, a stay would promote sound public and fiscal policy by allowing Calumet County to adequately and sufficiently budget for the necessary and vital programs and services within the limited resources described herein.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 28th day of September, 2012.

Jay Shambeau

Subscribed and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin,
My commission expires: 7/21/13
Patricia K. Glynn

STATE OF WISCONSIN | CIRCUIT COURT Branch 10 | DANE COUNTY

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
And JOHN WEIGMAN,

Plaintiffs,

v.

Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN and
RODNEY G. PASCH,

Defendants.

AFFIDAVIT IN SUPPORT OF POSITION URGING COURT TO STAY IMPLEMENTATION OF ORDER PENDING APPEAL

STATE OF WISCONSIN)
) ss.
GRANT COUNTY)

The undersigned, being first duly sworn, states as follows:

1. I am the Personnel Director for the County of Grant, Wisconsin, a municipal employer subject to Wis. Stat. § 111.70, and make this affidavit in support of the request that the Court stay implementation of its September 14, 2012, Order declaring certain statutes enacted pursuant to 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 unconstitutional and void ("Order.")

2. Prior to Act 10, Grant County had entered into collective bargaining agreements with several unions representing Grant County general municipal employees and these

agreements covered a myriad of topics surrounding wages, hours and conditions of employment. All of these collective bargaining agreements expired on December 31, 2010. As a result, Grant County implemented the changes mandated by Acts 10 and 32 upon the effective date of those acts.

3. There is significant uncertainty surrounding the scope of a municipal employer's duty to bargain following the Court's Order. Specifically, it is unclear whether a municipal employer will be required to return to the "status quo" of wages, hours and conditions of employment that existed prior to the expiration date of the collective bargaining agreements last in effect preceding the effective dates of Acts 10 and 32. Moreover, if it is determined that a municipal employer must return to the "status quo" that existed prior to the effective dates of Acts 10 and 32, it is unclear whether a municipal employer must make general municipal employees whole for any loss in wages, hours or conditions of employment, or part thereof, for the time period from the effective dates of Acts 10 and 32 to present.

4. Grant County, like all Wisconsin counties, is subject to limitations on the amount of money that it may raise through property taxation – commonly referred to as "levy limits." Act 32 makes levy limits on local governments permanent (previous levy limits had sunset dates). Act 32 sets the levy limit for 2011(12) and 2012(13) at 0 percent or the percentage increase in valuation due to net new construction, whichever is higher. The allowable base for each year will be based on the prior year's actual levy, with a provision established to allow counties to carry forward some allowable levy from the prior year; the carry-forward may increase the levy by no more than 0.5% and utilizing the carry-forward would require an affirmative supermajority vote by three-quarters of the county board. For debt issued prior to July 1, 2005, the allowable levy must also be reduced to reflect any reductions in debt service

payments; however, this reduction need not be made if a county does not utilize the carry-forward provision of unused levy capacity described herein.

5. Grant County, also like all other Wisconsin counties, saw a significant decrease in the amount of revenue received from the State of Wisconsin, commonly referred to as "shared revenue," by virtue of Act 32. According to the Wisconsin Department of Revenue, Grant County's decrease in shared revenue from 2011 to 2012 is estimated at approximately $421,000, representing a 17.84% decrease.

6. Despite Grant County's inability to raise additional funds through taxes and the reduction in shared revenue, Grant County's costs of operation continue to rise given normal inflationary pressures and enhanced demand for services.

7. Through implementation of the employee cost-sharing for WRS mandated by Act 10, Grant County saved approximately $400,000 per year. Through implementation of new health insurance plan designs following Act 10, Grant County saved approximately $800,000 per year.

8. If the Court's Order is interpreted to require either that Grant County make its general municipal employees whole for any monetary loss an employee suffered or that Grant County must return to the "status quo" under previous collective bargaining agreements, all of the savings generated through Acts 10 and 32 would be lost. In addition, going forward, Grant County would begin its budgeting process with a significant structural deficit depending upon the interpretation and application of the Court's Order.

9. All of the uncertainty regarding the interpretation and application of the Court's Order will likely take months to resolve. In the meantime, Grant County will not be able to best

manage its limited financial resources for the benefit of Grant County citizens, taxpayers and employees.

10. Grant County would benefit from the imposition of a stay pending appeal to promote certainty and consistency in its dealings with Grant County employees. Moreover, a stay would promote sound public and fiscal policy by allowing Grant County to adequately and sufficiently budget for the necessary and vital programs and services within the limited resources described herein. The Grant County Board has passed a resolution signifying their support for a stay of proceedings pending appeal, a copy of which is attached hereto and labeled Exhibit A.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 28th day of September, 2012.

Joyce Roling

Subscribed and sworn to before me
this 28th day of September, 2012.

Karla K. Schwantes
Notary Public, State of Wisconsin
My commission expires: 5-31-2013

STATE OF WISCONSIN | CIRCUIT COURT Branch 10 | DANE COUNTY

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
And JOHN WEIGMAN,

Plaintiffs,

v. Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN and
RODNEY G. PASCH,

Defendants.

AFFIDAVIT IN SUPPORT OF POSITION URGING COURT TO STAY IMPLEMENTATION OF ORDER PENDING APPEAL

STATE OF WISCONSIN)
) ss.
ONEIDA COUNTY)

The undersigned, being first duly sworn, states as follows:

1. I am the Human Resources Director for the County of Oneida, Wisconsin, a municipal employer subject to Wis. Stat. § 111.70, and make this affidavit in support of the request that the Court stay implementation of its September 14, 2012, Order declaring certain statutes enacted pursuant to 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 unconstitutional and void ("Order.")

2. Prior to Act 10, Oneida County had entered into collective bargaining agreements with several unions representing Oneida County general municipal employees and these

agreements covered a myriad of topics surrounding wages, hours and conditions of employment. Since expiration of those agreements following the effective dates of Acts 10 and 32, Oneida County has implemented the changes mandated by Acts 10 and 32.

3. There is significant uncertainty surrounding the scope of a municipal employer's duty to bargain following the Court's Order. Specifically, it is unclear whether a municipal employer will be required to return to the "status quo" of wages, hours and conditions of employment that existed prior to the expiration date of the collective bargaining agreements last in effect preceding the effective dates of Acts 10 and 32. Moreover, if it is determined that a municipal employer must return to the "status quo" that existed prior to the effective dates of Acts 10 and 32, it is unclear whether a municipal employer must make general municipal employees whole for any loss in wages, hours or conditions of employment, or part thereof, for the time period from the effective dates of Acts 10 and 32 to present.

4. Your affiant recently received correspondence from the AFSCME bargaining agent representing Local Unions 79 and 79-B. In that correspondence, the bargaining agent indicated that the Court's Order "removed the prohibition on municipal employers from collectively bargaining with general employee unions on anything but base wages." In addition, the correspondence states: "per *MTI v. Walker*, the union requests restoration of the dynamic status quo per the expired collective bargaining agreement." A copy of the correspondence referenced in this paragraph is attached hereto and labeled Exhibit A.

5. Oneida County, like all Wisconsin counties, is subject to limitations on the amount of money that it may raise through property taxation – commonly referred to as "levy limits." Act 32 makes levy limits on local governments permanent (previous levy limits had sunset dates). Act 32 sets the levy limit for 2011(12) and 2012(13) at 0 percent or the percentage

increase in valuation due to net new construction, whichever is higher. The allowable base for each year will be based on the prior year's actual levy, with a provision established to allow counties to carry forward some allowable levy from the prior year; the carry-forward may increase the levy by no more than 0.5% and utilizing the carry-forward would require an affirmative supermajority vote by three-quarters of the county board. For debt issued prior to July 1, 2005, the allowable levy must also be reduced to reflect any reductions in debt service payments; however, this reduction need not be made if a county does not utilize the carry-forward provision of unused levy capacity described herein.

6. Oneida County, also like all other Wisconsin counties, saw a significant decrease (25%) in the amount of revenue received from the State of Wisconsin, commonly referred to as "shared revenue," by virtue of Act 32.

7. Despite Oneida County's inability to raise additional funds through taxes and the reduction in shared revenue, Oneida County's costs of operation continue to rise given normal inflationary pressures and enhanced demand for services.

8. Through implementation of the measures mandated by Acts 10 and 32, Oneida County has saved approximately $650,000 and has otherwise been able to create a balanced, and fiscally responsible, budget even with the levy limits and cuts to shared revenue.

9. If the Court's Order is interpreted to require either that Oneida County make its general municipal employees whole for any monetary loss an employee suffered, as AFSCME has requested, or that Oneida County must return to the "status quo" under previous collective bargaining agreements, all of the savings generated through Acts 10 and 32 would be lost. In addition, going forward, Oneida County would begin its budgeting process with a significant structural deficit depending upon the interpretation and application of the Court's Order.

10. All of the uncertainty regarding the interpretation and application of the Court's Order will likely take months to resolve. In the meantime, Oneida County will not be able to best manage its limited financial resources for the benefit of Oneida County citizens, taxpayers and employees.

11. Oneida County would benefit from the imposition of a stay pending appeal to promote certainty and consistency in its dealings with Oneida County employees. Moreover, a stay would promote sound public and fiscal policy by allowing Oneida County to adequately and sufficiently budget for the necessary and vital programs and services within the limited resources described herein.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 28th day of September, 2012.

Lisa Charbarneau

Subscribed and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin
My ~~commission~~ term expires: 1/7/2013

MARY BARTELT
COUNTY CLERK
ONEIDA CO. WI

Wisconsin Council 40 AFSCME
We Make Communities Happen

September 21, 2012

Ms. Lisa Charbarneau
Oneida County Human Resources Director
P.O. Box 400
Rhinelander, WI 54501

Please reply to:
John Spiegelhoff
Staff Representative
1105 E. 9th Street
Merrill, WI 54452
jspiegelhoff@afscme40.org

RE: NOTICE OF INTENT: AFSCME LOCALS 79 & 79-B

Dear Ms. Charbarneau:

On Friday September 14, 2011, Judge Colás issued his decision in *Madison Teachers, Inc., et al. v. Walker, et al.* (Case No. 11CV3774). Madison Teachers, Inc. challenged the constitutionality of the statutory changes made by 2011 Wisconsin Acts 10 and 32. In finding certain provisions of Act 10 unconstitutional, Judge Colás removed the prohibition on municipal employers from collectively bargaining with general employee unions on anything but base wage increases. In addition, the Court found the prohibition on payroll dues deduction, the limitation of fair share to exclude general employees, and the imposed annual certification elections null and void.

Given the above, please be advised that AFSCME Locals 79 & 79-B, is hereby providing notice that it desires to commence bargaining on a successor agreement to become effective 1/1/12. Accordingly, we also request that Oneida County suspend activities regarding any modifications to existing wage and benefit structures, pending judicial clarification. In addition, and per *MTI v Walker*, the union requests restoration of the dynamic status quo per the expired collective bargaining agreement.

AFSCME leadership and membership in Oneida County appreciate the fiscal and organizational concerns confronting employers due to Act 10 and this Court decision. We are committed to working through these challenges with the Oneida County Board and its representatives, in a cooperative and responsible manner.

Please contact me at your earliest convenience to schedule a date to meet and exchange proposals.

Thank you in advance for your attention to this matter.

Sincerely,

John Spiegelhoff
Staff Representative
AFSCME Wisconsin Council 40

Cc: Julie Allen-President Local 79-B
Lance Johns-President Local 79

Sent Electronically and Via US Mail

EXHIBIT
tabbies
A

STATE OF WISCONSIN | CIRCUIT COURT Branch 10 | DANE COUNTY

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
And JOHN WEIGMAN,

Plaintiffs,

v. Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN and
RODNEY G. PASCH,

Defendants.

AFFIDAVIT IN SUPPORT OF POSITION URGING COURT TO STAY IMPLEMENTATION OF ORDER PENDING APPEAL

STATE OF WISCONSIN)
) ss.
DOUGLAS COUNTY)

The undersigned, being first duly sworn, states as follows:

1. I am the Administrator for the County of Douglas, Wisconsin, a municipal employer subject to Wis. Stat. § 111.70, and make this affidavit in support of the request that the Court stay implementation of its September 14, 2012, Order declaring certain statutes enacted pursuant to 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 unconstitutional and void ("Order.")

2. Prior to Act 10, Douglas County had entered into collective bargaining agreements with several unions representing Douglas County general municipal employees and

these agreements covered a myriad of topics surrounding wages, hours and conditions of employment. Since expiration of those agreements following the effective dates of Acts 10 and 32, Douglas County has implemented the changes mandated by Acts 10 and 32.

3. There is significant uncertainty surrounding the scope of a municipal employer's duty to bargain following the Court's Order. Specifically, it is unclear whether a municipal employer will be required to return to the "status quo" of wages, hours and conditions of employment that existed prior to the expiration date of the collective bargaining agreements last in effect preceding the effective dates of Acts 10 and 32. Moreover, if it is determined that a municipal employer must return to the "status quo" that existed prior to the effective dates of Acts 10 and 32, it is unclear whether a municipal employer must make general municipal employees whole for any loss in wages, hours or conditions of employment, or part thereof, for the time period from the effective dates of Acts 10 and 32 to present.

4. Recently, your affiant received correspondence from the AFSCME bargaining agent that formerly represented employees in the Buildings & Grounds/Forestry, Communications Center, and Courthouse Paraprofessionals, Local 385, AFSCME, AFL-CIO, and Douglas County Child Support Investigators, Health and Human Services Professionals, and Public Health RNs, Local 2375, requesting that Douglas County reopen negotiations for a successor collective bargaining agreement for each of the units. The correspondence requests bargaining on all matters in the expired agreements. Notably, neither of these bargaining units recertified under the provisions of Wis. Stat. § 111.70 modified through Act 10 and, therefore, there is no indication that the bargaining representative has the legal authority, or practical ability, to negotiate on behalf of all of the employees within the purported bargaining units. A copy of the correspondence referenced in this paragraph is attached hereto and labeled Exhibit A.

5. Your affiant also received correspondence from the Teamsters bargaining agent representing Local Union No. 346. This particular unit recertified and is authorized to bargain on behalf of the employees within that bargaining unit. As set forth in the correspondence, Teamsters intends to negotiate modifications in "wage rates, pensions, health and welfare, vacations and so forth." A copy of this correspondence is attached hereto and labeled Exhibit B. Teamsters sent your affiant another letter on behalf of Local Union 346 indicating that because of the Court's Order, "Local 346 takes the position that our Contract is in full force and effect as it was prior to Act 10 and 32 taking effect." A copy of this correspondence is attached hereto and labeled Exhibit C.

6. Douglas County, like all Wisconsin counties, is subject to limitations on the amount of money that it may raise through property taxation - commonly referred to as "levy limits." Act 32 makes levy limits on local governments permanent (previous levy limits had sunset dates). Act 32 sets the levy limit for 2011(12) and 2012(13) at 0 percent or the percentage increase in valuation due to net new construction, whichever is higher. The allowable base for each year will be based on the prior year's actual levy, with a provision established to allow counties to carry forward some allowable levy from the prior year; the carry-forward may increase the levy by no more than 0.5% and utilizing the carry-forward would require an affirmative supermajority vote by three-quarters of the county board. For debt issued prior to July 1, 2005, the allowable levy must also be reduced to reflect any reductions in debt service payments; however, this reduction need not be made if a county does not utilize the carry-forward provision of unused levy capacity described herein.

7. Douglas County, also like all other Wisconsin counties, saw a significant decrease in the amount of revenue received from the State of Wisconsin, commonly referred to as "shared

revenue," by virtue of Act 32. According to the Wisconsin Department of Revenue, Douglas County's decrease in shared revenue from 2011 to 2012 is estimated at approximately $387,526, representing a 15.35% decrease.

8. Despite Douglas County's inability to raise additional funds through taxes and the reduction in shared revenue, Douglas County's costs of operation continue to rise given normal inflationary pressures and enhanced demand for services.

9. Through implementation of the measures mandated by Acts 10 and 32, Douglas County has saved significant sums and has otherwise been able to create a balanced, and fiscally responsible, budget even with the levy limits and cuts to shared revenue.

10. If the Court's Order is interpreted to require either that Douglas County make its general municipal employees whole for any monetary loss an employee suffered or that Douglas County must return to the "status quo" under previous collective bargaining agreements, all of the savings generated through Acts 10 and 32 would be lost. In addition, going forward, Douglas County would begin its budgeting process with a significant structural deficit depending upon the interpretation and application of the Court's Order.

11. All of the uncertainty regarding the interpretation and application of the Court's Order will likely take months to resolve. In the meantime, Douglas County will not be able to best manage its limited financial resources for the benefit of Douglas County citizens, taxpayers and employees.

12. Douglas County would benefit from the imposition of a stay pending appeal to promote certainty and consistency in its dealings with Douglas County employees. Moreover, a stay would promote sound public and fiscal policy by allowing Douglas County to adequately

and sufficiently budget for the necessary and vital programs and services within the limited resources described herein.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 28th day of September, 2012.

Andrew Lisak

Subscribed and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin
My commission expires: 11/17/2013

Exhibit A

Sent Electronically and Via US Mail
September 27, 2012

Andy Lisak
County Administrator
Douglas County
1316 North 14th Street, Room 301
Superior, WI 54880
andy.lisak@douglascountywi.org

RE: NOTICE OF INTENT: AFSCME LOCALS 385 and 2375

Dear Mr. Lisak,

On Friday September 14, 2011, Judge Colás issued his decision in *Madison Teachers, Inc., et al. v. Walker, et al.* (Case No. 11CV3774). Madison Teachers, Inc. challenged the constitutionality of the statutory changes made by 2011 Wisconsin Acts 10 and 32. In finding certain provisions of Act 10 unconstitutional, Judge Colás removed the prohibition on municipal employers from collectively bargaining with general employee unions on anything but base wage increases. In addition, the Court found the prohibition on payroll dues deduction, the limitation of fair share to exclude general employees, and the imposed annual certification elections null and void.

Given the above, please be advised that Douglas County Buildings & Grounds/Forestry, Communications Center, and Courthouse Paraprofessionals, Local 385, AFSCME, AFL-CIO, and Douglas County Child Support Investigators, Health and Human Services Professionals, and Public Health RNs, Local 2375, are hereby providing notice that they desire to commence bargaining on a successor agreement to become effective 1/2/2012. Accordingly, we also request that Douglas County suspend activities regarding any modifications to existing wage and benefit structures, pending judicial clarification. In addition, and per *MTI v Walker*, the union requests restoration of the dynamic status quo per the expired collective bargaining agreement.

AFSCME leadership and membership in Douglas County appreciate the fiscal and organizational concerns confronting employers due to Act 10 and this Court decision. We are committed to working through these challenges with the Board, and its representatives, in a cooperative and responsible manner.

Please contact me at your earliest convenience to schedule a date to meet and exchange proposals.

Thank you in advance for your attention to this matter.

Lance Nelsen, Staff Representative
AFSCME Council 40
2408 Maryland Avenue
Superior, Wisconsin 54880
(715) 450-5404
lnelsen@afscme40.org

Exhibit B

TEAMSTERS GENERAL LOCAL UNION No. 346

Affiliated with the International Brotherhood of Teamsters

2802 West First Street • Duluth, MN 55806
218/628-1034 • Fax: 218/628-0246
Email: teaml346@qwest.net

Mailing Address:
P.O. Box 16208
Duluth, MN 55816-0208

September 17, 2012
SENT VIA CERTIFIED MAIL

Douglas County Highway Department
1315 N 14th Street, Suite 301
Superior, WI 54880

Re: Contract Opening

To Whom It May Concern:

This is to notify you that Teamsters General Local Union No. 346 does hereby open the Working Agreement in effect between said Union and your Company, for the purpose of negotiating modifications in wage rates, pensions, health and welfare, vacations and so forth.

This notice is in compliance with said Agreement and modifications agreed upon are to be effective January 1 2013.

Please notify the Union who will be your representative for the purpose of negotiating the modifications.

Very truly yours,

TEAMSTERS GENERAL LOCAL UNION NO. 346

Patrick Radzak
Secretary-Treasurer

PR:jl

Certified Mail R/R/R #7011 0110 0000 8569 9794

Buy American

EX 1617 C

TEAMSTERS GENERAL LOCAL UNION No. 346

Affiliated with the International Brotherhood of Teamsters

2802 West First Street • Duluth, MN 55806
218/628-1034 • Fax: 218/628-0246
Email: teamL346@qwest.net

Mailing Address
P.O. Box 16208
Duluth, MN 55816-0208

September 25, 2012

Andy Lisak, County Administrator
Douglas County
1316 N 14th Street, Suite 301
Superior WI 54880

Re: Act 10 and 32

Dear Mr. Lisak:

As you are aware, Dane County Judge Juan B. Colos' decision vacated Act 10 and 32 and found them to be unconstitutional and therefore void and without effect.

Therefore, Local 346 takes the position that our Contract is in full force and effect as it was prior to Act 10 and 32 taking effect.

With all that being said, Local 346 requests that we schedule a meeting to begin immediate bargaining.

Yours truly,

TEAMSTERS GENERAL LOCAL 346

David LaBorde
Vice President

DL:gp

cc: Craig Plummer; Tiffany Jenner; Timothy Andrew, Attorney

Buy American

STATE OF WISCONSIN | CIRCUIT COURT Branch 10 | DANE COUNTY

MADISON TEACHERS, INC.,
PEGGY COYNE,
PUBLIC EMPLOYEES LOCAL 61, AFL-CIO
And JOHN WEIGMAN,

Plaintiffs,

v.

Case No. 11CV3774

SCOTT WALKER,
JAMES R. SCOTT,
JUDITH NEUMANN and
RODNEY G. PASCH,

Defendants.

AFFIDAVIT IN SUPPORT OF POSITION URGING COURT TO STAY IMPLEMENTATION OF ORDER PENDING APPEAL

STATE OF WISCONSIN)
) ss.
BROWN COUNTY)

The undersigned, being first duly sworn, states as follows:

1. I am the Director of Administration for the County of Brown, Wisconsin, a municipal employer subject to Wis. Stat. § 111.70, and make this affidavit in support of the request that the Court stay implementation of its September 14, 2012, Order declaring certain statutes enacted pursuant to 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 unconstitutional and void ("Order.")

2. Prior to Act 10, Brown County had entered into collective bargaining agreements with several unions representing Brown County general municipal employees and these agreements covered a myriad of topics surrounding wages, hours and conditions of employment.

Since expiration of those agreements following the effective dates of Acts 10 and 32, Brown County has implemented the changes mandated by Acts 10 and 32.

3. There is significant uncertainty surrounding the scope of a municipal employer's duty to bargain following the Court's Order. Specifically, it is unclear whether a municipal employer will be required to return to the "status quo" of wages, hours and conditions of employment that existed prior to the expiration date of the collective bargaining agreements last in effect preceding the effective dates of Acts 10 and 32. Moreover, if it is determined that a municipal employer must return to the "status quo" that existed prior to the effective dates of Acts 10 and 32, it is unclear whether a municipal employer must make general municipal employees whole for any loss in wages, hours or conditions of employment, or part thereof, for the time period from the effective dates of Acts 10 and 32 to present.

4. Your affiant, through our Human Resources Department, recently received correspondence from the Teamsters bargaining agent representing several bargaining units consisting of Brown County general municipal employees. In that correspondence, the bargaining agent indicated that the units was refusing to execute base wage bargaining agreements already ratified by the parties and characterized those agreements as "illegal." Moreover, the bargaining agent "demanded" that "the County restore all contractual provisions in place prior to initiation of Act 10 retroactively, thereby making all references *(sic)* employees whole for lost wages, benefits and other contractual benefits afforded them under the Agreements." Finally, the bargaining agent attempts to order that the "County cease and desist in its efforts to eliminate Airport Utility workers and subcontract our work." A copy of the correspondence referenced in this paragraph is attached hereto and labeled Exhibit A.

5. Brown County, like all Wisconsin counties, is subject to limitations on the amount of money that it may raise through property taxation – commonly referred to as "levy limits." Act 32 makes levy limits on local governments permanent (previous levy limits had sunset dates). Act 32 sets the levy limit for 2011(12) and 2012(13) at 0 percent or the percentage increase in valuation due to net new construction, whichever is higher. The allowable base for each year will be based on the prior year's actual levy, with a provision established to allow counties to carry forward some allowable levy from the prior year; the carry-forward may increase the levy by no more than 0.5% and utilizing the carry-forward would require an affirmative supermajority vote by three-quarters of the county board. For debt issued prior to July 1, 2005, the allowable levy must also be reduced to reflect any reductions in debt service payments; however, this reduction need not be made if a county does not utilize the carry-forward provision of unused levy capacity described herein.

6. Brown County, also like all other Wisconsin counties, saw a significant decrease in the amount of revenue received from the State of Wisconsin, commonly referred to as "shared revenue," by virtue of Act 32. According to the Wisconsin Department of Revenue, Brown County's decrease in shared revenue from 2011 to 2012 is estimated at approximately $883,506, representing a 25% decrease.

7. Despite Brown County's inability to raise additional funds through taxes and the reduction in shared revenue, Brown County's costs of operation continue to rise given normal inflationary pressures and enhanced demand for services.

8. Through implementation of the measures mandated by Acts 10 and 32, Brown County has saved significant sums and has otherwise been able to create a balanced, and fiscally responsible, budget even with the levy limits and cuts to shared revenue.

9. If the Court's Order is interpreted to require either that Brown County make its general municipal employees whole for any monetary loss an employee suffered or that Brown County must return to the "status quo" under previous collective bargaining agreements, as the Teamsters has demanded, all of the savings generated through Acts 10 and 32 would be lost. In addition, going forward, Brown County would begin its budgeting process with a significant structural deficit depending upon the interpretation and application of the Court's Order.

10. All of the uncertainty regarding the interpretation and application of the Court's Order will likely take months to resolve. In the meantime, Brown County will not be able to best manage its limited financial resources for the benefit of Brown County citizens, taxpayers and employees.

11. Brown County would benefit from the imposition of a stay pending appeal to promote certainty and consistency in its dealings with Brown County employees. Moreover, a stay would promote sound public and fiscal policy by allowing Brown County to adequately and sufficiently budget for the necessary and vital programs and services within the limited resources described herein.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 28th day of September, 2012.

Brent Miller

Subscribed and sworn to before me
this 28th day of September, 2012.

Notary Public, State of Wisconsin
My commission expires: 7-19-2015

SUSAN M GOTTFRIED
Notary Public
State of Wisconsin

GENERAL TEAMSTERS UNION LOCAL 662

Affiliated with the International Brotherhood of Teamsters, and Wisconsin Teamsters Joint Council No. 39

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September 18, 2012

Lynn Vanden Landenberg
Interim Human Resources Manager
P O Box 23600
305 E Walnut Street
Green Bay, WI 54305-3600

RE: 2012 Agreements

Ms. Vanden Langenberg:

I am in receipt of your request dated September 14, 2012 to sign and return Agreements for Austin Straubel Airport; Corrections Officers, Highway, now known as Department of Public Works and Neville, Museum Employees.

In light of the recent circuit court ruling determining Act 10 unconstitutional, I decline to enter into these illegal agreements.

I demand that Brown County enter into contract negotiations for those units referenced above, as well as Courthouse employees, including Tele communicators and Judicial Assistants.

Further, that the County cease and desist in its efforts to eliminate Airport Utility workers and sub-contract our work.

Finally, I demand that the County restore all contractual provisions in place prior to initiation of Act 10 retroactively, thereby making all references employees whole for lost wages, benefits and other contractual benefits afforded them under the Agreements.

Thank you in advance for your anticipated attention and cooperation.

Yours truly,

Beth Kirchman
Business Representative/ms

CC: Tom Burke
Val Kaepernick
Greg Engles
Louise Pfotenhaurer
Bonnie Defnet
Diane Perry
Heather Tiedke
Tim Hopp

EXHIBIT
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A