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September 28, 2012

BY HAND DELIVERY

Carlo Esqueda, Clerk
Dane County Courthouse
215 South Hamilton Street
Madison, WI 53703-3285

Re: *Madison Teachers, Inc., et al. v. Scott Walker, et al.*
Case No. 2011-CV-3774

Dear Mr. Esqueda:

Enclosed for filing in the above-referenced case please find an original and one copy of Plaintiffs' Motion for Amendment of Judgment. Please file the original and return the file-stamped copy to our messenger.

By copy of this letter, all counsel of record are being served by e-mail and U.S. Mail with the aforementioned documents.

Thank you for your assistance with this matter.

Sincerely,

CULLEN WESTON PINES & BACH LLP



Susan M. Crawford

SMC:hmm
Enclosures

cc: AAG Steven C. Kilpatrick
Joseph Olson
Michael Screnock
M. Nicol Padway
John Weigman (by U.S. Mail only)
Madison Teachers Inc.
Peggy Coyne (by U.S. Mail only)
Thomas C. Kamenick
Richard M. Esenberg
Milton L. Chappell
Bruce N. Cameron
Michael May

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

Plaintiffs,

v.

CASE NO.: 2011CV003774
CASE CODE: 30701

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

Defendants.

PLAINTIFFS' MOTION FOR AMENDMENT OF JUDGMENT

Plaintiffs Madison Teachers, Inc. and Peggy Coyne, by Cullen Weston Pines & Bach LLP, their attorneys; and Plaintiffs Public Employees Local 61, AFL-CIO and John Weigman, by Padway & Padway, Ltd., their attorneys, hereby respectfully move the court, pursuant to Wis. Stat. § 806.07(1)(h), to amend its September 14, 2012 final Decision and Order ("Decision") by adding Wis. Stat. §111.70(2), in relevant part, to the list of statutory provisions declared null and void.

As grounds for this motion, the Plaintiffs respectfully represent that:

1. The circuit court has broad discretionary powers under Wis. Stat. §806.07(1)(h) and may grant relief upon a showing of "[a]ny other reason [] justifying

relief from the operation of the judgment.” *Dietrich v. Elliott*, 190 Wis. 2d 816, 822-23 (1995).

2. “Under §806.07(1)(h), the court is permitted to correct erroneous conclusions of law and to address issues not properly dealt with under the original judgment.” *Id.*

3. The circuit court may act under Wis. Stat. §806.07 while an appeal of the action is pending. Wis. Stat. § 808.075(1).

4. In its decision, the court described the alleged burdens to Plaintiffs’ associational rights as including the prohibition on employers “entering into a ‘fair share’ agreement” and cited Wis. Stat. §111.70(2) (Decision at pp. 11-12). It went on to discuss the parties’ arguments on the alleged associational burdens imposed by those statutes and concluded that “the statutes do impose burdens on employees’ exercise of [speech and associational] rights,” specifically ruling that “[t]he prohibition on fair share agreements means that employees in a bargaining unit who join the union that bargains collectively for them are required to bear the full costs of collective bargaining for the entire bargaining unit, including employees in the unit who do not belong to the union but receive the benefits of the bargaining” (Decision at pp. 15-16).

5. In the portion of the decision captioned “Order,” however, the court “declared that Wis. Stat. §§ 66.0506, 118.245, **111.70(1)(f)**, 111.70 (3g), 111.70 (4)(mb), and 111.70 (4)(d)(3) violate the Wisconsin Constitution and the United States Constitution and all are null and void” (Decision at p. 27, emphasis added).

6. Wis. Stat. §111.70(1)(f) defines “Fair-share agreement” as:

[A]n agreement between a municipal employer and a labor organization that represents public safety employees or transit employees under which all or any of the public safety employees or transit employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members.

7. Wis. Stat. §111.70(2) provides, in relevant part (emphasis added):

A general municipal employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit. A public safety employee or a transit employee, however, may be required to pay dues in the manner provided in a fair-share agreement....

8. The Plaintiffs believe that the omission of Wis. Stat. §111.70(2), in relevant part, from the list of provisions declared unconstitutional, null and void by the decision was an oversight, in light of the court’s citation of Wis. Stat. §111.70(2) among the provisions imposing unconstitutional burdens on Plaintiffs’ speech and associational rights.

9. The State has acknowledged that the effect of the court’s decision and order is unclear with respect to the provisions eliminating fair share agreements for general municipal employees, stating: “The Court left unaltered Wis. Stat. § 111.70(2), which gives employees’ the right to refrain from paying dues while remaining a member of a collective bargaining unit,’ so the unions’ ability to force nonmembers to pay dues is uncertain.” (Defendants’ Brief in Support of Motion for Stay, p. 14, n. 2).

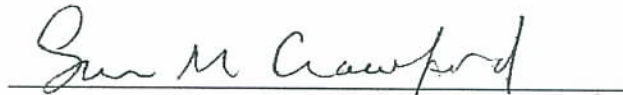
10. Amending the September 14, 2012 decision and order by adding Wis. Stat. §111.70(2), in relevant part, to the list of provisions declared unconstitutional, null and

void will resolve any ambiguity regarding the court's intent to declare unconstitutional the provisions prohibiting fair share agreements between municipal employers and the representatives of general municipal employees.

Dated this 28th day of September, 2012.

Respectfully submitted,

CULLEN WESTON PINES & BACH LLP



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