

STATE OF WISCONSIN

MILWAUKEE COUNTY  
Branch 22

CIRCUIT COURT

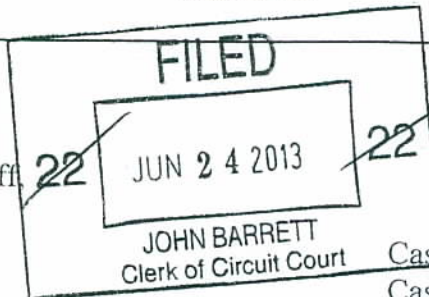
VICTORIA MARONE,

Plaintiff

v.

MILWAUKEE AREA TECHNICAL  
COLLEGE DISTRICT,  
700 West State Street  
Milwaukee, WI 53233,

Defendant.



Case no. 13-CV-4154  
Case code 30701

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**BRIEF IN SUPPORT OF THE MOTION TO INTERVENE AS DEFENDANT OF  
AMERICAN FEDERATION OF TEACHERS, LOCAL 212, WFT, AFL-CIO**

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The American Federation of Teachers, Local 212, WFT, AFL-CIO (Local 212) submits this brief in support of its motion to intervene as a defendant in the above-named action, pursuant to Wis. Stat. §§803.09(1) and (2).

**I. The Proposed Intervenor-Defendant Satisfies the Four-Part Test for Intervention as Matter of Right, Pursuant to Wis. Stat. §803.09(1).**

Pursuant to Wis. Stat. §803.09(1), the proposed intervenor must satisfy a four-part test showing: (1) an interest relating to the subject of the action; (2) that the disposition of the action may as a practical matter impair or impede the movant's ability to protect its interests; (3) that the movant's interest will not be adequately represented by existing parties to the action; and (4) that the motion to intervene was made in a timely fashion. *M&I Marshall & Ilsley Bank v. Urquhart Companies*, 2005 WI App 225, ¶7, 287 Wis. 2d 623, 631, 706 N.W.2d 335, 339.

According to the Supreme Court “the criteria need not be analyzed in isolation from one another, and a movant’s strong showing with respect to one requirement may contribute to the movant’s ability to meet other requirements as well.” *Helgeland v Wisconsin Municipalities*, 2008 WI 9, ¶39, 307 Wis. 2d at 21-22, 745 N.W.2d at 10 (footnotes omitted). This promotes a “flexible and pragmatic” approach to allowing intervention. *Id.* at ¶40 n. 30.

**A. As Party to the Collective Bargaining Agreements Which Plaintiff Seeks to Invalidate, Movant Has A Direct and Legally-Protectable Interest in this Litigation.**

Proposed intervenor-defendant Local 212 is a labor organization representing certain employees of defendant MATC and is a party to the collective bargaining agreements with MATC which plaintiff seeks to invalidate. Local 212 therefore has an interest in this litigation which is fundamental to its performance of its statutory role, pursuant to the Municipal Labor Relations Act (MERA) Wis. Stat. §111.70 *et seq.*, as the certified, exclusive collective bargaining representatives of the employees in the bargaining units that are subject to the labor agreements.

The Supreme Court has promoted a broad, “pragmatic approach to intervention as of right,” directing that “the court should view the interest sufficient to allow the intervention practically rather than technically.” *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 548, 334 N.W.2d 252, 257 (1983) (citation omitted). Courts generally view the interest test as “primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Id.* at 548-549, 334 N.W.2d 257 (citation omitted).

Local 212's interest is unlike that of an intervenor who is "an outside entity" with "only generalized claims." *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶¶6, 7, 307 Wis. 2d 1, 10, 745 N.W.2d 1, 5. As party to the collective bargaining agreements which plaintiff seeks to invalidate, movant's interests are hardly remote or tangential. Its interests are unique in that it has a direct stake in the outcome as party to the contracts and as the collective bargaining representative of employees for whom they are bound by statute to negotiate with the defendant employer over wages, hours and working conditions.

**B. Disposition of This Action May Impede or Impair Movant's Interests.**

Plaintiff seeks to nullify the collective bargaining agreements lawfully entered into by Local 212 and MATC. Local 212 has no independent remedy outside this litigation. Its interest in this litigation is inseparable from, fundamental to, and can be extinguished by issuance of the declaration sought by plaintiff. If Local 212 is not afforded an opportunity to participate as a defendant in this litigation and plaintiff is successful in achieving the remedy sought, movant's ability to effectuate its interests in enforcement of the collective bargaining agreements will be extinguished.

**C. Movant's Interests Are Not Adequately Represented by the Parties.**

Whether the existing parties adequately represent movant's interests, the Court of Appeals has determined that:

The inadequacy of representation by existing parties is satisfied "if the applicant shows that the representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."

*M&I Marshall & Ilsley Bank, Id.* at ¶18, 287 Wis. 2d at 637, 706 N.W.2d at 342 (quoting *Wolff*,



229 Wis. 2d at 747, 601 N.W.2d 301); *Armada Broadcasting, Inc. v. Stirn*, 183 Wis. 2d 463, 476, 516 N.W.2d 357, 361-362 (1994).

MATC can surely adequately defend its statutory role and its interest as the employer. However, only Local 212 itself can adequately protect its interests and those of its members, thereby furthering its duties and responsibilities as the duly-certified and statutorily-approved bargaining representatives of the three bargaining units at issue.

**D. The Motion is Timely.**

The complaint was filed on filed May 2, 2013. Local 212 has moved to intervene promptly and without undue delay, following the filing of defendant's responsive pleading on May 28, 2013. As this Court has not yet conducted any proceedings in this matter, and the Court has scheduled its first calendar call on July 11, 2013, there should be no concern that the motion to intervene is untimely.

**II. In the Alternative, Movants Should Be Permitted to Intervene, Pursuant to Wis. Stat. §803.09(2).**

Permissive intervention requires only that the proposed intervenor merely be a proper party. *City of Madison v. WERC*, 2000 WI 39, ¶11 n.11, 234 Wis. 2d 550, 610 N.W.2d 94. As party to the collective bargaining agreements which plaintiff seeks to invalidate, Local 212 is certainly a proper party in this litigation. All of the arguments favoring its right to intervene under Wis. Stat. §803.09(1), and discussed above, also favor allowing the movant to proceed as permissive intervenor-defendant. Moreover, granting Local 212 leave to intervene at this very preliminary stage in this litigation will neither delay nor adversely affect the rights of the parties.


### Conclusion

On the basis of all of the above, proposed intervenor-defendant American Federation of Teachers, Local 212, WFT, AFL-CIO respectfully requests that the Court grant its motion to intervene, pursuant to Wis. Stat. §§803.09(1) and (2), and accept for filing its proposed Answer.

Respectfully submitted,

June 24, 2013

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