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DATE: December 9, 2013

TO: Honorable David M. Bastianelli

FAX: 262-653-2676

FROM: JoAnn M. Hart

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TOTAL NUMBER OF PAGES (including this one): 17
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Message:

Re: ***Kristi LaCroix, et al. v. Kenosha Unified School District Board of Education, et al.***
Case No. 123-CV-1899

Dear Judge Bastianelli:

Please see the attached regarding the referenced matter.

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JoAnn M. Hart, Attorney

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VIA FACSIMILE

December 9, 2013

Ms. Rebecca Matoska-Mentink
Kenosha County Circuit Court Clerk
912 56th Street
Kenosha, WI 53140

RE: *Kristi LaCroix, et al. v. Kenosha Unified School District Board of Education, et al.*
Case No. 123-CV-1899

Dear Ms. Matoska-Mentink:

Enclosed for filing please find Defendants' Brief in Opposition to Plaintiffs' Motion for a Temporary Injunction in the referenced matter. The Second Affidavit of Sheronda Glass, referenced in the brief, will be delivered to the court at the time of the hearing scheduled for Tuesday, December 10, 2013 at 3:00 p.m.

Thank you for your attention to this matter.

Very truly yours,

BOARDMAN & CLARK LLP

JoAnn M. Hart

Enclosure

cc: Attorney Richard M. Esenberg
Attorney Lester Pines

DER:bas

STATE OF WISCONSIN **CIRCUIT COURT** **KENOSHA COUNTY**

KRISTI LACROIX and
CARRIEANN GLEMBOCKI,

Plaintiff,

Case No.: 13-CV-1899

v.

KENOSHA UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION, KENOSHA UNIFIED
SCHOOL DISTRICT and KENOSHA EDUCATION
ASSOCIATION BUILDING CORPORATION,
d/b/a KENOSHA EDUCATION ASSOCIATION,

Defendants.

DEFENDANTS KENOSHA UNIFIED SCHOOL DISTRICT AND KENOSHA UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION

On November 15, 2013, the Kenosha Unified School District Board of Education ratified a collective bargaining agreement between the District and the Kenosha Education Association for Kenosha teachers. Plaintiffs Kristi Lacroix and Carrieann Glembocki have now filed a motion for a temporary injunction, seeking to enjoin the District from implementing the agreement pending the outcome of this case.

Plaintiffs' motion for a temporary injunction should be denied. As explained in detail below, plaintiffs cannot meet the requirements for issuing a temporary injunction.

FACTS[1]

The Kenosha Education Association (Association) has historically been the collective bargaining representative for Kenosha teachers, and the Kenosha Unified School District

[1] Because the Motion to Dismiss filed by Defendants Kenosha Unified School District and the Board of Education for the Kenosha Unified School District is pending, they rely upon the facts pleaded in the Complaint, the attachments thereto, and the public record for the limited purpose of this brief in opposition to Plaintiffs' Motion for a Temporary Injunction.

(District) and the Association have entered into collective bargaining agreements governing the terms and conditions of employment for those teachers. The agreement covering the period from July 1, 2011 through June 30, 2013 expired June 30, 2013. Ex. L to Complaint. The Association did not file a petition seeking a recertification election in 2013 as required by provisions of Act 10.

On September 14, 2012, the Honorable Juan Colás of the Circuit Court for Dane County entered an order holding parts of Act 10 to be in violation of the Wisconsin and United States Constitutions, including the limitations on the scope of bargaining, prohibitions on payment of "fair share" contributions and payroll deductions for union dues, and requirement of annual recertification election. *Madison Teachers, Inc. v. Walker*, Dane County Circuit Court No. 11CV3774. On October 21, 2013, in response to a motion filed by the Association and other entities, Judge Colás ruled that the WERC commissioners were in contempt for implementing Act 10 against entities that had not been parties to the *Madison Teachers* case, including the Kenosha Education Association. On October 21, 2013, in compliance with Judge Colás' ruling, the Chief Legal Counsel of the WERC advised the District that his prior communications indicating that a decertification petition for the Association would be forthcoming, were withdrawn. The District publicly acknowledged receipt of his email to that effect on October 21, 2013. See, Ex. E to Complaint, Kenosha News article dated October 21, p. 2.

On October 25, 2013, Judge Colás signed an order compelling the Commissioners to post language on the WERC website to "Inform the public that Wis. Adm. Code ECR 70.03 [the WERC Administrative Rule requiring certification elections] was enacted without lawful authority and was therefore void when enacted, has no legal effect, and will not be implemented or enforced as long as the Decision and Order of this Court dated September 14, 2012 remains in

effect. Further, that labor organizations are to be accorded the same status with respect to municipal employers that they would have had if [the WERC rule] had not been adopted." The order also required the Commissioners to "[i]mmediately inform the Kenosha Unified School District (KUSD) that the prior communications from the Chief Legal Counsel of the WERC to KUSD with respect to the status of the Kenosha Education Association were in error and are withdrawn and affirmatively inform the KUSD that the Kenosha Education Association has the same status it would have had had ERC 70.03 not been enacted and had the withdrawn communications not been sent[.]" *Madison Teachers, Inc. v. Walker*, Dane County Circuit Court No. 11CV3774, October 25, 2013 Contempt Order, p. 2 (copy included in Plaintiffs' Appendix of Act 10 Cases filed with their Motion for a Temporary Injunction). As noted above, the Chief Legal Counsel of the WERC had already complied with that portion of the order as of October 21, 2013, notifying the District via email.

On October 22, 2013, the Kenosha Unified School District Board of Education held its regular monthly meeting. The agenda and public notice for the meeting included "discussion/action" on the employee handbook, which would have governed employee working conditions. At the meeting, a school board passed a motion to postpone action on the handbook and to begin bargaining with representative groups.

The Association and the Board met on the morning of November 8, 2013 and exchanged contract proposals. Ex. H to Complaint. Subsequently, on November 8, 2013, the District posted timely notice that the Board would hold a special meeting at 6 p.m. on Saturday, November 9, 2013, for the purpose of discussion and action on commencement of collective bargaining negotiations with collective bargaining representatives. Ex. I to the Complaint. The

District and the Association subsequently signed a tentative agreement on November 11, 2013. Ex. J to Complaint. The agreement was ratified on November 15, 2013.

ARGUMENT

I. STANDARDS FOR GRANTING A TEMPORARY INJUNCTION.

The rigorous standards for granting or denying a request for a temporary injunction are set forth in *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 519, 520, 259 N.W.2d 310 (1977):

> Injunctions, whether temporary or permanent, are not to be issued lightly. The cause must be substantial. A temporary injunction is not to be issued unless the movant has shown a reasonable probability of ultimate success on the merits. Temporary injunctions are to be issued only when necessary to preserve the status quo. Injunctions are not to be issued without a showing of a lack of adequate remedy at law and irreparable harm, but at the temporary injunction stage the requirement of irreparable injury is met by a showing that, without it to preserve the status quo pendente lite, the permanent injunction sought would be rendered futile.

In addition, Plaintiffs must show that the balance of harms between plaintiffs, defendants and other potentially affected persons favors an injunction. *Akin v. Kewaskum Community Schools*, 64 Wis. 2d 154, 162, 218 N.W. 2d 494 (1974) (holding that it was appropriate for trial court to consider potential harm to students in denying request for injunction against school district).

II. PLAINTIFFS DO NOT DEMONSTRATE A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.

Plaintiffs contend that the collective bargaining agreement between the District and Kenosha Education Association is invalid because it violates various provisions of Act 10, Wisconsin's antitrust laws and Wisconsin's Open Meetings Law. Plaintiffs do not have a reasonable likelihood of success on the merits of any of these claims for three reasons. First, plaintiffs have failed to join the Kenosha Education Association, a necessary party under Wis. Stat. § 803.03(1)(b). (See Motion to Dismiss filed by co-defendant Kenosha Education Association Building Corp.). Second, neither plaintiff has standing to bring this challenge, and

therefore has *no* probability of success on the merits. Third, plaintiffs cannot show that the District violated any law by collectively bargaining with the Kenosha Education Association.

A. Plaintiffs Lack Standing.

Neither plaintiff has established standing to sue for the claims raised in this action. "In order to have standing to sue, a party must have a personal stake in the outcome . . . and must be directly affected by the issues in controversy." *Village of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 8, 256 Wis. 2d 859, 650 N.W.2d 81. When a party does not claim that the action affects property they own, or is not able to show a "risk of pecuniary loss or substantial injury to themselves," then they do not have a personal stake in the outcome." *Lake Country Racquet & Athletic Club*, 2002 WI App 301, ¶ 23, 259 Wis. 2d 107, 655 N.W.2d 189.

Plaintiffs have not shown that the District's decision to collectively bargain or sign a collective bargaining agreement with the Kenosha Education Association has caused or may cause a "risk of pecuniary loss" or other "substantial injury" to themselves or their property. Plaintiff Glembocki has not alleged that she will be worse off in terms of her wages or working conditions as a result of the agreement. In fact, it is undisputed that the agreement will actually increase Glembocki's wages. Further, the District has stated that it will not collect fair share payments. (Second Aff. of Sheronda Glass). Thus, Glembocki will suffer no pecuniary loss in the form of mandatory fair share payments.

Plaintiffs argue that Glembocki has suffered injury by losing her First Amendment right not to be represented and to bargain individually with the District. However, as plaintiffs admit, the District was poised to adopt an employee handbook in the place of the expired collective bargaining agreement, to govern working conditions for teachers in the District, leaving Glembocki with no practical difference, and no irreparable harm.

Plaintiff Lacroix also lacks standing. She asserts standing based solely on her status as a taxpayer in Kenosha, but a taxpayer cannot challenge a government decision merely because she disagrees with the decisionmaking body. *Village of Slinger*, 2002 WI App 187, ¶ 10. Further, it is not enough to assert a pecuniary harm that would be the same as what every taxpayer in the District faces. Rather, the taxpayer 'must have sustained, or will sustain, some pecuniary loss before he or she has standing.'" *Id.* at ¶ 11. *See also Lake Country Racquet & Athletic Club*, 2002 WI App 301, ¶ 23, 259 Wis. 2d 107, 655 N.W.2d 189 ("simply registering its disagreement with legislative decisions of the Village . . . is insufficient to confer standing").

It is true, as plaintiffs argue, that taxpayers may have standing to challenge the illegal disbursement of public funds in some situations, *Hart v. Ament*, 176 Wis. 2d 694, 699, 500 N.W.2d 312, 314 (1993), but plaintiffs cannot rely on this principle because they cannot show that the District has or will disburse funds illegally. Plaintiffs' standing argument assumes that the District has violated the law, when, as discussed in detail below, the District has not. Plaintiffs' argument also incorrectly implies that the District would be prohibited from disbursing funds to teachers in the absence of the collective bargaining agreement. However, the District could have provided these very same payments to teachers in the absence of the collective bargaining agreement. The Board retains authority to decide what to spend the District's funds on. Plaintiffs' objection as to the <u>manner</u> in which the Board decided how to spend its funds (through collective bargaining) does not somehow create standing for the taxpayer plaintiff.

B. <u>Plaintiffs Cannot Show A Reasonable Probability of Success on the Merits of Their Claims that the District Violated Act 10 by Bargaining with the Kenosha Education Association and by Entering into a Collective Bargaining Agreement that Covers Various Subjects</u>.

Plaintiffs' Act 10 arguments assume improperly that Judge Colás' September 14, 2012 decision in *Madison Teachers, Inc. v. Walker*, is not binding on the District and that the

Wisconsin Supreme Court will overturn that decision. Additionally, the plaintiffs ignore the fact that the District engaged in collective bargaining *only after* receiving notice of a judicial order stating that the WERC was prohibited from enforcing any provision of Act 10 found to be unconstitutional and a subsequent communication from the WERC advising of the Kenosha Education Association's authority to collectively bargain on behalf of Kenosha teachers.

Judge Colás' decision in *Madison Teachers, Inc. v. Walker*, declared that Act 10 was unconstitutional, and thus void, as to limitations on the scope of bargaining, prohibitions on payment of "fair-share" contributions and payroll deductions for union dues, and requirement of annual recertification elections. A statute that is unconstitutional is void *ab inito*, and cannot be a basis for declaring that the Kenosha collective bargaining agreement is unlawful. *State v. Konrath*, 218 Wis. 2d 290, n.13, 577 N.W.2d 601 (1998) ("If a court holds a statute unconstitutional on its face, the state may not enforce it under any circumstances, unless an appropriate court narrows its application[.]"); *Hunter v. School Dist. Gale-Ettrick-Trempealeau*, 97 Wis. 2d 435, 293 N.W.2d 515 (1980) ("A legislative act that has been ruled unconstitutional has no legal effect or existence."). The decision finding Act 10 unconstitutional is currently pending before the Wisconsin Supreme Court and the outcome is uncertain.

Moreover, contrary to plaintiffs' assertions, it is not settled whether *Madison Teachers, Inc. v. Walker* is binding on the WERC as to municipal employers and employees who were not parties to the original action. The parties to the appeal before the Wisconsin Supreme Court briefed and argued the issue of whether the Dane County Circuit Court's September 14, 2012 decision or October 21, 2013 contempt order should be stayed. In its November 21, 2013 decision vacating the contempt order, the majority for the Wisconsin Supreme Court declined to issue a stay. Instead, the Court decided that the circuit court's contempt order was an

impermissible interference with the appellate jurisdiction of the Wisconsin Supreme Court, because the order was issued while the appeal to the Wisconsin Supreme Court was pending. Plaintiffs point to language in the decision stating that the circuit court exceeded its authority by expanding the scope of its September 2012 decision, claiming that through this language, the Supreme Court "made clear" that the ruling in *Madison Teachers* did not bar the application of Act 10 to non-parties. However, the majority did not decide that issue, while the dissenting opinion sets forth legal precedents of the United States Supreme Court and the Wisconsin Supreme Court holding that a governmental entity cannot continue to enforce facially unconstitutional statutes. (A copy of the Court's November 21, 2013 decision is attached to Plaintiffs' Appendix of Act 10 cases.) It is precisely *because* the appeal before the Wisconsin Supreme Court is still pending that plaintiffs cannot proclaim a reasonable probability of success on the merits of their claim that Act 10 is valid and enforceable.

If the circuit court's decision finding Act 10 unconstitutional as to the limits on the scope of bargaining is upheld, those prohibitions on certain subjects of bargaining will be void, and all of the provisions of the collective bargaining agreement will be lawful under Wis. Stat. § 111.70(1)(a), as either mandatory subjects of bargaining concerning items of wages, or permissive subjects of bargaining concerning all other terms and conditions of employment. Until the circuit court decision is either upheld or overturned, plaintiffs cannot claim to have a reasonable probability of success on the merits of this argument.

Finally, it is uncontroverted that at the time the collective bargaining agreement was negotiated, the Board and the District were acting in response to an October 21, 2013 judicial order and an email from the Chief Legal Counsel of the WERC to the District, both of which advised "that the Kenosha Education Association has the same status it would have had had ERC

70.03 not been enacted and had the withdrawn communications [of the WERC] not been sent." The parties were entitled to rely on the judicial order and ensuing communication.

C. Plaintiffs Cannot Show a Reasonable Probability of Success on the Merits of Their Claim That the Contract Violates Wis. Stat. § 133.03(1).

Plaintiffs contend that the agreement acts as an unlawful "restraint of trade" by restricting Glembocki's ability to negotiate with the District with respect to the factors and conditions of her employment. They also contend that the agreement violates the antitrust laws because it uses taxpayer money to fund an illegal restraint of trade. To state a claim for violation of § 133.03(1), which is analogous to § 1 of the federal Sherman Act, a plaintiff must allege facts suggesting (1) the existence of a conspiracy, combination or contract, (2) that results in the unreasonable restraint of trade in a relevant market, and (3) the existence of an "antitrust injury." *Agnew v. National Collegiate Athletic Association*, 683 F.3d 328, 335 (7th Cir. 2012). Plaintiffs' allegations are not even sufficient to state a claim for violation of § 133.03(1), let alone sufficient to show a likelihood of success on the merits of this claim.

As an initial matter, the activities of labor unions have long been exempt from both federal and state antitrust laws. Wisconsin's antitrust statute recognizes that, "[t]he labor of a human being is not a commodity or article of commerce," and thus, labor unions may engage in activities to carry out the legitimate goals of their organization without running afoul of the antitrust laws. Wis. Stat. § 133.07(1). The law specifically allows "[w]orking people [to] organize themselves" to promote "the regulation of their wages and their hours and conditions of labor," *Id.* § 133.08(1), and states the antitrust laws should not be construed so as to prohibit collective bargaining. *Id.* § 133.09. *See also Id.* § 133.08(2).

Plaintiff contends that these exemptions do not apply in this case because Act 10 prohibits the District from collectively bargaining with the Association. In other words,

plaintiffs argue that if the collective bargaining agreement violates Act 10, it also violates the antitrust laws. However, plaintiffs cite no provision in Wisconsin's antitrust laws stating that labor unions or employers lose the protections of the antitrust exemptions solely because they acted contrary to a different law. The antitrust provisions exempt the activities of labor unions and the action of collective bargaining by recognizing that human labor is not a commodity and that employees should be protected from the antitrust laws when they combine for their "mutual protection or benefit." *Id.* § 133.08(1). Regardless whether a labor union or employer violates technical requirements for collective bargaining prescribed by other laws, the act of collective bargaining is not subject to antitrust restrictions. The fact that plaintiffs' antitrust claim is wholly dependent on their Act 10 claim makes it clear that plaintiffs are simply trying to bootstrap an antitrust claim onto this case.

Moreover, plaintiffs have not alleged facts suggesting that the collective bargaining agreement is an unreasonable restraint of trade. "[T]he determination of whether a restraint is unreasonable must focus on the competitive effects of challenged behavior relative to such alternatives as its abandonment or a less restrictive substitute." *Agnew*, 683 F.3d at 335 (citation omitted). Generally, this means that a plaintiff must show that the defendant has sufficient market power to create an anticompetitive effect on a given market within a given geographic area. *Id.* Plaintiff does not attempt to conduct this analysis, probably because it is obvious that this analysis does not fit the present situation. The District does have market power over teachers within a certain geographic area, but that is because the District is authorized by state law to manage and control the District. Regardless whether the District ratified the collective bargaining agreement, the District would have controlled the wages and working conditions of teachers within the District. In other words, when the "alternatives" or "substitutes" are

analyzed, it is clear that the collective bargaining agreement does not have an anticompetitive effect on the teaching market in Kenosha.

Plaintiffs suggest that the agreement had an anticompetitive effect by prohibiting teachers, such as Glembocki, from negotiating higher wages or more favorable working conditions for themselves. However, plaintiffs have no evidence that Glembocki or any other teacher would have been able to negotiate a higher wage or more favorable working conditions; in fact, plaintiffs admit that teachers would be required to work longer hours for less pay without the agreement. Similarly, there are no allegations or evidence that the collective bargaining agreement has frozen any competitors out of the market, has made it difficult for teachers to find jobs in the District or has raised the overall cost of education to the taxpayers.

This leads to a further problem with plaintiffs' antitrust claim, which is that plaintiffs have not alleged any injury that qualifies as an "antitrust" injury. An "antitrust injury" is an injury "of the type the antitrust laws were intended to prevent and reflect the anticompetitive effect of either the violation or of anticompetitive acts made possible by the violation." *Tamburo v. Dworkin*, 601 F.3d 693, 699 (7th Cir. 2010) (citation omitted). Glembocki's alleged injuries are not antitrust injuries, because the antitrust laws were not intended to prevent teachers from receiving higher salaries or better working conditions; nor are the antitrust laws concerned with employee representation. The antitrust laws are concerned with fostering competition.

For the same reasons, plaintiffs cannot sustain an antitrust claim on the basis of Lacroix's alleged injury as a taxpayer. Plaintiffs cite no authority suggesting that an injury similar to Lacroix's alleged injury could support an antitrust claim. Lacroix has not alleged that she is a competitor in the market and has not alleged that defendants' actions will have any effect on her

overall taxes. Lacroix's dissatisfaction with the District's decisions does not create an antitrust injury. For these reasons, plaintiffs cannot show a likelihood of success on their antitrust claims.

D. Plaintiffs Have No Reasonable Probability of Success on the Merits of Their Claim That Agreement Was Result of Violation of the Open Meetings Law.

Plaintiffs acknowledge that they currently cannot ask this Court to void the collective bargaining agreement on the basis of a claimed open meetings law violation, because they have not met the procedural prerequisites to bring such a claim, as set out in Wis. Stat. § 19.97.

Also, for the reasons explained more fully in the District and Board's Motion to Dismiss, plaintiffs cannot show that the agreement was the result of a violation of Wisconsin's Open Meetings Law. Under the Open Meetings Law, the action sought to be voided must have been taken at the meeting found to be in violation of the statute. Here, the District did not reach any actual or tentative agreement with the Association at the October 22, 2013 meeting allegedly held in violation of the Open Meetings Law. Rather, the agreement was reached after subsequent meetings for which proper notice had been provided. Moreover, under Wis. Stat. § 19.97(3), an action taken at a meeting of a governmental body held in violation of the Open Meetings Law is voidable, not void. A court may not declare an action void without first finding that the public interest in voiding the action outweighs any public interest which there may be in sustaining the validity of the action taken. Wis. Stat. § 19.97(3). Plaintiffs have no likelihood of success in proving that the public interest favors voiding the agreement.

III. PLAINTIFFS HAVE NOT SHOWN THAT THEY WILL SUFFER IRREPARABLE HARM IF A TEMPORARY INJUNCTION IS NOT GRANTED OR THAT THEY LACK AN ADEQUATE LEGAL REMEDY.

An injury is irreparable if it is not adequately compensable in damages. *Pure Milk Prods. Co-op v. National Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979). Plaintiffs have not demonstrated that they will suffer irreparable harm if the temporary injunction is not granted,

because any actions taken by the parties under the collective bargaining agreement can be ordered undone by the Court.

Plaintiffs argue that they will suffer irreparable harm if payments are made under the collective bargaining agreement, because "there is no practical way to get the money back." This Court certainly retains authority to order the defendants to take certain actions in order to comply with any order it may issue. In the realm of labor relations, parties are frequently subject to both mutual agreements and orders requiring them to take actions retroactively. The WERC frequently exercises jurisdiction to put complaining parties into the position they would have been in but for the complained of conduct. Complying with a court order to undo any actions taken under the collective bargaining agreement is not an impossible task. Plaintiffs' speculation that it would be difficult for the District to recover money does not amount to irreparable harm.

Plaintiffs also argue that individual teachers will be irreparably harmed if they are required to pay union dues or fair share amounts. As with the payment of wages, the Court can order the refund of any dues or fair share amounts if the Court finds that the collection of dues was unlawful. Plaintiffs' arguments that taxpayers will be harmed *if* financial institutions charge fees related to dues deduction, or *if* the school district incurs additional personnel costs related to dues deduction are far too speculative to support a request for a temporary injunction. Moreover, the District has stated that it will not collect fair share payments under the agreement, and will only collect dues if the individual teacher provides a written authorization. (Second Aff. of Sheronda Glass). Therefore, Glembocki will not be compelled to pay fair share amounts or union dues, will not be deprived of her First Amendment rights and cannot show irreparable harm on this basis. The allegations also demonstrate that the District would have adopted an

employee handbook to govern teacher working conditions, leaving Glembocki in no better position than she would have been in the absence of a collective bargaining agreement.

Plaintiffs' final argument as to irreparable harm circles back to the claim that the Defendants' actions in negotiating a collective bargaining agreement after the issuance of the contempt order were unlawful. However, during the pendency of the Act 10 litigation before the Supreme Court, plaintiffs cannot establish that the defendants' actions were unlawful. That argument must fail. Because plaintiffs cannot show any likelihood of irreparable harm, they cannot show that an injunction is necessary to preserve the status quo.

IV. THE BALANCE OF INTERESTS WEIGHS AGAINST PLAINTIFFS' REQUEST FOR AN INJUNCTION.

In deciding whether to grant an injunction, the Court should balance the benefit to plaintiffs against the harm to defendants and others. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America*, 549 F.3d 1079, 1085 (7th Cir. 2008). The plaintiffs must show that "on balance, equity favors issuing the injunction." *Nettesheim v. S.G. New Age Products, Inc.*, 2005 WI App 169, ¶ 21, 285 Wis. 2d 663, 702 N.W.2d 449.

In this case, defendants would suffer a significant injury if the court grants a temporary injunction, and equity favors denying the motion. The Association and the teachers who stand to benefit under the collective bargaining agreement would be harmed because they would not receive the negotiated wage increases and other terms and conditions of employment agreed to between the parties. This results in a real loss of wages to individual employees. Delaying the receipt of anticipated wages shifts the balance of interests against plaintiffs' request for an injunction. The District would be harmed because the temporary injunction would interfere with the Board's authority to operate the school district and would create significant morale issues

among its staff. Any benefit to plaintiffs, who have an adequate remedy at law, is outweighed by these significant harms to the defendants and non-party teachers.

IV. CONCLUSION.

For the reasons stated above, Defendants Kenosha Unified School District and the Board of Education for the Kenosha Unified School District respectfully ask the Court to deny Plaintiffs' motion for a temporary injunction.

Dated this 9th day of December, 2013.

Respectfully submitted,

BOARDMAN & CLARK LLP

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JoAnn M. Hart, State Bar Number 1008827
Attorneys for Kenosha Unified School District and Kenosha Unified School District Board of Education

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