

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

KENOSHA COUNTY

---

STATE EX REL. KRISTI LACROIX  
KRISTI LACROIX, and  
CARRIEANN GLEMBOCKI,

Plaintiffs,

Case No. 13cv1899

v.

REBECCA STEVENS,  
JO ANN TAUBE,  
CARL BRYAN,  
KYLE FLOOD,  
KENOSHA UNIFIED SCHOOL  
DISTRICT BOARD OF EDUCATION,  
KENOSHA UNIFIED SCHOOL DISTRICT, and  
KENOSHA EDUCATION ASSOCIATION,  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 168,  
AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, LOCAL 2383,

Defendants.

---

**KENOSHA EDUCATION ASSOCIATION'S AMENDED ANSWER TO SECOND  
AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES AND KENOSHA  
EDUCATION ASSOCIATION'S CROSS CLAIM AGAINST THE KENOSHA  
UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION**

---

Defendant Kenosha Education Association ("KEA") by its attorneys, Cullen  
Weston Pines & Bach LLP, as an answer to the Plaintiffs' Second Amended Complaint  
admits, denies and alleges as follows:

**INTRODUCTION**

**COMPLAINT PARAGRAPH NO. 1:** This action is brought for declaratory  
judgment under Wis. Stat. §§ 19.97 and § 806.04 and for an injunction under Wis. Stat.

§§ 19.97 and 813.02. Plaintiffs Lacroix and Glembocki seek a declaration that the November 15, 2013, collective bargaining agreement between Defendant School District and Defendant SEIU, and the November 15, 2013 collective bargaining agreement between Defendant School District and Defendant AFSCME (collectively, the “new CBAs”) are unlawful, invalid and void on the grounds that: (a) the KEA, Local 168, and AFSCME (collectively, the “Unions”) are not statutorily certified as the collective bargaining agent for School District employees; (b) the New CBAs are the product of unlawful collective bargaining in violation of Wis. Stat. § 111.70(4)(mb); (c) the New CBAs violate the rights of municipal employees under Wis. Stat. § 111.70(2); and (d) the New CBAs are unlawful agreements in restraint of trade in violation of Wis. Stat. § 133.03(1).

**ANSWER TO PARAGRAPH NO. 1:** Paragraph 1 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA admits that the Plaintiffs’ Amended Complaint seeks a declaratory judgment pursuant to Wis. Stat. § 806.04 and an injunction pursuant to Wis. Stat. § 813.02 and denies the balance of Paragraph 1.

**COMPLAINT PARAGRAPH NO. 2:** This action is also brought under Wis. Stat. § 19.97. Relator Lacroix seeks judgment: (a) finding the Board and Defendants Stevens, Taube, Bryan, and Flood violated Wisconsin’s Open Meeting Law; (b) voiding any action taken in violation of Wisconsin’s Open Meetings Law; and (c) imposing forfeitures on Defendants Stevens, Taube, Bryan, and Flood for violating Wisconsin’s Open Meeting Law.

**ANSWER TO PARAGRAPH NO. 2:** Paragraph 2 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA admits that the Plaintiffs' Amended Complaint seeks the judgment pursuant to Wis. Stat. § 19.97 that Paragraph 2 describes.

**COMPLAINT PARAGRAPH NO. 3:** Should the New CBAs be found unlawful, Plaintiff Lacroix seeks an order directing the School District to recover any unlawful payments of taxpayer funds made under the New CBAs.

**ANSWER TO PARAGRAPH NO. 3:** KEA admits that Paragraph 3 is what the Plaintiff Lacroix seeks.

**COMPLAINT PARAGRAPH NO. 4:** Plaintiff Glembocki seeks damages, should the School District withhold any union dues or so-called "fair share" payments from her paycheck.

**ANSWER TO PARAGRAPH NO. 4:** KEA admits that Paragraph 4 is what the Plaintiff Glembocki seeks.

**COMPLAINT PARAGRAPH NO. 5:** Plaintiffs and Relator seek a declaration that the New CBAs are unlawful, invalid, and void *ab initio*, and seek an injunction prohibiting their enforcement.

**ANSWER TO PARAGRAPH NO. 5:** KEA admits that Paragraph 5 describes what Plaintiffs and Relator seek.

#### **PARTIES**

**COMPLAINT PARAGRAPH NO. 6:** Plaintiff Kristi Lacroix is a citizen of the State of Wisconsin, a resident of the Town of Somers and County of Kenosha, and a

taxpayer whose taxes are used to fund the School District. She resides at 6206 64th Street, Kenosha, Wisconsin.

**ANSWER TO PARAGRAPH NO. 6:** KEA has insufficient information to either admit or deny the allegations of Paragraph 6 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 7:** Plaintiff Carrie Ann Glembocki is currently employed by the School District as a teacher. Plaintiff Glembocki has been employed by the School District since January 2008, and is not a member of the KEA. She resides at 1541 Serena Lane, Burlington, Wisconsin.

**ANSWER TO PARAGRAPH NO. 7:** KEA has insufficient information to either admit or deny the allegations of Paragraph 7 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 8:** Defendant Rebecca Stevens is a duly-elected member of the Board, serves as the President of the Board, and is sued in her official capacity.

**ANSWER TO PARAGRAPH NO. 8:** KEA admits.

**COMPLAINT PARAGRAPH NO. 9:** Upon information and belief, as presiding officer of the Board, Defendant Stevens is responsible for, among other things, creating agendas and ensuring that notice is properly given for Board meetings.

**ANSWER TO PARAGRAPH NO. 9:** KEA has insufficient information to either admit or deny the allegations of Paragraph 9 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 10:** Defendant Jo Ann Taube is a duly-elected member of the Board, serves as the Vice President of the Board, and is sued in her official capacity.

**ANSWER TO PARAGRAPH NO. 10:** KEA admits.

**COMPLAINT PARAGRAPH NO. 11:** Defendant Carl Bryan is a duly-elected member of the Board, serves as the Treasurer of the Board, and is sued in his official capacity.

**ANSWER TO PARAGRAPH NO. 11:** KEA admits.

**COMPLAINT PARAGRAPH NO. 12:** Defendant Kyle Flood is a duly-elected member of the Board, serves as the Clerk of the Board, and is sued in his official capacity.

**ANSWER TO PARAGRAPH NO. 12:** KEA admits.

**COMPLAINT PARAGRAPH NO. 13:** Defendants Stevens, Taube, Bryan, and Flood (collectively, the “Board Members”) have offices at 3600 52nd Street, Kenosha, Wisconsin 53144.

**ANSWER TO PARAGRAPH NO. 13:** KEA admits.

**COMPLAINT PARAGRAPH NO. 14:** Defendant School District is a “school district” as that term is used in Chapters 115 through 121 of the Wisconsin Statutes. The School District is a “municipal employer” as defined in Wis. Stat. § 111.70(1)(j).

**ANSWER TO PARAGRAPH NO. 14:** KEA admits.

**COMPLAINT PARAGRAPH NO. 15:** Defendant Board is the governing body of the School District as defined in Wis. Stat. § 115.001(7).

**ANSWER TO PARAGRAPH NO. 15:** KEA admits.

**COMPLAINT PARAGRAPH 16:** The School District and the Board are “governmental bodies” as defined in Wis. Stat. § 19.82(1).

**ANSWER TO PARAGRAPH NO. 16:** KEA admits.

**COMPLAINT PARAGRAPH 17:** The School District and the Board have offices at 3600 52nd Street, Kenosha, Wisconsin 53144.

**ANSWER TO PARAGRAPH NO. 17:** KEA admits.

**COMPLAINT PARAGRAPH NO. 18:** Defendant KEA is an unincorporated association that purports to represent School District public school teachers and other School District employees in collective bargaining with the Board and the School District. KEA has offices at 5610 55th St., Kenosha, WI 53144.

**ANSWER TO PARAGRAPH NO. 18:** KEA admits all of the allegations of Paragraph 18 except that allegation that the KEA “purports to represent Kenosha public school teachers and other employees in collective bargaining with the Board and the School District” and alleges that the KEA does represent Kenosha public school teachers and other employees in collective bargaining with the Board and the School District. Specifically, KEA is the collective bargaining agent for five (5) different bargaining units: (1) all regular full-time and all regular part-time certified teaching personnel employed by the School District, (2) all regular full-time and regular part-time Education Support Professionals employed by the School District, (3) all substitute

teachers employed by the School District, (4) all regular licensed full-time and part-time educational interpreters employed by the School District, and (5) all carpenters and painters employed by the School District.

**COMPLAINT PARAGRAPH NO. 19:** Defendant SEIU is an unincorporated association that purports to represent employees of the School District in collective bargaining with the Board and the School District. SEIU has offices at 6618 39th Avenue, Kenosha, WI 53142.

**ANSWER TO PARAGRAPH NO. 19:** KEA has insufficient information to either admit or deny the allegations of Paragraph 19 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 20:** Defendant AFSCME is an unincorporated association that purports to represent employees of the School District in collective bargaining with the Board and the School District. AFSCME has offices at 3450 East Oak Creek Drive, Oak Creek, WI 53154.

**ANSWER TO PARAGRAPH NO. 20:** KEA has insufficient information to either admit or deny the allegations of Paragraph 20 and put the Plaintiffs to their strict proof thereon.

#### **JURISDICTION AND VENUE**

**COMPLAINT PARAGRAPH NO. 21:** This Court has jurisdiction pursuant to Wis. Stat. § 19.97(1) in that the alleged violations of the Wisconsin Open Meetings Law occurred in Kenosha County.

**ANSWER TO PARAGRAPH NO. 21:** Paragraph 21 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA admits.

**COMPLAINT PARAGRAPH NO. 22:** This Court has jurisdiction pursuant to Wis. Stat. § 806.04 in that: (a) there is a controversy between the parties as to the validity and binding effect of the CBA; (b) the interests of Plaintiffs and Defendants are adverse in that the Board ratified the CBA, the School District and KEA, SEIU, and AFSCME are parties to the CBA, and Plaintiffs seeks a declaration that the CBAs are unlawful, invalid, and void; (c) Plaintiff Lacroix, on behalf of herself and other taxpayers, has a legally protected interest because she has suffered and will continue to suffer a pecuniary loss as a result of the Defendants' illegal conduct in that under the CBAs her taxes will be spent in a manner which is unlawful and in violation of the public policy of the State of Wisconsin; Plaintiff Glembocki on behalf of herself and other School District employees has a legally protectable interest in her right to individually negotiate with the School District the factors and conditions of her employment excepting total base wages and a right not to be required to pay union dues; and (d) the controversy is ripe for determination in that the Board, the School District, and KEA, SEIU, and AFSCME are seeking to immediately (and retroactively) implement the CBA, but the CBA is unlawful, invalid and void.

**ANSWER TO PARAGRAPH NO. 22:** Paragraph 22 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies the allegations of Paragraph 22.



**COMPLAINT PARAGRAPH NO. 23:** Venue is proper in this Court pursuant to Wis. Stat. § 801.50(2)(a) and (c).

**ANSWER TO PARAGRAPH NO. 23:** Paragraph 23 is an assertion of law to which no answer is required, but to the extent that an answer is deemed necessary, the KEA admits the allegation of Paragraph 23.

**FACTS**  
*Act 10*

**COMPLAINT PARAGRAPH NO. 24:** In 2011, the Wisconsin Legislature enacted sweeping changes to the statutes that govern collective bargaining between public employees and their employers. These changes include 2011 Act 10 and 2011 Act 32, which amended and modified Act 10. Act 10 became the law in Wisconsin on June 29, 2011; Act 32 on July 1, 2011.

**ANSWER TO PARAGRAPH NO. 24:** KEA admits.

**COMPLAINT PARAGRAPH NO. 25:** Act 32 and Act 10 (together known as “Act 10”), among other things, amended Wis. Stat. § 111.70, the statute that governs collective bargaining between municipal employers and municipal employees. Section 111.70(4)(mb), as amended by Act 10, now prohibits municipal employers such as the School District from bargaining collectively with a union representing its employees with respect to any of the factors or conditions of employment except for total base wages. Base wages do not include overtime, premium pay, merit pay, pay schedules, supplemental compensation, or automatic pay progression. Wis. Stat. § 111.70(4)(mb).

**ANSWER TO PARAGRAPH NO. 25:** KEA admits.

**COMPLAINT PARAGRAPH NO. 26:** Pursuant to Act 10, municipal employees have the right, among other things, to (a) vote in an annual election on the certification or recertification of a collective bargaining agent, (b) refrain from union activity, (c) not pay union dues, and (d) not pay any amount under any so-called “fair share” agreements, *i.e.* non-union teachers forced to pay union dues against their wishes.

**ANSWER TO PARAGRAPH NO. 26:** KEA denies.

### *Act 10 Litigation*

**COMPLAINT PARAGRAPH NO. 27:** In the wake of its passage by the Legislature, several lawsuits were filed that challenged the validity of Act 10 on constitutional and other grounds. Act 10 has been upheld as constitutional by the United States Seventh Circuit Court of Appeals, the United States District Court for the Western District of Wisconsin, and the Honorable John Markson in the Dane County Circuit Court.

**ANSWER TO PARAGRAPH NO. 27:** KEA admits.

**COMPLAINT PARAGRAPH 28:** The U.S. District Court for the Western District of Wisconsin dismissed a number of constitutional challenges to Act 10 and, on appeal, the U.S. Court of Appeals for the Seventh Circuit dismissed all challenges to the statute on federal constitutional grounds. *WEAC v. Walker*, 705 F.3d 640 (7th Cir., 2013). On September 11, 2013, the U.S. District Court of the Western District of Wisconsin upheld Act 10 against a related constitutional challenge, dismissing that case as well. *Laborers Local 236, AFL-CIO v. Walker*, No. 11-cv-462-wmc, 2013 WL 4875995 (W.D. Wis.

Sept. 11, 2013). On October 23, 2013, the Dane County Circuit Court, the Honorable John Markson, presiding, upheld Act 10 against a State constitutional challenge brought by state employees and a union representing them, dismissing that case. *Wisconsin Law Enforcement Association v. Walker*, Dane County Circuit Court No. 12CV4474.

**ANSWER TO PARAGRAPH NO. 28:** KEA admits.

**COMPLAINT PARAGRAPH NO. 29:** But on September 14, 2012, in contrast to these other judicial decisions, the Honorable Juan Colas of the Dane County Circuit Court held parts of Act 10 to be in violation of the Wisconsin State Constitution. *Madison Teachers, Inc. v. Walker*, Dane County Circuit Court No. 11CV3774. The Dane County Circuit Court decision was appealed to the Wisconsin Court of Appeals, and then certified to the Wisconsin Supreme Court. The Wisconsin Supreme Court heard oral argument on November 11, 2013, but has not yet decided the case.

**ANSWER TO PARAGRAPH NO. 29:** KEA admits the allegations of Paragraph 29 with the exception of the assertion that Judge Colas decided the case before him, "in contrast to these other legal decisions" which apparently refers to the judicial decisions described in Paragraph 28 and alleges that Judge Colas' decision was made before the rulings by the 7th Circuit Court of Appeals, before the ruling of Judge Conley following the decision of the 7th Circuit Court of Appeals and before the ruling of Judge Markson meaning that the proper description is that those decisions were in contrast to Judge Colas' decision.

**COMPLAINT PARAGRAPH NO. 30:** It is well-established Wisconsin law that Circuit Court decisions, such as that by Judge Colas, are not binding on anyone other

than parties to the lawsuit. Thus, Act 10 remains the law in Wisconsin for everyone except the parties in *Madison Teachers*. None of the Defendants were parties to the *Madison Teachers* case, and they are therefore not free to disregard the laws of Wisconsin as a result of the Dane County Circuit Court decision in *Madison Teachers*.

**ANSWER TO PARAGRAPH NO. 30:** Paragraph 30 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA denies.

*Recent History Of The School District And The Unions  
The Unions Fail To Pursue Recertification*

**COMPLAINT PARAGRAPH NO. 31:** On July 1, 2011, the effective date of Act 10, there were collective bargaining agreements in place between the School District and each of the Unions (“Expired CBAs”). Those agreements expired by their terms on June 30, 2013.

**ANSWER TO PARAGRAPH NO. 31:** Paragraph 31 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA denies.

**COMPLAINT PARAGRAPH NO. 32:** Under Act 10, the Unions were to be decertified as the collective bargaining representatives for their respective School District employees at the expiration of the Expired CBAs (*i.e.*, as of June 30, 2013), unless they recertified as the collective bargaining representative in an election as required by Wis. Stat. § 111.70(4)(d)3.b. (“If no representative receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, the commission shall decertify the

current representative and the general municipal employees shall be nonrepresented.”)

(emphasis added).

**ANSWER TO PARAGRAPH NO. 32:** Paragraph 32 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary KEA denies.

**COMPLAINT PARAGRAPH NO. 33:** When Dane County Judge Colas declared Act 10 to be unconstitutional on September 14, 2012, KEA began to demand that the School District start collective bargaining with them. KEA’s goal was a new collective bargaining agreement that would reinstate and amend the agreement expiring on June 30, 2013.

**ANSWER TO PARAGRAPH NO. 33:** KEA admits.

**COMPLAINT PARAGRAPH NO. 34:** However, School District officials refused to negotiate with the KEA. School District Superintendent Michele Hancock and then Board President Mary Snyder sent a letter to employees explaining that it would be illegal for the district to collectively bargain a new agreement with employees. A true and correct copy of that letter is attached as *Exhibit A*.

**ANSWER TO PARAGRAPH NO. 34:** KEA admits the allegations of Paragraph 34.

**COMPLAINT PARAGRAPH 35:** The School District’s letter stated that its attorney advised that “there is no legal authority for claiming that Judge Colas’ decision applies to the School District or any of its bargaining units.” The attorney further advised that “Should the [School District] engage in bargaining outside the scope of Act

10, both the district and individual board members face the potential of having penalties assessed against them for knowingly violating Act 10.”

**ANSWER TO PARAGRAPH 35:** KEA admits that the letter referred to in Paragraph 35 contains the quoted statements.

**COMPLAINT PARAGRAPH 36:** Upon information and belief the School District did not negotiate with SEIU or AFSCME prior to June 30, 2013.

**ANSWER TO PARAGRAPH 36:** KEA has insufficient information to either admit or deny the allegations of Paragraph 36 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 37:** After the Expired CBAs expired on June 30, 2013, KEA declared that it was not going to file for recertification. No election was held to recertify KEA as the exclusive collective bargaining agent for Kenosha teachers after the expiration of the Expired CBAs on June 30, 2013.

**ANSWER TO PARAGRAPH 37:** KEA has insufficient information to either admit or deny the allegations of Paragraph 37 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 38:** Upon information and belief, neither SEIU nor AFSCME has received at least 51 percent of the votes of all of the general municipal employees in their respective collective bargaining units under § 111.70(4)(d)3.b. since the enactment of Act 10.

**ANSWER TO PARAGRAPH 38:** KEA has insufficient information to either admit or deny the allegations of Paragraph 38 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 39:** Thus, KEA, SEIU, and AFSCME have all been decertified as collective bargaining representatives.

**ANSWER TO PARAGRAPH 39:** KEA denies.

*The School District Develops An Employee Handbook*

**COMPLAINT PARAGRAPH NO. 40:** On January 29, 2013, the Board approved the adoption of an employee handbook that would replace all school district employee contracts created through collective bargaining. A true and correct copy of the Minutes from the Board's January 29, 2013 meeting is attached hereto as *Exhibit B*. The handbook was scheduled to go into effect on July 1, 2013, which was the day after the expiration of the then existing collective bargaining agreement.

**ANSWER TO PARAGRAPH NO. 40:** KEA admits.

**COMPLAINT PARAGRAPH NO. 41:** The handbook was not implemented on July 1, 2013, and instead either the Board or the School District or both began talking with the Unions in a series of so-called "meet and confers" over the terms to be included in the handbook.

**ANSWER TO PARAGRAPH NO. 41:** KEA admits.

*The Board Chooses To Engage In Illegal Collective Bargaining*

**COMPLAINT PARAGRAPH NO. 42:** On October 21, 2013, Dane County Circuit Court Judge Juan Colas held the Wisconsin Employment Relations Commission

commissioners in contempt of court (an order later vacated by the Wisconsin Supreme Court, *see Madison Teachers, Inc. v. Walker*, 2012AP2067, Nov. 21, 2013 Order) for implementing Act 10 against entities that were not parties to the case pending before him.

**ANSWER TO PARAGRAPH NO. 42:** KEA denies but admits that at a hearing held on October 21, 2013, Dane County Circuit Court Judge Juan Colas found the WERC commissioners in contempt of court for intentionally disregarding the Court's determination that portions of Act 10 are facially unconstitutional by implementing those provisions despite the Court's ruling. KEA affirmatively states that the Dane County Circuit Court issued an Order on October 25, 2013 adjudging the commissioners in contempt, ordering them to cease enforcement of those parts of Act 10 which had been declared to be unconstitutional by that Court in its September 14, 2012 decision and order, and directing them, among other things, to inform the public and all interested parties that Wis. Admin. Code ECR 70.03 was enacted without lawful authority, was void when enacted, has no legal effect, and that labor organizations, including KEA, have the same status with respect to municipal employers that they would have had if ECR 70.03 had not been adopted. It was that October 25, 2013 Order that was vacated by the Wisconsin Supreme Court in a per curiam order issued November 21, 2013 in *Madison Teachers, Inc. v. Walker*, 2012AP2067.

**COMPLAINT PARAGRAPH NO. 43:** Based upon Judge Colas' contempt ruling, KEA once again asserted that the School District was obligated to collectively bargain with KEA.



**ANSWER TO PARAGRAPH NO. 43:** KEA admits.

**COMPLAINT PARAGRAPH NO. 44:** The Board held a “meeting” as that term is defined by Wis. Stat. § 19.82(2) on October 22, 2013.

**ANSWER TO PARAGRAPH NO. 44:** Paragraph 44 is a statement of legal assertions and argument to which no answer is required.

**COMPLAINT PARAGRAPH NO. 45:** The agenda for the Board’s October 22, 2013, regular monthly meeting contained an item labeled “Old – Business Continued, L. Discussion/ Action Adoption of Employee Handbook.” The full agenda is quite lengthy. A true and correct copy of the Title Page, the Table of Contents, and Page 84 of the Agenda is attached as *Exhibit C*. The entire Agenda is available at <http://www.kusd.edu/sites/default/files/document-library/english/102213rbmagenda.pdf>.

**ANSWER TO PARAGRAPH NO. 45:** KEA admits.

**COMPLAINT PARAGRAPH NO. 46:** Page 84 of the Agenda provides further information on the Agenda item:

Effective July 1, 2013, the collective bargaining agreements between Kenosha Unified School District and the Kenosha Education Association (Teachers, Educational Support Professionals, Interpreters, Carpenters and Painters and Substitute Teachers) and Local 2382 (Secretary Union) expired. Therefore, with the implementation of Act 10, which prohibits unions and employers from bargaining over conditions of employment other than base wages, the Administration is recommending the adoption of a district-wide employee handbook.

Although the handbook was originally adopted in January 2013, in July of 2013, the Board of Education directed the Administration to “meet and confer” with employees groups regarding concerns associated with the original handbook. A series of meetings were held and recommendations from those meetings were incorporated into the draft handbook which will be available on the [School District] website by noon on Tuesday, October 22, 2013.

**ANSWER TO PARAGRAPH NO. 46:** KEA admits that Paragraph 46 correctly quotes from Page 84 of the Agenda.

**COMPLAINT PARAGRAPH NO. 47:** At the October 22, 2013 monthly board meeting, Defendant Taube introduced a three-part motion. She moved to “postpone action on the Employee Handbook” until November 26, 2013,” “that [School District] administration and members of the School Board begin to bargain with the respective represented groups regarding mandatory and permissive subjects to reach an agreement no later than November 15, 2013,” and “that the School Board maintain the status quo with respect to all mandatory subjects of bargaining as provided for by the represented groups’ respective 2011-2013 Agreements, and the SEIU 2009-2013 Agreement, until new agreements have been ratified.” A true and correct copy of the Taube motion is attached as *Exhibit D*.

**ANSWER TO PARAGRAPH NO. 47:** KEA admits.

**COMPLAINT PARAGRAPH NO. 48:** The Board approved the Taube motion by a vote of 4-3. Defendants Stevens, Taube, Bryan, and Flood voted in favor of the Taube motion.

**ANSWER TO PARAGRAPH NO. 48:** KEA admits.

**COMPLAINT PARAGRAPH NO. 49:** The Agenda for the October 22, 2013, Board meeting contained no notice that the Board would be discussing and voting on engaging in collective bargaining with the Unions.

**ANSWER TO PARAGRAPH NO. 49:** Paragraph 49 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA denies.

**COMPLAINT PARAGRAPH NO. 50:** The School District and/or the Board engaged in collective bargaining with the Unions on Friday, November 8, 2013.

**ANSWER TO PARAGRAPH NO. 50:** KEA denies.

*The Unlawful CBA*

**COMPLAINT PARAGRAPH NO. 51:** The collective bargaining that began on Friday, November 8, 2013 led to an agreement between the School District and the Unions, and on Monday, November 11, 2013, representatives of the School District, KEA, SEIU, and AFSCME signed a Tentative Agreement. A true and correct copy of the Tentative Agreement is attached as *Exhibit E*.

**ANSWER TO PARAGRAPH NO. 51:** KEA admits.

**COMPLAINT PARAGRAPH NO. 52:** The Board held a meeting on November 12, 2013 to determine whether it would ratify the Tentative Agreement.

**ANSWER TO PARAGRAPH NO. 52:** KEA admits.

**COMPLAINT PARAGRAPH NO. 53:** At the November 12, 2013 meeting, the Board voted to postpone the decision on whether or not to ratify the Tentative Agreement until its regularly scheduled meeting on November 26, 2013.

**ANSWER TO PARAGRAPH NO. 53:** KEA admits.

**COMPLAINT PARAGRAPH NO. 54:** However, on November 14, 2013 the Board scheduled a meeting on 24 hours' notice for a meeting at 10:00 a.m. on

November 15, 2013, to ratify the Tentative Agreement. A true and correct copy of the November 14, 2013 notice is attached hereto as *Exhibit F*.

**ANSWER TO PARAGRAPH NO. 54:** KEA admits.

**COMPLAINT PARAGRAPH 55:** Only the four Board members named herein as Defendants attended the November 15, 2013 meeting.

**ANSWER TO PARAGRAPH NO. 55:** KEA has insufficient information to either admit or deny the allegations of Paragraph 55 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 56:** At the November 15, 2013 meeting, the Board ratified the terms of the Tentative Agreement.

**ANSWER TO PARAGRAPH NO. 56:** KEA admits that “[a]t the November 15th meeting the Board ratified the terms of the collective bargaining agreement (the “CBA”)” and denies the balance of Paragraph 56.

**COMPLAINT PARAGRAPH NO. 57:** The Tentative Agreement incorporated all of the terms of the Expired Agreements between the School District and the three Unions, which had expired on June 30, 2013, and amended those terms as expressly set forth in the Tentative Agreement, creating three New CBAs.

**ANSWER TO PARAGRAPH NO. 57:** KEA admits except that there were more than three “New CBAs” created by the Tentative Agreement.

**COMPLAINT PARAGRAPH 58:** A true and correct copy of the Expired Agreement between KEA and the School District is attached as Exhibit G. Exhibit G is

not signed, but is the copy that was posted on the School District's website while the agreement was in effect.

**ANSWER TO PARAGRAPH NO. 58:** KEA has insufficient information to either admit or deny the allegations of Paragraph 58 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 59:** Upon information and belief, the Expired Agreements between SEIU and the School District and the AFSCME and the School District were substantially similar to the Expired Agreement between KEA and the School District in all ways relevant to this lawsuit, including the provision of "fair share" payments and dues deductions and the inclusion of topics unlawful for collective bargaining under Act 10.

**ANSWER TO PARAGRAPH NO. 59:** KEA has insufficient information to either admit or deny the allegations of Paragraph 59 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH NO. 60:** The New CBAs include numerous provisions which are unlawful for collective bargaining under Act 10. The New CBAs cover matters that go far beyond what is permitted by Act 10, including, but not limited to, provisions on working conditions, teacher assignments, fringe benefits, teacher tenure, union dues, "fair share" payments, wages in the form of a lump-sum payment (which are not base wages), employee healthcare contributions, retiree healthcare, pension, sick leave, and pay schedules, etc. - all of which are expressly prohibited by

Wisconsin law. Moreover, the New CBAs include terms which violate the rights of municipal employees under Act 10.

**ANSWER TO PARAGRAPH NO. 60:** Paragraph 60 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA denies.

**COMPLAINT PARAGRAPH NO. 61:** The Board had been advised by its own legal counsel that it could not legally ratify the New CBAs, but the Board did so anyway. The New CBAs run retroactively from July 1, 2013 through June 30, 2015.

**ANSWER TO PARAGRAPH NO. 61:** KEA denies, but admits that one set of the New CBAs between its bargaining units and the School District run retroactively from July 1, 2013 through June 30, 2014, and a second set of the New CBAs between its bargaining units and the School District run July 1, 2014 through June 30, 2015.

*Compliance with Wis. Stat. § 19.97*

**COMPLAINT PARAGRAPH 62:** On November 7, 2013, and pursuant to § 19.97(1), Relator Lacroix filed a verified complaint with the Attorney General of the State of Wisconsin and the District Attorney of Kenosha County, requesting those persons “investigate the above allegations and issue charges as appropriate under Wis. Stat. § 19.97(1) seeking a declaration that the Board and the above mentioned Board members violated the Open Meetings Law, and such other legal or equitable relief as appropriate, including voiding any improper action taken by the Board, as provided in § 19.97(3).” A true and accurate copy of that verified complaint is attached as *Exhibit H*.

**ANSWER TO PARAGRAPH 62:** KEA has insufficient information to either admit or deny the allegations of Paragraph 62 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 63:** The verified complaint was made against the Board, Rebecca Stevens, Jo Ann Taube, Carl Bryan, and Kyle Flood.

**ANSWER TO PARAGRAPH 63:** KEA has insufficient information to either admit or deny the allegations of Paragraph 63 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 64:** The District Attorney of Kenosha County did not commence such an action within 20 days after receiving LA Croix's verified complaint.

**ANSWER TO PARAGRAPH 64:** KEA has insufficient information to either admit or deny the allegations of Paragraph 64 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 65:** On December 18, 2013, the District Attorney of Kenosha County notified Lacroix's counsel via letter of his decision to decline prosecution of the verified complaint. A true and accurate copy of that letter is attached as *Exhibit I*.

**ANSWER TO PARAGRAPH 65:** KEA has insufficient information to either admit or deny the allegations of Paragraph 65 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 66:** Thus, by operation of § 19.97(4), Lacroix is entitled to bring an action in her relation and on behalf of the State of Wisconsin, seeking those remedies available under §§ 19.96 and 19.97.

**ANSWER TO PARAGRAPH 66:** Paragraph 66 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**FIRST CAUSE OF ACTION**

*On Behalf Of Relator Lacroix; Against Defendants Board, Stevens, Taube, Bryan and Flood;  
Violation of Wis. Stat. § 19.84(2); Insufficient Notice of October 22, 2013 Meeting*

**COMPLAINT PARAGRAPH 67:** Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

**ANSWER TO PARAGRAPH 67:** KEA restates and incorporates its answers to paragraphs 1 through 66 above.

**COMPLAINT PARAGRAPH 68:** Under § 19.84(2), "Every public notice of a meeting of a governmental body shall set forth the . . . subject matter of the meeting, including that intended for consideration at any closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof."

**ANSWER TO PARAGRAPH 68:** Paragraph 68 is a statement of law to which no answer is required, but to the extent that an answer is deemed necessary, the KEA admits.

**COMPLAINT PARAGRAPH 69:** The notice (*Exhibit C*) given for the Board's October 22, 2013 meeting contained an item related to the adoption of an employee handbook.



**ANSWER TO PARAGRAPH 69:** KEA admits.

**COMPLAINT PARAGRAPH 70:** Instead, Defendant Taube introduced a motion related to re-opening collective bargaining with the School District's employee Unions.

**ANSWER TO PARAGRAPH 70:** KEA has insufficient information to either admit or deny the allegations of Paragraph 70 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 71:** Defendants Stevens, Taube, Bryan, and Flood voted for the motion. The other Board members voted against it.

**ANSWER TO PARAGRAPH 71:** KEA has insufficient information to either admit or deny the allegations of Paragraph 71 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 72:** The notice given was not "reasonably likely to apprise members of the public and the news media" of the "subject matter . . . intended for consideration at any contemplated closed session" under § 19.84(2).

**ANSWER TO PARAGRAPH 72:** KEA has insufficient information to either admit or deny the allegations of Paragraph 72 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 73:** The subject matter given in the notice was employee handbooks.

**ANSWER TO PARAGRAPH 73:** KEA has insufficient information to either admit or deny the allegations of Paragraph 73 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 74:** The subject matter taken up in the meeting was negotiating a new contract.

**ANSWER TO PARAGRAPH 74:** KEA has insufficient information to either admit or deny the allegations of Paragraph 74 and put the Plaintiffs to their strict proof thereon.

**COMPLAINT PARAGRAPH 75:** Those two subject matters are diametrically opposed. Employee handbooks are only necessary where no contract is in place.

**ANSWER TO PARAGRAPH 75:** KEA denies.

**COMPLAINT PARAGRAPH 76:** Under the three-factor test set forth in *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732, N.W.2d 804, this notice was not “reasonably specific under the circumstances.” *id.*, ¶22, because (1) providing notice that negotiations, instead of handbooks, would be discussed and voted on would impose virtually no burden on the Board: (2) choosing to enter into contract negotiations in violation of the high-profile changes to public collective bargaining law brought about by Act 10 would be of particular interest to the public; and (3) negotiating with unions in violation of state law would be a non-routine action the public would be unlikely to anticipate, particularly given that the School district had, up until that point, been diligently finalizing an employee handbook.

**ANSWER TO PARAGRAPH 76:** Paragraph 76 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**COMPLAINT PARAGRAPH 77:** Thus, the Board violated § 19.84(2) by failing to give sufficient notice that the Board would discuss and vote on opening contract negotiations with the Unions at its October 22, 2013 meeting.

**ANSWER TO PARAGRAPH 77:** Paragraph 77 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**COMPLAINT PARAGRAPH 78:** Furthermore, Defendant Stevens violated § 19.96 in her official capacity as President of the Board by failing to give sufficient notice that the Board would discuss and vote on opening contract negotiations with the Unions at its October 22, 2013 meeting.

**ANSWER TO PARAGRAPH 78:** Paragraph 78 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**COMPLAINT PARAGRAPH 79:** Furthermore, Defendants Stevens, Taube, Bryan , and Flood violated § 19.96 by knowingly attending a meeting of the Board held in violation of the Open Meeting Law.

**ANSWER TO PARAGRAPH 79:** Paragraph 79 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**SECOND CAUSE OF ACTION**

*On Behalf of Plaintiffs Lacroix and Glembocki; Against Defendants School District, KEA, SEIU, and AFSCME; For A Declaration That The New CBAs Are Unlawful, And Therefore Void, In That The Unions Were Not Authorized To Bargain On Behalf Of School District Employees*

**COMPLAINT PARAGRAPH NO. 80:** Under Wis. Stat. § 111.70(4)(d), municipal employees have the right to vote on an annual basis as to whether they will be represented by a collective bargaining agent. If no collective bargaining agent receives the affirmative vote of 51% of the teachers in a proposed collective bargaining unit in an election held under Wis. Stat. § 111.70(4)(d) the employees “shall be nonrepresented.”

**ANSWER TO PARAGRAPH NO. 80:** KEA denies.

**COMPLAINT PARAGRAPH NO. 81:** KEA is not the authorized collective bargaining representative of the teachers that work for the School District, because KEA was not recertified as required by Act 10.

**ANSWER TO PARAGRAPH NO. 81:** KEA denies.

**COMPLAINT PARAGRAPH 82:** Although Judge Colas, as part of his contempt order, required the Wisconsin Employment Relations Commission to inform KEA that it was not decertified in order to lift the contempt, the Wisconsin Supreme Court vacated that contempt order. KEA has not been recertified as the collective bargaining representative in an election as required by Wis. Stat. § 111.70(4)(d)3.b. As a result, by statute the Board and the School District are not permitted to collectively bargain with KEA.

**ANSWER TO PARAGRAPH NO. 82:** Paragraph 82 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, the KEA denies.

**COMPLAINT PARAGRAPH 83:** SEIU is not the authorized collective bargaining representative of any School District employees, because SEIU was not recertified as required by Act 10. As a result, by statute the Board and the School District are not permitted to collectively bargain with SEIU.

**ANSWER TO PARAGRAPH NO. 83:** KEA denies.

**COMPLAINT PARAGRAPH NO. 84:** AFSCME is not the authorized collective bargaining representative of any School District employees, because AFSCME was not recertified as required by Act 10. As a result, by statute the Board and the School District are not permitted to collectively bargain with AFSCME.

**ANSWER TO PARAGRAPH NO. 84:** KEA denies.

**COMPLAINT PARAGRAPH 85:** Therefore, none of the Unions had lawful authority to bargain with the School District on behalf of a collective bargaining unit.

**ANSWER TO PARAGRAPH NO. 85:** KEA denies.

**COMPLAINT PARAGRAPH 86:** Plaintiff Glembocki's rights to be unrepresented under § 111.70(4)(d) were violated by the School District's bargaining with KEA.

**ANSWER TO PARAGRAPH NO. 86:** KEA denies.

**COMPLAINT PARAGRAPH 87:** Plaintiff Glembocki's rights to individually negotiate the factors and conditions of her employment with the School District were violated by the School District's bargaining with KEA.

**ANSWER TO PARAGRAPH NO. 87:** KEA denies.

**COMPLAINT PARAGRAPH 88:** Plaintiff Glembocki's rights were further violated as she is subjected to - and expected to perform under - a contract entered into on her behalf by an entity with no legal authority to act on her behalf.

**ANSWER TO PARAGRAPH NO. 88:** KEA denies.

**COMPLAINT PARAGRAPH 89:** Plaintiff Lacroix's rights as a taxpayer were violated because the School District unlawfully spent taxpayer funds in collective bargaining the New CBAs.

**ANSWER TO PARAGRAPH NO. 89:** KEA denies.

**COMPLAINT PARAGRAPH 90:** Plaintiff Lacroix's rights are further violated because the District will spend substantial additional taxpayer funds in implementing the CBA by, among other things, paying wages under the contract and facilitating payroll deductions for dues.

**ANSWER TO PARAGRAPH NO. 90:** KEA denies.

**COMPLAINT PARAGRAPH 91:** As none of the Unions had lawful authority to bargain with the School District and enter into the New CBAs on behalf of School District employees, the New CBAs are invalid and unenforceable.

**ANSWER TO PARAGRAPH NO. 91:** KEA denies.

**COMPLAINT PARAGRAPH 92:** Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

**ANSWER TO PARAGRAPH NO. 92:** KEA restates and incorporates its answers to the paragraphs 1-92 above.

**COMPLAINT PARAGRAPH 93:** Wis. Stat. § 133.03(1) prohibits contracts or agreements in restraint of trade. An agreement that constitutes a concerted refusal to deal is an agreement in restraint of trade, and subject to challenge as a violation of Wisconsin antitrust law as set forth in § 133.03(1).

**ANSWER TO PARAGRAPH NO. 93:** KEA denies.

**COMPLAINT PARAGRAPH NO. 94:** Plaintiff Glembocki, other School District employees, and the Defendants School District, KEA, SEIU, and AFSCME are engaged in trade or commerce within the State of Wisconsin. In the ordinary course of such commerce, Plaintiff Glembocki and other employees of the School District would be free to negotiate with the School District with respect to the factors and conditions of their employment by the School District.

**ANSWER TO PARAGRAPH NO. 94:** KEA denies.

**COMPLAINT PARAGRAPH NO. 95:** The New CBAs constitute an agreement between the School District on the one hand, and the respective Unions on the other hand, that the School District will not negotiate the factors and conditions affecting her individual employment with Plaintiff Glembocki or with any other individual employees of the School District because to do so would be to violate the New CBAs if any terms other than the New CBAs were negotiated on an individual basis. In the

absence of the New CBAs, Plaintiff Glembocki and other employees of the School District would be free to negotiate with the School District as to all of the factors and conditions of their employment.

**ANSWER TO PARAGRAPH NO. 95:** KEA denies.

**COMPLAINT PARAGRAPH NO. 96:** The New CBAs thus constitutes a concerted refusal to deal.

**ANSWER TO PARAGRAPH NO. 96:** KEA denies.

**COMPLAINT PARAGRAPH NO. 97:** The New CBAs are not legal collective bargaining agreements, and because the New CBAs prevents the School District from individually negotiating the factors and conditions of Plaintiff's and other employees' employment, they are specifically forbidden by Wisconsin law.

**ANSWER TO PARAGRAPH NO. 97:** KEA denies.

**COMPLAINT PARAGRAPH NO. 98:** The New CBAs are anticompetitive in purpose and effect. There is no conceivable procompetitive justification for the refusal to deal with Plaintiff Glembocki and other individual employees of the School District. Accordingly, there is no requirement under Wisconsin antitrust law that the anticompetitive effect of the New CBAs be tested under the rule of reason. To the contrary, the collective refusal to deal embodied in the New CBAs is nothing more than a naked restraint of trade. As such, the New CBAs constitute unreasonable agreements in restraint for trade and is per se unlawful under Wis. Stat. § 133.03(1).

**ANSWER TO PARAGRAPH NO. 98:** KEA denies.



**COMPLAINT PARAGRAPH NO. 99:** The New CBAs are not exempt from the application of Chapter 133; they are neither lawful collective bargaining agreements nor agreements that are the result of lawful collective bargaining.

**ANSWER TO PARAGRAPH NO. 99:** KEA denies.

**COMPLAINT PARAGRAPH NO. 100:** As a direct result of the unlawful New CBA between KEA and the School District, Plaintiff Glembocki has been injured in that she is precluded from attempting to individually negotiating the factors and conditions of her employment by the School District in the free market.

**ANSWER TO PARAGRAPH NO. 100:** KEA denies.

**COMPLAINT PARAGRAPH NO. 101:** Plaintiff Lacroix and other taxpayers are also harmed by the restraint of trade because substantial taxpayer funds will be used to implement all three of the New CBAs which would not be spent absent the restraint of trade.

**ANSWER TO PARAGRAPH NO. 101:** KEA denies.

**COMPLAINT PARAGRAPH NO. 102:** Pursuant to Wis. Stat. § 806.04, Plaintiffs are entitled to a declaration that the New CBAs violate Wis. Stat. § 133.03(1) and are therefore unlawful, invalid and void.

**ANSWER TO PARAGRAPH NO. 102:** KEA denies.

**COMPLAINT PARAGRAPH NO. 103:** Pursuant to Wis. Stat. § 133.18, Plaintiffs are entitled to recover the costs of this suit, including reasonable attorney fees.

**ANSWER TO PARAGRAPH NO. 103:** KEA denies.

**FOURTH CAUSE OF ACTION**

*On Behalf Of Plaintiffs Lacroix And Glembocki, Against Defendants School District, KEA, SEIU, And AFSCME; For A Declaration That The New CBAs Are Unlawful, And Therefore Void, In That They Violate Wis. Stat. § 111.70(4)(mb)*

**COMPLAINT PARAGRAPH NO. 104:** Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

**ANSWER TO PARAGRAPH NO. 104:** KEA restates and incorporates its answers to the previous paragraphs above.

**COMPLAINT PARAGRAPH NO. 105:** Under Wis. Stat. § 111.70(1)(a), collective bargaining is defined as:

The performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, **to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement**, or to resolve questions arising under such an agreement, with respect to wages, hours, and conditions of employment for public safety employees or transit employees and **with respect to wages for general municipal employees . . .** Collective bargaining includes the reduction of any agreement reached to a written and signed document.

(Emphasis added.)

**ANSWER TO PARAGRAPH NO. 105:** KEA admits that Paragraph No. 105 correctly quotes Wis. Stat. § 111.70(1)(a).

**COMPLAINT PARAGRAPH NO. 106:** Wis. Stat. § 111.70(4)(mb)(1) limits the subject of authorized collective bargaining to wages as therein defined, and prohibits bargaining with respect to any other factors or conditions of employment:

A municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a general municipal employee with respect to . . . any factor or condition of employment except wages, which includes only total base wages and excludes any other compensation, which includes, but is not limited to, overtime, premium pay, merit pay,

performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

**ANSWER TO PARAGRAPH NO. 106:** KEA admits that Paragraph No. 106 correctly quotes Wis. Stat. § 111.70(4)(mb)(1).

**COMPLAINT PARAGRAPH NO. 107:** Taken together, Wis. Stat. §§ 111.70(4)(mb)(1) and 111.70(10(a)), prohibit the School District from collectively bargaining with any collective bargaining representative on any factors or conditions of employment other than total base wages.

**ANSWER TO PARAGRAPH NO. 107:** KEA denies.

**COMPLAINT PARAGRAPH NO. 108:** The School District collectively bargained with the Unions on factors and conditions of employment other than total base wages.

**ANSWER TO PARAGRAPH NO. 108:** KEA admits.

**COMPLAINT PARAGRAPH NO. 109:** The School District reached collective bargaining agreements with the Unions on factors and conditions of employment other than base wages (the New CBAs).

**ANSWER TO PARAGRAPH NO. 109:** KEA admits.

**COMPLAINT PARAGRAPH NO. 110:** The New CBA between KEA and the School District violates Plaintiff Glembocki's rights by subjecting her to the performance and the effects of an unlawful contract, as well as denying her the right to negotiate subjects other than base wages directly with her employer.

**ANSWER TO PARAGRAPH NO. 110:** KEA denies.

**COMPLAINT PARAGRAPH NO. 111:** All three New CBAs violate Plaintiff Lacroix's rights as a taxpayer, because the New CBAs require the expenditure of taxpayer funds in an unlawful manner.

**ANSWER TO PARAGRAPH NO. 111:** KEA denies.

**COMPLAINT PARAGRAPH NO. 112:** The New CBAs are invalid and unenforceable, because they violate § 111.70(4)(mb).

**ANSWER TO PARAGRAPH NO. 112:** KEA denies.

**FIFTH CAUSE OF ACTION**

*On Behalf Of Plaintiff Glembocki; Against Defendants School District and KEA For A Declaration That The New CBA Between KEA And The School District Is Unlawful, And Therefore Void, In That It Violates Wis. Stat. § 111.70(2)*

**COMPLAINT PARAGRAPH NO. 113:** Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

**ANSWER TO PARAGRAPH NO. 113:** KEA restates and incorporates its answers to the previous paragraphs above.

**COMPLAINT PARAGRAPH NO.114:** Under Wis. Stat. § 111.70(2) teachers have the right to refrain from union activities, the right to refrain from paying union dues, and the right not to be bound by a so-called "fair share" agreement.

**ANSWER TO PARAGRAPH NO. 114:** KEA denies.

**COMPLAINT PARAGRAPH NO. 115:** Section XI(B) at pages 19-20 of the Expired Agreement between KEA and the School District (*Exhibit G*) specifically states that "all employees covered by this Agreement shall become members of the Kenosha Education Association or pay to the Association their proportionate share of the cost of

collective bargaining process and contract administration . . .” This provision was not modified or amended in any way by the Tentative Agreement (*Exhibit E*).

**ANSWER TO PARAGRAPH NO. 115:** Paragraph 115 is a statement of legal assertions and argument to which no answer is required, but to the extent that an answer is deemed necessary, KEA denies the allegations of Paragraph 115.

**COMPLAINT PARAGRAPH NO. 116:** The New CBA between KEA and the School District violates Plaintiff Glembocki’s rights under Wis. Stat. § 111.70(2) because it imposes an obligation on her to pay union dues against her will.

**ANSWER TO PARAGRAPH NO. 116:** KEA denies.

**COMPLAINT PARAGRAPH NO. 117:** Therefore, the New CBA between KEA and the School District is invalid and unenforceable.

**ANSWER TO PARAGRAPH NO. 117:** KEA denies.

#### **SIXTH CAUSE OF ACTION**

*On Behalf Of Plaintiffs Lacroix and Glembocki; Against Defendants School District, KEA, SEIU, And AFSCME; For A Declaration That The New CBAs Are Unlawful, And Therefore Void, In That It Violate Wis. Stat. § 111.70(3g)*

**COMPLAINT PARAGRAPH NO. 118:** Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

**ANSWER TO PARAGRAPH NO. 118:** KEA restates and incorporates its answers to the previous paragraphs above.

**COMPLAINT PARAGRAPH NO. 119:** Under Wis. Stat. § 111.70(3g), “A municipal employer may not deduct labor organization dues from the earnings of a general municipal employee or supervisor.”

**ANSWER TO PARAGRAPH NO. 119:** KEA admits.

**COMPLAINT PARAGRAPH NO. 120:** Section XI(B) of the Expired Agreements between the Unions and the School District (*Exhibit G*) contains the procedures for the School district to automatically deduct such dues from the employees' payroll checks. This provision was not modified or amended in any way by the Tentative Agreement (*See Exhibit E*).

**ANSWER TO PARAGRAPH NO. 120:** KEA admits that Section XI(B) of Exhibit G includes procedures for the School District to deduct dues from certain employees' payroll checks, and that this provision was not modified or amended in any way by the Tentative Agreement (Exhibit E), and denies the balance of the assertions contained in this paragraph.

**COMPLAINT PARAGRAPH NO. 121:** The New CBA between KEA and the School District violates Plaintiff Glembocki's rights by requiring unlawful deductions from her paychecks.

**ANSWER TO PARAGRAPH NO. 121:** KEA denies.

**COMPLAINT PARAGRAPH NO. 122:** All three New CBAs violate Plaintiff Lacroix's rights as a taxpayer, because the deduction of dues by the School District requires the expenditure of taxpayer funds in an unlawful manner.

**ANSWER TO PARAGRAPH NO. 122:** KEA denies.

**COMPLAINT PARAGRAPH NO. 123:** The New CBAs are invalid and unenforceable because they violate § 111.70(3g).

**ANSWER TO PARAGRAPH NO. 123:** KEA denies.

## AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state a claim upon which relief may be granted.

2. The Plaintiffs are not entitled to injunctive relief because they have an adequate remedy at law.

3. Those provisions of Act 10 upon which the Plaintiffs rely for their claim are unconstitutional.

4. The Kenosha Unified School District ("KUSD") was notified by the Wisconsin Employment Relations Commission that the KEA had not been decertified as the sole and exclusive bargaining agent for certain employees of the KUSD and, therefore, it would have committed a prohibited practice pursuant to Wis. Stat. § 111.70(3)(a)(4) for the KUSD to have refused to have collectively bargained with the KEA.

5. The collective bargaining agreements between KUSD and KEA for the periods July 1, 2013 through June 30, 2014 and July 1, 2014 through June 30, 2015 were not entered into in violation of law or public policy, because: (1) at the time the collective bargaining between the KUSD and the KEA took place, the Wisconsin Employment Relations commissioners were parties, in their official capacities, to a lawsuit in which the provisions of Act 10 on which the Plaintiffs' claims are based were declared to be unconstitutional; (2) they were bound by the declaration in that case; (3) the declaration was not stayed by the Wisconsin Court of Appeals or the Wisconsin Supreme Court; and (4) the unconstitutional provisions of Act 10 could not, therefore,

be enforced against anyone including non-parties. Consequently, the KUSD would have committed a prohibited practice pursuant to Wis. Stat. § 111.70(3)(a)(4) had the KUSD refused to collectively bargain with the KEA over wages, hours and working conditions.

6. No taxpayer has suffered any damages because, even if the collective bargaining agreements were to be determined to be void, the KUSD is free to treat the terms and conditions of the collective bargaining agreements with the KEA regarding wages, hours and working conditions as personnel policies and continue to maintain and implement them.

7. The Plaintiffs have failed to join indispensable parties to this action as required by Wis. Stat. §§ 806.03(1) and 802.06(a)(2)(7).

#### **CROSS CLAIM: BREACH OF CONTRACT**

By way of a cross claim against co-defendant Kenosha Unified School District Board of Education ("KUSD"), defendant Kenosha Education Association ("KEA") alleges as follows:

1. KEA is the collective bargaining agent for five (5) different bargaining units: (1) all regular full-time and all regular part-time certified teaching personnel employed by KUSD, (2) all regular full-time and regular part-time Education Support Professionals employed by KUSD, (3) all substitute teachers employed by KUSD, (4) all regular licensed full-time and part-time educational interpreters employed by KUSD, and (5) all carpenters and painters employed by the District (collectively, the "KEA bargaining units").



2. Each of the KEA bargaining units ratified a collective bargaining agreement with KUSD on or about November 12, 2013, and KUSD ratified those same contracts on or about November 15, 2013.

3. The contracts between the parties require KUSD to make payroll deductions of member dues and non-member fair share contributions (for their share of the cost of collective bargaining process and contract administration) from the paychecks of the employees in the KEA collective bargaining units once per month on the first payroll check of each month.

4. The contracts further require KUSD to pay the withheld amounts to KEA within ten days of the deduction.

5. KUSD has failed to make the required payroll deductions, and has further failed to pay the requisite amounts to KEA.

6. KUSD has informed KEA that it does not intend to withhold and pay to KEA the amounts required under the contracts.

7. A Notice of Claim and Claim, pursuant to Wis. Stat. § 893.80, regarding these repeated and ongoing breaches of contract by KUSD was served upon KUSD on March 7, 2014. The Notice of Claim and Claim is dated March 5, 2014.

8. As of March 5, 2014, the total amount of member dues and fair share contributions that KUSD had failed to pay to KEA was \$739,688.68, and that sum still has not been paid. Additional estimated amounts of \$147,937.74 were due and not paid within ten days of each of the payroll dates of March 5, 2014, and April 2, 2014, and additional estimated amounts of \$147,937.74 will accrue to be due within ten days of

each of the payroll dates of May 14, 2014 and June 11, 2014 unless KUSD complies with the contracts.

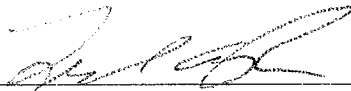
WHEREFORE, Defendant Kenosha Education Association demands judgment as follows:

- A. Dismissal of Plaintiffs' Complaint;
- B. Order directing KUSD to specifically perform its obligations of dues deductions and remittance to KEA under the parties' contract;
- C. KEA's damages against KUSD on its breach of contract cross claim;
- D. KEA's costs and disbursements of this action; and
- E. Such other and further relief as the Court deems just and appropriate.

***DEFENDANT KENOSHA EDUCATION ASSOCIATION DEMANDS  
A TWELVE-PERSON JURY TRIAL ON PLAINTIFFS' CLAIM MADE PURSUANT TO  
WIS. STAT. § 133.03 AND ON ITS BREACH OF CONTRACT CLAIM AGAINST KUSD.***

Dated this 14th day of April, 2014.

CULLEN WESTON PINES & BACH LLP



---

Lester A. Pines, SBN 1016543  
Attorney for Defendant  
Kenosha Education Association

Mailing Address

122 West Washington Avenue  
Suite 900  
Madison, Wisconsin 53703  
(608) 251-0101 (telephone)  
(608) 251-2883 (facsimile)  
pines@cwpb.com