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October 3, 2014

Hon. Richard G. Niess
Dane County Courthouse
215 S. Hamilton St., Rm. 5109
Madison, WI 53703

RECEIVED
10/6/14

Re: *David Blaska v. MMSD, et al.*
Case No. 14cv2578

Dear Judge Niess:

Enclosed for filing in the above-referenced matter, please find an original and one copy of Madison Teachers Inc.'s Answer to Complaint and Affirmative Defenses. Please file the original and return the file-stamped copy to our messenger.

By copy of this letter, all parties have been served with the same.

Thank you for your attention to this matter.

Very truly yours,

CULLEN WESTON PINES & BACH LLP



Lester A. Pines

LAP:hmm
Enclosures

cc: Richard Esenberg
Sarah Zylstra
Madison Teachers Inc.

DAVID BLASKA,

Plaintiff,

Case No. 14CV2578

v.

MADISON METROPOLITAN SCHOOL DISTRICT
BOARD OF EDUCATION, MADISON METROPOLITAN
SCHOOL DISTRICT and MADISON TEACHERS INC.,

Defendants.

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant Madison Teachers Inc. ("MTI") by its attorneys, Cullen Weston Pines & Bach LLP, as an answer to the plaintiff's Complaint admits, denies and alleges as follows:

INTRODUCTION¹

COMPLAINT PARAGRAPH NO. 1: This is a taxpayer action for declaratory judgment under Wis. Stat. § 806.04 and for an injunction under Wis. Stat. § 813.02. Plaintiff seeks a declaration that the 2014-2015 and the 2015-2016 collective bargaining agreements (the "CBAs") between the School District and MTI are unlawful, invalid and void on the grounds that: (a) the CBAs are the product of unlawful collective bargaining in violation of Wis. Stat. § 111.70(4)(mb); (b) the CBAs contain terms that

¹ For ease of reference, MTI sets out in the body of this Answer the headings and each paragraph of the plaintiff's Complaint, and is not intended as an admission of any assertion contained in the Complaint. The headings used by plaintiff in his Complaint are not understood to be assertions to which an Answer is required, but to the extent an answer is necessary, MTI denies all such allegations.

violate Wisconsin law; and (c) the CBAs violate the rights of teachers under Wis. Stat. § 111.70(2).

ANSWER TO PARAGRAPH NO. 1: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike subsection (c) of this paragraph, on the grounds stated in the District's Motion and Answer. To the extent the motion is denied, MTI denies subsection (c) of this paragraph. MTI further denies all other allegations contained in this paragraph.

COMPLAINT PARAGRAPH NO. 2: Plaintiff seeks a declaration that the CBAs are unlawful, invalid and void, and seeks an injunction prohibiting the CBAs from being enforced.

ANSWER TO PARAGRAPH NO. 2: MTI admits that plaintiff seeks a declaration and injunction but denies that plaintiff is entitled to either. MTI denies all other allegations contained in this paragraph.

PARTIES

COMPLAINT PARAGRAPH NO. 3: Plaintiff David Blaska is a citizen of the State of Wisconsin, a resident of the City of Madison and the County of Dane, and a taxpayer whose taxes are used to fund the School District. He resides at 5213 Loruth Terrace, Madison, WI 53711.

ANSWER TO PARAGRAPH NO. 3: MTI lacks knowledge or information sufficient to form a belief as to the truth of these assertions and therefore denies them and puts plaintiff to his proof.

COMPLAINT PARAGRAPH NO. 4: 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. 4: MTI admits.

COMPLAINT PARAGRAPH NO. 5: Defendant Board is the governing body of the School District as defined in Wis. Stat. § 115.001(7). The School District and the Board have offices at 545 West Dayton Street, Madison, WI 5370.

ANSWER TO PARAGRAPH NO. 5: MTI admits that the Board is the governing body of the District as defined in Wis. Stat. § 115.001(7) and that the District and the Board have offices at 545 West Dayton Street Madison, WI. MTI denies that the zip code for those offices is 5370, denies that the Board is a proper party to this lawsuit, and denies all other allegations in this paragraph. MTI affirmatively alleges that the zip code for the offices of the District and the Board is 53703.

COMPLAINT PARAGRAPH NO. 6: Defendant MTI is a domestic non-stock corporation that represents School District public school teachers and other School District employees under the provisions of Wis. Stats. § 111.70 in collective bargaining with the Board and the School District. MTI has a principal office at 821 Williamson Street, Madison, WI 53703.

ANSWER TO PARAGRAPH NO. 6: MTI admits that it is a domestic non-stock corporation with a principal office at 821 Williamson Street, Madison, WI 53703. MTI further admits that it is the certified collective bargaining agent as that term is used in Wis. Stat. § 111.70 for certain bargaining units of employees of the Madison

Metropolitan School District ("the District"). MTI affirmatively asserts that it is and has been the certified collective bargaining agent as that term has been used in Wis. Stat. § 111.70 for certain bargaining units of employees of the District since 1964. MTI denies all other allegations in this paragraph.

JURISDICTION AND VENUE

COMPLAINT PARAGRAPH NO. 7: 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 CBAs; (b) the interests of Plaintiff and Defendants are adverse in that the Board authorized the negotiation of and ratified the CBAs and the School District and MTI are parties to the CBAs and Plaintiff seeks a declaration that the CBAs are unlawful, invalid and void; (c) Plaintiff Blaska on behalf of himself and other taxpayers has a legally protected interest because he and other taxpayers have suffered and will continue to suffer a pecuniary loss as a result of the Defendants' illegal conduct in that under the CBAs taxes will be spent in a manner which is unlawful and in violation of the public policy of the State of Wisconsin; and (d) the controversy is ripe for determination in that the Board and the School District are continuing to implement the CBAs but the CBAs are unlawful, invalid and void.

ANSWER TO PARAGRAPH NO. 7: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI admits that this court has jurisdiction, but denies all other allegations in this paragraph. MTI affirmatively alleges that the Wisconsin Institute for Law & Liberty, Inc., ("WILL") is the real party in interest.

COMPLAINT PARAGRAPH NO. 8: Venue is proper in this Court pursuant to Wis. Stat. § 801.50(2)(a) and (c).

ANSWER TO PARAGRAPH NO. 8: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI admits that venue is proper in this court under Wis. Stat. § 801.50(2)(a) and (c) on the basis of the alleged residency of the plaintiff but denies all other allegations in this paragraph.

FACTS
Act 10

COMPLAINT PARAGRAPH NO. 9: 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. 9: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI admits that the Wisconsin Legislature enacted 2011 Act 10 and 2011 Act 32 (collectively, "Act 10"), but denies all other allegations in this paragraph and specifically denies that relevant portions of Act 10 were in effect for MTI at all times relevant to the plaintiff's allegations.

COMPLAINT PARAGRAPH NO. 10: 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, 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, or automatic pay progression. Wis. Stat. § 111.70(4)(mb).

ANSWER TO PARAGRAPH NO. 10: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI affirmatively alleges that Act 10, Wis Stat. § 111.70, and related statutes speak for themselves, and denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 11: Pursuant to Act 10, teachers have the right, among other things, to (a) refrain from union activity, (b) not pay union dues, and (c) not pay any amount under any so-called “fair share” agreements, i.e. non-union teachers being forced to pay union dues against their wishes.

ANSWER TO PARAGRAPH NO. 11: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District’s Motion to Strike this paragraph, on the grounds stated in the District’s Motion and Answer. To the extent that motion is denied, MTI answers this paragraph as follows: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI affirmatively alleges that Act 10 and related statutes speak for themselves, and denies all other allegations in this paragraph.

Act 10 Litigation

COMPLAINT PARAGRAPH NO. 12: In the wake of its passage by the Legislature, several lawsuits were filed challenging the validity of Act 10 on constitutional or other grounds. Act 10 has been upheld in every challenge. *WEAC v. Walker*, 705 F.3d 640 (7th Cir. 2013), *Wisconsin Law Enforcement Ass'n v. Walker*, Dane County Circuit Court No. 12CV4474; *Laborers Local 236, AFL-CIO v. Walker*, 749 F.3d 628 (7th Cir. 2014), and *Madison Teachers, Inc. v. Walker*, 2014 WI 99 (Wisconsin Supreme Court, July 30, 2014).

ANSWER TO PARAGRAPH NO. 12: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI admits that after the Wisconsin Legislature passed Act 10, several lawsuits regarding Act 10 were filed, and affirmatively states that such lawsuits, pleadings, arguments and rulings in those cases speak for themselves, and deny all other allegations in this paragraph.

History of the School District and MTI Negotiations In Violation of Act 10

COMPLAINT PARAGRAPH NO. 13: After the effective date of Act 10 - July 1, 2011 - and despite its enactment, the Defendants continued to collectively bargain on subjects prohibited by Act 10, reaching collective bargaining agreements containing terms prohibited by Act 10 for the 2014-2015 and the 2015-2016 school years.

ANSWER TO PARAGRAPH NO. 13: MTI admits that on behalf of five different bargaining units of District employees represented by MTI, MTI collectively bargained with the District and reached collective bargaining agreements between the

District and MTI for each bargaining unit for the year July 1, 2014 through June 30, 2015, and a separate set of collective bargaining agreements between the District and MTI for each bargaining unit for the year July 1, 2015 through June 30, 2016. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH 14: Under the CBAs, MTI was the collective bargaining agent for a variety of employees of the district, including but not limited to teachers, other related professional personnel, and certain staff. The employees covered by the CBAs are collectively referred to in the CBAs as “teachers” and will be referred to collectively herein as “teachers.”

ANSWER TO PARAGRAPH NO. 14: MTI admits that it is and has been at all relevant times the certified collective bargaining agent for five bargaining units of District employees. MTI further admits that teachers, other professionals, and certain staff are among the positions included in the five collective bargaining units for which it serves as certified collective bargaining agent. MTI denies that all of the employees it represents are referred to in the CBA’s as “teachers,” but affirmatively asserts that one of its bargaining units is referred to as the “teacher” bargaining unit in the CBA’s governing that bargaining unit. MTI denies all remaining allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 15: In May, 2013, MTI requested that the District collectively bargain a contract for the 2014-2015 school year. The District and the Board agreed to do so and such collective bargaining occurred in September 2013. A true and correct copy of a joint letter from the District and MTI describing the

decision to collectively bargaining and the dates for such bargaining is attached hereto as Exhibit A.

ANSWER TO PARAGRAPH NO. 15: MTI admits that in May of 2013 MTI requested that the District collectively bargain contracts for the year July 1, 2014 through June 30, 2015 with MTI for each of the five separate units of employees represented by MTI, admits that this bargaining occurred in September of 2013, admits that a true and correct copy of a joint letter from the District and MTI is attached as Exhibit A to plaintiff's Complaint, affirmatively alleges that Exhibit A to plaintiff's Complaint speaks for itself, affirmatively alleges that MTI and the District were acting in conformance with the ruling from the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, and denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 16: On October 3, 2013, counsel for the Plaintiff wrote to the District and stated that:

If the School District were to collectively bargain in a way that violates Act 10, it would be exposed to litigation by taxpayers or teachers who do not wish to be bound to an unlawful agreement or to be forced to contribute to an organization that they do not support.

A true and correct copy of the October 3, 2013 letter is attached hereto as Exhibit B.

ANSWER TO PARAGRAPH NO. 16: MTI denies that the document attached to plaintiff's Complaint as Exhibit B demonstrates that it is from counsel for the plaintiff, affirmatively alleges that no client is explicitly identified in Exhibit B, and affirmatively alleges upon information and belief that on October 3, 2013 neither WILL nor Attorney Richard M. Esenberg were engaged to represent the plaintiff. MTI further admits that the text quoted in the paragraph is included in Exhibit B to the plaintiff's

Complaint, and that Exhibit B purports to be on WILL letterhead and signed by Richard M. Esenberg. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in this paragraph and therefore denies them and puts plaintiff to his proof.

COMPLAINT PARAGRAPH NO. 17: As a result of the collective bargaining which occurred in September, 2013, and despite the notice received on October 3, 2013, on October 7, 2013, the Board ratified the collective bargaining agreement for the 2014-2015 school year. The 2014-2015 collective bargaining agreement was describe by the defendants herein as an extension of the 2013-2014 agreement.

ANSWER TO PARAGRAPH NO. 17: MTI admits that as a result of collective bargaining that occurred in September of 2013, on October 7, 2013 the Board ratified a collective bargaining agreement for the year July 1, 2014 through June 30, 2015 with MTI for each of the five separate units of employees represented by MTI, denies that any of those agreements was an extension of any 2013-2014 agreement, and denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 18: On May 15, 2014, the Board voted unanimously to enter into collective bargaining with MTI's five bargaining units for an additional year, namely 2015-2016.

ANSWER TO PARAGRAPH NO. 18: MTI admits that on May 15, 2014 the Board voted unanimously to enter into collective bargaining with MTI for each of the five bargaining units represented by MTI and that the parties intended to bargain

collective bargaining agreements for the period July 1, 2015 through June 30, 2015. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 19: On that same date, May 15, 2014, Plaintiff's counsel wrote a letter to the School Board informing them that Act 10 prohibits terms in collective bargaining agreements that are inconsistent with the provisions of Act 10, and likewise that any such provisions cannot be included in any extension, modification or renewal of a preexisting contract. Plaintiff's counsel further stated that, "[i]f the CBA is unlawfully extended, then every taxpayer in Madison would have a valid claim arising from the illegal expenditure of tax dollars, and every teacher in Madison would have a valid claim for violation of their rights under Wis. Stat. § 111.70(2)." A true and correct copy of the letter from Plaintiff's counsel is attached hereto as Exhibit C.

ANSWER TO PARAGRAPH NO. 19: MTI denies that the document attached to plaintiff's Complaint as Exhibit C demonstrates that it is from counsel for the plaintiff, affirmatively alleges that no client is explicitly identified in Exhibit C, and affirmatively alleges upon information and belief that on May 15, 2014 neither WILL nor Attorney Richard M. Esenberg were engaged to represent the plaintiff. MTI further admits that the text quoted in the paragraph is included in Exhibit C to the plaintiff's Complaint, and that Exhibit C purports to be on WILL letterhead and signed by Richard M. Esenberg. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in this paragraph and therefore denies them and puts plaintiff to his proof.

COMPLAINT PARAGRAPH NO. 20: Plaintiff's counsel closed its May 15th letter by stating that "Obviously, you cannot be forced to use the tools provided by Act 10 to better serve Madison's children and taxpayers. But you do have to comply with the law, and we hope that you will at least choose to avoid the litigation costs that will likely result from a decision to extend the CBA in violation of Act 10."

ANSWER TO PARAGRAPH NO. 20: MTI denies that the document attached to plaintiff's Complaint as Exhibit C demonstrates that it is from counsel for the plaintiff, affirmatively alleges that no client is explicitly identified in Exhibit C, and affirmatively alleges upon information and belief that on May 15, 2014 neither WILL nor Attorney Esenberg were engaged to represent the plaintiff. MTI admits that the text quoted in the paragraph is included in Exhibit C to the plaintiff's Complaint. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in this paragraph and therefore denies them and puts plaintiff to his proof.

COMPLAINT PARAGRAPH NO. 21: After the Board's vote on May 15, 2014, and despite the notice from Plaintiff's counsel that such collective bargaining would be illegal, representatives of the Board and/or School District met and collectively negotiated with MTI as representatives of the teachers.

ANSWER TO PARAGRAPH NO. 21: MTI admits that after the Board's vote on May 15, 2014, representatives of the District met and collectively negotiated with MTI as the representative of five separate units of employees of the District, including one unit of employees who are teachers. MTI affirmatively alleges that MTI and the

District were acting in conformance with the ruling from the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, and denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 22: On June 2, 2014, those representatives reached tentative agreements on a collective bargaining agreement for the 2015-2016 school year. On June 3, 2014, the membership of MTI's five bargaining units ratified the tentative agreements and on June 4, 2014, the Board unanimously approved the tentative agreements.

ANSWER TO PARAGRAPH NO. 22: MTI admits that on June 2, 2014, MTI, as the representative five separate units of employees of the District, and representatives of the District reached tentative agreements with one another on collective bargaining agreements for the year July 1, 2015 through June 30, 2016. MTI admits that on June 3, 2014, the membership of each of its five bargaining units ratified the tentative agreements reached with the District. MTI admits that on June 4, 2014, the Board unanimously approved the tentative agreements reached with MTI for each of the bargaining units it represents. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 23: Thus, there is currently a collective bargaining agreement in place between the School District and MTI for the 2014-2015 school year and the Defendants have entered into a collective bargaining agreement for the 2015-2016 school year.

ANSWER TO PARAGRAPH NO. 23: MTI admits that there are currently collective bargaining agreements in place between the District and MTI for each of the five units of District employees represented by MTI for the year July 1, 2014 through

June 30, 2015, and admits that the District and MTI have entered into collective bargaining agreements for the year July 1, 2015 through June 30, 2016 for each of the five units of District employees represented by MTI. MTI affirmatively alleges that MTI and the District were acting in conformance with the ruling from the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, and denies all other allegations.

COMPLAINT PARAGRAPH NO. 24: The conduct of the Board and School District in entering into the CBAs has and continues to cost taxpayers money, including but not limited to the costs of negotiating the CBAs, making payments to teachers under the CBAs, paying stipends to supervisors and coaches, providing additional paid leave, administering dues deductions, and otherwise implementing the CBAs. The costs also include legal exposure to the School District for claims by teachers to recoup illegal forced deductions of union dues under the CBAs.

ANSWER TO PARAGRAPH NO. 24: MTI denies all allegations in this paragraph, affirmatively alleges that Act 10 does not limit what an employer can spend, affirmatively alleges that the District has the authority to impose the terms of the CBAs as policies unilaterally and to spend the same money without violating or implicating Act 10, and affirmatively alleges that plaintiff has suffered no pecuniary loss and would not pay any less in taxes even if the court were to invalidate the CBAs.

The CBAs

COMPLAINT PARAGRAPH NO. 25: The CBAs include numerous provisions which are unlawful subjects of collective bargaining under Act 10. On June 3, 2014, the School District published a summary of the material terms of the 2015-2016 collective

bargaining agreement with MTI. MTI, likewise, published its own summary. A true and correct copy of the summary of the CBAs published by the School District is attached hereto as Exhibit D. A true and correct copy of the summary of the CBAs published by MTI is attached hereto as Exhibit E. The provisions that are not permissible under Act 10, as listed in the summaries, include but are not limited to provisions on working conditions, teacher assignments, fringe benefits, teacher tenure, deduction of union dues, "fair share" payments, employee healthcare contributions, retiree healthcare, pension, sick leave, and pay schedules.

ANSWER TO PARAGRAPH NO. 25: MTI lacks knowledge or information sufficient to form a belief as to the truth of the assertions regarding Exhibit D and therefore denies them and puts plaintiff to his proof. MTI admits that a true and correct copy of an MTI document is attached to plaintiff's complaint as Exhibit E. MTI denies that the CBA's referred to include provisions that are unlawful subjects of collective bargaining under Act 10 for the defendants in this matter and affirmatively alleges that portions of Act 10 were not in effect for the defendants in this matter at all times relevant to the claims asserted in this lawsuit. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 26: Collectively, the CBAs run from July 1, 2014 through June 30, 2016.

ANSWER TO PARAGRAPH NO. 26: MTI affirmatively alleges that the CBA's between the District and MTI for each of the bargaining units represented by MTI are

one-year contracts which run from July 1, 2014 through June 30, 2015 and from July 1, 2015 through June 30, 2016. MTI denies all other allegations in this paragraph.

FIRST CAUSE OF ACTION

**For a Declaration that the CBAs are unlawful, and therefore void,
in that they violate Wis. Stats. § 111.70(2) and 111.70(4)(mb).**

COMPLAINT PARAGRAPH NO. 27: Plaintiff incorporates the allegations of the previous paragraphs as if fully set forth herein.

ANSWER TO PARAGRAPH NO. 27: MTI incorporates the answers to the previous paragraphs as if fully set forth herein.

COMPLAINT PARAGRAPH NO. 28: 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. 28: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District’s Motion to Strike this paragraph, on the grounds stated in the District’s Motion and Answer. To the extent that motion is denied, MTI answers this paragraph as follows: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies that Wis. Stat. § 111.70(2) as cited here applied at any time relevant to the complaint and the defendants in this matter and affirmatively alleges that this portion of Act 10 was not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 29: 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. 29: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies that Wis. Stat. § 111.70(1)(a) as cited here applied at any time relevant to the complaint and the defendants in this matter and affirmatively alleges that this portion of Act 10 was not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 30: 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. 30: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies that Wis. Stat. § 111.70 (4)(mb)(1) as cited here applied at any time relevant to the complaint and the defendants in this matter and affirmatively alleges that this portion of Act 10 was not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 31: Taken together, Wis. Stats. §§ 111.70(4)(mb)(1) and 111.70(1)(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. 31: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies that the statutes as cited here applied at any time relevant to the complaint and the defendants in this matter and affirmatively alleges that these portions of Act 10 were not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 32: In spite of this prohibition, the Defendants collectively bargained on numerous factors and conditions of employment, violating § 111.70(4)(mb)(1).

ANSWER TO PARAGRAPH NO. 32: MTI admits that the defendants collectively bargained with one another but denies that such bargaining violated Wis. Stat. § 111.70(4)(mb)(1) and affirmatively alleges that this portion of Act 10 was not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 33: In addition, the CBAs violate Wis. Stat. § 111.70(2) by forcing teachers to pay union dues or “fair share” payments even if the teacher does not want to belong to the union.

ANSWER TO PARAGRAPH NO. 33: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District’s Motion to Strike this paragraph, on the grounds stated in the District’s Motion and Answer. To the extent that motion is denied, MTI answers this paragraph as follows: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies that Wis. Stat. § 111.70(2) as cited here applied at any time relevant to the complaint and the defendants in this matter and affirmatively alleges that this portion of Act 10 was not in effect for the defendants to this action at all times relevant to the claims asserted in this lawsuit because of the decision of the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 34: Wisconsin courts have long held that labor agreements that violate law or public policy are invalid and unenforceable. *Bd. of*

Ed. of Unified Sch. Dist. No. 1 v. WERC, 52 Wis. 2d 625, 635 (1971) (“A labor contract term that is violative of public policy or a statute is void as a matter of law.”); *Glendale Prof'l Policemen's Ass'n v. City of Glendale*, 83 Wis. 2d 90, 106, (1978) (“When an irreconcilable conflict exists [between law and a CBA], we have held that the collective bargaining agreement should not be interpreted to authorize a violation of law.”).

ANSWER TO PARAGRAPH NO. 34: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI admits that the cases cited contain those quotations. MTI denies all other allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 35: The Board and the School District unlawfully spent taxpayer funds in collectively bargaining the CBAs and will spend substantial additional taxpayer funds in implementing the CBAs.

ANSWER TO PARAGRAPH NO. 35: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies all allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 36: The CBAs violate the public policy of the State of Wisconsin.

ANSWER TO PARAGRAPH NO. 36: MTI denies all allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 37: Pursuant to Wis. Stat. § 806.04, Plaintiff is entitled to a declaration that the CBAs are unlawful, invalid and void.

ANSWER TO PARAGRAPH NO. 37: MTI denies all allegations in this paragraph.

SECOND CAUSE OF ACTION

For an Injunction prohibiting the Unlawful CBAs from being enforced

COMPLAINT PARAGRAPH NO. 38: Plaintiff incorporates the allegations of the previous paragraphs as if fully set forth herein.

ANSWER TO PARAGRAPH NO. 38: MTI incorporates the answers of the previous paragraphs as if fully set forth herein.

COMPLAINT PARAGRAPH NO. 39: The Plaintiff and other taxpayers are irreparably harmed by the CBAs. The CBAs require the expenditure of tax monies that cannot be recovered.

ANSWER TO PARAGRAPH NO. 39: MTI denies all allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 40: The CBAs require continuing payments in violation of Act 10 relating to monetary compensation including fringe benefits agreed to in the CBAs which will impose continuing costs on the School District, and the School District must expend money to administer the CBAs including but not limited to administering the dues deductions for MTI.

ANSWER TO PARAGRAPH NO. 40: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies all allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 41: In addition, the CBAs require School District employees covered under the CBAs to pay union dues or "fair share" payments

in violation of Act 10 and prohibit them from negotiating their own terms and conditions of employment. Continuing to implement the CBAs exposes the School District to financial exposure for claims by teachers for violation of this provision.

ANSWER TO PARAGRAPH NO. 41: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike this paragraph, on the grounds stated in the District's Motion and Answer. To the extent that motion is denied, MTI answers this paragraph as follows: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies all allegations in this paragraph.

COMPLAINT PARAGRAPH NO. 42: The Plaintiff lacks an adequate remedy at law to prevent those payments and costs and an injunction is necessary to preserve the status quo.

ANSWER TO PARAGRAPH NO. 42: This paragraph is comprised of legal contentions to which no answer is required. To the extent that any answer is necessary, MTI denies all allegations in this paragraph and affirmatively alleges that the status quo is that the CBA's are in place and the parties to them are operating under them. Thus, what plaintiff seeks is the opposite of maintaining the status quo.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff lacks standing to assert his claims.
3. Plaintiff is not the real party in interest.

4. Because plaintiff did not comply with Wis. Stat. § 893.80, the court has no jurisdiction over the District and therefore plaintiff failed to appropriately bring an indispensable party under the jurisdiction of the court.

5. Plaintiff's claims do not have an adequate basis in law or in fact.

6. Plaintiff's claims may be barred by the doctrines of estoppel and laches.

7. Plaintiff's claims may be barred by the doctrines of claim preclusion and/or issue preclusion.

8. Plaintiffs claim for an injunction may be barred because plaintiff can show no valid basis for an injunction, has no irreparable harm, and has suffered no damages.

9. Plaintiff has no colorable claim and his claims are moot because the District and Board have authority to implement unilaterally the terms and conditions of the CBA's as personnel policies, and, upon information and belief, would do so if the CBA's were to be found unenforceable; further, plaintiff has suffered no pecuniary loss and would not save any money in taxes even if he were successful.

10. Plaintiff's claims are barred by the Dane County Circuit Court's decision in *Madison Teachers, Inc. v. Walker*, which decision was in effect at the time the parties to the CBA's the subject of this litigation and of which plaintiff complains were entered into, and on which defendants reasonably relied.

11. Defendants acted at all times in good faith based on the current state of the law.

12. The District would have committed a prohibited practice under the provisions of Wis. Stat. § 111.70 that applied to the defendants had it refused to bargain

with MTI in response to MTI's requests to bargain which occurred in May 2013 and in May 2014.

12. Plaintiff's claims violate the United States and Wisconsin Constitutions in that plaintiff seeks relief that would improperly impair existing contracts by holding defendants liable retroactively and applying a later court decision retroactively to void contracts that were lawful when entered.

WHEREFORE, Defendant Madison Teachers Inc. demands judgment as follows:

- A. Dismissal of plaintiff's Complaint;
- B. MTI's costs and disbursements of this action; and
- C. Such other and further relief as the Court deems just and appropriate.

***DEFENDANT MADISON TEACHERS INC. DEMANDS
A TWELVE-PERSON JURY TRIAL.***

Dated this 3rd day of October, 2014.

CULLEN WESTON PINES & BACH LLP



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