DAVIS | KUELTHAU
attorneys at law

October 7, 2014

VIA MESSENGER – ROUND TRIP

Clerk to the
Honorable David A. Hansher
Milwaukee County Courthouse, Br. 42
901 North Ninth Street
Milwaukee, WI 53233

Re: Marone v. Milwaukee Area Technical College District, et. al.
Case No. 13-CV-004154
Our File No. 03731.17452

I am enclosing the original and one copy of the following:

1. Joint Memorandum in Further Support of Defendant's and Intervenor-Defendant's Respective Motion for Judgment on the Pleadings and Motion to Dismiss and Certificate of Service.

2. Tentative agreements produced in discovery by Milwaukee Area Technical College District to the plaintiff. These tentative agreements were referenced by counsel for Ms. Marone when we last were in court on September 30, 2014, and Judge Hansher asked that we file a copy along with this memorandum.

3. March 12, 2013 Clerk of Wisconsin Court of Appeals Order, *Madison Teachers Inc. vs. Scott Walker et al*, Dane County No. 2011CV003774, Dkt. 97.

Please file the original of each document and return the file stamped copies to our waiting messenger.

As indicated on the enclosed Certificate of Service, counsel of record are being served with a copy of the enclosed this date via email and U.S. mail.

Thank you.

Very truly yours,

Davis & Kuelthau, s.c.

Kathy Nusslock

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KLN:slh
Enclosures
cc: Richard M. Esenberg, Esq. (w/encs. – via U.S. mail & email)
Timothy E. Hawks, Esq. (w/encs. – via U.S. mail & email)

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 42 | MILWAUKEE COUNTY

VICTORIA MARONE

Plaintiff,

v.

MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT

Case No. 13-CV-004154

Defendant,

Hon. David A. Hansher

v.

AMERICAN FEDERATION OF TEACHERS, LOCAL 212, WFT, AFL-CIO

Intervenor-Defendant.

CERTIFICATE OF SERVICE

Stacey Howe states that on the 7th day of October, 2014, she served: the Joint Memorandum in Further Support of Defendant's and Intervenor-Defendant's Respective Motion for Judgment on the Pleadings and Motion to Dismiss and Certificate of Service; the tentative agreements produced requested by the Court on September 30, 2014; and the March 12, 2013 Clerk of Wisconsin Court of Appeals Order, *Madison Teachers Inc. vs. Scott Walker et al*, Dane County No. 2011CV003774, Dkt. 97 on the following counsel of record via email and U.S. mail.

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STATE OF WISCONSIN | CIRCUIT COURT BRANCH 42 | MILWAUKEE COUNTY

VICTORIA MARONE

Plaintiff,

v.

MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT

Defendant,

v.

AMERICAN FEDERATION OF TEACHERS, LOCAL 212, WFT, AFL-CIO

Intervenor-Defendant.

Case No. 13-CV-004154

Hon. David A. Hansher

JOINT SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF DEFENDANT'S AND INTERVENOR-DEFENDANT'S RESPECTIVE MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION TO DISMISS

Plaintiff Victoria Marone ("Marone") has asked the court to declare certain tentative, conditional agreements ("Conditional Successor Agreements"), between defendant Milwaukee Area Technical College District ("MATC") and intervenor-defendant American Federation of Teachers, Local 212, WFT AFL-CIO ("Local 212") (collectively, with MATC, the "Defendants"), to be unlawful, invalid and void. (Compl. ¶¶ 1-2). However, the Conditional Successor Agreements are not binding contracts under Wisconsin law and are not proper subjects for declaratory relief.

The Conditional Successor Agreements were expressly conditioned on a determination by the appellate courts that Dane County Circuit Court Judge Colas correctly concluded that

portions of 2011 WI Act 10 ("Act 10") are unconstitutional. (Compl. Ex. D). However, the Wisconsin Supreme Court overturned Judge Colas' decision in *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 851 N.W.2d 337. As a result, the condition precedent to the Conditional Successor Agreements being finalized, signed, and implemented as actual contracts was not satisfied and, consequently, the Conditional Successor Agreements did not and cannot become binding agreements.

In light of the Wisconsin Supreme Court's decision in *Madison Teachers,* MATC and Local 212 jointly submit that Marone's claims are moot and do not present an actual, justiciable controversy that is ripe for judicial determination. Marone cannot secure a declaratory judgment that a contract is unlawful, invalid, and void when no such contract exists. Therefore, her claims for declaratory relief should be dismissed in their entirety for the reasons set forth below, as well as the reasons set forth in Local 212's Motion to Dismiss the Complaint and MATC's Motion for Judgment on the Pleadings Seeking Dismissal in Full or In Part.[1]

SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS

1. Marone's Complaint is Limited To A Claim For Declaratory Relief Concerning Alleged Collective Bargaining Agreements.

The only relief Marone seeks is a declaration that the parties' Conditional Successor Agreements are unlawful, invalid and void on the grounds that MATC violated Wis. Stat. §§ 66.0506 and 111.70(4)(mb) or, alternatively, that MATC violated Wis. Stat. § 133.03(1). (Compl. ¶¶ 30-43; p. 9). Marone confirmed this in her response to MATC's motion for judgment on the pleadings:

[1] The Defendants incorporate by reference and mutually adopt the arguments set forth in the parties' respective Motion to Dismiss the Complaint and Motion for Judgment on the Pleadings Seeking Dismissal in Full or In Part, with the exception of Local 212's request that the court transfer this matter to the WERC for decision, which Local 212 withdrew on September 30, 2014.

> Ms. Marone does not seek any form of damages against MATC, nor does she seek any penalty against MATC or any MATC official. She seeks a declaration that the labor contracts negotiated between MATC and Local 212 in violation of Act 10 are null and void under two distinct theories.

(Plaintiff's Response Brief In Opposition To Milwaukee Area Technical College's Motion For Judgment On The Pleadings, p. 4.)

2. Marone's Claims In Support Of Her Complaint Are Based Entirely Upon The Tentative Conditional Successor Agreements.

Marone's claims are based entirely upon the parties' Conditional Successor Agreements. (Compl. ¶¶ 20-44). However, the only document that was ever approved by the MATC Board (the "Board") is a summary of the parties' Conditional Successor Agreements (Compl. Ex. D). That summary unequivocally states that the Conditional Successor Agreements would not result in actual collective bargaining agreements between the parties unless Judge Colas decision was upheld and, indeed, that relevant Wisconsin appellate court rulings would be followed if Judge Colas' decision was overturned or invalidated.

The summary that was approved by the MATC Board stated.

> Note: the parties' negotiations were entered into and their tentative agreements have been made subject to all applicable laws and regulations. The parties' negotiations and agreement are and have been conditioned on Judge Colas' decision being upheld by Wisconsin's appellate courts. If Judge Colas' decisions were to be overturned or invalidated, fully or in part, all obligations to bargain or resulting agreements are to be contingent on relevant Wisconsin appellate courts' rulings and applicable laws.

(Compl. Ex. D).

The Board resolutions approving the tentative agreements were also dependent upon a final, approved agreement being signed by the MATC District Board and the Administration.

> BE IT RESOLVED, that the Milwaukee Are Technical College District Board hereby accepts and approves the agreement reached by MATC and Local 212 [Respectively, Full-time Faculty, Part-time Faculty and

> Paraprofessionals] bargaining unit, and authorizes signatures representing the MATC District Board and the Administration on the approved agreement, *at which time said agreement shall be incorporated by reference to this resolution.*

(Compl. Ex. C) (emphasis added).[2]

The parties did not execute or enter into a final "approved agreement(s)." Doing so was only appropriate under the Conditional Successor Agreements if the conditions for finalizing those Agreements were met in the future. Therefore, it is effectively undisputed that Marone's complaint for declaratory relief is based on conditional agreements that would not become final collective bargaining agreements unless the specified conditions were met.

3. The Conditional Successor Agreements Did Not Become Binding Collective Bargaining Agreements.

While the constitutionality of Act 10 was being litigated in *Madison Teachers*, MATC entered into negotiations with Local 212. The parties subsequently agreed on terms for the Conditional Successor Agreements. (Compl. ¶¶ 22-23, Ex. D). The Conditional Successor Agreements were subject to all applicable laws and regulations, and were conditioned on appellate courts upholding Judge Colas' decision declaring portions of Act 10 to be unconstitutional, in *Madison Teachers, Inc. v. Walker*, No. 11CV3774 (Dane Co. Cir. Ct. Sept. 14, 2012). (Compl. ¶¶ 22-23, Ex. D).

On July 31, 2014, the Wisconsin Supreme Court overturned Judge Colas' decision and declared that Act 10 was constitutional. *Madison Teachers, Inc.*, 2014 WI 99, ¶¶ 3, 159-64, 851 N.W.2d 337. The Supreme Court's decision extinguished any possibility that the condition precedent required to finalize, sign, and implement the Conditional Successor Agreements could

[2] At the hearing on September 30, 2014, counsel for Marone referred to "the contracts" produced by MATC during discovery. The documents counsel referenced were the tentative understandings reached by the bargaining teams, which were subject to ratification by the teams' principals, passed back and forth during negotiations. They accompany this brief at the direction of the court. These documents were not reduced to an "approved agreement," and plaintiff does not allege that they were signed by the MATC District Board or the Union.

ever occur. Consequently, the Conditional Successor Agreements were not and cannot become binding contracts.

MATC and Local 212 join one another's motions seeking dismissal and submit that, in addition to the grounds set forth in their motions, the Complaint must also be dismissed in its entirety because it does not present an actual, justiciable controversy and it is now moot as a result of the Supreme Court's decision in *Madison Teachers*.

SUPPLEMENTAL ARGUMENT

1. The Complaint Must Be Dismissed Because Marone's Claim For Relief Is Moot.

a. The Conditional Successor Agreements Are Not And Cannot Become Binding Contracts.

Under Wisconsin contract law, the Conditional Successor Agreements never were and never can become binding contracts. Wisconsin courts hold that " 'Where the parties to the proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed.' " *Fox v. Catholic Knights Ins. Soc.*, 2003 WI 87, ¶ 26, 263 Wis. 2d 207, 665 N.W.2d 181, *quoting Kocinski v. Home Ins. Co.*, 147 Wis. 2d 728, 739, 433 N.W.2d 654 (Ct.App.1988), *aff'd by* 154 Wis.2d 56, 452 N.W.2d 360 (1990).

In this case, the parties' negotiations and their Conditional Successor Agreements were conditioned on all applicable law, regulations, and appellate approval of Judge Colas' decision in *Madison Teachers*. (Compl. Ex. D). However, the Wisconsin Supreme Court reversed Judge Colas' decision. Consequently, the condition required for a binding contract did not occur; indeed, the summary of the parties' Conditional Successor Agreements mandated compliance with the Wisconsin Supreme Court's decision. As a result, the terms and conditions set forth in the summary of the parties' Conditional Successor Agreements will never be finalized in

contract form, signed by the parties, and implemented as an actual collective bargaining agreement.

Therefore, under Wisconsin contract law, no binding contract has or can be consummated based on the Conditional Successor Agreements.

b. The Controversy Of Whether MATC Violated Wis. Stat. §§ 66.0506, 111.70(4)(mb) and 133.18 Is Moot.

Marone's First and Second Causes of Action, respectively, ask the court to declare that MATC violated Wis. Stat. §§ 66.0506 and 111.70(4)(mb) by negotiating terms and conditions that were prohibited subjects of bargaining and violated Wis. Stat. § 133.03(1) because the Conditional Successor Agreements preclude Marone from being able to negotiate the terms and conditions of her employment directly with MATC. (Compl. ¶¶ 30-43; p. 9). In addition, Marone asks the court to declare that, as a result of those violations, the Conditional Successor Agreements negotiated are unlawful, invalid and void. (Compl. ¶¶ 30-43; p. 9). However, both claims are moot and all claims requesting declaratory relief should be dismissed.

As a general rule, dismissal is appropriate when the issues to be resolved in a controversy are moot. *State ex rel. La Crosse Tribune v. Circuit Court for La Crosse County*, 115 Wis. 2d 220, 228-29, 340 N.W.2d 460 (1983). "An issue is moot when its resolution will have no practical effect on the underlying controversy. In other words, a moot question is one which circumstances have rendered purely academic." *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶ 3, 233 Wis. 2d 685, 608 N.W.2d 425 (internal citations omitted). "It is generally thought to be in the interest of judicial economy not to continue to litigate issues that will not affect real parties to an existing controversy." *La Crosse Tribune*, 115 Wis. 2d at 228. However, a court has the discretion to decide a moot issue if the issue is likely to arise again and should be resolved by the court to avoid uncertainty. *Fine v. Elections Bd. of State of Wis.*, 95 Wis. 2d 162, 166, 289

N.W.2d 823 (1980) (the court should rule on a statute related to election ballots even after the election was held because the same issue could be presented in future elections).

First, the question of whether the Conditional Successor Agreements are valid is moot. Marone has not identified a binding agreement that could be declared invalid in the first instance. The Conditional Successor Agreements described in the Complaint were not, are not, and can never be binding contracts under Wisconsin law because the condition precedent to them becoming contracts—expressly set forth in the summary attached to the Complaint as Exhibit D – has not and cannot be satisfied. The court does not need to declare that the Conditional Successor Agreements are unlawful, invalid, and void, because they are not contracts; they are conditional agreements to enter into contracts only if Wisconsin appellate courts ultimately determined that it was lawful to do so.

Accordingly, there is no controversy over this issue, because the contracts that Marone seeks to invalidate have not and will never exist, and the resolution of this question by the court has no practical effect on the parties. Moreover, the validity of the Conditional Successor Agreements is not an issue that is likely to surface again—indeed, it will not surface again--because the Wisconsin Supreme Court's decision resolves the issue of whether the condition precedent underlying the Conditional Successor Agreements could ever be met with complete finality.

Second, it is not appropriate for the court to issue a declaratory judgment on the question of whether negotiating the Conditional Successor Agreements was lawful. Marone specifically presented this claim to secure a declaration that the Conditional Successor Agreements are unlawful, invalid, and void. As the Conditional Successor Agreements were not, are not, and cannot be binding contracts, deciding at this point whether MATC violated the law by

negotiating them will have no practical effect and is a purely academic question. *See State ex rel. Olson*, 2000 WI App 61, ¶ 3. In addition, the issue of whether MATC violated the law by negotiating Conditional Successor Agreements while the constitutionality of related statutes was being litigated is not one that will arise again because the Wisconsin Supreme Court has now made a final ruling as to the constitutionality of the statutes.[3] In any event, the fact that the Conditional Successor Agreements never were and never can be binding contracts negates any claim that the MATC violated Wis. Stat. § 133.03(1) because, by her own admission "[i]n the absence of the Labor Agreement, Plaintiff and other employees of MATC would be free to negotiate with MATC as to all of the factors and conditions of their employment except for total base wages." (Compl. ¶ 37).

Therefore, the issues presented in Marone's First and Second Causes of Action, are moot and the Complaint for declaratory relief should be dismissed.

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[3] In any event, the Wisconsin Court of Appeals specifically recognized the dilemma confronting Wisconsin public employers in the *Madison Teachers* case, noting that

> It may be that some employers will choose to play it "safe" and engage in bargaining to protect themselves if the legislation at issue here is ultimately declared unconstitutional. And, if employers choose this route, as the appellants acknowledge in supplemental briefing, there would be no legal impediment to negotiating conditional contracts or retroactive wages that take into account the uncertain legal status of the challenged statutory provisions, or to attempting to recoup any overpayments if Act 10 is ultimately upheld. Such action would reduce the risk of irreparable harm.
>
> If, on the other hand, this confusion leads municipal employers to decline to bargain, such an effect is not harm, in the appellants' view, but rather the proper course. But this action also carries with it some risks. If these employers wrongly predict the outcome of the appellate proceedings regarding the merits, they may incur litigation costs and, ultimately, be required to compensate union members for losses owing to the employers' compliance with changes in MERA that are later deemed unconstitutional.

March 12, 2013 Clerk of Wisconsin Court of Appeals Order, *Madison Teachers Inc. vs. Scott Walker et al*, Dane County No. 2011CV003774, Dkt. 97 at pp. 14-15.

2. The Complaint Must Be Dismissed Because The Prerequisites For Declaratory Relief Are Not And Cannot Be Satisfied.

The court does not have jurisdiction to grant Marone's requested declaratory relief because the prerequisites for an actual, justiciable controversy have not been presented in the Complaint. As set forth in Local 212's Brief in Support of Its Motion to Dismiss, under Wisconsin's Declaratory Judgment Act, codified in Wis. Stat. § 806.04, a plaintiff seeking declaratory relief must allege a justiciable controversy by establishing the following:

1. A controversy in which a claim of right is asserted against one who has an interest in contesting it;
2. The controversy must be between persons whose interests are adverse;
3. The party seeking relief must have a legal interest in the controversy – that is to say a legally protectable interest or standing; and
4. The issue involved in the controversy is ripe for judicial determination.

Loy v. Bunderson, 107 Wis. 2d 400, 410, 320 N.W.2d 175 (1982); *Putnam v. Time Warner Cable*, 2002 WI 108, ¶ 41, 255 Wis. 2d 447, 649 N.W.2d 626; (Dkt. No. 28, p. 2-3).

In this case, the facts alleged do not establish Marone has a legally protectable interest sufficient to provide standing or a controversy ripe for judicial determination, as set forth below and in Local 212's Motion to Dismiss. (Dkt. Nos. 27 & 28). Indeed, as a result of *Madison Teachers*, Marone has not even made essential allegations that would be sufficient for the court to consider granting the requested declaratory relief, because implementing the Conditional Successor Agreements as final collective bargaining agreements is essential to Marone's requests for relief. Those Agreements never were and never will be finalized or implemented as collective bargaining agreements, however.

a. Marone Does Not Have A Legally Protectable Interest.

Marone lacks a legally protectable interest or standing because she has not suffered and will not suffer any injury requiring legal protection. Whether a party has a legally protectable

interest or standing requires that a party has either suffered an injury or be threatened with an injury. *Darboy Jt. Sanitary Dist. No. 1 v. City of Kaukauna*, 2013 WI App 113, ¶¶ 19-20, 350 Wis. 2d 435, 838 N.W.2d 103. Moreover, courts are to consider the fundamental questions of whether a plaintiff's claimed interest deserves protection against injury and what should be enough to constitute injury. *Wisconsin's Environmental Decade, Inc. v. Public Serv. Comm'n*, 69 Wis. 2d 1, 13, 230 N.W.2d 243 (1975).

In this case, Marone does not allege that she sought to bargain individual terms and conditions of employment and was rebuffed by MATC. She does not contend that was denied a request for a waiver from Local 212 to allow her to bargain individual terms and conditions with MATC or that Local 212 otherwise interfered with her efforts to do so. Marone simply alleges that her legally protected interest in individually negotiating the terms and conditions of her employment is precluded by the Conditional Successor Agreements. (Compl. ¶¶ 5, 42).

Marone has no such interest. The Conditional Successor Agreements did not and cannot come into existence, and therefore cannot preclude or even threaten to preclude Marone's interest in individually negotiating terms and conditions of her employment with MATC. As such, Marone does not have a legally protectable interest requiring court action, and these claims must be dismissed.

b. The Controversy Is Not Ripe For Judicial Determination.

In addition, Marone's claims are not ripe for judicial determination. A court does not have jurisdiction to order declaratory relief if a controversy is not ripe for judicial determination. *Sipl v. Sentry Indem. Co.*, 146 Wis. 2d 459, 469, 431 N.W.2d 685 (Ct. App. 1988). "'A justiciable controversy requires the existence of present and fixed rights. A declaratory judgment will not determine hypothetical or future rights.' " *Zehner v. Village of Marshall,* 2006 WI App

6, ¶ 13, 288 Wis.2d 660, 709 N.W.2d 64 (citation omitted); *see also Braun v. City of Wauwatosa*, No. 2009AP839, 2010 WL 1541496 at *3 (Ct. App., Apr. 20, 2010) (circuit court did not have the authority to provide the clarification sought with respect to potential or hypothetical future conduct). For a controversy to be ripe for judicial determination, the facts on which the court is asked to make a judgment must be sufficiently developed to avoid courts "entangling themselves in abstract disagreements" and should not be contingent or uncertain. *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 43, 309 Wis.2d 365, 749 N.W.2d 211 (citation omitted). "['It] is not a judicial function' to declare rights based on 'issues that are fictitious, colorable, or hypothetical.'" *Sipl*, 146 Wis. 2d at 466-67.

Moreover, the Declaratory Judgment Act does not permit courts to issue merely advisory opinions. *Sipl*, 146 Wis. 2d at 468. For example, in *Tooley v. O'Connell*, 77 Wis. 2d 422, 440, 253 N.W.2d 353 (1977), the Wisconsin Supreme Court determined that the controversy was ripe for judicial determination, because the plaintiff claimed that the procedure for levy and collection of property tax under a law was unconstitutional and the defendant government entities were required by law to implement the allegedly unconstitutional procedure. The Court reasoned that there was nothing "hypothetical" about the controversy even though the tax had not yet been levied or collected. *Tooley*, 77 Wis. 2d at 440.

In this matter, however, Marone seeks declarations on a controversy that is not ripe for judicial determination because her claims depend on the Conditional Successor Agreements being treated as though they are binding contracts. The Conditional Successor Agreements were never binding contracts and can never be binding contracts. Once the Wisconsin Supreme Court reversed Judge Colas' decision, the Conditional Successor Agreements could never be implemented. For the same reason, the possibility that the condition precedent for those

Agreements to become actual collective bargaining agreements might be satisfied—and the justiciable controversy that is necessary to support Marone's declaratory judgment action—was extinguished. Consequently, any declaration that negotiating or approving the Conditional Successor Agreements was unlawful is merely an advisory opinion based upon a fictitious or hypothetical controversy, since the Conditional Successor Agreements were never and can never become contracts that might actually affect Marone or have an impact on her stated interests.

Thus, any controversy imagined by Marone is not a justiciable controversy and not proper for the court to decide under Wisconsin's Declaratory Judgment Act.

CONCLUSION

For the reasons set forth herein, and in the Defendants' respective Motion to Dismiss and Motion for Judgment on the Pleadings Seeking Dismissal in Full or In Part, the court must dismiss Marone's claims for relief in their entirety. The Conditional Successor Agreements were never binding contracts and never can be binding contracts. As a result, Marone's claims that MATC unlawfully entered into the Conditional Successor Agreements and that the Conditional Successor Agreements are unlawful, invalid, and void must be dismissed as moot. In addition, Marone lacks standing because her alleged interest in bargaining her individual terms and conditions of employment was not impaired and has not been affected in any way. Finally, the controversy is not ripe for judicial determination; the issues presented by Marone are not an actual, justiciable controversy over which the court has jurisdiction because they call for an advisory, abstract opinion rather than an adjudication that actually affects the parties' rights and courses of action.

[Signatures appear on following page]

Dated: October 7, 2014.

DAVIS & KUELTHAU, s.c.
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Dated: October 7, 2014.

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Ful Shaw
Local 212
2-26-13

TA
Dan Meegan
MATC
2-26-13

MATC Bargaining Counter-Proposal
Local 212 Part-Time Faculty
Issues 2
February 25, 2013 ***(Draft)***

ARTICLE VII — Pension

Section 1 — Retirement System Contribution

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For income earned on or before February 15, 2014, the Board agrees to pay the full cost of the employee's contribution for eligible employees who qualify to the Wisconsin Retirement System.

For income earned on or after February 16, 2014, eligible employees who qualify shall pay the full cost of the employee's contribution, as defined by the state of Wisconsin toward the cost of pension under the Wisconsin Retirement System.

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~~a) The Board shall pay the full employee's contribution to the Wisconsin Retirement System.~~

Section 2 — Definition of Retiree

For employees hired or rehired on or before February 15, 2014, a~~A~~ retiree shall be defined as an employee who has seniority of 20 or more semesters of service to MATC, who is age 55 or older. An employee who has seniority of 20 or more semesters of service to MATC who becomes totally and permanently disabled and who qualifies for a Wisconsin Retirement System disability annuity and therefore retires from MATC is also considered a "retiree" under the terms of this agreement. Retirees may continue Health Insurance benefits on a self-paid basis.

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For employees hired or rehired on or after February 16, 2014, a retiree shall be defined as an employee with 40 or more semesters of seniority of service to MATC, who is age 60 or older.

PT Faculty

TA
Final Sheet
Local 212
2-26-13

TA
Dan Medigan
MATE
2-26-13

Local 212
Part-Time Faculty
Issue 5
Online Learning

Modify as follows:

On-Line Delivery:

A teacher must show competency or training in the internet delivery mode.

Through the Spring 2014 semester an additional load for internet instruction shall be given per the chart below. This additional load does not include curriculum development.

Hours of Class Per Week	**Additional Load for Class**
1	1.93%
2	3.86%
3	5.80%
4	5.80%
5	5.80%

Effective with the Summer 2014 semester, the additional load described above shall be eliminated. Thereafter, a one-time stipend of $675.00 shall be paid to instructors teaching an on-line course for the first time. Said stipend shall only be paid once, and shall not be paid to any instructor who has previously received an additional load or payment for teaching an on-line course.

TA
Fred Shanty
Local 212
2-19-13

TA
Dan Klepper
MATC
2-19-13

Issue 7 PT Faculty Contract
Local 212 Part-Time Faculty
February 18, 2013

Coaching

Article IX, Section 2

Modify as follows:

Section 2 — Employee Evaluation

a) Employee evaluation procedures are recognized to be a cooperative effort between the teacher and his/her immediate supervisor with the express purpose of achieving excellence in the area of effective and purposeful classroom instruction/job performance.

b) To achieve these results the following steps shall be initiated:

1) Each employee shall receive a copy of his/her evaluation at the time it is made.

2) In the case of an unsatisfactory evaluation, a conference between the employee and the Dean or designee shall be initiated immediately by the supervisor. The employee has the right to Union representation at such conference.

3) In the case of an unsatisfactory report, the employee shall have the right to submit written comments to be forwarded to the employee's Deputy Director with the supervisor's report. At the employee's request copies of his/her comments shall be placed with the supervisor's report in the personnel file.

4) It shall be the responsibility of the supervisor to assist employees in their development in every reasonable way.

5) The intercommunication system shall not be used for observation or evaluation of employees.

c) Commencing February 16, 2014, the parties agree to form a coaching committee to review, revise and implement the PEER coaching process for non-tenured, full and part-time faculty. The charge and scope of the committee is contained in the memo between the parties dated February 19, 2013.

PT#7

TA
Frank Shively
Local 212
2-19-13

TA
Dan Metzger
MATC
2-19-13

ITEM 14
Coaching PT Issue #7

Coaching Committee – A joint committee that is convened to review and revise coaching processes for non-tenured and tenured, full and part time faculty.

The committee will:

- Review coaching systems and make recommended modifications based upon system evaluations by faculty and administration.
- Create sample student evaluations based upon the teaching standards and develop a plan for distribution, completion, and collection
- Recommend training and resource development to support participation of all faculty in the coaching systems.

Peer Coaching System – Tenured Full Time

- This system focuses on faculty self reflection and development of a professional growth plan with the input and support of a peer or peers.
- All full time tenured faculty will participate in the Peer Coaching process.
- Faculty may choose to continue working with an administrator, work in pairs, groups or with individuals outside of MATC.
- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments.
- Student evaluations will be included in the Peer Coaching System to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.
- Student evaluations will be reviewed with the faculty supervisor as a component of the process to enhance faculty development and insure quality education. Faculty who consistently receive negative student feedback will be required to create a growth plan for improvement.
- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments

Professional Growth System – PT- Tenured

- All part time faculty will participate in the coaching process.

- Part time tenured faculty may participate in peer coaching as a part of their professional growth plan.

- Student evaluations will be included in the part time faculty coaching system to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.

- Student evaluations will be reviewed with the faculty supervisor as a component of the coaching process to enhance faculty development and insure quality education. Faculty who consistently receive negative student feedback will be required to create a growth plan for improvement.

- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments.

Non-tenured Faculty – Full Time & Part Time

- Non-tenured faculty participates in a system that is a combination of coaching and evaluation.
- Coaching includes self assessment, classroom observations, and ongoing professional goal setting with the faculty supervisor.

- Student evaluations will be included in the non-tenured faculty coaching system to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.

- Student evaluations will be reviewed with the faculty supervisor as a component of the coaching process to enhance faculty development and insure quality education.

- Faculty who consistently receive negative student feedback will be required to create a growth plan and timeline for improvement.
  If inadequate progress is made by the faculty this process may become a summative evaluation and may lead to termination.

***The current non-tenured processes need to be updated and incorporate the teaching standards. The Coaching committee should be convened to review these documents and update for the coming year.

TA Dan McGuan MATC 2-19-13

Frank Shaudy Local 212 2-19-13

Issue 8 PT Contract, (Issue 12 FT Contract)
Local 212 Part-Time Faculty
February 18, 2013

Part-Time Faculty Access to Full-Time Faculty Positions

Article III, Section 11 (e)- Part-Time Faculty Contract

Modify as follows Article III, Section 11 (e) of Part-Time Faculty Contract as follows as follows:

e) The following shall apply when employees apply to fill vacancies in the full-time bargaining unit:

1) For the purposes of this clause, a position in the full-time bargaining unit shall be considered vacant when no full-time faculty member fills it through a transfer or application to fill a vacancy.

2) The District must then apply Paragraph 5) below to a minimum of fifty ~~sixty~~ percent (~~60~~50%) of the vacant faculty positions, described in Paragraph 1) above, in a school year (July 1–June 30). The District shall notify the Union at the time a position notice is posted if such position is exempt from Paragraph 5) below.

3) All employees interested in the full-time position(s) shall file an application with Personnel and Human Resources.

4) If the position is declared exempt, the three most senior qualified applicants will be accorded a personal interview.

5) If the position is not declared exempt and applicants meet or exceed the qualifications of the posted position, fifty percent (50%) of the positions will be offered to one of the three most senior qualified applicants by the Dean of the respective division.

The remaining fifty percent (50%) of the non-exempt positions will be selected from the pool of tenured, part-time qualified applicants. If the number of qualified applicants exceeds three (3), a committee of three departmental faculty and three administrators will identify three finalists, one of which will be selected by the divisional Dean.

After faculty acceptance, applicants will be notified that the position has been filled.

6) The Board shall not be obligated to consider an application of a probationary employee.

TA
Dawn McKeegan
MATC
2-26-13

TA
Local 212
2-26-13

Effective July 1, 2014, Appendix L of the Part-time Faculty agreement shall be modified to reflect the High Benefit PPO Plan Design in effect for the non-represented employees of MATC as of February 19, 2013.

TA
Frank Shanty
Local 212
2-26-13

TA
Dan Mellgren
Local
2-26-13

Part-Time Faculty Pay and Full-Time Faculty Overload

Amend Part-Time Faculty contract and Full-Time Faculty contract to reflect that commencing February 16, 2014, the part-time faculty pay and the full-time faculty pay will be lowered from the current 60% pro-rate to 52%. Part-time faculty teaching summer school shall also be at the 52% rate.

TA
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2-26-13

TA
MTC
2-26-13

Wages

There will be no general/base wage increase for fiscal year 2014-15, for the Full-time Faculty and Professionals contract, the Part-time Faculty contract and Full and Part-time Paraprofessionals contract.

TA Subject to Final Review
Dan Mecegan
MATE
2-26-13

TA - subject to final review
Fred Sluzy
Local 262
2-26-13

Part-time Faculty

Effective February 16, 2014, replace Article V, Section I with the following:

I. Step Increments

Employees shall advance two steps on the salary scale upon working 768 (seven hundred sixty-eight) hours.

II. Transitional Period

The transition period described in this section shall apply only to those employees who are part-time faculty as of February 15, 2014.

To achieve an even distribution of employee step increases over the step cycle, employees whose employee identification number ends in an even number shall advance one step after working 384 (three hundred eighty-four) hours. Once employees in this group earn this step, the language in the previous sentence shall no longer apply, and this group will follow the criteria of Section I.

For employees covered by this section with employee identification numbers ending in an odd number, the language in Section I above shall apply effective February 16, 2014.

III. New Hires

For part-time faculty hired or rehired on or after February 16, 2014 the language of Section I shall apply.

IV. Other Information

Employees are in the "step before the last step" of their particular salary schedule, shall move one step, to the final step after working 384 hours.

All step movements for part-time faculty described herein shall occur at the beginning of the next closest fall or spring academic semester following the satisfaction of the criteria described above.

TA
Frank Shanty
Local 262
2-26-13

TA
Dan McElligott
2-26-13

Term of Contracts

Amend Article XX of the Full-time Faculty and Professionals contract, Article XVIII of the Part-time Faculty contract, and Article XXI of the full and part-time Paraprofessionals contract to reflect the term of the successor agreement to run from February 16, 2014 through February 15, 2015.

TA
Fred Sharp 2-19-13 Local 212
Doug McCollum MATC 2-19-13

MATC Bargaining Counter Proposal
Local 212 Full-Time Faculty and Professionals
Issues 1 through 4
February 18, 2013 ***(Draft)***

ARTICLE VII — Insurance

Section 1 — Health

A. The Board agrees to pay its share of the health insurance premium which shall be the difference between the cost of the plan and the employee premium contribution outlined in Article VII, Section 1 (A) or ~~and~~ (B) or (C) (whichever is applicable) as described herein. Effective November 1, 2007, through June 30, 2011, employees will pay a contribution of $27.50 ~~per~~ month for single coverage or $55.00 per month for family coverage under the PPO Plan ("High Level" PPO Plan effective January 1, 2008). Effective November 1, 2007, through June 30, 2011, employees will pay a contribution of $32.50 per month for single coverage or $65.00 per month for family coverage under the HMO Plan. All employees with coverage shall pay their share of the insurance premium through pre-tax payroll deductions in accordance with IRS regulations, unless they notify the District in writing to the contrary. Additionally, the plan design changes outlined in Appendix M will become effective July 1, 2011. Effective January 1, 2008, through June 30, 2011 employees with coverage under the "Low Level" PPO shall not have employee contributions as set forth above.

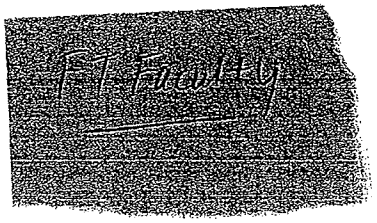
B. All of the following changes are effective July 1, 2011, and apply to active employees only.

1. **Change two-tier premiums to three-tier premiums under all MATC health plans:**

- Current "single/family" system of premiums will be changed to a three-tier system of premiums consisting of Single (employee only) coverage, Employee plus one (dependent) coverage, and Family coverage (for employees insuring more than one dependent).

2. **Health Insurance Contributions based on percent of pay:**

- Employees electing single coverage will contribute .80 of one percent (1%) of their gross pay toward the cost of health insurance.
- Employees electing employee plus one dependent coverage will contribute 1.2% of their gross pay toward the cost of health insurance.
- Employees electing family coverage will contribute 1.5% of their gross pay toward the cost of health insurance.



Wellness and Biometric Testing

Biometric testing of willing insured employees and spouses (or domestic partners) will take place beginning Spring 2011 and will include Body Mass Index, blood pressure, blood glucose, HDL/LDL/total cholesterol, and tobacco use. The overall health score is determined by vendor and serves as baseline measurement for changes in future.

- Employees with single coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .25 of 1% and contribute 1.05 % of their gross pay toward the cost of health insurance effective with the next July 1.

- Employees with employee plus one coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .5 of 1% and will contribute 1.7 % of their gross pay toward the cost of health insurance effective with the next July 1.

- Employees with family coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .5 of 1% and contribute 2.0 % of their gross pay toward the cost of health insurance effective with the next July 1.

Both the employee and the covered spouse (or covered domestic partner) must submit to the biometric testing and obtain the requisite health score for the surcharge defined herein not to apply.

By July 1, 2011 MATC, Local 212, MATC's benefit consulting firm and the biometric vendor will form a joint committee (not a core committee as defined under the labor agreement) to review and recommend under item "b)" above the criteria for the biometric components that will be scored and used to determine surcharge situations. This criteria recommendation will be completed by February 1, 2012. Said criteria and all aspects of the biometric testing program including its relationship to employee health care contributions, shall be subject to legal review and must comply with all applicable laws and regulations. In the event the joint committee cannot agree on the criteria, the president of Local 212 and president of MATC will meet to confer and resolve the disagreement and their subsequent decision shall be final. (See criteria recommended March of 2012.)

C. Effective March 1, 2014, employee health insurance premium contributions will be based on percent of premium. The employee contribution share shall be the greater of 12.6% or whatever amount is prescribed by state law;

- Employees who: a) willingly participate in biometric testing prior to open enrollment, and b) employees who maintain or improve their health score from the previous year; or employees who meet the criteria agreed upon by the parties (See March 14, 2012 memo) will pay a reduced premium percentage of 2.6% of

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premium and contribute 10% of the health insurance premium effective July 1, 2014. Should the employee contribution level be adjusted by state law, the reward for biometric participation and success will continue to be 2.6% of the premium.

- Both the employee and the covered spouse (or covered domestic partner) must submit to the biometric testing and obtain the requisite health score, or satisfy the requisite criteria (See March 14, 2012 memo) for the reduction in premium to apply.
- The biometric testing program referenced herein applies only to current full-time employees and their covered spouses. Said program does not apply to retirees or other non-employees of the College.

The following is a brief outline of the major provisions:

[See attached chart and the current plan design in Appendix M and the Summary Plan Description effective July 1, 2011. The annual out-of-pocket maximum accumulates for both in-network and out-of-network satisfaction. For example, $250 in out-of-pocket expenses incurred at a clinic counts toward satisfying both the in-network & out-of-network maximums employees must pay. The deductible works similarly. However, the deductible maximums continue to be separate from the out-of-pocket maximums in the PPO Plan.]]

Effective July 1, 2014, Appendix M shall be modified to reflect the High Benefit PPO Plan Design in effect for the non-represented employees of MATC as of ~~July 1~~, 2013.

Feb. 19, 2013 FS
DRM

D.~~C.~~ The Board shall continue to pay its share of the health insurance premiums, as described in Article VII, Section 1 (A) or (B) or (C) above (whichever is applicable), while an employee is on any paid leave. After an employee's paid leave has been exhausted, the Board shall continue to pay its share of the premium payments for a period of up to but not exceeding six (6) months. During such periods, the employee must pay the employee contribution described in Section 1 (A) or (B) (whichever is applicable). Such employees may purchase an additional twenty-four (24) months of coverage at group rates.

E.~~D.~~ Health insurance shall be continued through the summer recess for those teachers employed for the previous semester and who have an assignment in the summer and/or have a full-time assignment for the following fall semester. Effective January 1, 2008, all members will pay their annual premium contribution as set forth in Article VII, Section 1 (A) or (B) or (C) (whichever is applicable), through a pre-tax payroll deduction divided equally among twenty (20) payroll periods throughout a calendar year. ~~Effective July 1, 2011, all members will pay their annual premium contribution as set forth in Article VII, Section 1 (B) through a pre-tax payroll deduction divided equally among twenty (20) payroll periods throughout a calendar year.~~

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~~F~~E. The Board shall provide and pay its share of the health insurance premium, as described in Article VII, Section 1 (A) or (B) above (whichever is applicable) for a period of two (2) years for the spouse (and dependents) of employees who die while in employment of the school on or before February 15, 2014, and who had at least ten (10) years of cumulative service. The surviving spouse (and dependents) must pay the employee contribution described in Article VII, Section 1 (A) or (B) or above (whichever is applicable) for said two (2) year period. After the two (2) year period, the spouse may elect to continue coverage at group rates. This paragraph shall not apply if the surviving spouse has health insurance coverage outside of MATC.
The Board shall provide and pay its share of the health insurance premium, as described in Article VII, Section 1 (A) and (C) above for a period of two years for the spouse (and dependents) of employees who die while in employment of the school on or after February 16, 2014, and who had at least ten (10) years of cumulative service. The surviving spouse (and dependents) must pay the employee contribution that consists of the greater of 12.6% or whatever amount is prescribed by state law. After said period, the spouse may elect to continue coverage at group rates. This paragraph shall not apply if the surviving spouse has health insurance coverage outside of MATC.

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G~~F~~. Optional coverage offered by a health maintenance organization (HMO) shall be made available to all employees.

H~~G~~. If an employee is laid off on or prior to February 15, 2014, health insurance coverage will be continued for an additional thirty (30) days under the terms of Section 1 ~~(A) or~~ (B) or (C) above (whichever is applicable). Such employees may purchase an additional twelve (12) months of coverage, by paying the employee contribution as described in Section 1 (A) or (B) above (whichever is applicable) unless the employee is eligible for coverage as a result of employment with another employer. If an employee is laid off on or after February 16, 2014, health insurance coverage will be continued for an additional thirty (30) days under the terms of Section 1 (C) above. Such employees may purchase an additional twelve (12) months of coverage, by paying the employee contribution that consists of the greater of 12.6% or whatever amount is prescribed by state law for said one year period unless the employee is eligible for coverage as a result of employment with another employer.

I~~H~~. Quantum Health program and its corresponding benefit improvement end as of June 30, 2011. The parties agree to research Modern Med as an option for primary care physician services for both the PPO and HMO Health Plans.

J~~I~~. **Retiree Health Insurance-** For employees hired or rehired on or before February 15, 2014, ~~T~~the Board shall provide and pay its share of the health insurance premium as defined in Article VII, Section J (1) and (2)- herein ~~I and J herein~~ (including eligible dependent coverage, unless expressly excluded herein), and as defined in Article VII, Section K or L or M, herein (whichever is applicable) through the end of the month in which the retiree reaches age sixty-five (65) for all eligible employees who retire:

1. between the ages of fifty-five (55) and fifty-nine (59), inclusive with at least fifteen (15) years of cumulative service; or,
2. between the ages of sixty (60) and sixty-four (64), inclusive, with at least ten (10) years of cumulative service.
3. Employees hired or rehired on or after February 16, 2014 who retire from the college must have attained a minimum age of 60 (sixty) with a minimum of 20 (twenty) years of

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continuous MATC full-time service in order to qualify for any college subsidy toward retiree health insurance. Those who do not qualify for a college subsidy will be permitted to continue under the MATC group coverage after retirement under the normal provisions of COBRA.

4. Employees who qualify for retiree healthcare benefits Section 4 (J) (1) and (2) above, and who are subsequently rehired on or after February 16, 2014 shall not be disqualified from said benefits by virtue of being rehired.

~~K~~J. **Employees Retiring on or After July 1, 2008 & Before or On June 30, 2011**-The Board shall provide and pay its share of the health insurance premium (including dependent coverage) as described in Article VII, Section 1 (A) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after July 1, 2008 and before or on June 30, 2011, and who meet the requirements described in Section ~~J~~I(1) or (2) described above. Said retirees shall pay the health insurance contributions as described in Article VII, Section 1 (A) until they reach age sixty-five (65).

~~L~~K. **Employees Retiring on or After July 1, 2011 & Before or On February 15, 2014**- The Board shall provide and pay its share of the health insurance premiums described in Article VII, Section 1 (A) & (B) (including dependent coverage) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after July 1, 2011, and before or on February 15, 2014, and who meet the requirements described in Section ~~J~~I (1) or (2) described above. Eligible pre-65 retirees who retire on or after July 1, 2011and before or on February 15, 2014, and elect single coverage will contribute $55.00 per month towards their selected plan's monthly premium until age 65. Eligible pre-65 retirees who retire on or after July 1, 2011 and elect family coverage will contribute $110.00 per month towards their selected plan's monthly premium until age 65.

~~M~~L. **Employees Retiring On or After February 16, 2014** -The Board shall provide and pay its share of the health insurance premium (including dependent coverage) as described in Article VII, Section 1 (A) and (C) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after February 16, 2014, and who meet the requirements described in Section J (1) and (2) described above. Said retirees shall pay the health insurance premium contributions of the greater of 12.6% or whatever amount is prescribed by state law, until they reach age sixty-five (65).

N. **Employees who are hired or rehired on or after February 16, 2014**, and who retire with at least twenty (20) years of service on or after reaching age sixty (60) and meet the requirements described in Section J (3) above Article VII, will pay the greater of 12.6% of the health insurance premium or whatever amount is prescribed by state law first using the value of their accumulated unused sick days, up to a maximum of one-hundred and twenty-five (125), until they reach age 65. The retiree pays 100% of the premium once they reach age 65.

~~O~~L. Eligible employees who retire as outlined in subparagraphs [~~J~~I.-1.] or [~~J~~I.-2.] above and who would have had fifteen (15) years of cumulative service at age sixty-five (65) if they had not retired earlier, shall be eligible for health insurance benefits at age 65 to the same extent as employees who retire at age 65 as specified in the next sentence. For all eligible employees with at least fifteen (15) years of cumulative service who retire at age sixty-five (65) and desire to

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continue the health insurance program in effect for active employees less that portion covered by Medicare, the Board shall pay one-half the monthly premium and the retiree shall pay one-half the monthly premium. The Board will review the possibility of additional MATC health plan offerings for Medicare eligible retirees.

~~P~~M. For purposes of this section, cumulative is understood to mean that a break in service does not disqualify an employee for eligibility if the break in service is for reason of layoff. Leaves of absence are not considered a break in service. Non-paid leave time and layoff shall not be counted toward cumulative service.

~~O~~N. In the event of any national health insurance program, no benefits provided hereunder shall be reduced or eliminated, provided, however, that any benefit or coverage provided by the legally required program need not be duplicated under the program provided by the Board. In the event that any portion of this Article conflicts with the District Board's duties and responsibilities pursuant to the Patient Protection and Affordable Care Act and the regulations enacted thereunder, the District Board will notify the Union of such conflict and the District Board is authorized to take any action necessary to conform to the requirements of the Patient Protection and Affordable Care Act and that such actions taken for that purpose will not violate this agreement.

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~~R~~O. Effective January 1, 2008, MATC agrees to offer family health insurance coverage for same sex domestic partners for eligible employees (children of domestic partner excluded) in accordance with the provisions of Article VII, Section 1 (above) and subject to the coverage guidelines for domestic partner benefits.

Employees retiring on or after July 1, 2006, shall be eligible for same sex domestic partner retiree health insurance (children of domestic partner excluded) in accordance with the provisions outlined in Article VII, Section 1 (above) and subject to the coverage guidelines for domestic partner benefits, effective with the January 1, 2008, open enrollment period. Coverage for those eligible retirees is not retroactive. Employees retiring prior to July 1, 2006, are not eligible for this benefit.

Article VII, Section 8 — Change of Carriers

A. The current insurance coverage and benefits will not be changed except by mutual agreement. The Board may change insurance carriers and enter into a replacement contract with any other qualified insurer or establish a self-administered plan provided:

1. The cost of any replacement plan/program shall be no greater to individual group members than prior to making the change.

2. That coverages and benefits of such replacement program shall be comparable ~~at least identical~~ to the current coverage's and benefits currently in effect for employees and retirees.

~~3. Any replacement program for Compcare shall continue to provide an HMO option for those employees who make such election on the same basis of the current program.~~

~~4. Prior to a substitution of carrier or implementing a self-administered plan, the Board agrees to provide the Union with a full 60 days to review any new plan.~~

~~5. The Board shall supply the Union with a complete copy of all insurance plans in effect as of January 1, 1986, within thirty (30) days of the signing of this Agreement.~~

~~6. Any dispute arising out of an alleged failure of the Board to abide by the assurances contained in this section may be submitted directly to Arbitration by the Union. The decision of the Arbitrator shall be limited to the determination of whether or not the substitute plan is in compliance with [1.] through [5.] above, shall specifically identify the lack of compliance, and shall be final and binding in that respect. The Arbitrator shall not have the authority to modify it in order to comply with the assurance of this section. Any such challenge shall be brought by the Union within the 60 days period of review provided in [4.] above. No substitute plan shall be implemented until the issues submitted to Arbitration have been resolved.~~

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Modify current relevant provisions of Paraprofessionals contract consistent with relevant concepts herein.

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Dan Mellon
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2-26-13

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MATC Bargaining Counter-Proposal
Local 212 Full-Time Faculty and Professionals
Issues 5 & 6
February 12, 2013 ***(Draft)***

ARTICLE VIII — Pension

Section 1 — Retirement System Contribution

For income earned on or before February 15, 2014, ~~T~~the Board agrees to pay the full cost of the employee's contribution for employees who are members of the State of Wisconsin Retirement Fund or the Employee's Retirement System of the City of Milwaukee.

For income earned on or after February 16, 2014, eligible employees shall pay the full cost of the employee's contribution, as defined by the state of Wisconsin toward the cost of pension under the Wisconsin Retirement System.

Section 2 — Terminal Pay

For employees hired or rehired on or before February 15, 2014, ~~O~~one-half of unused accumulated sick leave, up to a maximum of forty-eight (48) days of full pay, is to be used to continue the payment of health insurance premiums for the employee and his/her eligible dependents at the time of retirement (disability, early, or normal). Effective May 1988, terminal pay for teachers will be paid at 1/175th of annual salary as of the last work day of May 1988. The employee has the option to request (or in the event of the death of the employee, his/her designated beneficiaries shall receive) a lump sum payment equivalent to the total benefit less any payments made for the extended medical coverage. The beneficiary designated under the Board's group life insurance plan shall receive the payment unless the employee has filed a different designation in writing with the Office of Human Resources.

Employees who are hired or rehired on or after February 16, 2014, and who retire with at least twenty (20) years of service on or after reaching age 60 are eligible to have up to one hundred and twenty-five (125) days of their accumulated unused sick leave balances,(rounded to the nearest number of full days) used to pay their premium contribution, as defined in Article VII Section 1, (N). An employee who elects to waive the college's retiree health care forfeits all unused sick days at retirement.

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Section 3 — Definition of Retiree

For employees hired or rehired on or before February 15, 2014, ~~A~~a retiree shall be defined as an employee with 10 or more years of service to MATC, who is age 55 or older, and who retires on an immediate annuity from the Wisconsin Retirement System. Employees with 10 or more years of service to MATC who become totally and permanently disabled and who qualify for a Wisconsin Retirement System disability annuity and therefore retire from MATC are also considered "retirees" under the terms of this agreement. Retirees may continue Health

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MATC Bargaining Proposal
Local 212 Full-Time Faculty and Professionals
Issue 9
January 25, 2013 (*Draft*)

On-Line Delivery

Article IV- Section 9 (A) (9) (b)

Modify the current Article IV, Section 9 (A) (9) (b) as follows:

9. On-Line Delivery:

a. A teacher must show competency or training in the internet delivery mode.

b. Through the Spring 2014 semester ~~A~~an additional load for internet instruction shall be given per the chart below. This additional load does not include curriculum development.

Hours of Class Per Week	**Additional Load for Class**
1	1.93%
2	3.86%
3	5.80%
4	5.80%
5	5.80%

Effective with the Summer 2014 semester, the additional load described above shall be eliminated. Thereafter, a one-time stipend of $675.00 shall be paid to instructors teaching an on-line course for the first time. Said stipend shall only be paid once, and shall not be paid to any instructor who has previously received an additional load or payment for teaching an on-line course.

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MATC Bargaining Counter Proposal
Issue 10
Local 212 Full-Time Faculty & Professionals
February 19, 2013 ***(Draft)***

Summer School- Full-time Faculty

Article III, Section 4

Modify as follows:

Section 4 — Summer School

A. Teaching positions in the summer session (day and evening) shall be filled by teachers on the regularly employed staff of the preceding year, if such qualified teachers are available and consent. Otherwise, such positions shall be filled at the discretion of the administration.

B. For the period extending from February 16, 2011 through February 15, 2014, ~~A~~all Full-time equivalencies (FTE) of Full-time Teachers shall be paid at Class and Step. The salary will be based on the rate of 85% of Class and Step for ~~all~~ classes taught. Commencing February 16, 2014, the salary for summer school instruction for full-time faculty will be based on the rate of 60% of class and step for all classes taught. (See the part-time faculty contract for the rate for part-time faculty teaching summer school.)

C. In the selection of qualified teachers for summer school, teaching positions shall be offered first to qualified tenured teachers if they expect to be available for the full duration of the assignment (excluding attendance at the AFT National convention). They shall be selected using an equitable method of rotation as set by the division/department. Faculty who receive a non-rotational assignment during summer recess will be considered in a department/division summer instructional assignment rotation if the assignment was compensated at 90% or more of the average summer instructional compensation received by faculty fulfilling a class and step summer recess instructional assignment. Multiple summer assignments shall not exceed a full load as defined in Article IV, Sec. 9 [B.-1.]. This provision shall not create a limitation on Outreach assignments.

Outreach pd @ 60% SW

D. In scheduling summer sessions, every effort will be made to offer employment to as many teachers as possible consistent with good educational practice. This means that all qualified faculty shall be offered one class assignment, no matter what the divisional affiliation is, before any faculty receive two class assignments. Workload shall be calculated, based upon a fifty-five (55) minute teaching period.

E. A teacher's daily reimbursement for a summer assignment shall be 1/175th of his/her class and step salary rate for the preceding semester and shall be prorated in case of an underload or overload.

TA
Fred Sharky
Local 212
2-19-13

TA
Dan Madigan
MATE
2-19-13

MATC Bargaining Counter Proposal
Issue 11
Local 212 Full-Time Faculty & Professionals
February 18, 2013 ***(Draft)***

Staffing Levels

Modify Article IV, Section 7, as follows:

Section 7 — Part-Time Teaching Appointments**

A. The parties agree that the number and use of part-time (less than 50% load, i.e., call staff) teachers must be judiciously implemented to assure quality of education.

B. As a basis for determining full-time teaching faculty requirements district-wide for regular approved aidable courses and programs, the following guidelines shall be applied:

1. The number of full-time teaching positions shall be determined as defined by aidable full-time teaching load, in the first sentence of Article IV, Sec. 9 [B.-1.] of this Agreement, which states "Class loads which fall between 90% and 108% shall be construed as 100%."

2. The number of call staff full-time equivalent teaching positions shall be determined by adding all call staff teacher (part-time teacher) loads as calculated on a semester basis for regular, approved, aidable day, evening, and weekend courses and dividing the total by the total load for all classes taught ~~100~~. However, in calculating this ratio, 400 level (continuing education) and 600 level courses (avocational, community enrichment) shall not be included. Additionally, the total load taught by call staff does not include courses taught by full-time staff on an overload basis.

3. The bargaining unit teacher's FTE/call-staff FTE ratio as defined Section 7 (B) (2) above shall not exceed 65/35. The parties agree that increasing the above stated ratio is an educationally desirable goal.

4. Regular full-time teachers may have reduced loads with reduced pay, or may be laid off as provided in this Agreement, under "Protection of Full-Time Teaching Loads," and under "Layoff." However, regular full-time teachers will not be reduced in load/pay nor will they be laid off, if they are to be replaced with part-time teachers.

5. Employees who are reduced below 50% FTE will be allowed to continue Board insurances on a self-paid basis where eligible as determined by the carrier.

6. STRS contributions will be continued by the Board to the extent they are eligible as determined by State Statutes.

7. Regular employees will continue to receive class and step pay unless their reduction below 50% FTE follows a separation in employment or a full layoff for a period of one semester or longer.

8. Limited term employees with less than three years service who are reduced below 50% FTE will receive compensation based upon call staff pay.

9. Vacancy of Full-time Position

a. Whenever a regular, full-time position becomes vacant, MATC shall reallocate the full-time position to a different department or student division if over 50% of the workload is eliminated. The position shall be filled by a full-time teacher. If the workload is reinstated within 3 full school years, MATC will assign such workload to a regular teacher, if available, and shall not divide such 50% or more workload of the vacant position among part-time teachers. ~~If the District meets or exceeds the staffing commitment of the Full-time Staff Memorandum of Understanding, this section [B.-9.-a.] does not apply.~~

b. Whenever a regular, full-time position becomes vacant, and 50% or more of the workload of the vacant position is to be continued, MATC shall allocate the position in whole or in part by:

(1) keeping the position in its original department.
(2) replace existing call-staff teachers with full-time teachers.
(3) add a full-time teacher to an expanding program.
(4) assign a full-time teacher to a new program.

c. If a reallocated position is subsequently eliminated, such position shall be reallocated as described in [B.-9.-a.], above.

d. The Union shall be notified of positions which are reallocated in [B.-9.-a.,b.] above, and who has filled the position.

e. MATC does not intend to use new or existing part-time teachers as a device to abolish previous existing regular teaching positions.

10. The provisions of Article IV, Section (B (9) do not apply if the District meets or exceeds the minimum staffing ratio for full-time faculty as defined in Article IV Section B (2) and (3) above.

11~~0~~. The ratio of call-staff full-time equivalent teaching positions shall be calculated and averaged for both semesters and provided to Local 212 by April 1 of each school year. In the event the percentage of call-staff full-time equivalent for regular approved aidable courses exceeds the stipulated percentage, no individual teacher shall have any claim or be entitled to back pay and the sole remedy shall be that MATC at its option will either establish additional full-time positions and/or reduce the number of call-staff full-time equivalent positions to reach the ratio required by subsection [B.-3.] above, plus an additional adjustment equal to the amount of the prior deviation, such additional adjustment to continue for the same length of time as the violation existed.

12~~1~~. Both MATC and Local 212 reserve the right to object to future collective bargaining concerning the subject matter of this section upon the grounds that it is not a mandatory subject of collective bargaining, notwithstanding its inclusion in this Agreement and notwithstanding any future legislation or court or administrative decision which would require collective bargaining as to subjects covered by an existing agreement. In the event of any future dispute as to whether

such subject matter is a mandatory subject of collective bargaining, the existence of this agreement shall be disregarded and such dispute shall be resolved as if this agreement did not exist.

Modify Appendix I as follows: Formatted: Font: Bold

APPENDIX I — Memorandums of Understanding

1. Full-time/Part-time Staff

A. The present level of General Fund staffing (i.e. number of full-time positions as of September 30, 1989) shall be maintained for the duration of the agreement, absent a substantial decline in fiscal resources or loss of program viability (i.e. LPN 1985/86).

B. The parties agree that increasing the (FTE/call staff ratio) is an educationally desirable goal. The Administration intends to increase the FTE/call staff ratio above the present level for the 1992-93 school year.

C. The parties agree to freeze nineteen (19) full-time faculty provisions from July 1, 2011 through the term of the contract. There will be no layoffs for the full-time faculty and full-time professionals covered by this collective bargaining agreement for the term of the frozen positions.

D. Effective February 16, 2014, the parties agree to eliminate the terms of Appendix I (1) (A), (B) and (C) above.

Modify Appendix K, Section VI of the Full-time faculty contract, and Appendix G, Section VI of the Part-time faculty contract as follows: Formatted: Font: Bold; Formatted: Font: Bold; Formatted: Font: Bold

VI. FTE/CALL-STAFF RATIO

Outreach services shall be included in the FTE/call-staff ratio as per Article IV, Sec. 7 [B.-3.]. Per Article IV, Section 7, Outreach sevices classes at the 400 and 600 level shall not be included in calculating the FTE/call staff ratio.: Formatted: Not Highlight; Formatted: Not Highlight

TA [signature] Local 212 2-19-13

TA [signature] MATC 2-19-13

MATC Bargaining Counter Proposal
Issue 14
Local 212 Full-Time Faculty & Professionals
February 18, 2013

Coaching & Performance Evaluation

Article III, Section 2

Modify as follows:

Section 2 — Coaching System Committee

A. Using a process of joint decision making, the standing coaching committee will develop a variety of student feedback formats for recommended use in all MATC classes.

B. The student feedback is intended to promote reflection and growth by the individual teacher.

C. The administration is not a part of this process except for their participation on the coaching committee.

Appendix I-9

9. Coaching Committee

The Parties, MATC and AFT Local 212, agree that the joint coaching committee, upon ratification of the agreement, shall be re-convened. The committee shall discuss and recommend to their respective bargaining committees whether to implement a mandatory student feedback component as part of the coaching/evaluation process.
The committee shall also discuss and recommend to their bargaining teams a teacher feedback tool to be used in conjunction with the evaluation of associate deans.

Commencing February 16, 2014, the parties agree to form a coaching committee to review, revise and implement the PEER coaching process for non-tenured, full and part-time faculty. The charge and scope of the committee is contained in the memo between the parties dated February 19, 2013.

TA
Frank Shanly
Local 212
2-19-13

TA
Dan Meagher
MATC
2-19-13

ITEM 14
Coaching

Coaching Committee – A joint committee that is convened to review and revise coaching processes for non-tenured and tenured, full and part time faculty.

The committee will:

- Review coaching systems and make recommended modifications based upon system evaluations by faculty and administration.
- Create sample student evaluations based upon the teaching standards and develop a plan for distribution, completion, and collection
- Recommend training and resource development to support participation of all faculty in the coaching systems.

Peer Coaching System – Tenured Full Time

- This system focuses on faculty self reflection and development of a professional growth plan with the input and support of a peer or peers.
- All full time tenured faculty will participate in the Peer Coaching process.
- Faculty may choose to continue working with an administrator, work in pairs, groups or with individuals outside of MATC.
- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments.
- Student evaluations will be included in the Peer Coaching System to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.
- Student evaluations will be reviewed with the faculty supervisor as a component of the process to enhance faculty development and insure quality education. Faculty who consistently receive negative student feedback will be required to create a growth plan for improvement.
- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments

Professional Growth System – PT- Tenured

- All part time faculty will participate in the coaching process.

- Part time tenured faculty may participate in peer coaching as a part of their professional growth plan.

- Student evaluations will be included in the part time faculty coaching system to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.

- Student evaluations will be reviewed with the faculty supervisor as a component of the coaching process to enhance faculty development and insure quality education. Faculty who consistently receive negative student feedback will be required to create a growth plan for improvement.

- The process is monitored by the faculty's supervisor on an annual basis. The supervisor is accountable for the faculty's compliance with duties and assignments.

Non-tenured Faculty – Full Time & Part Time

- Non-tenured faculty participates in a system that is a combination of coaching and evaluation.
- Coaching includes self assessment, classroom observations, and ongoing professional goal setting with the faculty supervisor.

- Student evaluations will be included in the non-tenured faculty coaching system to gather information on the quality, effectiveness, and satisfaction with course content, methods of instruction, textbooks, homework, and overall student learning.

- Student evaluations will be reviewed with the faculty supervisor as a component of the coaching process to enhance faculty development and insure quality education.

- Faculty who consistently receive negative student feedback will be required to create a growth plan and timeline for improvement.
  If inadequate progress is made by the faculty this process may become a summative evaluation and may lead to termination.

***The current non-tenured processes need to be updated and incorporate the teaching standards. The Coaching committee should be convened to review these documents and update for the coming year.

TA
Dan McGuan
MATC
2-19-13

Fred Shuda
Local 212
2-19-13

MATC Bargaining Proposal
Local 212 Full-Time Faculty and Professionals
Issue 15
February 18, 2013 ***(Draft)***

Instructional Overload Maximum

Article IV- Section 21 (D)

Modify the current Article IV, Section 21 (D) and chart on page 89 as follows:

D. Full-time Professionals Access to Part-time Assignments:

1. A full- time professional who has more full-time seniority than a part-time professional has part-time seniority, as defined below, shall have priority to an assignment. Conversely a part-time professional who has more part-time seniority than a full-time professional has full-time seniority, as defined below, shall have priority to an assignment.

- **a.** Full-time professional hired prior to January 5, 1993 will have their seniority date for part-time assignments considered as their actual seniority date as full-time professionals.
- **b.** All full-time professionals hired between January 5, 1993 and June 30, 1998 will have their seniority date for part-time assignments set to July 1, 1998. The tiebreaker for this group will be the teacher's actual full-time seniority date.
- **c.** All full-time professional hired after July 1, 1998 will have their seniority date for part-time assignments set to their actual full-time seniority date.

2. Full-time instructors who retire from MATC shall be allowed to teach part-time based on full-time seniority accrued since July 1, 1998. This seniority will accrue to seniority earned under the part-time contract since their retirement.

3. A letter of availability shall be provided by the District to all full-time professionals in order to determine whether they want to teach over their full-time load for the following year. Effective with the Fall 2014 semester, a full-time instructor can only teach a maximum overload of thirty-three percent (33%).

Any exceptions to the above shall be on a strictly limited basis and must be mutually agreed upon by the Provost and President of Local 212.

E. For transfer and layoff purposes, seniority is presently determined upon the basis of separate departments within separate student divisions.

F. The recognized instructional divisions are Business, Graphic Arts and Information Technology, PreCollege, Health Occupations, Liberal Arts and Sciences, Technical and Applied Sciences, and Television and Video Production.

Appendix J- Part-Time Faculty Contract

Modify as follows:

APPENDIX H — Teaching Load, Limitations, and Special Assignments

A) The teacher's weekly class load shall be based upon the following formula: Total 55-Minute Teaching Periods Per Week**

** If receiving pay at 100% load, part-time faculty load cannot exceed ~~49%~~ 33% .

	PAY RATES		ACCESS TO WORK	
When	**Part of 100% Load**	**Voluntary Overload**	**Right to Work 100%**	**Right to Work Overload**
1) 175-day school year	C&S	52% Part-time C&S	Guaranteed	Based on part-time/ full-time seniority. Up to 33% ~~149%~~ (see Article IV, Sec. 21, D~~d~~).
2) Recess Winter Break Spring Break	C&S	52% Part-time C&S	Based on availability of classes. Decided based on seniority within department. If a continuation of 175 day assignment, may continue in it.	Only after other full-time have had opportunity to get to 100%.
3) Summer - ending of Spring semester to beginning of Fall semester	~~85~~60%% C&S	~~85~~60%% C&S	Seniority-based rotation within department. After rotation, may go outside department. (See Article IV, Sec. 4, D.)	May work but no obligation to give overload. If done, should be by seniority based rotation.

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CE&WD – Assignments that are above-load are made on a seniority based rotation basis, which includes part-time faculty.

~~Those positions defined and agreed to by Parties as being "year round" will not be subject to 85% pay. Faculty in those positions will be obligated to work the "year round" calendar.~~

If an employee works over the 175 day calendar, he/she is paid separately for those days, even if the assignment was part of a prior assignment that was part of their regular 175 day load.

TA
Dan Keegan
2-14-13
MATC

TA Fred Shanley
Local 212
2-19-13

MATC Bargaining Proposal
Issue 17
Local 212 Full-Time Faculty & Professionals
January 23, 2013 ***(Draft)***

Long-Term Disability

Article VII, Section 6

Modify as follows:

Section 6 — Long-Term Disability

A. The Board agrees to provide long-term disability benefits to all eligible employees, with these major provisions:

1. 120-day waiting period.

2. Eligible employees whose "elimination" or waiting period for long-term-disability benefits begins on or before February 15, 2014 will be eligible for a monthly benefit that is equal to 90% of the employee's pre-disability base earnings as defined by the plan. ~~previous W2 statement or current contract (Class ___ and Step) salary, whichever is greater~~. Eligible employees whose "elimination" or waiting period for long-term disability benefits begins on or after February 16, 2014 will be eligible for a monthly benefit that is equal to 2/3 (two thirds) of their pre-disability base earnings as is defined by the plan.

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3. The benefits otherwise payable under subparagraph (b) shall be reduced by payments from Worker's Compensation, primary social security, disability retirement, and any other salary continuance plan paid entirely or partially by the Board.

4. Benefits payable to age 65.

5. This plan may be insured with a commercial carrier or be self-insured by the Board, but in either case the plan may contain such other terms, conditions, and requirements as are customary in comparable commercial insurance plans.

6. ~~The current insurance coverage will not be changed by the Board without agreement from the Union.~~Any changes to the District's LTD plan must be consistent with the provisions of Article VII, Section 8.

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TA
Local 212
2-19-13

TA
MATC
2-19-13

MATC Bargaining Proposal
Issue 6 – Local 212 Part-Time Faculty
Issue 14- Local 212 Paraprofessionals
February 19, 2013

Full-Time Employees- Accumulation of Sick Leave for Part-Time Assignments

Article IX, Section 1- Full-time Faculty and Professionals Contract

Modify as follows:

Section 1 — Sick Leave

A. Computation and Accumulation

1. All full-time teachers shall earn fifteen (15) days (6.4 hrs/day) or 96 hours of sick leave credit per year, with maximum full-time accumulation up to 150 days and with unlimited accumulation of one-half (1/2) day of sick leave for each accumulated full day over 150 days.

2. Those full-time teachers who are required to work longer than 6.4 hrs/day shall earn the same number of sick leave days/years. Their sick leave shall be defined based upon the average number of hours the employee is required to work/day.

3. Teachers employed after the beginning of the school year shall be credited with a proportionate amount based upon one and one-half (1-1/2) days of sick leave per each remaining school month.

4. Part-time day school teachers with a fifty percent (50%) teaching load or greater shall earn sick leave credit on a prorated basis.

5. Commencing February 16, 2014, full-time faculty, counsleors and professionals covered by this collective bargaining agreement will no longer accumulate sick leave for any part-time assignment or overload work. Full-time faculty, counselors and professionals will keep whatever part-time sick leave accumulation they have earned on or prior to February 15, 2014 and may utilize that accumulation consistent with the applicable Local 212 collective bargaining agreement under which said part-time sick leave was earned.

Article VIII, Section 1- Part-Time Faculty Contract

Modify as follows:

Section 1 — Sick Leave

a) Computation and Accumulation

1) Effective with the employee's date of hire, sick leave shall be calculated each semester at a rate of 1 times the teacher's weekly hourly workload (including

office hours and other Article III, Section 2 activities when they become effective), with maximum accumulation up to 640 hours.

2) Teachers employed after the beginning of the school year shall be credited with a proportionate amount.

MATC BBM - 2-19-13 FS

3) Commencing February 16, 2014, full-time employees covered by this, or another collective bargaining agreement will no longer accumulate sick leave for any part-time assignment or overload work assignment under this collective bargaining agreement. Said full-time employees will keep whatever part-time sick leave accumulation they have earned under this contract on or before February 15, 2014 and may utilize that accumulation consistent with this contract.

Article XI, Section 1- Paraprofessionals

Modify as follows:

Section 1 — Sick leave

A) Computation and Accumulation

1) Full-time Employees

a) All full-time employees shall earn fifteen (15) days of sick leave credit per year, with maximum full-time accumulation up to 150 days and with unlimited accumulation of one-half (1/2) day of sick leave for each accumulated full day unused over 150 days. Employees hired after September 1 of any year shall be credited with a proportionate amount based upon one and one-half (1 1/2) days of sick leave per each remaining school month to a maximum of fifteen (15) days of sick leave credit per year.

b) Employees who are regularly scheduled to work twenty (20) hours or more per week on a school year basis shall earn sick leave credit on prorated basis.

MATC BBM 2-19-13 FS

2) Part-time Employees

a) All employees shall earn and accrue sick leave credit at the end of each semester worked with maximum accumulation of 640 hours. The credit shall be equal to the average number of hours worked per week in the given semester.

b) Employees will accrue sick leave based upon their average hours of work per week per semester. There is no accrual in the summer.

c) Commencing February 16, 2014, full-time employees covered by this contract or another collective bargaining agreement will no longer accumulate sick leave for any part-time assignment or overload work assignment under this collective bargaining agreement. Said full-time employees will keep whatever part-time sick leave accumulation they

have earned under this contract on or before February 15, 2014 and may utilize that accumulation consistent with this contract.

TA
MATL
2-19-13

Local 212
2-19-13

Union Release Time

Commencing February 16, 2014, the Parties agree to lower Union release time by a 60% equivalent load. Local 212 will notify the administration of the specific loads that will be reduced/eliminated.

TA
Local 212
2-26-13

TA
MTC
2-26-13

Wages

There will be no general/base wage increase for fiscal year 2014-15, for the Full-time Faculty and Professionals contract, the Part-time Faculty contract and Full and Part-time Paraprofessionals contract.

TA
Frank Shanty
Local 212
2-26-13

TA
Dan McGowan
Local
2-26-13

Part-Time Faculty Pay and Full-Time Faculty Overload

Amend Part-Time Faculty contract and Full-Time Faculty contract to reflect that commencing February 16, 2014, the part-time faculty pay and the full-time faculty pay will be lowered from the current 60% pro-rate to 52%. Part-time faculty teaching summer school shall also be at the 52% rate.

TA Subject to Final Review
Dan Mellon
MMTC
2-26-13

TA - subject to final review
Fred Hardy
Local 212
2-26-13

I. **Full-time Faculty**

Effective February 16, 2014, replace Article VI, Section (A), (B), and (C) with the following:

A. Step Increments

Faculty members shall advance two steps on the salary scale two years following their previous step increase.

B. Transitional Period

To achieve an even distribution of instructor step increases in each year of the two year cycle, instructors whose employee identification numbers end in an even number shall advance one step increment in August, 2014. Once employees in this group earn this step, this group shall follow the criteria of Section I (A) above.

For those instructors whose employee identification numbers end in an odd number, the language in the Section I (A) shall apply effective February 16, 2014.

C. New Faculty

New faculty members shall receive their first step increment (two steps) at the beginning of the school year (August) after having completed a minimum of 3 full semesters of teaching.

D. Other Information

Full-time faculty who are in the "step before the last step" of their particular salary schedule, shall move one step, to the final step after working one additional year.

All step movements described herein shall occur at the beginning of the fall semester of the academic year following the satisfaction of the criteria described above.

II. **Full time Non-Faculty Professionals** (Counselors, et al)

Effective February 16, 2014, modify as needed and supplement Appendix F, Article VI, Section 1 with the following:

A. Step Increments

Employees shall advance two steps on the salary scale two years following their previous step increase.

B. Transitional Period

To achieve an even distribution of employee step increases in each year of the two year cycle, those employees whose employee identification number ends in an even number and reach their increment date between February 16, 2014 and February 15, 2015 shall advance one step. Once employees in this group earn this step, the language in the previous sentence shall no longer apply, and this group shall follow the criteria of Section II (A) above.

For those employees whose employee identification numbers end in an odd number, the language of Section II (A) shall apply effective February 16, 2014.

C. New Hires

For full-time professionals employees hired or rehired on or after February 16, 2014 the language of Section II (A) shall apply.

D. Other Information

Full-time professionals who are in the "step before the last step" of their particular salary schedule, shall move one step, to the final step after working one additional year, provided they otherwise meet the relevant requirements of Appendix F, Article VI, Section 1 of the 2011-14 contract.

TA
Frank Sharry
Local 262
2-26-13

TA
Dan McElroy
2-26-13

Term of Contracts

Amend Article XX of the Full-time Faculty and Professionals contract, Article XVIII of the Part-time Faculty contract, and Article XXI of the full and part-time Paraprofessionals contract to reflect the term of the successor agreement to run from February 16, 2014 through February 15, 2015.

Public Health (As relevant)

TA
Fred Shirley 2-19-13 Local 212
Dan McCoy MATC 2-19-13

MATC Bargaining Counter Proposal
Local 212 Full-Time Faculty and Professionals
Issues 1 through 4
February 18, 2013 ***(Draft)***

ARTICLE VII — Insurance

Section 1 — Health

A. The Board agrees to pay its share of the health insurance premium which shall be the difference between the cost of the plan and the employee premium contribution outlined in Article VII, Section 1 (A) or ~~and~~ (B) or (C) (whichever is applicable) as described herein. Effective November 1, 2007, through June 30, 2011, employees will pay a contribution of $27.50 ~~per~~ month for single coverage or $55.00 per month for family coverage under the PPO Plan ("High Level" PPO Plan effective January 1, 2008). Effective November 1, 2007, through June 30, 2011, employees will pay a contribution of $32.50 per month for single coverage or $65.00 per month for family coverage under the HMO Plan. All employees with coverage shall pay their share of the insurance premium through pre-tax payroll deductions in accordance with IRS regulations, unless they notify the District in writing to the contrary. Additionally, the plan design changes outlined in Appendix M will become effective July 1, 2011. Effective January 1, 2008, through June 30, 2011 employees with coverage under the "Low Level" PPO shall not have employee contributions as set forth above.

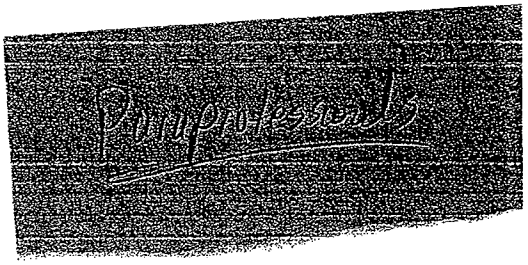
B. All of the following changes are effective July 1, 2011, and apply to active employees only.

1. **Change two-tier premiums to three-tier premiums under all MATC health plans:**

- Current "single/family" system of premiums will be changed to a three-tier system of premiums consisting of Single (employee only) coverage, Employee plus one (dependent) coverage, and Family coverage (for employees insuring more than one dependent).

2. **Health Insurance Contributions based on percent of pay:**

- Employees electing single coverage will contribute .80 of one percent (1%) of their gross pay toward the cost of health insurance.
- Employees electing employee plus one dependent coverage will contribute 1.2% of their gross pay toward the cost of health insurance.
- Employees electing family coverage will contribute 1.5% of their gross pay toward the cost of health insurance.



Wellness and Biometric Testing

Biometric testing of willing insured employees and spouses (or domestic partners) will take place beginning Spring 2011 and will include Body Mass Index, blood pressure, blood glucose, HDL/LDL/total cholesterol, and tobacco use. The overall health score is determined by vendor and serves as baseline measurement for changes in future.

- Employees with single coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .25 of 1% and contribute 1.05 % of their gross pay toward the cost of health insurance effective with the next July 1.

- Employees with employee plus one coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .5 of 1% and will contribute 1.7 % of their gross pay toward the cost of health insurance effective with the next July 1.

- Employees with family coverage who a) choose not to participate in biometric testing prior to open enrollment, and/or b) employees who have a decline in their health score from the previous year will pay a surcharge of .5 of 1% and contribute 2.0 % of their gross pay toward the cost of health insurance effective with the next July 1.

Both the employee and the covered spouse (or covered domestic partner) must submit to the biometric testing and obtain the requisite health score for the surcharge defined herein not to apply.

By July 1, 2011 MATC, Local 212, MATC's benefit consulting firm and the biometric vendor will form a joint committee (not a core committee as defined under the labor agreement) to review and recommend under item "b)" above the criteria for the biometric components that will be scored and used to determine surcharge situations. This criteria recommendation will be completed by February 1, 2012. Said criteria and all aspects of the biometric testing program including its relationship to employee health care contributions, shall be subject to legal review and must comply with all applicable laws and regulations. In the event the joint committee cannot agree on the criteria, the president of Local 212 and president of MATC will meet to confer and resolve the disagreement and their subsequent decision shall be final. (See criteria recommended March of 2012.)

C. Effective March 1, 2014, employee health insurance premium contributions will be based on percent of premium. The employee contribution share shall be the greater of 12.6% or whatever amount is prescribed by state law;

- Employees who: a) willingly participate in biometric testing prior to open enrollment, and b) employees who maintain or improve their health score from the previous year; or employees who meet the criteria agreed upon by the parties (See March 14, 2012 memo) will pay a reduced premium percentage of 2.6% of

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premium and contribute 10% of the health insurance premium effective July 1, 2014. Should the employee contribution level be adjusted by state law, the reward for biometric participation and success will continue to be 2.6% of the premium.

- Both the employee and the covered spouse (or covered domestic partner) must submit to the biometric testing and obtain the requisite health score, or satisfy the requisite criteria (See March 14, 2012 memo) for the reduction in premium to apply.
- The biometric testing program referenced herein applies only to current full-time employees and their covered spouses. Said program does not apply to retirees or other non-employees of the College.

The following is a brief outline of the major provisions:

[See attached chart and the current plan design in Appendix M and the Summary Plan Description effective July 1, 2011. The annual out-of-pocket maximum accumulates for both in-network and out-of-network satisfaction. For example, $250 in out-of-pocket expenses incurred at a clinic counts toward satisfying both the in-network & out-of-network maximums employees must pay. The deductible works similarly. However, the deductible maximums continue to be separate from the out-of-pocket maximums in the PPO Plan.]]

Effective July 1, 2014, Appendix M shall be modified to reflect the High Benefit PPO Plan Design in effect for the non-represented employees of MATC as of ~~July 1~~ Feb. 19, 2013 FS BRM, 2013.

D.~~C.~~ The Board shall continue to pay its share of the health insurance premiums, as described in Article VII, Section 1 (A) or (B) or (C) above (whichever is applicable), while an employee is on any paid leave. After an employee's paid leave has been exhausted, the Board shall continue to pay its share of the premium payments for a period of up to but not exceeding six (6) months. During such periods, the employee must pay the employee contribution described in Section 1 (A) or (B) (whichever is applicable). Such employees may purchase an additional twenty-four (24) months of coverage at group rates.

E.~~D.~~ Health insurance shall be continued through the summer recess for those teachers employed for the previous semester and who have an assignment in the summer and/or have a full-time assignment for the following fall semester. Effective January 1, 2008, all members will pay their annual premium contribution as set forth in Article VII, Section 1 (A) or (B) or (C) (whichever is applicable), through a pre-tax payroll deduction divided equally among twenty (20) payroll periods throughout a calendar year. ~~Effective July 1, 2011, all members will pay their annual premium contribution as set forth in Article VII, Section 1 (B) through a pre-tax payroll deduction divided equally among twenty (20) payroll periods throughout a calendar year.~~

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~~F~~E. The Board shall provide and pay its share of the health insurance premium, as described in Article VII, Section 1 (A) or (B) above (whichever is applicable) for a period of two (2) years for the spouse (and dependents) of employees who die while in employment of the school on or before February 15, 2014, and who had at least ten (10) years of cumulative service. The surviving spouse (and dependents) must pay the employee contribution described in Article VII, Section 1 (A) or (B) or above (whichever is applicable) for said two (2) year period. After the two (2) year period, the spouse may elect to continue coverage at group rates. This paragraph shall not apply if the surviving spouse has health insurance coverage outside of MATC.
The Board shall provide and pay its share of the health insurance premium, as described in Article VII, Section 1 (A) and (C) above for a period of two years for the spouse (and dependents) of employees who die while in employment of the school on or after February 16, 2014, and who had at least ten (10) years of cumulative service. The surviving spouse (and dependents) must pay the employee contribution that consists of the greater of 12.6% or whatever amount is prescribed by state law. After said period, the spouse may elect to continue coverage at group rates. This paragraph shall not apply if the surviving spouse has health insurance coverage outside of MATC.

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G~~F~~. Optional coverage offered by a health maintenance organization (HMO) shall be made available to all employees.

H~~G~~. If an employee is laid off on or prior to February 15, 2014, health insurance coverage will be continued for an additional thirty (30) days under the terms of Section 1 ~~(A) or~~ (B) or (C) above (whichever is applicable). Such employees may purchase an additional twelve (12) months of coverage, by paying the employee contribution as described in Section 1 (A) or (B) above (whichever is applicable) unless the employee is eligible for coverage as a result of employment with another employer. If an employee is laid off on or after February 16, 2014, health insurance coverage will be continued for an additional thirty (30) days under the terms of Section 1 (C) above. Such employees may purchase an additional twelve (12) months of coverage, by paying the employee contribution that consists of the greater of 12.6% or whatever amount is prescribed by state law for said one year period unless the employee is eligible for coverage as a result of employment with another employer.

I~~H~~. Quantum Health program and its corresponding benefit improvement end as of June 30, 2011. The parties agree to research Modern Med as an option for primary care physician services for both the PPO and HMO Health Plans.

J~~I~~. **Retiree Health Insurance**- For employees hired or rehired on or before February 15, 2014, ~~T~~the Board shall provide and pay its share of the health insurance premium as defined in Article VII, Section J (1) and (2) ~~herein I and J herein~~ (including eligible dependent coverage, unless expressly excluded herein), and as defined in Article VII, Section K or L or M, herein (whichever is applicable) through the end of the month in which the retiree reaches age sixty-five (65) for all eligible employees who retire:

1. between the ages of fifty-five (55) and fifty-nine (59), inclusive with at least fifteen (15) years of cumulative service; or,
2. between the ages of sixty (60) and sixty-four (64), inclusive, with at least ten (10) years of cumulative service.
3. Employees hired or rehired on or after February 16, 2014 who retire from the college must have attained a minimum age of 60 (sixty) with a minimum of 20 (twenty) years of

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continuous MATC full-time service in order to qualify for any college subsidy toward retiree health insurance. Those who do not qualify for a college subsidy will be permitted to continue under the MATC group coverage after retirement under the normal provisions of COBRA.

4. Employees who qualify for retiree healthcare benefits Section 4 (J) (1) and (2) above, and who are subsequently rehired on or after February 16, 2014 shall not be disqualified from said benefits by virtue of being rehired.

~~K~~J. **Employees Retiring on or After July 1, 2008 & Before or On June 30, 2011-**The Board shall provide and pay its share of the health insurance premium (including dependent coverage) as described in Article VII, Section 1 (A) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after July 1, 2008 and before or on June 30, 2011, and who meet the requirements described in Section ~~J~~(1) or (2) described above. Said retirees shall pay the health insurance contributions as described in Article VII, Section 1 (A) until they reach age sixty-five (65).

~~L~~K. **Employees Retiring on or After July 1, 2011 & Before or On February 15, 2014-** The Board shall provide and pay its share of the health insurance premiums described in Article VII, Section 1 (A) & (B) (including dependent coverage) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after July 1, 2011, and before or on February 15, 2014, and who meet the requirements described in Section ~~J~~ (1) or (2) described above. Eligible pre-65 retirees who retire on or after July 1, 2011and before or on February 15, 2014, and elect single coverage will contribute $55.00 per month towards their selected plan's monthly premium until age 65. Eligible pre-65 retirees who retire on or after July 1, 2011 and elect family coverage will contribute $110.00 per month towards their selected plan's monthly premium until age 65.

~~M~~ . **Employees Retiring On or After February 16, 2014 -**The Board shall provide and pay its share of the health insurance premium (including dependent coverage) as described in Article VII, Section 1 (A) and (C) through the end of the month in which retiree reaches age sixty-five (65) for all employees who retire on or after February 16, 2014, and who meet the requirements described in Section J (1) and (2) described above. Said retirees shall pay the health insurance premium contributions of the greater of 12.6% or whatever amount is prescribed by state law, until they reach age sixty-five (65).

N. Employees who are hired or rehired on or after February 16, 2014, and who retire with at least twenty (20) years of service on or after reaching age sixty (60) and meet the requirements described in Section J (3) above Article VII, will pay the greater of 12.6% of the health insurance premium or whatever amount is prescribed by state law first using the value of their accumulated unused sick days, up to a maximum of one-hundred and twenty-five (125), until they reach age 65. The retiree pays 100% of the premium once they reach age 65.

~~O~~L. Eligible employees who retire as outlined in subparagraphs [~~J~~.-1.] or [~~J~~.-2.] above and who would have had fifteen (15) years of cumulative service at age sixty-five (65) if they had not retired earlier, shall be eligible for health insurance benefits at age 65 to the same extent as employees who retire at age 65 as specified in the next sentence. For all eligible employees with at least fifteen (15) years of cumulative service who retire at age sixty-five (65) and desire to

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continue the health insurance program in effect for active employees less that portion covered by Medicare, the Board shall pay one-half the monthly premium and the retiree shall pay one-half the monthly premium. The Board will review the possibility of additional MATC health plan offerings for Medicare eligible retirees.

~~P~~M. For purposes of this section, cumulative is understood to mean that a break in service does not disqualify an employee for eligibility if the break in service is for reason of layoff. Leaves of absence are not considered a break in service. Non-paid leave time and layoff shall not be counted toward cumulative service.

~~O~~N. In the event of any national health insurance program, no benefits provided hereunder shall be reduced or eliminated, provided, however, that any benefit or coverage provided by the legally required program need not be duplicated under the program provided by the Board. In the event that any portion of this Article conflicts with the District Board's duties and responsibilities pursuant to the Patient Protection and Affordable Care Act and the regulations enacted thereunder, the District Board will notify the Union of such conflict and the District Board is authorized to take any action necessary to conform to the requirements of the Patient Protection and Affordable Care Act and that such actions taken for that purpose will not violate this agreement.

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R~~O~~. Effective January 1, 2008, MATC agrees to offer family health insurance coverage for same sex domestic partners for eligible employees (children of domestic partner excluded) in accordance with the provisions of Article VII, Section 1 (above) and subject to the coverage guidelines for domestic partner benefits.

Employees retiring on or after July 1, 2006, shall be eligible for same sex domestic partner retiree health insurance (children of domestic partner excluded) in accordance with the provisions outlined in Article VII, Section 1 (above) and subject to the coverage guidelines for domestic partner benefits, effective with the January 1, 2008, open enrollment period. Coverage for those eligible retirees is not retroactive. Employees retiring prior to July 1, 2006, are not eligible for this benefit.

Article VII, Section 8 — Change of Carriers

A. The current insurance coverage and benefits will not be changed except by mutual agreement. The Board may change insurance carriers and enter into a replacement contract with any other qualified insurer or establish a self-administered plan provided:

1. The cost of any replacement plan/program shall be no greater to individual group members than prior to making the change.

2. That coverages and benefits of such replacement program shall be comparable ~~at least identical~~ to the current coverage's and benefits currently in effect for employees and retirees.

~~3. Any replacement program for Compcare shall continue to provide an HMO option for those employees who make such election on the same basis of the current program.~~

~~4. Prior to a substitution of carrier or implementing a self-administered plan, the Board agrees to provide the Union with a full 60 days to review any new plan.~~

~~5. The Board shall supply the Union with a complete copy of all insurance plans in effect as of January 1, 1986, within thirty (30) days of the signing of this Agreement.~~

~~6. Any dispute arising out of an alleged failure of the Board to abide by the assurances contained in this section may be submitted directly to Arbitration by the Union. The decision of the Arbitrator shall be limited to the determination of whether or not the substitute plan is in compliance with [1.] through [5.] above, shall specifically identify the lack of compliance, and shall be final and binding in that respect. The Arbitrator shall not have the authority to modify it in order to comply with the assurance of this section. Any such challenge shall be brought by the Union within the 60 days period of review provided in [4.] above. No substitute plan shall be implemented until the issues submitted to Arbitration have been resolved.~~

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Modify current relevant provisions of Paraprofessionals contract consistent with relevant concepts herein.

TA.
Dan Mellon
MATC
2-26-13

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Fred Shanley
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TA
Dan Metzger
MATC
2-26-13

TA
Frank Skowronski
Local 212
2-26-13

MATC Bargaining Counter-Proposal
Local 212 Paraprofessionals
Issue 4
February 25, 2013 ***(Draft)***

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Article IX — Pension

Section 1 — Retirement system contribution

For income earned on or before February 15, 2014, ~~T~~the Board agrees to pay the full cost of the employee's contribution for employees who are members of the State of Wisconsin Retirement Fund or the Employees' Retirement System of the City of Milwaukee.

For income earned on or after February 16, 2014, eligible employees shall pay the full cost of the employee's contribution, as defined by the state of Wisconsin toward the cost of pension under the Wisconsin Retirement System.

Section 2 — Terminal pay

For employees hired or rehired on or before February 15, 2014, ~~O~~one-half of unused accumulated sick leave, up to a maximum of forty-eight (48) days of full pay, is to be used to continue the payment of health insurance premiums for the employee and his/her eligible dependents at the time of retirement (disability, early, or normal). The employee has the option to request (or in the event of the death of the employee, his/her designated beneficiaries shall receive) a lump sum payment equivalent to the total benefit less any payments made for the extended medical coverage. The beneficiary designated under the Board's group life insurance plan shall receive the payment unless the employee has filed a different designation in writing with the Office of Human Resources.

Employees who are hired or rehired on or after February 16, 2014, and who retire with at least twenty (20) years of service on or after reaching age 60 are eligible to have up to one hundred and twenty-five (125) days of their accumulated unused sick day balances,(rounded to the nearest number of full days) used to pay their premium contribution, as defined in Article VII Section I.(insert new subsection) An employee who elects to waive the college's retiree health care forfeits all unused sick days at retirement.

Section 3 — Definition of retiree

For employees hired or rehired on or before February 15, 2014, ~~A~~a retiree shall be defined as an employee with 10 or more years of service to MATC, who is age 55 or older, and who retires on an immediate annuity from the Wisconsin Retirement System. Employees with 10 or more years of service to MATC who become totally and permanently disabled and who qualify for a Wisconsin Retirement System disability annuity and therefore retire from MATC

are also considered "retirees" under the terms of this agreement. Retirees may continue health insurance benefits on self-paid basis unless otherwise eligible for District paid benefits pursuant to Article VII, Section 1, F(1,2).

For employees hired or rehired on or after February 16, 2014, a retiree shall be defined as an employee with 20 or more years of service to MATC, who is age 60 or older.

Section 4 — Early retirement — Full-time Paraprofessionals

An employee hired or rehired on or before February 15, 2014, who has been employed by MATC for 10 or more years and who retires after attaining age fifty-five (55) and before attaining age sixty-five (65) shall:

A) Receive an unreduced pension a (full retirement) benefit equal to what the employee would have received from the Wisconsin State Retirement System if retirement had taken place at age sixty-five (65). This payment will be a combination of the reduced Wisconsin State Retirement System payment and Board supplemental payment with the sum equal to age sixty-five (65) benefits.

B) Provide the Board written notice of planned early retirement at least 30 calendar days prior to the expected date of retirement.

C. The early retirement benefit described in Article VIX, Section 4 (A) above shall not apply to employees hired or rehired on or after the effective date of the new contract, February 16, 2014.

D. Employees who qualify for the unreduced pension benefits as described in Article IX, Section 4 (A) above, and who are subsequently rehired on or after February 16, 2014 shall not be disqualified from said benefits by virtue of being rehired.

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TA
Fred Shandy
Local 212
2-26-13

TA
David Koger
2-26-13
MATC

Local 212 Paraprofessionals
Issue 11
Long-Term Disability

Modify Article VII, Section 6 as follows:

Section 6 — Long-term disability - Full-time Paraprofessionals

The Board agrees to provide long-term disability benefits to all eligible employees, with these major provisions:

A) 120-day waiting period

B) Eligible employees whose "elimination" or waiting period for long-term-disability benefits begins on or before February 15, 2014 will be eligible for a monthly benefit that is equal to 90% of the employee's pre-disability base earnings as defined by the plan. Eligible employees whose "elimination" or waiting period for long-term disability benefits begins on or after February 16, 2014 will be eligible for a monthly benefit that is equal to 2/3 (two thirds) of their pre-disability base earnings as is defined by the plan.

C) The benefits otherwise payable under subparagraph B)shall be reduced by payment from Worker's Compensation, primary social security, disability retirement, and any other salary continuous plan paid entirely or partially by the Board.

D) Benefits payable to age 65.

E) This plan may be insured with a commercial carrier or be self-insured by the Board, but in either case the plan may contain such other terms, conditions, and requirements as are customarily in comparable commercial insurance plans.

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ITEM 7
Hiring/Selection/Transfer

Hiring/Selection/Transfer Committee – A joint committee that is convened to review and revise the job posting, transfer, and hiring process for Para-professionals.

The committee will review the following ideas and concepts:

- Review job posting policies and make recommended modifications which recognizes the work, experience, skills and service of all MATC employees and serving the best interests of the students.
- Developing language that provides opportunity to all staff based on their professional development and appropriate job skills and experience.
- Review the utility and usefulness of the classification category structure outlined in the current contract.
- Review positives and negatives of current system for modifying job descriptions and if appropriate, make recommendations for change.
- A system that provides clear specifications of qualifications for each posting.
- First priority for consideration on job posting should be transfer requests by any employee within the same job title provided they satisfy the specifications of the new job.
- If the position is not filled by an employee in the same job title, review a procedure that will provide outside candidates equal consideration in filling positions.
- Interviews can be granted to non-Para-professionals both internal and external to the college.

TA
Frank Shandy
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MATC
2-26-13

Wages

There will be no general/base wage increase for fiscal year 2014-15, for the Full-time Faculty and Professionals contract, the Part-time Faculty contract and Full and Part-time Paraprofessionals contract.

TA Subject to Final Review
Dan Mellgren
MATC
2-26-13

TA - subject to final review
Frank Shanly
Local 212
2-26-13

Paraprofessionals-

Effective February 16, 2014, replace Article V, Section 2 and 3 with the following:

I. Full-time Employees

A. Step Increments

Employees shall advance two steps on the salary scale two years following their previous step increase.

B. Transitional Period

To achieve an even distribution of employee step increases in each year of the two year cycle, those employees whose employee identification number ends in an even number and reach their increment date between February 16, 2014 and February 15, 2015 shall advance one step. Once employees in this group earn this step, the language in the previous sentence shall no longer apply, and this group shall follow the criteria of Section I (A) above.

For those employees whose employee identification numbers end in an odd number, the language of Section I (A) shall apply effective February 16, 2014.

C. New Hires

For full-time employees hired or rehired on or after February 16, 2014 the language of Section I (A) above shall apply.

D. **Other**

Full-time employees who are in the "step before the last step" of their particular salary schedule, shall move one step, to the final step after working one additional year, provided they otherwise meet the requirements of Article V, Section 3 contained in the 2011-2014 contract.

II. Part-time Employees

A. Step Increments

Employees shall advance two steps on the salary scale eight semesters following their previous step increase.

B. Transitional Period

The transition period described in this section shall apply only to those employees who are paraprofessionals as of February 15, 2014.

To achieve an even distribution of employee step increases over the eight semester cycle, those employees whose employee identification number ends in an even number shall advance one step on the salary scale upon earning 4 semesters of seniority. Once employees in this group earn this step, the language in the previous sentence shall no longer apply, and this group shall follow the criteria of Section II A above.

For those part-time paraprofessionals covered by this Section employees whose employee identification numbers end in an odd number, the language in Section II (A) above shall apply effective February 16, 2014.

C. **New Hires**

For part-time employees hired or rehired on or after February 16, 2014 the language of Section II (A) above shall apply.

D. All step movements for part-time paraprofessionals described herein shall occur at the beginning of the next closest July 1 or January 1, whichever is applicable, following the satisfaction of the criteria described above.

E. Part-time employees who are in the "step before the last step" of their particular salary schedule , shall move one step, to the final step after working four additional semesters, provided they otherwise meet the requirements of Article V, Section 3 contained in the 2011-2014 contract.

TA
Frank Sharp
Local 262
2-26-13

TA
Dan McKeon
2-26-13

Term of Contracts

Amend Article XX of the Full-time Faculty and Professionals contract, Article XVIII of the Part-time Faculty contract, and Article XXI of the full and part-time Paraprofessionals contract to reflect the term of the successor agreement to run from February 16, 2014 through February 15, 2015.

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DISTRICT IV

March 12, 2013

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You are hereby notified that the Court has entered the following order:

2012AP2067 Madison Teachers, Inc. v. Scott Walker (L.C. # 2011CV3774)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Appellants Scott Walker, James Scott, Judith Neumann, and Rodney Pasch move to stay a circuit court order that declared unconstitutional certain portions of the Municipal Employment Relations Act ("MERA," located at WIS. STAT. §§ 111.70 to 111.77) while an appeal from that order is pending. Specifically, the order at issue struck down provisions prohibiting collective bargaining with municipalities on any subject other than total base wages; requiring a local referendum to authorize negotiation of any increase in base wages exceeding a cost-of-living increase; requiring mandatory annual recertification elections for unions; prohibiting the forced

payment of dues from non-union-member employees; prohibiting payroll deductions for union dues; and prohibiting the City of Milwaukee from paying employee contributions to the retirement system.

The appellants first sought relief in the circuit court, under the procedures set forth in WIS. STAT. § 808.07(2)(a)3. and RULE 809.12. We therefore review the circuit court's decision to deny a stay under the erroneous-exercise-of-discretion standard, rather than considering the matter de novo. *See* ***State v. Gudenschwager***, 191 Wis. 2d 431, 439-40, 529 N.W.2d 225 (1995). We will sustain a discretionary decision so long as the circuit court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). For the reasons discussed below, we conclude that the circuit court acted within its discretion in denying the stay.

The proper standard of law for evaluating a stay request was set forth by the supreme court in ***Gudenschwager***. A stay pending appeal is appropriate if the moving party:

> (1) makes a strong showing that it is likely to succeed on the merits of the appeal;
>
> (2) shows that, unless a stay is granted, it will suffer irreparable injury;
>
> (3) shows that no substantial harm will come to other interested parties; and
>
> (4) shows that a stay will do no harm to the public interest.

Gudenschwager, 191 Wis. 2d at 440. These factors are interrelated considerations that must be balanced. ***Id.***

The circuit court evaluated the appellants' stay request in this case by balancing the factors set forth in ***Gudenschwager***. The circuit court concluded that the first factor, the likelihood of success on appeal, weighed in favor of a stay, but that this factor was "outweighed by the [appellants'] failure to show irreparable harm to them if a stay is denied and by the harm to others and to the public if a stay is granted."

The appellants contend that the circuit court erroneously exercised its discretion because its application of the ***Gudenschwager*** factors was flawed in multiple respects as a matter of law. They further argue that, if the circuit court had correctly interpreted and applied the ***Gudenschwager*** factors, the only reasonable exercise of discretion would have been to grant their stay request.

We note that the way in which the appellants have structured their arguments on appeal complicates our review of the ***Gudenschwager*** factors. Rather than discussing, individually, the nature of each factor and its application to the facts of this case, the appellants present purely legal arguments—that is, arguments that do not depend on the particular statute or particular facts at issue here—as to how the factors should be interpreted and then, essentially, lump together a discussion of harms that the appellants argue will occur if a stay is not granted.

We recognize that the interests at stake in a particular case do not always fit squarely within one of the enumerated ***Gudenschwager*** factors. Indeed, ***Gudenschwager*** itself did not contain a neatly individualized discussion of each of the stay factors. For example, the ***Gudenschwager*** court seems to discuss the risk that a person will commit future acts of sexual violence as both a matter of irreparable injury under factor two and as a matter of potential harm to the public under factor four. *See* ***id.*** at 441-43.

As a practical matter, then, we acknowledge that the balancing test must be flexible enough to accommodate some variation in the ways in which a particular harm may be analyzed under one or more of the final three factors. We emphasize, however, that flexibility as to which factor or factors apply to a particular harm does not alter the appellants' overall burden to address all factors in some manner and, ultimately, to demonstrate that the factors favoring a stay outweigh the factors disfavoring a stay.

Accordingly, we will structure this order around the appellants' arguments, even though those arguments do not precisely match up with the list of factors in ***Gudenschwager***. We will, however, note throughout our discussion points at which the appellants' framing of a particular argument ignores relevant considerations or otherwise fails to satisfy their burden of proof.

Scope of Required Examination into Likelihood of Success on Appeal

The first factor looks at the likelihood of success on appeal. The appellants must make "a strong showing that [they are] likely to succeed on the merits of the appeal." ***Id.*** at 440. "[T]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the plaintiff will suffer absent the stay," but the probability of success must in any case be more than a "mere 'possibility.'" ***Id.*** at 441.

The appellants' first legal argument is that the circuit court misapplied this stay factor by relying entirely on the legal presumption of constitutionality afforded to statutes to determine that the appellants had shown a basic likelihood of success on appeal, without directly addressing the specific claims of error the appellants proposed to raise on appeal. They argue that the inversely proportional relationship described in ***Gudenschwager*** between the showing needed on the first and second factors requires a circuit court to closely evaluate the merits of a movant's

appellate issues in order to determine where the issues fall on a continuum of likely success. Stated another way, the appellants contend that the circuit court deprived them of the benefit that comes from showing an especially high likelihood of success on appeal—*i.e.*, the benefit that they are required only to make a lesser showing of irreparable harm—by stopping its analysis after concluding that the appellants had satisfied the basic threshold of more than a mere possibility of success.

The respondents, on the other hand, take the position that it would be improper for the circuit court or this court to engage in a substantive evaluation of the merits of the appeal. The respondents correctly point out that, in a similar situation, the ***Gudenschwager*** court itself did just what the circuit court did here—the ***Gudenschwager*** court simply applied the presumption, broadly determined that the appellants had a likelihood of success on appeal, and moved on to consider the other factors. *See* ***id.*** at 441-44. Accordingly, the respondents have declined to provide a substantive discussion of the issues on appeal.

Although we agree with the general proposition that the required showing for irreparable harm is inversely proportional to the strength of a movant's showing regarding the likelihood of success on appeal, we conclude that, in a case presenting a novel constitutional challenge to a recently enacted statute like the one before us, the proper course is the one followed by the circuit court here and the supreme court in ***Gudenschwager***. That is, a court should apply the presumption of constitutionality and conclude that the appellants have made a showing that they are likely to succeed on the merits of the appeal, without attempting to more precisely identify the appellants' likelihood of success. In reaching this conclusion, we make the following observations.

Our experience with examining the merits of appellate issues in the context of stay motions tells us that cases generally fall into one of three categories: (1) "near frivolous" appeals in which the appellant obviously has virtually no chance of success on appeal; (2) "near certain to win" appeals in which the appellant obviously has a very high chance of success on appeal; and (3) "middle ground" appeals in which it is difficult or impractical to predict the outcome. As we understand the first factor, and as we will discuss further below, the presumed constitutionality of statutes automatically puts the present case, at a minimum, in the last of these, the middle-ground category.

The appellants have attempted to persuade us that this case falls into the near-certain-to-win category, an appeal that we can determine from their motion has a very high likelihood of success on appeal. The appellants assert that the decision under review is "in direct conflict with the settled law that employees have no constitutional guarantee to any level or type of collective bargaining" and that the circuit court placed primary reliance on a case that has no application here. It is hard to assess the accuracy of these assertions. The issues presented here are complex, and it is not readily apparent that the authority cited by the appellants is either directly on point or controlling. Similarly, it is not readily apparent that the case on which the circuit court placed substantial reliance is inapposite. And, it is especially difficult to assess the complex issues raised in the absence of adversarial briefing. Thus, we are not persuaded that this is a near-certain-to-win situation or that the circuit court was required to conclude that the appellants had such a high likelihood of success on appeal as to lower the necessary showing on any of the three harm factors.

We conclude, instead, that this is a middle-ground case. The presumption applied by the circuit court here yields a "likelihood of success," defined elsewhere in ***Gudenschwager*** as

"more than the mere 'possibility'" of success. *Id.* at 441. More than a mere possibility of success, broadly speaking, defines our middle-ground category. It would not be appropriate for us to more specifically identify where in the middle this case falls for two reasons.

First, the appellants effectively invite us to tentatively decide the merits of the appeal, thus giving the appearance that we have prejudged the appeal. The appellants provide lengthy and detailed arguments in their motion and, if we were to address these arguments in a meaningful way, we would necessarily need to identify legal principles and authority and indicate our thinking on the merits. This seems to run afoul of the ***Gudenschwager*** court's concern with not appearing to have prejudged the merits. The ***Gudenschwager*** court stressed that its conclusion that the State had made a showing of a likelihood of success on appeal "should in no way be construed to mean that we have prejudged the merits." *Id.* at 441 n.2.

Second, we agree with the respondents that, in a similar circumstance, the supreme court itself declined to be more specific. The topic at issue in ***Gudenschwager*** was the constitutionality of Wisconsin's sexual predator law. After explaining that the challenged sexual predator law would enjoy a presumption of constitutionality, the ***Gudenschwager*** court concluded that the State had made a strong showing that it was likely to succeed on the merits of its appeal. *Id.* at 441. The ***Gudenschwager*** court did not more specifically determine the State's chances of success on appeal with regard to specific legal issues. That is, the ***Gudenschwager*** court did no more than to make a broad-strokes finding that the State's chances of success on appeal fell in to what we have characterized as a middle-ground category. Thus, in a middle-ground case like this, we have no guidance on how we might go about identifying more specifically the chances of success without venturing too deeply into the merits and prejudging a case.

Our discussion here focuses on our role and not the circuit court's analysis of the likelihood of success factor, but the net result is the same. Like the circuit court and like the supreme court in ***Gudenschwager***, we do no more than apply the presumption of constitutionality of regularly enacted statutes and weigh this factor in favor of the appellants. Since we decline to address the appellants' more specific arguments regarding the merits of their appeal, we move on to their next claim of legal error, which relates to the second stay factor.

Proof Required to Show Irreparable Injury Resulting from the Voiding of Legislation

The second stay factor addresses whether the moving party will suffer irreparable injury if a stay is not granted. ***Gudenschwager*** directs that an alleged irreparable injury "must be evaluated in terms of its substantiality, the likelihood of its occurrence, and the proof provided by the movant." ***Id.*** at 441-42.

The appellants contend that they, as state actors, will be irreparably harmed as a matter of law if the statutory provisions at issue are not in force pending the appeal. Specifically, they assert that the circuit court erred in failing to acknowledge that the State "suffers irreparable injury whenever validly enacted legislation is declared void." The appellants further contend that such injury is always substantial, "self-proving," and 100% likely to occur. That is to say, the appellants claim that, any time a circuit court decision prevents the enforcement of a statute, there is, by definition, irreparable injury of such degree as to relieve a government appellant of the burden of making any additional showing on this factor. We disagree.

We begin by noting that the appellants' argument conflates two separate aspects of the irreparable injury inquiry: (1) whether the alleged injury to the movant could be compensated or otherwise remedied and, if not, (2) how substantial the injury would be in relation to any other

alleged harms being considered under the last two factors if a stay were granted. *See* BLACK'S LAW DICTIONARY 856 (9th ed. 2009) (term "irreparable injury" generally means that monetary damages would provide an inadequate remedy). Even accepting the appellants' first proposition that a denial of the will of the people as expressed by their elected representatives (*i.e.*, a representational injury) is an intangible harm that cannot be adequately compensated by money damages and is thus always "irreparable," it does not follow that the degree of such harm is always uniformly substantial. To the contrary, we are persuaded that the degree of irreparable injury resulting from voiding legislation varies widely depending on the legislation at issue.

Our conclusion is supported by two observations. First, there is no reason to suppose that ***Gudenschwager***'s direction that an alleged irreparable injury must be evaluated in terms of the proof submitted on its substantiality and probability does not apply when legislation is declared unconstitutional. After all, a declaration that a statute was unconstitutional was the very topic at issue in ***Gudenschwager***.

Second, it is self-evident that not all statutes are created equal in terms of the breadth of their application or the depth of their impact. Suppose, for example, the state legislature were to amend WIS. STAT. § 1.10(3)(f) to make the sparrow, rather than the robin, the state bird. Suppose further that a circuit court struck down the legislation as unconstitutional based on some alleged deficiency in the legislative process, and the State moved to stay the circuit court's decision. It cannot be the case that a court considering whether to grant a stay in those circumstances would afford *exactly the same weight* to the appellants' claim of irreparable harm that a court would if it struck down, for example, a statute with the effect that all highway construction in the state must immediately come to a halt. The point of this example is not that

we have low impact statutes at issue here; plainly we do not. Rather, our point is that the appellants' per se approach to this factor is unsound.

Rather than a per se harm rule, a proper analysis of the ramifications of staying or not staying a decision declaring statutory provisions unconstitutional requires an analysis that looks at the particular legislation at issue. The appellants do not challenge the circuit court's finding that they failed to offer any facts or argument as to the stated ***Gudenschwager*** criteria of substantiality that was applicable to their claim of an irreparable injury to the representational interests of the State. We conclude, therefore, that the circuit court did not apply an improper standard of law or otherwise erroneously exercise its discretion in its assessment of that particular claim of irreparable harm made by the appellants.

We pause here to note that the appellants made a decision to discuss other potential harms that might occur in the absence of a stay, such as statewide confusion among municipal employers, only as part of their arguments relating to the last two factors, without addressing such harms in the context of the second irreparable injury factor. Logically speaking, we believe it would make more sense to address together under the second factor all of the claims of irreparable injury that might result if a stay were not granted (*i.e.*, the main harm factors weighing in favor of a stay), so that such harm could more clearly be balanced against all of the allegations of substantial harm to other interested parties under factor three if a stay were imposed (*i.e.*, the main harm factors weighing against a stay). However, as we stated above, this order is organized around the specific arguments made in the appellants' stay motion. We will, therefore, discuss other potential irreparable injuries that might result if a stay were not granted as those claims have been framed by the appellants.

Definition of Interested Parties

Regarding the framework of the stay analysis, the appellants next assert that the third and fourth stay factors should be considered together in this case in light of the "multitude" of interested parties and public interests that could be affected by the decision whether to stay the court's order. This assertion ties directly to another argument the appellants make, that the circuit court erred in limiting its discussion of other interested parties to the unions that brought this suit. The appellants contend that the circuit court should have expanded its definition of interested parties to include the "literally thousands of municipal employers and tens of thousands of municipal employees" affected by the challenged provisions of MERA, and points out that the interests of those employers and employees are not uniform.

We agree that the interests of municipal employers and employees—and, for that matter, members of the public generally—are not monolithic and could be considered on either side of the stay equation. We have already explained, however, that the crux of the balancing test is to consider collectively how those factors favoring a stay weigh against those factors opposing a stay. Therefore, it is a distinction without a difference whether the circuit court considered the interests of those municipal employers and employees who support the challenged provisions of MERA under the rubric of "other interested parties," or as part of its consideration of the public interest. We are satisfied from our own review of the circuit court's decision that the court did consider alleged harms to the interests of municipal employers and employees who support the challenged provisions of MERA as part of its discussion of whether the appellants had demonstrated that there was widespread confusion resulting from the circuit court's order.

Weight Accorded to Affidavits Regarding Statewide Confusion

The appellants' challenge to the way the circuit court categorized the interests of municipal employers and others—whom the appellants claim would be harmed by the absence of a stay—fails to acknowledge that the circuit court did, in fact, address those concerns in another portion of its decision. That is, the circuit court did not ignore claimed harm to municipal employers and others, but rather gave little weight to the evidence the appellants offered on this topic.

Although the appellants did not provide us with copies of their affidavits with their stay materials, we surmise from the parties' arguments and the circuit court's order that the allegations therein, made by several officials representing nonparty public employers, are as follows: (1) there is widespread confusion among municipal employers about the statewide effect of the circuit court's order on such topics as the scope of issues that must be bargained with public unions, the status of bargaining representatives that were decertified pursuant to MERA prior to the effective date of the circuit court's decision, and the continuing validity of unilateral changes implemented by municipal employers; (2) this confusion will have a negative impact on the municipal budgeting process; and (3) the confusion could lead to litigation.

First, assuming that confusion over whether the circuit court's decision has statewide binding effect is a significant potential issue, we note that the appellants take the position that it clearly does not have statewide effect. If the reach of the circuit court's order is as plainly limited as the appellants argue, the appellants have no need for a stay because there is no underlying cause for confusion on the part of nonparty municipal employers. The circuit court essentially made this point when it noted that it did not find the affidavits persuasive, in part

because the affiants did not state that they had actually read the decision, consulted the Attorney General or separate legal counsel, or taken any other steps to allay their confusion or uncertainty.[1]

Second, the appellants have failed to present a cogent explanation as to why a stay or the absence of a stay would affect the likelihood of the harms that the appellants contend flow from the alleged confusion.

The appellants assert that confusion—over whether the circuit court's decision is binding state-wide—will have a negative impact on the municipal budgeting process. We understand the appellants to be arguing that municipal employers across the state might spend more as a result of engaging in contract negotiations based on confusion over whether they are now required to negotiate for wages in excess of cost-of-living increases and other items that would have an effect on the municipality's budget. However, the appellants do not explain why the risk flowing from this alleged confusion does not cut equally both ways. It may be that some employers will choose to play it "safe" and engage in bargaining to protect themselves if the legislation at issue here is ultimately declared unconstitutional. And, if employers choose this route, as the appellants acknowledge in supplemental briefing, there would be no legal impediment to

[1] In their motion for a stay, the appellants indicated that the circuit court's decision was not binding state-wide. In response to our request for supplemental briefing, the appellants expanded on this topic and more forcefully argued that the circuit court's decision is not binding state-wide on nonparties.

We acknowledge that the *respondents* argue that the circuit court's decision here *is* binding state-wide. But we reject out of hand the proposition that the circuit court's decision has the same effect as a published opinion of this court or the supreme court. A more interesting issue is whether, if a union sues, a different circuit court might exercise its discretion to apply the doctrine of issue preclusion or a similar doctrine and, thereby, effectively choose to follow the circuit court's decision here. So far as we can tell, different courts might make different decisions on that topic and, in any event, this is not the sort of statewide effect that would justify a stay order in this case.

negotiating conditional contracts or retroactive wages that take into account the uncertain legal status of the challenged statutory provisions, or to attempting to recoup any overpayments if Act 10 is ultimately upheld. Such action would reduce the risk of irreparable harm.

If, on the other hand, this confusion leads municipal employers to decline to bargain, such an effect is not harm, in the appellants' view, but rather the proper course. But this action also carries with it some risks. If these employers wrongly predict the outcome of the appellate proceedings regarding the merits, they may incur litigation costs and, ultimately, be required to compensate union members for losses owing to the employers' compliance with changes in MERA that are later deemed unconstitutional.

In sum, the appellants' arguments do not persuade us that confusion—over whether the circuit court's decision is binding state-wide—will have a negative impact on the municipal budgeting process. Based on the information before us, it appears that budgeting risk for public employers goes both ways. If there is a more sophisticated analysis that makes clear that the risk of bargaining (taking into account the parties' apparent agreement that the uncertain legal status of the challenged statutory provisions can affect the nature of the bargaining itself and, for example, result in conditional agreements) is substantially greater than the risk of not bargaining, such an argument is not before us.

The appellants assert that confusion—over whether the circuit court's decision here is binding state-wide—will lead to litigation. In this regard, the appellants are apparently talking about scenarios in which public employers decline to bargain on the topics covered by the challenged MERA provisions and are then sued by union members for a failure to bargain in good faith. On this topic, the appellants have not explained why a stay or the absence of a stay

would affect such litigation. Whether a stay is or is not granted, nothing brought to our attention by the appellants prohibits nonparty unions from suing municipal employers who decline to bargain on topics covered by the new MERA provisions. The imposition of a stay would not prevent such unions from filing suit. Indeed, because the imposition of a stay does not resolve the underlying legal issues, it is hard to imagine why the imposition of a stay would have any effect on whether nonparty unions filed suit. Until the Wisconsin Supreme Court finally resolves the issues, either by issuing a definite ruling on the merits or by issuing an order declining to review a merits decision of this court, it seems that ongoing litigation is inevitable.

In sum, the appellants have not persuaded us that the circuit court was required to give any more weight than it did to their affidavits alleging statewide confusion. It appears to us that the sort of confusion the appellants highlight is not a product of the circuit court's decision, but rather a product of ground-breaking legislation that is now subject to constitutional challenges. As we have explained, as best we can discern from the materials and arguments presented to us, it appears that the potential for litigation on this topic will not be lessened until the merits of the constitutional issues are finally resolved by action of our supreme court.

Assumption Underlying Claims of Substantial Harm

The appellants' final argument is that the circuit court erred by "assuming the correctness of its decision" when considering under the third and fourth factors whether any substantial harm might result to other interested parties or the public if a stay were granted. That is, the appellants argue that the premise that union members would suffer any harm—whether fiscal in nature or an intangible violation of their constitutional rights—rests upon an assumption that the circuit

court correctly ruled the statute unconstitutional, and that such an assumption "essentially eviscerated the presumption that the appellants are likely to succeed on appeal."

We conclude that this argument is based on a misapprehension of how the ***Gudenschwager*** test works. It is implicit in the second, third, and fourth ***Gudenschwager*** factors that a court is to balance any harm that might result in the absence of a stay, *in the event that the decision on appeal is ultimately reversed,* against harm that might result from the imposition of a stay, *in the event that the decision on appeal is ultimately affirmed.* This is the only logical way to read the factors. *See* ***Gudenschwager***, 191 Wis. 2d at 440.

Contrary to the appellants' assertion, making an assumption under the third or fourth factor that the decision on appeal will be affirmed does not conflict with a determination made under the first factor that a movant has demonstrated a likelihood of success on appeal. As we have explained above, a movant can establish a likelihood of success on appeal by making a showing that there is "more than a mere 'possibility'" that an appeal will succeed. The first factor does not require a finely calibrated evaluation of the merits, or even a determination that it is more likely than not that an appeal would succeed. And, as we have explained, we are not persuaded that this case falls into that category of cases in which it is apparent that the appellants are nearly certain to win on appeal.

Therefore, we see nothing inconsistent about assuming that the circuit court's decision will be affirmed when considering the potential harm to other parties if a stay were granted, and weighing that against the harm that could result in the absence of a stay assuming that the circuit court's decision were reversed. Rather, we believe those are precisely the competing possibilities that are supposed to be balanced in considering whether to grant a stay.

Having rejected the appellants' legal challenge to how the third and fourth factors should be interpreted in relation to the first factor, we reiterate that it was the appellants' burden under the third and fourth factors to show that no interested parties would be harmed if a stay were granted. The appellants did not develop, either before the circuit court or this court, any fact-based argument as to why publicly employed union members would not be harmed if a stay were granted and they were thereby prohibited from bargaining for benefits, limited in their negotiations for wage increases, and required to recertify their unions according to the challenged provisions. Therefore, the circuit court did not apply an improper standard of law or otherwise erroneously exercise its discretion when it determined that the appellants had failed to meet their burden of showing a lack of substantial harm to other interested parties or the public.

Rather, we conclude that the circuit court reasonably considered, as weighing against a stay, the proposition that, even with a stay imposed, municipal employers could not be compelled to grant wage increases higher than the cost of living, whereas, in the absence of a stay, public employees would be flatly prohibited from bargaining on benefits or work conditions, and would be limited to cost-of-living wage increases. Because the ultimate weighing of such factors was within the circuit court's discretion, we see no basis to set aside the circuit court's decision that a stay was not warranted.

IT IS ORDERED that the motion for relief pending appeal is denied.

Diane M. Fremgen
Clerk of Court of Appeals