STATE OF WISCONSIN | CIRCUIT COURT BRANCH 9 | DANE COUNTY

DAVID BLASKA,

Plaintiff,

v.

Case No.: 14-cv-2578
Case Code: 30701
Declaratory Judgment

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

Defendants.

**MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM FILED BY MMSD AND MMSD BOARD OF EDUCATION**

Defendants Madison Metropolitan School District Board of Education (the "Board") and Madison Metropolitan School District (the "District"), by and through their attorneys, Boardman & Clark LLP, hereby move the Court for summary judgment pursuant to Wis. Stat. § 802.08. The grounds for this motion are set forth below.

**Introduction**

Plaintiff David Blaska ("Blaska") filed this lawsuit on September 10, 2014 as a "taxpayer action" against the Board and the District (collectively, "MMSD") and Madison Teachers Inc. ("MTI"), the union that represents five certified collective bargaining units of District employees. Blaska's Complaint challenges the legality of the collective bargaining agreements entered into between MTI and the District for the 2014-2015 and 2015-2016 school years (the "CBAs"). He asserts that the CBAs were bargained for and entered into in violation of certain provisions of Wis. Stat. § 111.70, as amended by 2011 Act 10 and 2011 Act 32 (collectively,

"Act 10"), regarding collective bargaining for public employees. Blaska seeks a declaratory judgment that the CBAs are "unlawful, invalid and void" and injunctive relief to prevent payments and costs under the CBAs and to "preserve the status quo."

Blaska's claims fail on both substantive and procedural grounds. They should therefore be dismissed in their entirety. Substantively, Blaska's claims fail because at the time the District and MTI bargained for and entered into the CBAs, Act 10 did not govern their conduct. Although Act 10 became law in Wisconsin on July 1, 2011, MTI subsequently brought a lawsuit in Dane County Circuit Court challenging the constitutionality of the law. On September 14, 2012, the Honorable Juan Colás issued a final Order holding that Act 10 violated the Wisconsin and United States Constitutions and was therefore "null and void" and "without effect" (the "Order").

The Order was appealed, but its effect was not stayed during the appeal. As such, Wisconsin law clearly holds that the Order was entitled to full force and effect unless and until reversed and that, even if reversed, all actions taken in reliance on it were justified and any obligations entered into prior to reversal are enforceable. Therefore, because MTI and the District negotiated and entered into the CBAs in reliance on Judge Colás's final Order, the CBAs were lawfully negotiated and executed. Although the Order was later reversed by the Wisconsin Supreme Court, it was not reversed until ***after*** the CBAs were finalized and executed, which means that they are enforceable and entitled to their effect.

Blaska's claims also fail procedurally. Specifically, Blaska's Complaint must be dismissed because he failed to comply with the notice of claim requirements under Wis. Stat. § 893.80. In addition, Blaska cannot meet his burden to establish that he has taxpayer standing to maintain this lawsuit.

For all of these reasons, the Court should grant MMSD's motion for summary judgment and dismiss Blaska's Complaint in its entirety and with prejudice.

**Defenses**

MMSD's defenses and the elements of each defense are as follows:

A. **Act 10 Not Applicable.** Act 10 did not apply to MMSD and MTI when the CBAs were negotiated and executed; the CBAs therefore do not violate Act 10 and are entitled to their effect. There are no specific elements to this defense, which is based on the straightforward application of binding Wisconsin precedent. *See, e.g.*, *Slabosheske v. Chikowske*, 273 Wis. 144, 150, 77 N.W.2d 497 (1956) (an agreement entered into in reliance on a final circuit court decision was enforceable despite the later reversal of that decision on the basis of "the well-known and fundamental legal principle that when a court has jurisdiction of the parties and the subject matter[,] its judgment, however erroneous, is a complete justification, until reversed or set aside, of acts done in its enforcement and a protection to those who acted in good faith reliance upon it").

B. **Notice of Claim Requirements Not Met.** Blaska failed to comply with the notice of claim requirements under Wis. Stat. § 893.80. Wis. Stat. § 118.26 specifically states that "no action may be brought or maintained against a school district upon a claim or cause of action unless the claimant complies with § 893.80." Thus, the Court lacks competency to hear Blaska's claims, unless the requirements of § 893.80 are met. Section 893.80 holds that "no action may be brought or maintained against any . . . governmental subdivision . . . upon a claim or cause of action unless":

1. "Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the . . . governmental subdivision"; and

2. "A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant . . . subdivision . . . and the claim is disallowed."

Wis. Stat. § 893.80(1d); *see also* Wis. Stat. § 118.26; *DNR v. City of Waukesha*, 184 Wis. 2d 178, 191, 515 N.W.2d 888 (1994) ("Thus, we now hold that sec. 893.80 applies to all causes of action, not just those in tort and not just those for money damages.").

**C. Lack of Standing.** Blaska asserts only taxpayer standing in bringing this action. To establish taxpayer standing, he has the burden to establish the following elements:

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 declaratory relief must have a legally protectable interest in the controversy, which means that the party must establish the following:

   i. A personal stake in the outcome;

   ii. That the party is directly affected by the issues in controversy; and

   iii. That taxpayers will suffer some pecuniary loss.

4. The issue involved in the controversy must be ripe for judicial determination.

*Village of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 9, 256 Wis. 2d 859, 650 N.W.2d 81. Blaska cannot present admissible evidence to meet his burden.

**Proposed Undisputed Facts**

1. In 2011, the Wisconsin legislature passed Act 10 and Act 32 (collectively, "Act 10") to amend Wis. Stat. § 111.70, which governs collective bargaining between public employees and their employers. 2011 Wis. Act 10; 2011 Wis. Act 32.

2. Act 10 was signed into law by Governor Scott Walker and became effective on July 1, 2011 (a portion of the law was effective as of June 29, 2011). 2011 Wis. Act 10, § 9332.

3. Following the passage of Act 10, a number of lawsuits were filed challenging the new law as unconstitutional. Compl. ¶ 12; Answer ¶ 12.

4. Among these was a lawsuit filed by MTI (and others) against Governor Walker (and others) on August 18, 2011 in Dane County Circuit Court. Packard Aff., ¶ 2, Ex. 1.

5. That case was heard by Judge Juan B. Colás. Packard Aff., ¶ 3, Ex. 2.

6. On September 14, 2012, Judge Colás issued a Decision and Order that found that portions of Act 10 violated the Wisconsin and United States Constitutions and were therefore "null and void" and "without effect." On October 10, 2012, Judge Colás issued an Amendment Clarifying September 14, 2012 Decision and Order, which clarified the scope of the September 14, 2012 Decision and Order. Packard Aff., ¶¶ 3-4, Exs. 2-3.

7. The portions of Act 10 invalidated by Judge Colás's Order included the provisions that underlie Blaska's claims in this case. These include Wis. Stat. § 111.70(2) and (4)(mb). Packard Aff., ¶¶ 3-4, Exs. 2-3; Compl. ¶¶ 1, 27-42.

8. Judge Colás's Order was a final order as defined by Wis. Stat. § 808.03(1). Packard Aff., ¶ 3, Ex. 2.

9. The Order was appealed, and a stay was sought. However, neither Judge Colás, nor the appellate courts stayed the Order pending appeal. Packard Aff., ¶¶ 5-9, Exs. 4-8.

10. On July 9, 2013, the Wisconsin Employment Relations Commission ("WERC") issued Emergency Rules implementing portions of Act 10. Referencing *MTI v. Walker*, those Rules, EMR1310, explicitly stated that the Rules "are not applicable to the Plaintiffs in Case 11CV3744 [sic] unless and until the Circuit Court's decision is no longer in effect." Packard Aff., ¶ 9, Ex. 8, p. 2; Matthews Aff., ¶ 6.

11. The Wisconsin Supreme Court eventually overturned Judge Colás's Order in a July 31, 2014 decision that upheld Act 10 "in its entirety." *MTI v. Walker*, 2014 WI 99, ¶ 3, 358 Wis. 2d 1, 851 N.W.2d 337.

12. In the nearly two-year period after Judge Colás's September 14, 2012 Order and before the Wisconsin Supreme Court's July 31, 2014 decision overturning that Order, MTI and MMSD relied on Judge Colás's Order and the WERC Emergency Rules to collectively bargain and enter into the CBAs at issue in this lawsuit. Cheatham Aff., ¶¶ 2-6; Matthews Aff., ¶¶ 3-8.

13. MMSD and MTI collectively bargained the 2014-2015 CBAs during September of 2013, reaching a tentative agreement on September 27, 2013. MTI ratified the 2014-2015 CBAs on October 2, 2013. Cheatham Aff., ¶ 5; Matthews Aff., ¶ 7.

14. MMSD and MTI collectively bargained the 2015-2016 CBAs during May and June of 2014, reaching a tentative agreement on June 2, 2014. MTI ratified the 2015-2016 CBAs on June 4, 2014. Cheatham Aff., ¶ 6; Matthews Aff., ¶ 8.

15. MTI and MMSD have not collectively bargained since the supreme court's ruling in *MTI v. Walker*. Cheatham Aff. ¶ 7; Matthews Aff., ¶ 9.

16. Blaska filed his Complaint in this lawsuit on September 10, 2014. Lehman Aff., ¶ 2.

17. Prior to filing his Complaint, Blaska did not file a notice of claim or a claim with MMSD pursuant to Wis. Stat. § 893.80. Lehman Aff., ¶ 4; Cheatham Aff., ¶ 10.

18. Before he filed his Complaint, Blaska never suggested, verbally or in writing, that he had claims that he planned to assert against MMSD or that he intended to pursue any sort of relief from MMSD. Lehman Aff., ¶¶ 4-5; Cheatham Aff., ¶ 10.

19. The first indication that MMSD had that Blaska intended to file this lawsuit was when MMSD was served with the Complaint. Lehman Aff., ¶ 5; Cheatham Aff., ¶ 10.

20. MMSD was prejudiced by Blaska's failure to provide any notice of his claims prior to filing his Complaint. Cheatham Aff., ¶¶ 11-12.

21. Due to the lack of notice, MMSD was not able to budget for the lawsuit or explore the possibility of settlement of Blaska's claims. Cheatham Aff., ¶ 11.

22. MMSD began incurring (and has incurred) litigation-related expenses immediately after Blaska served MMSD with the Complaint. In addition, the Board and a number of MMSD employees have had to dedicate time and resources to Blaska's lawsuit. Cheatham Aff., ¶ 12.

23. Absent the CBAs, MMSD would retain authority to pay its employees and provide them with fringe benefits and would do so. Cheatham Aff., ¶¶ 8-9.

24. MMSD uses an automated payroll system to administer payroll deductions. Trendel Aff., ¶¶ 2.

25. The same system is used to administer all types of payroll deductions (e.g., deductions for health insurance premiums, retirement contributions, garnishments, union dues, fair share, etc.). Trendel Aff., ¶¶ 2-3.

26. If MMSD were to stop administering certain types of payroll deductions (such as union dues or fair share), it would continue to use the same payroll system, and the cost of using that system would not change. Trendel Aff., ¶ 4.

27. The administration of particular types of payroll deductions (such as union dues or fair share) through the payroll system does not result in any additional cost to MMSD. Trendel Aff., ¶ 5.

28. In *LaCroix v. Kenosha Unified School District*, Kenosha County Case No. 13-CV-1899, a teacher represented by the Wisconsin Institute for Law and Liberty ("WILL") brought suit against Kenosha Unified School District asserting that their CBAs violated Act 10. Packard Aff. ¶ 10.

29. In the final Decision, Order and Judgment issued by Court Judge David M. Bastianelli on March 15, 2015 in *LaCroix v. Kenosha Unified School District*, Kenosha County Case No. 13-CV-1899, Judge Bastianelli recognized that: "There's no question that the plaintiffs in [*MTI v. Walker*] had the right to rely on the decision of Judge Colas [sic], without a stay and until an appellate court said otherwise." Packard Aff., ¶ 10, Ex. 9, at 8.

## Argument

### I. Factual background

In 2011, the Wisconsin legislature passed Act 10 and Act 32 (collectively, "Act 10") to amend Wis. Stat. § 111.70, which governs collective bargaining between public employers and the certified collective bargaining agents of their employees. PUF ¶ 1. Act 10 was signed into law by Governor Scott Walker and became effective on July 1, 2011. PUF ¶ 2.

Following the passage of Act 10, a number of lawsuits were filed challenging the new law as unconstitutional. PUF ¶ 3. Among these was a lawsuit filed on August 18, 2011 in Dane

County Circuit Court by MTI (and others) against Governor Walker (and others). PUF ¶ 4. That case was heard by Judge Juan B. Colás. PUF ¶ 5. On September 14, 2012, Judge Colás issued a Decision and Order (the "Order") that found that portions of Act 10 violated the Wisconsin and United States Constitutions on their face and were therefore "null and void" and "without effect." PUF ¶ 6. The portions of Act 10 invalidated by the Order included the provisions that underlie Blaska's claims in this case. PUF ¶ 7.[1]

The defendants appealed Judge Colás's Order and sought stays pending appeal at every level. The Circuit Court, Court of Appeals, and Wisconsin Supreme Court all denied the defendants' motions for stay. PUF ¶ 9. In addition, on July 9, 2013, the Wisconsin Employment Relations Commission ("WERC") issued Emergency Rules implementing portions of Act 10. PUF ¶ 10. Referencing *MTI v. Walker*, those Rules, EMR1310, explicitly stated that they were "not applicable to the Plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect." PUF ¶ 10. The Wisconsin Supreme Court eventually overturned Judge Colás's Order in a July 31, 2014 decision that upheld Act 10 "in its entirety." PUF ¶ 11.

In the nearly two years between Judge Colás's September 14, 2012 Order and the Wisconsin Supreme Court's July 31, 2014 decision reversing the Order, MTI and MMSD relied on Judge Colás's Order to collectively bargain and enter into the CBAs at issue here. PUF ¶ 12. MMSD and MTI collectively bargained the 2014-2015 CBAs during September of 2013, reaching a tentative agreement on September 27, 2013. PUF ¶ 13. MTI ratified the 2014-2015 CBAs on October 2, 2013. PUF ¶ 13. MMSD and MTI collectively bargained the 2015-2016 CBAs during May and June of 2014, reaching a tentative agreement on June 2, 2014. PUF ¶ 14. MTI ratified the 2015-2016 CBAs on June 4, 2014. PUF ¶ 14. Thus, all of the CBAs had been agreed upon and entered into ***prior*** to the supreme court's decision reversing Judge Colás's

[1] This Order was a final order as defined by Wis. Stat. § 808.03(1). PUF ¶ 8.

Order and upholding Act 10. MTI and MMSD have not collectively bargained since the supreme court's July 31, 2014 ruling. PUF ¶ 15.

Blaska filed his Complaint in this lawsuit on September 10, 2014. PUF ¶ 16. Prior to filing his Complaint, Blaska did not file a notice of claim or claim with MMSD pursuant to the provisions of Wis. Stat. 893.80. PUF ¶ 17.

## II. Summary judgment standard

The summary judgment standard is well-known and repeated often. Wis. Stat. § 802.08(2) provides that summary judgment shall be granted when no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Wisconsin appellate courts recognize the important role that summary judgment plays in our jurisprudence. In *Transportation Ins. Co. v. Hunzinger Const. Co.*, 179 Wis. 2d 281, 289-90, 507 N.W.2d 136 (Ct. App. 1993), the court made these observations:

> The well-known purpose of summary judgment is "to avoid trials where there is nothing to try." *Rollins Burdick Hunter of Wisconsin, Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752, 757 (1981). . . . [O]nce sufficient time for discovery has passed, it is the burden of the party asserting a claim on which it bears the burden of proof at trial "to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex Corp. v. Catrell*, 477 U.S. 317, 322 (1986). The party moving for summary judgment need only explain the basis for its motion and identify those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that it believes demonstrate the absence of a genuine issue of material fact; the moving party need not support its motion with affidavits that specifically negate the opponent's claim. *Celotex*, 477 U.S. at 323.

*Id.* at 289-92.

Not all factual disputes foreclose summary judgment. The statute requires that there be no "genuine" issue of "material" fact. *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991). A factual issue is genuine and material only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* (citing *Anderson v. Liberty*

*Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). Moreover, a genuine issue of material fact may be established only by such evidence as would be admissible at trial. *Moulas v. PBC Productions, Inc.*, 213 Wis. 2d 406, 411, 570 N.W.2d 739 (Ct. App. 1997). Hearsay, personal opinions, speculation, and conclusory statements are not sufficient. *Id.* at 417.

## III. Blaska cannot establish that the CBAs between MMSD and MTI violate Act 10.

In his Complaint, Blaska asks the Court to invalidate the CBAs because they violate Act 10. This argument is a nonstarter, however, because Act 10 was not in effect for MTI and MMSD when the CBAs were negotiated. As discussed above, the CBAs were negotiated and executed at a time when Act 10 was "null and void" and "without effect" for MTI and MMSD (the only entity with whom MTI bargains) due to Judge Colás's final Order, which found Act 10 facially unconstitutional. While that Order was later reversed, Wisconsin law is clear that MMSD and MTI were entitled to rely on and take actions in accordance with the Order until it was reversed, and that their actions taken in reliance on the Order are valid and effective.

Under Wisconsin law, MTI and MMSD were entitled to rely on Judge Colás's Order until it was overturned by the supreme court. As the Wisconsin Court of Appeals has explained, a trial court's judgment is "valid until reversed." *Harris v. Harris*, 141 Wis. 2d 569, 584, 415 N.W.2d 596 (Ct. App. 1987). The only exception to this rule is in the case of a judgment that is void due to the trial court's lack of jurisdiction, in which case the judgment "is a mere nullity" and "is not binding on anyone." *Kett v. Community Credit Plan, Inc.*, 222 Wis. 2d 117, 127-28, 586 N.W.2d 68 (Ct. App. 1998), *aff'd*, 228 Wis. 2d 1, 596 N.W.2d 786 ("A judgment entered in excess of the court's jurisdiction is void."). That exception is not applicable here, as there is no contention (nor could there be) that Judge Colás lacked jurisdiction to enter the Order.

A final order or judgment from a circuit court that properly has jurisdiction of the parties, such as Judge Colás's September 12, 2012 Order in *MTI v. Walker*, is considered "voidable."

*See id.* A voidable judgment "has the same effect and force as a valid judgment until it has been set aside." *Id.* at 128. Moreover, "a voidable judgment protects actions taken under it before it is reversed." *Id.* The effect of Judge Colás's holding that Act 10 was facially unconstitutional was that Act 10 no longer had any "legal effect or existence." *Hunter v. School District of Gale-Ettrick-Trempealeau*, 97 Wis. 2d 435, 444, 293 N.W.2d 515 (1980) ("A legislative act that has been ruled unconstitutional has no legal effect or existence."); *see also State v. Konrath*, 218 Wis. 2d 290, 304 n.13, 577 N.W.2d 601 (1998) (quoting Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 Stan. L. Rev. 235, 236 (1994)) ("If a court holds a statute unconstitutional on its face, the state may not enforce it under any circumstances, unless an appropriate court narrows its application."). As such, in collectively bargaining and entering into the CBAs in the wake of Judge Colás's Order, Act 10 had no application to MTI and MMSD until the Wisconsin Supreme Court eventually reversed the Order on July 31, 2014. Therefore, because the CBAs were bargained and entered into after Judge Colás's Order rendered Act 10's prohibitions on collective bargaining inoperable but before the supreme court's decision reversing the Order, they do not violate Act 10 and are entitled to their effect.

The necessity of this result is well illustrated by the Wisconsin Supreme Court's decision in *Slabosheske v. Chikowske*, 273 Wis. 144, 77 N.W.2d 497 (1956). *Slabosheske* involved a challenge to the enforceability of a promissory note against a school district. The challenge was based on a complicated set of facts involving two school districts, District 2 and District 7. *Id.* at 146. Initially, District 2 and District 7 were separate districts. *Id.* However, in 1949, the school committee that governed District 7 elected to dissolve District 7 and consolidate it with District 2. As a result, for the 1949-1950 school year, District 7 ceased to operate and its students attended school in the consolidated District 2. *Id.*

At the time, the statute governing the dissolution and consolidation of school districts provided that a dissolution and consolidation "shall not become effective" unless approved by a referendum to be held *after the consolidated district had been in operation for one year*. *Id.* at 146-47. Consequently, in September of 1950, after the consolidated District 2 had been in operation for one year, a referendum was held to approve the dissolution of District 7 and its consolidation with District 2. *Id.* at 147. That referendum failed to approve the dissolution and consolidation. *Id.* A lawsuit was then brought challenging the validity of the referendum, and the circuit court issued a final decision on July 25, 1951 affirming the validity of the referendum. *Id.*

Relying on the circuit court's final decision upholding the referendum, District 7 reconstituted itself for the 1951-1952 school year. *Id.* In August of 1951, a school board for District 7 was elected and given authority to borrow money to pay school operating expenses and a tax levy was authorized to raise funds for the district. *Id.* at 148. In September of 1951, the school board for District 7 borrowed $2,000 from Slabosheske and another individual (collectively, "Slabosheske") to pay school operating expenses. *Id.* This loan was documented by a promissory note signed by representatives of District 7. *Id.*

As all of this was taking place, the circuit court decision that upheld the validity of the referendum was being appealed. *Id.* at 147. And, on January 8, 1952, the Wisconsin Supreme Court issued a decision reversing the circuit court and holding that the referendum had been invalid. *Id.* The supreme court's decision determined that the dissolution of District 7 and its consolidation with District 2 remained valid. *Id.* at 149. Based on this decision, District 7 terminated its operations after January 8, 1952, and its pupils resumed attendance in the consolidated District 2. *Id.*

After this, there was a default on payment of the Slabosheske promissory note. *Id.* Slabosheske then brought suit seeking payment on the note from District 2 as the successor to the assets and liabilities of District 7 or, in the alternative, from the individuals who had originally signed the note as representatives of District 7. *Id.* The defendants contended that they were not obligated to pay Slabosheske on the note. They argued, in essence, that the effect of the supreme court's reversal of the circuit court was that they could not be liable on the note because the re-established District 7 never had a legal existence and, therefore, neither it nor its purported representatives had the capacity to enter into the promissory note. *Id.* The defendants maintained that District 2 was the only legally competent school district that existed during the pendency of the re-constituted District 7. *Id.* at 149-50. Therefore, the defendants asserted, the note between Slabosheske and District 7 was "null and void." *Id.* at 150.

The Wisconsin Supreme Court flatly rejected those arguments on the basis that they ignored the "well-known and fundamental legal principle that when a court has jurisdiction of the parties and the subject matter[,] its judgment, however erroneous, is a complete justification, until reversed or set aside, of acts done in its enforcement and a protection to those who acted in good faith in reliance upon it." *Id.* In its decision, the court surveyed the wide range of sources and authorities supporting this rule, emphasizing that, even if erroneous, a circuit court judgment that is later reversed "'constitutes a sufficient justification for all acts done in its enforcement until reversed or set aside by competent authority.'" *Id.* (quoting 3 Am. Jur., Appeal and Error, p. 755, § 1266); *see also id.* at 150-53 (discussing other authorities supporting this rule). The court explained that until the circuit court's decision was reversed on appeal, "[t]hose who dealt with [District 7] in reliance upon its apparent status, such as the plaintiffs, are protected by the

circuit court judgment." *Id.* at 152-53. The court therefore found the note valid and enforceable even after the circuit court's order had been reversed:

> In summary we conclude that the referendum, confirmed by the judgment of the circuit court, made the consolidation order ineffective and reactivated the former District 7 until the judgment was reversed; that a pending appeal, without more, did not prohibit the exercise of the functions of District 7 which were not dependent on process of the court from which the appeal was taken; that the unreversed judgment justified the acts done in reliance on it and protected the plaintiffs who dealt with District 7 relying on the apparent authority confirmed in its officers by the judgment.

*Id.* at 157.

*Slabosheske*'s teachings have been routinely followed. *See, e.g.*, *State v. Campbell*, 2006 WI 99, ¶ 42, 294 Wis. 2d 100, 718 N.W.2d 649; *Harris v. Harris*, 141 Wis. 2d 569, 584-85, 415 N.W.2d 586 (Ct. App. 1987); *Kett*, 222 Wis. 2d at 127-28; *Virnich v. Vorwald*, 664 F.3d 206, 216 (7th Cir. 2011). And the policy underlying *Slabosheske* only makes sense. Consider the alternative. It suggests that a party to a circuit court ruling not only can disregard that ruling if the case is appealed, but should disregard it if the party speculates that the case might be reversed. Such a rule would relegate circuit courts judges to the position of mere advice columnists. Our judiciary's authority is not so easily disregarded—it is an *equal* branch of government.

The rule of *Slabosheske* fully affirms the validity of the CBAs in this case. As explained above, Judge Colás's Order held that the provisions of Act 10 on which Blaska's Complaint rests were "null and void" and "without effect." PUF ¶¶ 6-7. As a result, until the Order was reversed, Act 10 no longer had any "legal effect or existence." *Hunter*, 97 Wis. 2d at 444; *Slabosheske*, 273 Wis. at 150. This is true despite the fact that the Order was appealed (as explained above, the Order was not stayed pending appeal). *Slabosheske*, 273 Wis. at 150. Further, as in *Slabosheske*, those acting in reliance on the Order were "protected by the circuit

court judgment." *Id.* Thus, MTI, the party in whose favor the Order was issued, and MMSD, with whom MTI bargained, were entitled rely on the Order to collectively bargain and enter into the CBAs until the Order was reversed. Further, WERC guidance strengthened that reliance, as its Emergency Rules stated explicitly that the Rules were not applicable to the plaintiffs in the *MTI v. Walker* "unless and until the Circuit Court's decision is no longer in effect." PUF ¶ 10. And, as in *Slabosheske*, even after the Order was reversed, the actions of MTI and MMSD taken in reliance on the Order prior to its reversal are entitled to their effect. *Slabosheske*, 273 Wis. at 157. At least one Wisconsin court has already recognized the necessity of this result: "There's no question that the plaintiffs in [*MTI v. Walker*] had the right to rely on the decision of Judge Colas [sic], without a stay and until an appellate court said otherwise." PUF ¶ 29.[2]

## IV. Blaska failed to comply with Wis. Stat. § 893.80's notice of claim requirements.

Before a party may sue a governmental subdivision, including a school district, it must comply with the notice requirements specified in Wis. Stat. § 893.80 (commonly referred to as the "notice of claim statute"). *See Elkhorn Area School District v. East Troy School District*, 110 Wis. 2d 1, 327 N.W.2d 206 (Ct. App. 1982). Under § 893.80, a claimant must provide (1) a written notice of the circumstances of the claim, and (2) a written claim containing an itemized statement of relief sought. Wis. Stat. § 893.80(1d).[3] The purpose of the notice of claim statute is

---

[2] In this case, *LaCroix v. Kenosha Unified School District*, a teacher brought suit against the Kenosha Unified School District and the Kenosha Education Association asserting that their collective bargaining agreements violated Act 10. PUF ¶ 28. In considering the issue in the context of *Slabosheske*, the court indicated in the quoted dicta its belief that the CBAs of MTI and MMSD are valid based on the reasoning of *Slabosheske*.

[3] Wis. Stat. § 893.80(1d) provides in full:

> Except as provided in subs. (1g), (1m), (1p) and (8), no action may be brought or maintained against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employee of the corporation, subdivision or agency for acts done in their official

"(1) to give governmental entities the opportunity to investigate and evaluate potential claims, and (2) to afford governmental entities the opportunity to compromise and budget for potential settlement or litigation." *E-Z Roll Off, LLC v. County of Oneida*, 2011 WI 71, ¶ 34, 335 Wis. 2d 720, 800 N.W.2d 421; *see also City of Racine v. Waste Facility Siting Bd.*, 216 Wis. 2d 616, 622, 575 N.W.2d 712 (1998). As a general rule, § 893.80(1d) applies to all causes of action, not just those in tort and not just those for money damages. *See Oak Creek Citizen's Action Comm. v. City of Oak Creek*, 2007 WI App 196, ¶ 6, 304 Wis. 2d 702, 738 N.W.2d 168.

Moreover, for actions brought against a school district in particular, the statutes mandate that the requirements of § 893.80 be met in ***all*** cases except three specific enumerated exceptions that are not applicable here:

> **Claim against school district.** No action may be brought or maintained against a school district upon a claim or cause of action unless the claimant complies with s. 893.80. This section does not apply to actions commenced under s. 19.37 [regarding public records], 19.97 [regarding open meetings] or 281.99 [regarding safe drinking water]."

Wis. Stat. § 118.26.

---

capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employee under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employee; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed.

The notice of claim must be served on the municipality "[w]ithin 120 days after the happening of the event giving rise to the claim." Wis. Stat. § 893.80(1d)(a). The governmental subdivision then has 120 days to respond to the claim before it is deemed disallowed. Wis. Stat. § 893.80(1g).[4] Formal disallowance requires a written notice from the governmental subdivision to the claimant filed by registered or certified mail. *Id.*[5] No action may be "brought or maintained" unless both "notice" and "claim" conditions are satisfied and the governmental subdivision disallows the claim. *Id.* It is the plaintiff's burden to prove that the statutory requirements were met. *Moran v. Milwaukee County*, 2005 WI App 30, ¶ 3, 278 Wis. 2d 747, 693 N.W.2d 121.

### A. Blaska failed to plead compliance with, and failed to serve MMSD with, a timely notice of claim and claim.

Blaska has brought two causes of action here, the first for a declaratory judgment under Wis. Stat. § 806.04 declaring the CBAs "unlawful, invalid, and void," and the second for an injunction "to preserve the status quo." Compl. ¶¶ 27-42. Compliance with § 893.80(1d) is a necessary prerequisite to both of these causes of action. Wis. Stat. § 118.26; *DNR v. City of Waukesha*, 184 Wis. 2d 178, 202, 515 N.W.2d 888 (1994)) ("We hold that the notice of claim

---

[4] Wis. Stat. § 893.80(1g) provides in full:

> (1g) Notice of disallowance of the claim submitted under sub. (1d) shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. Failure of the appropriate body to disallow a claim within 120 days after presentation of the written notice of the claim is a disallowance. No action on a claim under this section against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employee, may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect.

[5] A claim is disallowed in either of two ways: (1) a denial of the claim by the governmental entity is served on the party filing the notice of claim pursuant to the procedure specified in Wis. Stat. § 893.80(1g); or (2) 120 days have expired since presentation of the claim. Wis. Stat. § 893.80(1g); *Colby v. Columbia County*, 202 Wis. 2d 342, 357-58, 362-64, 550 N.W.2d 124 (1996).

statute sec. 893.80(1), Stats., applies in all actions."). Blaska, however, failed to plead compliance with this condition precedent and failed to comply with the notice of claim statute.

A review of Blaska's Complaint reveals that he did not plead compliance with a condition precedent, namely the notice of claim and claim requirements of Wis. Stat. § 893.80. *Rouse v. Theda Clark Med. Ctr., Inc.*, 2007 WI 87, ¶19, 302 Wis.2d 358, 735 N.W.2d 30 (2007) (notice of claim under Wis. Stat. §893.80 is a condition precedent); *Elm Park Iowa, Inc. v. Denniston*, 92 Wis. 2d 723, 728, 286 N.W.2d 5 (Ct. App. 1979) (trial court correct to dismiss suit when plaintiff had not pleaded in its complaint that it provided timely notice of claim). Summary judgment methodology begins with an examination of the complaint to determine whether it properly states a claim, and thus, Blaska's failure to plead a condition precedent is both the beginning and end of the inquiry. *Krezinski v. Hay*, 77 Wis. 2d 569, 572-73, 253 N.W.2d 522 (1977) (summary judgment requires an examination of the pleadings to determine whether a cause of action has been stated and if one is stated, the court then looks to the evidence submitted). Dismissal is warranted on this basis alone.

In addition, Blaska cannot dispute that he failed to provide any notice of his claims to MMSD, much less the specific notice required under § 893.80(1d). PUF ¶¶ 17-19. Before he filed his Complaint, Blaska never suggested, verbally or in writing, that he had claims that he planned to assert against MMSD. PUF ¶ 18. Further, Blaska failed to provide a written notice of the specific relief sought, as required by § 893.80(1d)(b). PUF ¶¶ 17-19; *see Elkhorn Area School District*, 110 Wis. 2d at 5 (no action against school district may be brought unless claimant provides itemized statement of relief sought).

**B. Blaska cannot excuse his failure to comply with § 893.80.**

Blaska may try to argue that his failure to comply with the requirements of § 893.80 should be excused. He might, for example, assert that MMSD had actual notice of his claims

and was not prejudiced by his failure to comply with § 893.80, or that a notice of claim was not required based on a judicially created exception to the requirements of § 893.80. None of those arguments would be availing.

### 1. MMSD did not have actual notice of Blaska's claim and it has been prejudiced.

Blaska may attempt excuse his failure to comply with § 893.80(1d)(a) by arguing that MMSD had "actual notice" and that his "failure to give the requisite notice has not been prejudicial" to MMSD. *See id.* ("Failure to give the requisite notice shall not bar action on the claim if [the governmental entity] had actual notice of the claim and the claimant shows . . . that the delay or failure to give the requisite notice has not been prejudicial to the [governmental entity]."). However, Blaska cannot meet his burden of proving either actual notice or a lack of prejudice.

First, Blaska cannot prove actual notice because MMSD was not aware that Blaska intended to assert the claims presented in this lawsuit until it was served with the Complaint. PUF ¶ 19. By failing to provide MMSD with notice of his claims and the relief sought, Blaska prejudiced MMSD by depriving it of the opportunity to investigate those claims prior to his filing of a lawsuit and to potentially negotiate with him to avoid litigation, which are two of the primary purposes underlying the requirements of § 893.80. PUF ¶¶ 20-21; *see E-Z Roll Off, LLC*, 2011 WI 71, ¶ 34. Second, in addition to losing the opportunity to negotiate with Blaska prior to his filing of this lawsuit, MMSD has been prejudiced because it lost the opportunity, and in fact did not, budget for this litigation. PUF ¶ 20. As Wisconsin courts have recognized, "it is easier for a governmental entity to compromise with a claimant when the governmental entity has the 120-day period required by the notice of claim statute in which it may review the claim and negotiate with the claimant prior to the commencement of litigation." *E-Z Roll Off, LLC*,

2011 WI 71, ¶ 38; *see also City of Racine v. Waste Facility Siting Bd.*, 216 Wis. 2d 616, 622, 575 N.W.2d 712 (1998) (quoting *City of Waukesha*, 184 Wis. 2d at 198) ("The government entity must have enough information 'so that it can budget accordingly for either a settlement or litigation.'"). Permitting Blaska to skirt the requirements of § 893.80 in this case would be inappropriate because it would deprive MMSD of these important and legislatively required protections.

In addition, even if MMSD had actual notice sufficient to excuse Blaska from complying with the notice of claim and claim requirements of § 893.80(1d)(a), Blaska was ***still*** required to comply with § 893.80(1d)(b), the notice of relief sought requirement, which does ***not*** contain an exception for actual notice or lack of prejudice. *See First Transit, Inc. v. City of Racine*, 359 F. Supp. 2d 782 (E.D. Wis. 2005) (dismissing plaintiff's claims against City for failure to comply with Wis. Stat. § 893.80(1d)(b)); *Fritsch v. St. Croix Cent. Sch. Dist.*, 183 Wis. 2d 336, 343, 515 N.W.2d 328 (Ct. App. 1994) (itemized statement of relief of §893.80(1)(b) does not contain prejudice standard); *City of Racine*, 216 Wis. 2d at 620 ("We conclude that compliance with sec. 893.80(1)(b) is a necessary prerequisite to all actions brought against the entities listed in the statute, including governmental subdivisions, whether a tort or non-tort action, and whether brought as an initial claim, counterclaim, or cross-claim."). Blaska was required to file a notice of claim and claim and an itemized statement of the relief sought, and then provide the requisite number of days for MMSD to determine whether compromise, allow, or disallow the claim. He failed to do so. PUF ¶¶ 17-19. Blaska, therefore, cannot rely on an argument of actual notice and lack of prejudice to remedy his failure to comply with the requirements of § 893.80.

### 2. No judicially created exception to the requirements of § 893.80 applies in this case.

Blaska may also attempt to invoke a judicially created exception to the notice of claim statute. Wisconsin courts have recognized a limited exception under which the requirements of § 893.80(1d) may not apply in an action against a municipal entity where the claims in the lawsuit are brought pursuant to statutes with specific procedures for bringing actions against municipal entities. *See Oak Creek Citizen's Action Comm. v. City of Oak Creek*, 2007 WI App 196, ¶ 6, 304 Wis. 2d 702, 738 N.W.2d 168. But this exception does not apply in this case.

To begin, the legislature has specifically precluded the applicability of this judicially created exception in cases against school districts (like this case) by expressly providing that that requirements of § 893.80 apply in all actions against school districts other than those specifically enumerated in the statutes. *See* Wis. Stat. § 118.26. As noted above, Blaska's claims do not fall under any of the enumerated exceptions. *See id.* As such, they are subject to the requirements of § 893.80.

Further, even if § 118.26 did not resolve the issue, the judicial exception recognized in *Oak Creek* applies only in cases involving "statutes which provide specific procedures for bringing actions in which municipal entities are defendants or respondents" that are inconsistent with the purpose of § 893.80. *Nesbitt Farms, LLC v. City of Madison*, 2003 WI App 122, ¶¶ 7, 9, 265 Wis. 2d 422, 665 N.W.2d 379. The statutes at issue here do not fit this mold. First, the provisions of Act 10 on which Blaska's claims are based do not provide any specific procedures for bringing actions against municipal entities. *See* Wis. Stat. § 111.70(2), (4)(mb). Second, to the extent Blaska tries to assert that the declaratory judgment statute (Wis. Stat § 806.04) provides "specific procedures for bringing actions in which municipal entities are defendants or respondents," the Wisconsin Supreme Court has already rejected that argument, ruling that

§ 806.04 does not conflict with § 893.80 and that there is therefore no automatic pass on the requirements of § 893.80 for a declaratory judgment action. *E-Z Roll Off, LLC*, 2011 WI 71, ¶ 28 ("[D]eclaratory relief is not, by its nature, in conflict with providing governmental entities a 120-day period to review a claim."). In sum, there is no basis for Blaska to avoid the requirements of § 893.80 in this case by invoking the judicial exception recognized in *Oak Creek.*

**C. Blaska's failure to comply with § 893.80 requires dismissal of his claims.**

Blaska's failure to comply with the notice of claim statute requires dismissal of his claims. *Selerski v. Village of West Milwaukee*, 212 Wis. 2d 10, 20-21, 568 N.W.2d 9 (Ct. App. 1997) ("[A]n action that is filed prematurely must be dismissed."). Wisconsin courts have held repeatedly that the notice of claim statute imposes a condition precedent on a party's right to invoke the judicial power to grant relief. *See, e.g.*, *Rouse*, 2007 WI 87 at ¶ 19. A plaintiff's failure to satisfy this crucial condition precedent deprives the court of competency to adjudicate the plaintiff's claims, *Village of Trempealeau v. Mikrut*, 2004 WI 79, n.5, 273 Wis. 2d 76, 681 N.W.2d 190, and requires dismissal of the plaintiff's claims. *See, e.g.*, *City of Racine*, 216 Wis. 2d at 628-30 (dismissing claims against municipal entities because plaintiff failed to comply with Wis. Stat. § 893.80(1[d])); *Probst v. Winnebago County*, 208 Wis. 2d 280, 289, 560 N.W.2d 291 (Ct. App. 1997) (same). Accordingly, Blaska's claims must be dismissed because the Court lacks competency to hear them.

**V. Blaska cannot meet his burden of proving that he has standing to bring this lawsuit.**

MMSD previously filed a motion to strike challenging Blaska's standing to maintain certain allegations in his Complaint regarding the rights of teachers. The Court denied this motion on the basis that Blaska's "harm-to-teachers allegations" were made "as part of [his] showing that he has or will sustain some pecuniary loss sufficient for standing as a taxpayer" and

that those allegations were therefore "*relevant* to proving the *material* issue of standing." Decision and Order Denying Defense Motion to Strike, at 3-4. The Court concluded that this was "true for at least two reasons": (1) because Blaska alleged "that certain public expenditures pursuant to the collective bargaining agreement violate Wisconsin law," including "administration expenses for dues [d]eductions for [MTI]"; and (2) because Blaska alleged that the harm to teachers exposed the district to the possibility of future litigation that could cause pecuniary injury to taxpayers (although the Court acknowledged that "the potential for future litigation is not the sole or even primary basis for [Blaska's] alleged standing"). *Id.* at 4. The Court also found that Blaska's allegations regarding harm to teachers were relevant to the material liability issues at the heart of his case and that this was another basis for declining to strike those allegations. *Id.* at 5.

The Court reached these conclusions on the basis of Blaska's pleadings. The case is now at the summary judgment stage, and Blaska therefore has the burden of coming forward with admissible evidence to demonstrate that has taxpayer standing to maintain this action. *Krezinski v. Hay*, 77 Wis. 2d 569, 572, 253 N.W.2d 522 (1977) ("The allegations of the pleadings, however, may not be considered as evidence or other proof on a disposition of a motion for summary judgment."). He cannot meet that burden.

First, as discussed in MMSD's previous briefing regarding taxpayer standing (which MMSD hereby incorporates), to establish taxpayer standing, Blaska must demonstrate a "direct and personal pecuniary interest in the litigation." *City of Appleton*, 142 Wis. 2d at 883. Blaska's basis for asserting pecuniary harm is that MMSD illegally expended public funds in bargaining, executing, and administering the CBAs in violation of Act 10. In his Complaint, Blaska alleges as follows in regard to the purported illegal expenditure of public funds:

> The CBAs require continuing payments in violation of Act 10 relating to monetary compensation including fringe benefits agreed to in the CBAs which will impose continuing costs on the School District, and the School District must expend money to administer the CBAs including but not limited to administering the dues deductions for MTI.

Compl., ¶ 40. Blaska cannot put forward admissible evidence to substantiate these allegations.

For example, absent the CBAs, MMSD would retain authority to pay its employees and provide them with fringe benefits and would do so. PUF ¶ 23. Whether or not Act 10 is in effect, this compensation is not illegal, and the effect of Act 10 would not alter the fact that MMSD compensates its employees as it deems appropriate. Act 10 places no limits on the School District's conduct outside the narrow sphere of collective bargaining. *See, e.g.*, Wis. Stat. § 111.70(4)(mb) ("The municipal employer is ***prohibited from bargaining collectively with a collective bargaining unit*** containing a general municipal employee with respect to any of the following . . .") (emphasis added). Therefore, Act 10 does not limit the School District's authority to provide salary increases or benefits unilaterally or after negotiations with employees that occur outside the statutory scope of "collective bargaining." There is nothing in Act 10 that would prevent an employer from responding to employee requests for wage increases or benefit increases outside of a collective bargaining agreement.

However, unless the unions are certified as collective bargaining units, all Act 10 provides is that employee unions cannot "force" the employer to negotiate. Outside of statutory collective bargaining, the employer has no duty to listen, respond, negotiate, or bargain with the individual employees or unions. Thus, a ruling here by this Court that the CBAs were void would not prevent MMSD from offering the exact same monetary compensation and fringe benefits to its employees. As a result, Blaska cannot meet his burden of establishing that the terms of the CBAs will result in an illegal expenditure of public funds.

Similarly, the administration of dues deductions does not result in any illegal expenditure of public funds. This is because the dues deductions do not result in ***any*** expenditure of public funds—legal or illegal. Dues deductions are administered using MMSD's automated payroll system. PUF ¶ 24. This is the same payroll system that is used to administer all other types of employee payroll deductions (e.g., deductions for health insurance premiums, retirement contributions, garnishments, etc.). PUF ¶ 25. MMSD would maintain and operate this payroll system, and the cost of the system would be the same, even if it were not administering dues deductions. PUF ¶ 26. In addition, the particular dues deductions of the CBAs to which Blaska objects, such as union dues and fair share deductions, do not result in any additional cost to MMSD. PUF ¶ 27.

Further, as explained in MMSD's previous brief in support of its motion to strike, Blaska's allegations regarding violations of the rights of teachers cannot demonstrate any illegal expenditure of public funds, because those allegations all pertain to things that ***teachers*** will be required to do, not to any payment of money by ***MMSD***. *See, e.g.*, MMSD Brief in Support of Motion to Strike, at 6-8. Blaska's allegations regarding the rights of teachers do not implicate any spending by the District. Thus, even if Blaska's could somehow provide evidence to support the allegations in his Complaint, the result would ***not*** be the illegal expenditure of ***public*** funds. Again, teachers, not taxpayers, would be the injured party. For example, teachers, not taxpayers, would be illegally forced to pay union dues against their wishes, and teachers, not taxpayers, would be illegally required to make fair-share payments. Therefore, neither *Hart* nor *S.D. Realty Co.* (cases on which Blaska relied in responding to the motion to strike) stands for the proposition that taxpayers have standing to challenge aspects of a governmental contract that do not result in injury to taxpayers as a class.

Third, Blaska's allegations regarding potential future lawsuits by teachers cannot support taxpayer standing. Again, to establish taxpayer standing at the summary judgment stage, Blaska must come forward with admissible evidence to demonstrate that taxpayers will be harmed by a pecuniary loss. The ***threat*** of ***possible*** lawsuits in the ***future*** is not a pecuniary loss—it is speculation, especially given the facts here. A "remote" and "hypothetical" future injury is not sufficient to support standing. *See Fox v. DHSS*, 112 Wis. 2d 514, 527, 334 N.W.2d 532 (1983). The speculative nature of these allegations is highlighted by the fact that even though we are nearing the end of the 2014-2015 contract year, Blaska has not identified a single teacher lawsuit challenging the CBAs. Blaska simply cannot come forward with admissible evidence to establish any pecuniary harm related to teacher lawsuits.

In addition, it would be entirely circular and illogical to grant Blaska taxpayer standing based on the premise that he is pursuing this lawsuit to protect taxpayers from the pecuniary harm of future lawsuits by teachers. There is no pecuniary harm to taxpayers if no such lawsuits are ever filed. Yet, by filing his lawsuit, Blaska is ***causing*** taxpayers the very harm that he purports to be protecting them from, because he is seeking to make the arguments that a teacher might make in the context of some nebulous future lawsuit. Granting standing to Blaska on this basis would therefore do the opposite of protecting the interests of taxpayers because this lawsuit is causing taxpayers to incur costs that they likely otherwise would have avoided. Moreover, permitting the nebulous threat of potential future lawsuits to serve as the basis for taxpayer standing would essentially eliminate the standing requirement for any taxpayer. If taxpayer standing can be justified on this basis, then any taxpayer could challenge any act of government simply by alleging that someone else who is directly affected by the governmental action could possibly sue the government in the future. Under Wisconsin law, standing is a matter of "sound

judicial policy," and such a rule would not fit that mold. *See Coyne v. Walker*, 2015 WI App 21, ¶ 7.

Wisconsin courts consistently have recognized that a taxpayer does not have standing to bring a lawsuit merely because he or she disagrees with a decision made by a governmental body. *Village of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 10, 256 Wis. 2d 859, 650 N.W.2d 81; *Kaiser v. City of Mauston*, 99 Wis. 2d 345, 360, 299 N.W.2d 259 (Ct. App. 1980), *overruled on other grounds by, DNR v. City of Waukesha*, 184 Wis. 2d 178, 191, 515 N.W.2d 888 (1994). But this is precisely what Blaska and his attorneys are attempting to do in this case under the guise of an assertion of taxpayer standing that, for the reasons discussed above, is flimsy at best. If the bar for taxpayer standing is so low that no harm need be shown, it essentially serves as invitation for the judicial system to be commandeered for the purpose of micro-managing governmental decisions. Such a low bar would not only be inconsistent with "sound judicial policy," *see Coyne*, 2015 WI App 21, ¶ 7, it would also threaten to erode separation of powers, *see Barland v. Eau Claire County*, 216 Wis. 2d 560, 573, 575 N.W.2d 691 (1998) (citations and internal quotation marks omitted) ("The separation of powers doctrine states the principle of shared, rather than completely separated powers. The doctrine envisions a government of separate branches sharing certain powers. In these areas of 'shared power,' one branch of government may exercise power conferred on another only to an extent that does not unduly burden or substantially interfere with the other branch's exercise of its power.").

## VI. Conclusion.

At the time that MTI and MMSD negotiated the CBAs, they were subject to Judge Colás's Order holding Act 10 "null and void" and "without effect." The Order was entitled to full force and effect until it was reversed nearly two years later. Well-established Wisconsin precedent indicates that actions taken in reliance of a circuit court's order are justified and any

obligations entered into are enforceable even if that order is later reversed. Blaska cannot show otherwise. In addition, Blaska's claims should be dismissed for his failure to plead satisfaction with or compliance with the notice of claim statute. Finally, Blaska cannot prove any pecuniary harm and therefore lacks standing to maintain this suit.

**Relief Sought**

For the reasons discussed above, MMSD respectfully requests that the Court grant summary judgment in favor of the defendants and dismiss Blaska's claims in their entirety and with prejudice.

Dated this 1st day of May, 2015.

Respectfully submitted,

BOARDMAN & CLARK LLP
By

Sarah A. Zylstra, State Bar No. 1033159
Andrew N. DeClercq, State Bar No. 1070624
Attorneys for Defendants Madison Metropolitan School District Board of Education and Madison Metropolitan School District
U.S. Bank Plaza, Suite 410
1 South Pinckney Street
P.O. Box 927
Madison, Wisconsin 53701-0927
(608) 257-9521
szylstra@boardmanclark.com
adeclercq@boardmanclark.com

F:\DOCS\WD\59164\23\A2144456.DOCX