

Attorneys at Law

122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax
www.cwpb.com

Attorney Lester A. Pines
pines@cwpb.com

May 11, 2015

VIA HAND DELIVERY

Carlo Esqueda
Dane County Clerk of Courts
Dane County Courthouse, Room 1000
215 South Hamilton Street
Madison, WI 53703-3285

Re: Norman Sannes v. Madison Metropolitan School District, et al.
Case No. 15-CV-974

Dear Mr. Esqueda:

Enclosed please find Madison Teachers Inc.'s Answer to Complaint and Affirmative Defenses in the above-referenced matter. Please file it in accordance with the Court's usual procedure.

I certify by copy of this letter and enclosure, copies of the same have been served on all counsel of record by U.S. first-class mail this date.

Thank you for your attention to this matter. Kindly contact me with any questions or concerns.

Very truly yours,

CULLEN WESTON PINES & BACH LLP



Lester A. Pines

LAP:hkb
Enclosure

cc: Madison Teachers Inc.
Richard M. Esenberg
Sarah Zylstra

NORMAN SANNES,

Plaintiff,

Case No. 15-CV-0974

v.

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

Defendants.

**MADISON TEACHERS INC.'S ANSWER TO THE COMPLAINT
AND AFFIRMATIVE DEFENSES**

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

INTRODUCTION

COMPLAINT PARAGRAPH NO. 1: This is a taxpayer action for declaratory judgment under Wis. Stat. § 806.04 and for an injunction under Wis. Stat. § 813.02. Plaintiff seeks a declaration that the 2014-2015 and the 2015-2016 collective bargaining agreements (the "CBAs") between the School District and MTI are unlawful, invalid and void on grounds that: (a) the CBAs are the product of unlawful collective bargaining in violation of Wis. Stat. § 111.70(4)(mb); (b) the CBAs contain terms that violate Wisconsin law; and (c) the CBAs violate the rights of teachers under Wis. Stat. § 111.70(2).

ANSWER TO PARAGRAPH NO. 1: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike Paragraphs 1(c), 11, 30, 35, 43, and portions of Paragraph 27 relating to deductions of union dues, fair share payments and the like, on the grounds stated in the District's Motion and Answer. To the extent the motion may be denied and an answer deemed necessary, MTI denies subsection (c) of Paragraph 1. MTI further denies all other allegations contained in Paragraph 1.

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

ANSWER TO PARAGRAPH NO. 2: MTI admits that Plaintiff seeks a declaration and injunction but denies that Plaintiff is entitled to either.

PARTIES

COMPLAINT PARAGRAPH NO. 3: Plaintiff Norman Sannes is a citizen of the State of Wisconsin, a resident of the City of Madison and the County of Dane, and a taxpayer whose taxes are used to fund the School District. He resides at 5345 Queensbridge Road, Madison, WI 53714.

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

COMPLAINT PARAGRAPH NO. 4: Defendant School District is a “school district” as that term is used in Chapters 115 through 121 of the Wisconsin Statutes. The School District is a “municipal employer” as defined in Wis. Stat. § 111.70(1)(j).

ANSWER TO PARAGRAPH NO. 4: MTI admits.

COMPLAINT PARAGRAPH NO. 5: Defendant Board is the governing body of the School District as defined in Wis. Stat. § 115.001(7). The School District and the Board have offices at 545 West Dayton Street, Madison, WI 53703.

ANSWER TO PARAGRAPH NO. 5: MTI admits that the Board is the governing body of the District as defined in Wis. Stat. § 115.001(7) and that the District and the Board have offices at 545 West Dayton Street Madison, WI.

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

ANSWER TO PARAGRAPH NO. 6: MTI admits that it is a domestic non-stock corporation with a principal office at 821 Williamson Street, Madison, WI 53703. MTI further admits that it is the certified collective bargaining agent, as that term is used in Wis. Stat. § 111.70, for certain bargaining units of employees of the Madison Metropolitan School District (“the District”), including the “teacher” bargaining unit. MTI affirmatively alleges that it is and has been the certified collective bargaining agent

as that term has been used in Wis. Stat. § 111.70 for certain bargaining units of employees of the District since 1964. MTI denies all other allegations in Paragraph 6.

JURISDICTION AND VENUE

COMPLAINT PARAGRAPH NO. 7: This Court has jurisdiction pursuant to Wis. Stat. § 806.04 in that: (a) there is a controversy between the parties as to the validity and binding effect of the CBAs; (b) the interests of Plaintiff and Defendants are adverse in that the Board authorized the negotiation of and ratified the CBAs and the School District and MTI are parties to the CBAs and Plaintiff seeks a declaration that the CBAs are unlawful, invalid and void; (c) Plaintiff Sannes on behalf of himself and other taxpayers has a legally protected interest because he and other taxpayers have suffered and will continue to suffer a pecuniary loss as a result of the Defendants' illegal conduct in that under the CBAs, taxes will be spent in a manner which is unlawful and in violation of the public policy of the State of Wisconsin; and (d) the controversy is ripe for determination in that the Board and the School District are continuing to implement the CBAs but the CBAs are unlawful, invalid and void.

ANSWER TO PARAGRAPH NO. 7: Paragraph 7 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI admits that this court has jurisdiction, but denies all other allegations in Paragraph 7.

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

ANSWER TO PARAGRAPH NO. 8: Paragraph 8 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI admits that venue is proper in this court under Wis. Stat. § 801.50(2)(a) and (c).

FACTS
Act 10

COMPLAINT PARAGRAPH NO. 9: In 2011, the Wisconsin Legislature enacted sweeping changes to the statutes that govern collective bargaining between public employees and their employers. These changes include 2011 Act 10 and 2011 Act 32, which amended and modified Act 10. Act 10 became the law in Wisconsin on June 29, 2011; Act 32 on July 1, 2011.

ANSWER TO PARAGRAPH NO. 9: Paragraph 9 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI admits that the Wisconsin Legislature enacted 2011 Act 10 and 2011 Act 32 (collectively, "Act 10"), but denies all other allegations in Paragraph 9 and specifically denies that relevant portions of Act 10 were in effect for MTI at all times relevant to the Plaintiff's allegations.

COMPLAINT PARAGRAPH NO. 10: Act 32 and Act 10 (together known as "Act 10"), among other things, amended Wis. Stat. § 111.70, the statute that governs collective bargaining between municipal employers and municipal employees. Section 111.70(4)(mb), as amended by Act 10, prohibits municipal employers such as the School District from bargaining collectively with a union representing its employees with

respect to any of the factors or conditions of employment except for total base wages. Base wages do not include overtime, premium pay, merit pay, pay schedules, or automatic pay progression. Wis. Stat. § 111.70(4)(mb).

ANSWER TO PARAGRAPH NO. 10: Paragraph 10 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI affirmatively alleges that Act 10, Wis Stat. § 111.70, and related statutes speak for themselves, and denies all other allegations in Paragraph 10.

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

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

Act 10 Litigation

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

ANSWER TO PARAGRAPH NO. 12: Paragraph 12 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI admits that after the Wisconsin Legislature passed Act 10, several lawsuits regarding Act 10 were filed, affirmatively states that such lawsuits, pleadings, arguments and rulings in those cases speak for themselves, and denies all other allegations in Paragraph 12.

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

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

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

District and MTI for each bargaining unit for the year July 1, 2014 through June 30, 2015, and a separate set of collective bargaining agreements between the District and MTI for each bargaining unit for the year July 1, 2015 through June 30, 2016. MTI denies all other allegations in Paragraph 13.

COMPLAINT PARAGRAPH NO. 14: Under the CBAs, MTI was the collective bargaining agent for five different bargaining units of employees of the District.

ANSWER TO PARAGRAPH NO. 14: MTI admits.

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

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

COMPLAINT PARAGRAPH NO. 16: On October 3, 2013, counsel for the

Plaintiff wrote the District and stated that:

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

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

ANSWER TO PARAGRAPH NO. 16: MTI has insufficient information to either admit or deny the authenticity of Exhibit B and puts Plaintiff to his proof therein. MTI admits that the text quoted in Paragraph 16 is included in Exhibit B to the Plaintiff's Complaint, and that Exhibit B purports to be on WILL letterhead and signed by Richard M. Esenberg. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in Paragraph 16 and therefore denies them and puts Plaintiff to his proof. MTI specifically denies that the document attached to Plaintiff's Complaint as Exhibit B demonstrates that it was sent by an attorney who was acting at that time as counsel for the Plaintiff, affirmatively alleges that no client is explicitly identified in Exhibit B, and affirmatively alleges that on October 3, 2013 neither WILL nor Attorney Richard M. Esenberg had been engaged to represent the Plaintiff.

COMPLAINT PARAGRAPH NO. 17: As a result of the collective bargaining which occurred in September, 2013, and despite the notice received on October 3, 2013,

on October 7, 2013, the Board ratified the collective bargaining agreements for the 2014-2015 school year.

ANSWER TO PARAGRAPH NO. 17: MTI admits that as a result of collective bargaining that occurred in September of 2013, on October 7, 2013 the Board ratified a collective bargaining agreement for the year July 1, 2014 through June 30, 2015 with MTI for each of the five separate units of employees represented by MTI. MTI denies that the Board ratified the agreements “despite the notice received on October 3, 2013.” To the extent that Paragraph 17 constitutes an allegation that the October 3, 2103 letter sent to the Board by Attorney Richard M. Esenberg was a Notice of Claim made pursuant to Wis. Stat. § 893.80 on behalf of the Plaintiff, Norman Sannes, MTI denies such allegation.

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

ANSWER TO PARAGRAPH NO. 18: MTI admits.

COMPLAINT PARAGRAPH NO. 19: On that same date, May 15, 2014, Plaintiff’s counsel wrote a letter to the School Board informing them that Act 10 prohibits terms in collective bargaining agreements that are inconsistent with the provisions of Act 10, and likewise that any such provisions cannot be included in any extension, modification or renewal of a preexisting contract. Plaintiff’s counsel further stated that, “[i]f the CBA is unlawfully extended, then every taxpayer in Madison would have a valid claim arising from the illegal expenditure of tax dollars, and every

teacher in Madison would have a valid claim for violation of their rights under Wis. Stat. § 111.70(2).” A true and correct copy of the letter from Plaintiff’s counsel is attached hereto as Exhibit C.

ANSWER TO PARAGRAPH NO. 19: MTI has insufficient information to either admit or deny the authenticity of Exhibit C and puts Plaintiff to his proofs thereon. MTI admits that the text quoted in Paragraph 19 is included in Exhibit C to the Plaintiff’s Complaint, and that Exhibit C purports to be on WILL letterhead and signed by Richard M. Esenberg. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in Paragraph 19 and therefore denies them and puts Plaintiff to his proof. MTI denies that the document attached to Plaintiff’s Complaint as Exhibit C demonstrates that it is from counsel who represented the Plaintiff at the time the letter was sent to the Board, affirmatively alleges that no client is explicitly identified in Exhibit C, affirmatively alleges that on May 15, 2014 neither WILL nor Attorney Richard M. Esenberg were engaged to represent the Plaintiff and that, consequently, neither WILL nor Attorney Richard M. Esenberg was on May 15, 2014 “Plaintiff’s counsel.”

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

ANSWER TO PARAGRAPH NO. 20: MTI admits that the text quoted in Paragraph 20 is included in Exhibit C to the Plaintiff's Complaint, and that Exhibit C purports to be on WILL letterhead and signed by Richard M. Esenberg. MTI lacks knowledge or information sufficient to form a belief as to the truth of the balance of the assertions in Paragraph 20 and therefore denies them and puts Plaintiff to his proof. MTI denies that the document attached to Plaintiff's Complaint as Exhibit C demonstrates that it is from counsel who represented the plaintiff at the time the letter was sent to the Board, affirmatively alleges that no client is explicitly identified in Exhibit C, affirmatively alleges that on May 15, 2014 neither WILL nor Attorney Richard M. Esenberg were engaged to represent the plaintiff and that, consequently, neither WILL nor Attorney Richard M. Esenberg was on May 15, 2014 "Plaintiff's counsel."

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

ANSWER TO PARAGRAPH NO. 21: MTI admits that after the Board's vote on May 15, 2014, representatives of the District met and collectively negotiated with MTI as the representative of five separate units of employees of the District, including one unit of employees who are teachers. MTI affirmatively alleges that MTI and the District were acting in conformance with the ruling from the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, and denies all other allegations in Paragraph 21. To the extent that Paragraph 21 constitutes an allegation that the May 15, 2014 letter sent to the

Board by Attorney Richard M. Esenberg was a Notice of Claim that was made, pursuant to Wis. Stat. § 893.80 on behalf of the Plaintiff, Norman Sannes, MTI denies such allegation.

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

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

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

ANSWER TO PARAGRAPH NO. 23: MTI admits that there are currently collective bargaining agreements in place between the District and MTI for each of the

five units of District employees represented by MTI for the year July 1, 2014 through June 30, 2015, and admits that the District and MTI have entered into collective bargaining agreements for the year July 1, 2015 through June 30, 2016 for each of the five units of District employees represented by MTI. MTI affirmatively alleges that MTI and the District were acting in conformance with the ruling from the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, and denies all other allegations in Paragraph 23.

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

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

COMPLAINT PARAGRAPH NO. 25: On November 26, 2014, Plaintiffs' [sic] counsel wrote another letter to the Defendants, a true and correct copy of which is

attached hereto as Exhibit F and incorporated herein by reference. The November 26th letter informed the Defendants yet again that the CBAs were illegal and, among other things, requested an acknowledgment from the Defendants that the CBAs are unlawful, void, and of no force and effect; and the cessation of any and all actions by the Board and/or the School District to implement or enforce the CBAs.

ANSWER TO PARAGRAPH NO. 25: Answering paragraph 25, MTI has insufficient information to either admit or deny the authenticity of Exhibit F and puts the Plaintiff to his proof thereon, affirmatively alleges that Exhibit F speaks for itself, denies the truth of the factual and legal assertions of Exhibit F and denies all other allegations of Paragraph 25.

COMPLAINT PARAGRAPH NO. 26: In response to the November 26th letter, Plaintiffs' [sic] counsel received a notice of disallowance from the Board and the District dated March 24, 2015. Defendants continue to take actions that are based on the premise that the CBAs are valid and enforceable. A true and correct copy of which is attached hereto as Exhibit G and incorporated herein by reference.

ANSWER TO PARAGRAPH NO. 26: Answering Paragraph 26, MTI has insufficient information to either admit or deny the authenticity of Exhibit G and puts the Plaintiff to its proof thereon, affirmatively alleges that Exhibit G speaks for itself, denies the truth of the factual and legal assertions of Exhibit G. MTI admits that it and MMSD "take actions based on the premise that the CBAs are valid and enforceable" and affirmative allege that the CBAs are valid and enforceable.

The CBAs

COMPLAINT PARAGRAPH NO. 27: The CBAs include numerous provisions which are unlawful subjects of collective bargaining under Act 10. On June 3, 2014, the School District published a summary of the material terms of the 2015-2016 collective bargaining agreement with MTI. MTI, likewise, published its own summary. A true and correct copy of the summary of the CBAs published by the School District is attached hereto as Exhibit D. A true and correct copy of the summary of the CBAs published by MTI is attached hereto as Exhibit E. The provisions that are not permissible under Act 10, as listed in the summaries, include but are not limited to the provisions on working conditions, teacher assignments, fringe benefits, teacher tenure, deduction of union dues, "fair share" payments, employee healthcare contributions, retiree healthcare, pension, sick leave, and pay schedules.

ANSWER TO PARAGRAPH NO. 27: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike this paragraph, on the grounds stated in the District's Motion and Answer. MTI has insufficient information to admit or deny the authenticity of Exhibits D and puts the Plaintiff to his proof thereon. MTI admits that Exhibit E is a true and correct copy of an MTI document. The balance of Paragraph 27 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI denies.

COMPLAINT PARAGRAPH NO. 28: Collectively, the CBAs run from July 1, 2014 through June 30, 2016.

ANSWER TO PARAGRAPH NO. 28: MTI admits that there are collective bargaining agreements between it and the MMSD, some of which commenced July 1, 2014 and some of which expire on June 30, 2016. MTI denies all other allegations of Paragraph 28.

FIRST CAUSE OF ACTION

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

COMPLAINT PARAGRAPH NO. 29: Plaintiff incorporates the allegations of the previous paragraphs as if fully set forth herein.

ANSWER TO PARAGRAPH NO. 29: In answer to Paragraph 29, MTI restates and incorporates its answers to Paragraphs 1 through 28.

COMPLAINT PARAGRAPH NO. 30: Under Wis. Stat. § 111.70(2) teachers have the right to refrain from union activities, the right to refrain from paying union dues and the right not to be bound by a so-called “fair share” agreement.

ANSWER TO PARAGRAPH NO. 30: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District’s Motion to Strike this paragraph, on the grounds stated in the District’s Motion and Answer. Paragraph 30 is comprised of legal assertions and conclusions to which no answer is required. To the extent an answer may be deemed required, MTI admits.

COMPLAINT PARAGRAPH NO. 31: Under Wis. Stat. § 111.70(1)(a), collective bargaining is defined as:

The performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, **to meet and confer at reasonable times, in good faith, with the intention of reaching an**

agreement, or to resolve questions arising under such an agreement, with respect to wages, hours, and conditions of employment for public safety employees or transit employees and **with respect to wages for general municipal employees . . .** Collective bargaining includes the reduction of any agreement reached to a written and signed document.

(Emphasis added.)

ANSWER TO PARAGRAPH NO. 31: Paragraph 31 is comprised of legal assertions and conclusions to which no answer is required. To the extent an answer may be deemed required, MTI admits that Paragraph 31 quotes portions of Wis. Stat. § 111.70(1)(a).

COMPLAINT PARAGRAPH NO. 32: Wis. Stat. § 111.70(4)(mb)(1) limits the subject of authorized collective bargaining to wages as therein defined, and prohibits bargaining with respect to any other factors or conditions of employment:

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

ANSWER TO PARAGRAPH NO. 32: Paragraph 32 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI admits that Paragraph 32 quotes portions of Wis. Stat. § 111.70(1)(a).

COMPLAINT PARAGRAPH NO. 33: Taken together, Wis. Stats. §§ 111.70(4)(mb)(1) and 111.70(1)(a) prohibit the School District from collectively

bargaining with any collective bargaining representative on any factors or conditions of employment other than total base wages.

ANSWER TO PARAGRAPH NO. 33: Paragraph 33 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI denies and affirmatively alleges that the provisions of Wis. Stat. § 111.70(4)(mb)(1) were not in force or effect as to MTI at all times relevant to the Plaintiff's allegations.

COMPLAINT PARAGRAPH NO. 34: In spite of this prohibition, the Defendants collectively bargained on numerous factors and conditions of employment, violating § 111.70(4)(mb)(1).

ANSWER TO PARAGRAPH NO. 34: MTI admits that it engaged in collective bargaining with the MMSD, denies the balance of Paragraph 34 and affirmatively alleges that the provisions of Wis. Stat. § 111.70(4)(mb)(1) were not in force or effect as to MTI at all times relevant to the Plaintiff's allegations.

COMPLAINT PARAGRAPH NO. 35: In addition, the CBAs violate Wis. Stat. § 111.70(2) by forcing teachers to pay union dues or "fair share" payments even if the teacher does not want to belong to the union.

ANSWER TO PARAGRAPH NO. 35: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike this paragraph, on the grounds stated in the District's Motion and Answer. Paragraph 35 is comprised of legal assertions and conclusions to which no answer is required. To the extent an answer may be deemed required, MTI denies.

COMPLAINT PARAGRAPH NO. 36: Wisconsin courts have long held that labor agreements that violate law or public policy are invalid and unenforceable. *Bd. Of Ed. Of Unified Sch. Dist. No. 1 v. WERC*, 52 Wis.2d 625, 635 (1971)(“ A labor contract term that is violative of public policy or a statute is void as a matter of law.”); *Glendale Prof'l Policemen's Ass'n v. City of Glendale*, 83 Wis. 2d 90, 106, (1978)(“When an irreconcilable conflict exists [between law and a CBA], we have held that the collective bargaining agreement should not be interpreted to authorize a violation of law.”).

ANSWER TO PARAGRAPH NO. 36: Paragraph 36 is comprised of legal assertions and conclusions which no answer is required. To the extent that an answer may be deemed required, MTI denies.

COMPLAINT PARAGRAPH NO. 37: The Board and the School District unlawfully spent taxpayer funds in collectively bargaining the CBAs and will spend substantial addition taxpayer funds in implementing the CBAs.

ANSWER TO PARAGRAPH NO. 37: MTI denies.

COMPLAINT PARAGRAPH NO. 38: The CBAs violate the public policy of the State of Wisconsin.

ANSWER TO PARAGRAPH NO. 38: MTI denies.

COMPLAINT PARAGRAPH NO. 39: Pursuant to Wis. Stat. § 806.04, Plaintiff is entitled to a declaration that the CBAs are unlawful, invalid and void.

ANSWER TO PARAGRAPH NO. 39: MTI denies.

SECOND CAUSE OF ACTION

For an Injunction prohibiting the Unlawful CBAs from being enforced

COMPLAINT PARAGRAPH NO. 40: Plaintiff incorporates the allegations of the previous paragraphs as if fully set forth herein.

ANSWER TO PARAGRAPH NO. 40: In answer to Paragraph 40, MTI restates and incorporates its answers to Paragraphs 1 through 39.

COMPLAINT PARAGRAPH NO. 41: The Plaintiff and other taxpayers are irreparably harmed by the CBAs. The CBAs require the expenditure of tax monies that cannot be recovered.

ANSWER TO PARAGRAPH NO. 41: MTI denies.

COMPLAINT PARAGRAPH NO. 42: 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 of the School District, and the School District must expend money to administer the CBAs including but not limited to administering the dues deductions for MTI.

ANSWER TO PARAGRAPH NO. 42: Paragraph 42 is comprised of legal assertions and conclusions to which no answer is required. To the extent that an answer may be deemed required, MTI denies.

COMPLAINT PARAGRAPH NO. 43: In addition, the CBAs require School District employees covered under the CBAs to pay union dues or "fair share" payments in violation of Act 10 and prohibit them from negotiating their own terms and

conditions of employment. Continuing to implement the CBAs exposes the School District to financial exposure for claims by teachers for violation of this provision.

ANSWER TO PARAGRAPH NO. 43: MTI joins the Madison Metropolitan School District Board of Education and the Madison Metropolitan School District's Motion to Strike this paragraph, on the grounds stated in the District's Motion and Answer. To the extent the motion may be denied and an answer deemed necessary, MTI answers this paragraph as follows: MTI denies.

COMPLAINT PARAGRAPH NO. 44: The Plaintiff lacks an adequate remedy at law to prevent these payments and costs and an injunction is required to preserve the status quo.

ANSWER TO PARAGRAPH NO. 44: MTI denies.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief may be granted.
2. The Plaintiffs claims are barred by the doctrine of laches.
3. The Plaintiff is not the real party in interest.
4. The Plaintiff lacks standing to bring this action.

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

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

Dated this 11th day of May, 2015.

CULLEN WESTON PINES & BACH LLP



Lester A. Pines, SBN 1016543

Tamara B. Packard, SBN 1023111

Attorneys for Defendant

Madison Teachers Inc.

Mailing Address

122 West Washington Avenue

Suite 900

Madison, Wisconsin 53703

(608) 251-0101 (telephone)

(608) 251-2883 (facsimile)

pinest@cwpb.com

packard@cwpb.com