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October 5, 2015

VIA HAND DELIVERY

Hon. Peter C. Anderson
Branch 17
Dane County Courthouse, Room 6103
215 South Hamilton Street
Madison, WI 53703-3285

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

Dear Judge Anderson:

Enclosed please find Madison Teachers Inc.'s Summary Judgment Reply 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 e-mail this date.

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

Sincerely,

CULLEN WESTON PINES & BACH LLP

Tamara B. Packard

TBP:jp
Enclosure
cc: All counsel of record
Madison Teachers, Inc.

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 17 | DANE COUNTY

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 SUMMARY JUDGMENT REPLY

Defendant Madison Teachers Inc. hereby joins Defendants Madison Metropolitan School District Board of Education ("Board") and Madison Metropolitan School District ("District") (together, "MMSD") in their Summary Judgment Reply, filed with this Court on October 5, 2015, and adopts the arguments set forth therein.

MTI writes separately to emphasize two points: first, had the District refused to bargain with MTI, the Wisconsin Employment Relations Commission ("WERC") would have been bound to order it to do so. Second, taxpayers need not be parties in a declaratory judgment action, like *MTI v. Walker,* to be affected by its outcome.

I. The WERC Would Have Ordered the District to Bargain.

Sannes suggests that MTI used Judge Colás's Order ("the Order") "offensively as a sword against non-parties" to obtain the CBAs at issue, but could not legitimately do so because that Order was not "precedent." Sannes Br., at 12. At the same time, Sannes acknowledges that the parties to the declaratory judgment action were bound by that Order. *Id.*

It is undisputed that under Wis. Stat. § 111.70 the District had an obligation to bargain with MTI because MTI was the certified collective bargaining agent for numerous employee units, including the "teachers unit." Prior to Act 10, the District was obligated to bargain about wages, hours and working conditions. After Act 10, the only issue available for bargaining was "base wage." However, even after Act 10, the obligation of a municipal employer, i.e. the District, to bargain with a certified collective bargaining agent remained undisturbed.

Sannes is implicitly arguing that the District, when bargaining with MTI, could have ignored the Order's holding that crucial provisions of Act 10 were unconstitutional, thereby leaving in effect the previous sections of Wis. Stat. § 111.70 that required bargaining over all wages, hours and working conditions. He also appears to assert that the District had no reason to fear that MTI would seek remedies from the WERC if the District refused to bargain on those issues. On both points Sannes is wrong.

Among the defendants in *MTI v. Walker* were the Commissioners of the WERC. Those officials were sued **in their official capacities**. The declaratory judgement was rendered against them.

Thus, the Commissioners, **in their official capacities**, were bound by the Order, which told them that the challenged provisions of Wis. Stat. § 111.70 were unconstitutional. Once that judgment was rendered, those provisions had no legal effect whatsoever on MTI and, just as importantly, could not be enforced by the WERC in relation to MTI. Indeed, the Commissioners were well aware of this effect of the Order: when they adopted emergency administrative rules to implement certain amendments to Wis. Stat. § 111.70 enacted through Act 10, they excluded MTI from the effect of those rules. *See* EMR1310 (Packard Aff., ¶ 9, Ex. 8, p. 2).

After the Order was in effect and had not been stayed by the circuit court, the Court of Appeals or the Supreme Court, had the District refused to bargain with MTI, as Sannes would have had it do, the District would have been in violation of the law because it is a prohibited practice for a municipal employer "[t]o refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit." Wis. Stat. § 111.70(3)(a)4. The Commission (concurrent with the courts) is charged with prevention of all prohibited practices. Wis. Stat. § 111.70(4)(a) and Wis. Stat. § 111.07(1). Specifically, as to a petition received by the

WERC alleging failure to bargain, the WERC must issue a declaratory ruling, with the effect of an order, within 15 days of receiving the petition. Wis. Stat. § 111.70(4)(b).[1]

Had the WERC been asked to determine whether the District could refuse to bargain with MTI on all issues with the exception of base wages, the WERC would have been compelled to rely on the Order to determine the scope of bargaining required under Wis. Stat. § 111.70 (the Municipal Employment Relations Act, "MERA"). In so doing, because of the Order, the WERC would have had to have ordered the District to bargain with MTI on all issues of wages, hours and working conditions.

This is true not only because MTI and the WERC Commissioners were parties to the declaratory judgment action and therefore bound by the Order, but also because a circuit court's decision interpreting a provision of MERA binds the WERC. *MTI v. MMSD*, 197 Wis. 2d 731, 541 N.W.2d 786 (Ct. App. 1995). ("That decision supplies the meaning of the term which WERC must apply.") Indeed, it should be no surprise that the District would have avoided asking the WERC to interpret MERA differently from the circuit court: it had invested its resources and lost that battle in 1995!

MTI properly requested bargaining with the District on wages, hours and working conditions. The District made a sound decision when it chose to follow the law, bargain with MTI, and avoid committing a prohibited practice. That decision was

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[1] Alternatively, a union or municipal employer may seek an order from the circuit court directing the party to cease its prohibited practice. The WERC and the circuit courts have concurrent jurisdiction to enforce the prohibitions on prohibited practices. Wis. Stat. § 111.70(4)(a) and Wis. Stat. § 111.07(1) ("Any controversy concerning unfair labor practices may be submitted to the commission. . . but nothing herein shall prevent the pursuit of legal or equitable relief in the courts of competent jurisdiction.").

well within the District's authority, and was consistent with the law. While Sannes may disagree with the District's decision, his disagreement does not make the CBAs void.

II. Judge Colás's Order Did and Could Affect Non-Parties' Interests.

Sannes continues to repeat the meritless argument that his interests and the interests of other taxpayers could not be affected by the rulings in *MTI v. Walker* because he and other taxpayers were not a party in that suit. Pl. Resp., at 5. He made the same claim in his opening brief, and in response, the defendants demonstrated that this argument had been rejected by the Wisconsin Supreme Court, most recently in a 2008 decision:

> This court has determined that the Declaratory Judgment Act does not require the joinder as parties, in a declaratory action to determine the validity of a statute or ordinance, of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance. We have not construed Wis. Stat. § 806.04(11) to require that where a declaratory judgment as to the validity of a statute or ordinance is sought, every person whose interests are affected by the statute or ordinance must be made a party to the action. If the statute were so construed, the valuable remedy of declaratory judgment would be rendered impractical and indeed often worthless for determining the validity of legislative enactments, either state or local, since such enactments commonly affect the interests of large numbers of people.

Helgeland v. Wisconsin, 2008 WI 9, ¶ 140, 307 Wis. 2d 1, 745 N.W.2d 1 (citations and internal quotation marks omitted) (See MMSD Br., at 20).

In reply, Sannes made no effort to distinguish *Helgeland* or offer any authority whatsoever to support his claims that Wis. Stat. § 806.04 provides that "[t]he rights of the Plaintiff, and other taxpayers in the school District, cannot be taken away by a declaratory judgment to which they were not a party." Pl. Resp., at 5. He merely repeats

the meritless claim again, perhaps hoping that through repetition, the court will believe it. The court should not be so misled.

CONCLUSION

For the reasons stated in the briefs of MTI and MMSD, the court should grant MTI's Motion for Summary Judgment, dismiss all of the Plaintiff's claims, and award MTI its statutory fees and costs.

Dated this 5th day of October, 2015.

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