

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 139, AFL-CIO, KAREN ERICKSON, and
HEATH HANRAHAN,

Plaintiffs,

CIVIL ACTION

v.

JAMES J. DALEY, IN HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

NO. 19-CV-1233-JPS
JUDGE J.P. STADTMUELLER

Defendant.

REPORT OF RULE 26(f) PLANNING MEETING

Counsel for Plaintiffs, International Union of Operating Engineers, Local 139, AFL-CIO, Karen Erickson and Heath Hanrahan conferred telephonically on October 8, 2019 with Counsel for Defendant James J. Daley, in his official capacity as Chairman of the Wisconsin Employment Relations Commission. On October 9, 2019 Counsel for Plaintiff conferred via email with Counsel for the Proposed Intervenors.

The Rule 16 telephonic scheduling conference in this matter is scheduled to occur on October 16, 2019 at 11:00 a.m. before Hon. J.P. Stadtmueller. Counsel for the Plaintiffs, Defendant, and for the proposed intervening Defendants will appear telephonically.

The parties submit the following Rule 26(f) report.

Preliminary Statement

Since this action was filed on August 26, 2019, several motions have been filed in this case. The parties agree that discovery and disclosures should be stayed in this case until the Court rules on the following motions (the "Pending Motions"):

1. Defendant James J. Daley filed a motion to dismiss on September 26, 2019, seeking dismissal of the action pursuant to Fed. R. Civ. P. 12(b)(6). (Doc.#9; Doc.#10).

2. The Wisconsin Legislature filed a Motion to Intervene on September 27, 2019. (Doc.#13; Doc.#14; Doc.#14-1-14-4). Along with that motion, the Legislature also filed a proposed motion to dismiss the action pursuant to Fed. R. Civ. P. 12(b)(6). (Doc.#14-5; Doc.#14-6).

3. Kristi Koschkee filed a Motion to Intervene on September 30, 2019. (Doc.#18; Doc.#18-1; Doc.#18-2). Along with that motion, Ms. Koschkee filed a proposed answer. (Doc.#18-3).

The Pending Motions affect the parties involved in the case and the pending motions to dismiss will be case dispositive if they are granted. The parties agree that it will serve judicial economy and the resources of the parties to stay discovery and disclosures in this case until after the Court has decided the Pending Motions.

If there are any claims remaining in this case after the Court's decision on the Pending Motions, the Court could set a further Rule 16 scheduling conference to set deadlines on remaining issues.

I. Statement of the Nature of the Case

In this case, Plaintiffs International Union of Operating Engineers of Wisconsin, Local 139, AFL-CIO, Karen Erickson, and Heath Hanrahan have sued Defendant, James J. Daley, in his official capacity as Chairman of the Wisconsin Employment Relations Commission. This action relates to 2011 Wisconsin Act 10 ("Act 10"), legislative enactments that concern public employee labor law. Plaintiffs ask the Court to declare that certain portions of Act 10 are unconstitutional under the United States Constitution and to issue an injunction against those laws.

Specifically, the following Act 10 provisions are challenged in this case: (1) the law requiring an annual affirmative vote from 51% of all employees in a bargaining unit to recertify a union; (2) the law barring public employers from bargaining with unions on issues other than base wages; and (3) the law prohibiting public employers from deducting union dues from paychecks of general employees.

Defendant James J. Daley's motion to dismiss argues that this action must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Proposed intervenor the Wisconsin Legislature also has filed a motion to dismiss the action pursuant to Fed. R. Civ. P. 12(b)(6).

The Seventh Circuit and the Wisconsin Supreme Court have determined constitutional challenges to these provisions of Act 10 in the following cases: *Wisconsin Educ. Ass'n Council v. Walker* ["WEAC"], 705 F.3d 640 (7th Cir. 2013); *Laborers Local 236 v. Walker* ["Laborers Local"], 749 F.3d 628 (7th Cir. 2014); and *Madison Teachers, Inc. v. Walker* ["Madison Teachers"], 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337.

Plaintiffs contend that the *WEAC, Laborers Local*, and *Madison Teachers* decisions should be revisited in light of the United States Supreme Court decision in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018).

II. Rule 26(f) Requirements

A. Rule 26(f)(3)(A) - What Changes Should Be Made in the Timing, Form, or Requirement for Disclosures Under Rule 26(A), Including a Statement of When Initial Disclosures Were Made or Will Be Made.

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

B. Rule 26(f)(3)(B) - The Subjects on Which Discovery May Be Needed, When Discovery Should Be Completed, and Whether Discovery Should Be Conducted in Phases or Be Limited to or Focused on Particular Issues.

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

C. Rule 26(f)(3)(C) - Any Issues About Disclosure or Discovery of Electronically Stored Information, Including the Form or Forms in Which It Should Be Produced.

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

At this time, the parties do not anticipate any special issues related to the discovery of electronic information but will promptly address any issues that do arise during the course of discovery.

D. Rule 26(f)(3)(D) - Any Issues About Claims of Privilege or of Protection as Trial-Preparation Materials, Including - if the Parties Agree on a Procedure to Assert These Claims After Production - Whether to Ask the Court to Include Their Agreement in an Order.

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

E. Rule 26(f)(3)(E) - What Changes Should Be Made in the Limitations on Discovery Imposed Under These Rules or By Local Rule, and What Other Limitations Should Be Imposed.

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

F. Rule 26(f)(3)(F) - Any Other Orders That the Court Should Issue Under Rule 26(C) Or Under Rule 16(b) and (c).

The parties request the Court to stay discovery as well as the initial disclosure requirements until the Court has decided the Pending Motions. See Preliminary Statement, above.

III. Additional Scheduling Matters

A. The deadline for amended pleadings be set at sixty (60) days following the Court's Order on the Pending Motions;

B. The deadline for joining additional parties is set for sixty (60) days following the Court's Order on the Pending Motions;

C. The parties do not anticipate using any expert witness;

D. Once discovery is commenced, the parties will endeavor to complete discovery by August 31, 2020;

E. The deadline for filing case dispositive motions is thirty (30) days following the close of discovery.

Dated: October 10, 2019

s/ Patrick N. Ryan _____

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on or before October 10, 2019, he electronically filed the foregoing document (Report of Rule 26(f) Planning Meeting) with the Clerk of Court using the ECF system, which will provide notification to the following ECF participants:

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