UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN EDUCATION ASSOCIATION COUNCIL *et al.*,

Plaintiffs,

v. **Case No. 11-CV-428**

SCOTT WALKER, Governor of the State of Wisconsin *et al.*,

Defendants,

v.

KRISTI LACROIX, NATHAN BERISH, and RICARDO CRUZ,

Defendant-Intervenors.

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT-INTERVENORS

INTRODUCTION

Plaintiff labor unions seek to invalidate 2011 Wisconsin Act 10 ("Act 10") which, among other things, protects the First Amendment rights of public employees within bargaining units represented by these unions, their affiliates and other labor unions. The Defendant-Intervenors ("Employees") are Kristi Lacroix and Nathan Berish, public

school teachers represented for bargaining purposes by local affiliates of lead Plaintiff Wisconsin Education Association Council ("WEAC"), and Ricardo Cruz, a Wisconsin state trust fund specialist represented for bargaining purposes by Plaintiff AFT-Wisconsin, AFL-CIO ("AFT-W"), and its local affiliate. The Employees' First Amendment rights not to associate and not to speak are protected by Act 10. They file this answer and affirmative defenses to defend Act 10 and vindicate their First Amendment rights.

Defendant-Intervenors, by and through their attorneys, pursuant to Federal Rules of Civil Procedure 8, 12 and 24, hereby answer Plaintiffs' Complaint and assert the following affirmative defenses:

ANSWER

1. Defendant-Intervenors admit the allegations of Paragraphs 26-31, 33-37, 72, 75 and 79.

2. Defendant-Intervenors admit the allegations of Paragraph 25 but only as they relate to state employees.

3. As to Paragraph 1, Defendant-Intervenors admit that the Wisconsin Legislature enacted legislation officially titled "2011 Wisconsin Act 10" ("Act 10"), which had been introduced at the request of Governor Scott Walker, that the Governor signed the legislation, and Act 10 went into effect on July 29, 2011. Further, they admit that Act 10 classifies state and municipal employees as "general employees" and certain

firefighters and law enforcement officers as "public safety employees," and that Act 10 applies different provisions to these two groups of employees. The provisions of Act 10 speak for themselves and are the best evidence of what Act 10 does or does not do. Defendant-Intervenors deny the allegations in Paragraph 1 that are inconsistent with the actual provisions of Act 10. They further deny the allegation that Act 10 infringes on any employee's or Plaintiff's First Amendment rights, which is a legal conclusion to which no answer is required. The Employees deny any and all remaining allegations in Paragraph 1 to the extent not expressly admitted.

4. As to Paragraph 5, Defendant-Intervenors admit that Plaintiffs have styled this action as being brought pursuant to 42 U.S.C. § 1983. The Employees deny the allegation that Plaintiffs have brought a legally sufficient claim under 42 U.S.C. § 1983, which is a legal conclusion. They are without information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 5 and therefore deny them.

5. As to Paragrahp 6, Defendant-Intervenors admit that Plaintiffs' Complaint seeks declaratory, injunctive and equitable relief under 42 U.S.C. § 1983 and 28 USC § 1343(a)(3). The Employees deny that Plaintiffs are entitled to such relief, which is a legal conclusion, and further deny such relief is available or appropriate.

6. Although the allegations of Paragraphs 7 and 8 are legal conclusions, Defendant-Intervenors admit the Court has jurisdiction and venue is proper, but deny all remaining allegations, including that any relief is available under 42 U.S.C. § 1983.

7. As to Paragraph 9, Defendant-Intervenors admit the WEAC is a statewide organization affiliated with the NEA headquartered in Madison, Wisconsin and is a labor organization within the meaning of MERA and SELRA, which through its local affiliates represents for bargaining purposes teachers and education support professionals. The Employees are without information sufficient to form a belief as to the truth or falsity as to the remaining allegations of Paragraph 9 and therefore deny them.

8. Defendant-Intervenors admit that Act 10 has removed many of the extraordinary special privileges formerly available to WEAC, its affiliates and members who are classified as general employees. The Employees deny the allegations of Paragraphs 10, 12, 14, 16, 18 and 20 to the extent not expressly admitted.

9. As to Paragraph 17, Defendant-Intervenors admit AFT-W is a statewide organization and a labor organization within the meaning of MERA, SELRA, and FASLRA, which represents for bargaining purposes employees of the State of Wisconsin. The Employees are without information sufficient to form a belief as to the truth or falsity as to the remaining allegations of Paragraph 17 and therefore deny them.

10. As to Paragraph 23, Defendant-Intervenors admit that Scott Walker is the Governor of Wisconsin and that the Wisconsin Constitution describes the duties of the Governor. The Employees affirmatively state that the Wisconsin Constitution speaks for itself and is the best evidence of what the Wisconsin Constitution does or does not require of the Governor, but deny the allegations of Paragraph 23 to the extent they are

inconsistent with the Wisconsin Constitution. They further admit that Governor Walker has certain authority as a matter of law over the wages, hours and other conditions of employment of state employees as determined by the Legislature. Defendant-Intervenors deny the allegations of Paragraph 23 to the extent they are inconsistent with the relevant statutes or not expressly admitted.

11. As to Paragraph 24, the Employees admit that Governor Walker is responsible for enforcement of Act 10 and that his office is located as alleged. They further admit that Plaintiffs have sued Governor Walker in his official capacity only. Defendant-Intervenors deny that injunctive relief against the Governor is necessary or appropriate. They also deny the allegations of Paragraph 24 to the extent inconsistent with the relevant statutes or not expressly admitted.

12 As to Paragraph 32, Defendant-Intervenors admit that Act 10 was enacted on March 11, 2011, that its implementation was temporarily delayed by a Wisconsin state circuit court until the Wisconsin Supreme Court vacated the circuit court's orders enjoining Act 10 and declared those orders void *ab initio*, and that Act 10, which amended Chapter 111, governing Wisconsin employment relations law, became effective on June 29, 2011.

13 As to Paragraph 39, Defendant-Intervenors admit that Act 10 classifies public employees as general employees and public safety employees and provides different extraordinary special privileges to the two classes. The Employees deny the

allegations of Paragraph 39, which are legal conclusions, to the extent not expressly admitted.

14. As to Paragraph 60, Defendant-Intervenors admit that contributions to the Wisconsin Retirement System (WRS) for general employees, including teachers, are comprised of employer and employee portions which currently total 11.6 percent. The Employees deny the allegations of Paragraph 60 to the extent inconsistent with the actual language of Act 10 or not expressly admitted.

15. As to Paragraph 71, Defendant-Intervenors admit that Act 10 has been and is commonly referred to as the "Budget Repair Bill." Based on news reports, the Employees admit that Senate Bill 11 and Assembly Bill 11 were introduced at the request of the Governor, without legislative sponsorship. The Employees are without information sufficient to form a belief as to the truth or falsity of whether SB 11 and AB 11 are identical or identical to Act 10 and therefore deny them. The legislative history of Senate Bill 11 and Assembly Bill 11 are a matter of public record and therefore the Defendant-Intervenors deny the allegations of Paragraph 71 to the extent they are inconsistent with the public record or not expressly admitted.

16. Based on news reports, Defendant-Intervenors Defendants admit the allegations of Paragraph 73.

17. As to Paragraph 74, Defendant-Intervenors admit that MPA and Local 215 endorsed Governor Walker's campaign. The Employees are without knowledge sufficient

to form a belief as to the truth or falsity of the remaining allegations of Paragraph 74 and therefore deny all allegations not expressly admitted.

18. Although the allegations of Paragraph 80 are legal conclusions, Defendant-Intervenors admit that members of unions that endorsed the Governor have been classified as public safety employees. The Employees deny the remaining allegations of Paragraph 80 and affirmatively state that members of unions who did not endorse Governor Walker have also been classified as "public safety employees," and thus exempt from the provisions that eliminate or restrict bargaining rights.

19. Although the allegations of the first sentence of Paragraph 92 are legal conclusions, Defendant-Intervenors admit that any lawful group, including unions, may lawfully expend voluntary membership dues on political advocacy and other forms of expression protected by the First Amendment of the United States Constitution. The Employees are without knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore deny the allegations of Paragraph 92 to the extent not expressly admitted.

20. Defendant-Intervenors assert that Act 10 speaks for itself and is the best evidence of the effect of the Act. The Employees admit that Act 10: a) classifies employees as public safety employees and general employees; b) limits the subjects of bargaining for unions representing general employees to "total base wages;" c) requires unions representing general employees to be re-certified annually; d) limits bargaining

agreements for general employees to oneyear; e)precludes the public employer of general employees from deducting unin dues; and e) forbids public employers of general employees from requiring nonmember employees to pay fees or dues to the unions as a condition of employment. Defendant-Intervenors deny the allegations of Paragraph 82-87, which are legal conclusions, to the extent inconsistent with the actual language of Act 10 or not expressly admitted.

21. Defendant-Intervenors assert that the statutes referenced in Paragraph 55 speak for themselves and are the best evidence of their effects. Although the allegations of Paragraph 55 are legal conclusions, the Employees admit that in the past state and municipal employers and unions have been permitted to negotiate provisions for the deduction of union members' dues. The Employees also admit that unions have spent membership dues on both "representational" and "non-representational" activities. Defendant-Intervenors deny the allegations of Paragraph 55 to the extent inconsistent with the statutes' actual language or not expressly admitted.

22. Defendant-Intervenors are without information sufficient to form a belief as to the truth or falsity of the allegations of Paragraphs 11, 13, 15, 19, 21, 76 and 77 and therefore deny them.

23. Paragraphs 2, 3 and 22, are legal conclusions for which no answer is required. If an answer were required,Defendant-Intervenors would deny.

24. Defendant-Intervenors state that Act 10 and the statutes described in Paragraphs 40-44 speak for themselves and are the best evidence of the effects of Act 10 and those statutes. The Employees deny the allegations of Paragraphs 40-44 to the extent they are inconsistent with Act 10, the statutes referenced in Paragraphs 40-44, or not expressly admitted.

25. Defendant-Intervenors assert that the statutes described in Paragraphs 45, 50 and 64 speak for themselves and are the best evidence of the effect of those statutes. The Employees deny the allegations of Paragraphs 45, 50 and 64 to the extent they are inconsistent with the statutes referenced.

26. Defendant-Intervenors assert that the statutes referenced in Paragraph 58 speak for themselves and are the best evidence of their effects. The Employees deny the allegations of Paragraph 58, which are legal conclusions, to the extent inconsistent with the statutes' actual language.

27. Defendant-Intervenors assert that Act 10 speaks for itself and is the best evidence of the effect of the Act. The Employees deny the allegations of Paragraphs 46-48, 51-53, 59 and 62 to the extent inconsistent with the actual language of Act 10.

28. Defendant-Intervenors assert that Act 10 speaks for itself and is the best evidence of the effect of the Act. The Employees deny the allegations of Paragraph 49, 54, 56, 57, 61, 63 and 65-68, which are legal conclusions, to the extent inconsistent with the actual language of Act 10.

29. Defendant-Intervenors assert that Act 10 speaks for itself and is the best evidence of the effect of the Act. The Employees deny the allegations of Paragraph 69, which are legal conclusions, to the extent inconsistent with the actual language of Act 10 and any subsequent relevant legislation.

30. Defendant-Intervenors assert that Executive Order #14 speaks for itself and is the best evidence of the executive order stated. Based on news reports the Employees admit the allegations of Paragraph 70.

31. Defendant-Intervenors state that the records maintained by the Legislative Reference Bureau ("LRB") speak for themselves and are the best evidence of what they state. The Employees deny the allegations of Paragraph 78, which are legal conclusions, to the extent inconsistent with the actual language of the LRB's records.

32. Defendant-Intervenors deny all of the allegations of Paragraphs 4 and 38.

33. Defendant-Intervenors deny the allegations and legal conclusions of Paragraphs 88, 89 and 93.

34. Defendant-Intervenors deny the allegations, legal conclusions and mis-statements of law of Paragraph 90.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief may be granted as a matter of law.

2. Defendant-Intervenors Lacroix and Berish are represented for bargaining purposes by local affiliates of the lead Plaintiff Wisconsin Education Association Council ("WEAC"). Defendant-Intervenor Cruz is represented for bargaining purposes by Plaintiff AFT-Wisconsin, AFL-CIO ("AFT-W") and its local affiliate. The Employees are not members of their unions. They have the right, protected by the First Amendment to the United States Constitution, to prevent the unions and their affiliates from using their money for any purpose, unless the State demonstrates a compelling reason to require nonmembers to pay for the costs of collective bargaining, contract administration and grievance adjustment. Act 10 has removed most, if not all, compelling reasons to support any infringement on the First Amendment rights of nonmembers and is justified by the State's interest in protecting the First Amendment rights of nonmembers to refrain from association with the unions and from subsidizing the unions' speech.

3. The State also has the right to prohibit the payroll deduction of union dues and nonmember forced fees. The First Amendment does not confer an affirmative right on anyone or group, including unions, to use government payroll mechanisms for the purpose of obtaining funds for expression, nor does it require the government to assist others in funding the expression of particular ideas, including political ones. In fact, the

First Amendment does not even impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize labor unions and bargain with them. Through Act 10, the State of Wisconsin has exercised its constitutional discretion to stop assisting in the funding of general union expression and bargaining with general unions over any matter other than the rate of base wages. Because the Employees do not want to be represented by unions and do not want to advance the unions' bargaining and political agendas, they have an interest in seeing that the State does not through payroll dedudtion of union dues "aid the unions in their political [and other] activities." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 129 S. Ct. 1093, 1098 (2009).

WHEREFORE, Defendant-Intervenors respectfully requests that judgment be entered as follows:

A. Dismissing the Plaintiffs' Complaint in its entirety;

B. Awarding Defendants their costs, disbursements and attorney fees incurred in defending this action; and

C. Granting any other further relief this Court deems just and equitable under the circumstances.

Dated: July 19, 2011

Respectfully submitted,

/s/ Milton L. Chappell

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