

**INTERNATIONAL ASSOCIATION OF
MACHINISTS DISTRICT 10 and its LOCAL
LODGE 1061,**
1650 S. 38th St.
Milwaukee, WI 53215

UNITED STEELWORKERS DISTRICT 2,
1244A Midway Road
Menasha, WI 54952

WISCONSIN STATE AFL-CIO,
6333 W. Bluemound Road,
Milwaukee, WI 53213

Plaintiffs,

v.

Case No. _____
Case Type 30701

STATE OF WISCONSIN,

SCOTT WALKER,
Governor of the State of Wisconsin,
115 East State Capitol
Madison, WI 53702

BRAD SCHIMEL,
Attorney General of the State of Wisconsin,
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

JAMES R. SCOTT
Chairman of the Wisconsin Employment Relations Commission,
4868 High Crossing Blvd.,
Madison, WI 53704,

RODNEY G. PASCH
Commissioner of the Wisconsin Employment Relations Commission,
4868 High Crossing Blvd.,
Madison, WI 53704,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs International Association of Machinists District 10 and its Local Lodge 1061 et al., pursuant to the Uniform Declaratory Judgments Act, Wis. Stats. §806.04, state as their complaint against the Defendants, Scott Walker et al., as follows:

1. This complaint is an action for an unconstitutional taking of Plaintiffs' property by the State of Wisconsin. This action arises under the Constitution of the State of Wisconsin, Article I, Section 13, which states "The property of no person shall be taken for public use without just compensation therefor." This Court has jurisdiction over this action and venue is proper in this circuit court because the Defendants are found in this county.

PARTIES

2. International Association of Machinists District 10 ("District 10") and its Local Lodge 1061 ("Lodge 1061") are labor organizations within the meaning of § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(5), and §111.02(9g) of the Wisconsin Employment Peace Act. District 10 has its principal place of business at 1650 S. 38th Street in Milwaukee, Wisconsin. District 10 represents employees of employers engaged in interstate commerce for purposes of collective bargaining and is comprised of approximately 30 local lodges that also represent employees of employers engaged in interstate commerce for purposes of collective bargaining. Both District 10 and its affiliated local lodges are parties to numerous collective bargaining agreements with such employers. District 10 and its affiliates historically have negotiated union security clauses in the vast majority of their collective bargaining agreements. Lodge 1061 is an affiliate of District 10 which represents approximately 102 employees of employers engaged in interstate commerce in Wisconsin. Lodge 1061 historically has

negotiated union security clauses in its collective bargaining agreements that require both members and nonmembers to pay their fair share of the costs of collective bargaining, contract administration and grievance adjustment. Lodge 1061's collective bargaining agreement with an employer, DRS Power and Control Technologies, Inc., located in Milwaukee within the State of Wisconsin, is currently in the process of renegotiation. Act 1 prohibits Lodge 1061 from negotiating a successor contract that will contain a provision requiring nonmembers to pay their fair share of collective bargaining costs. Lodge 1061 represents approximately 12 nonmembers at DRS Power and Control Technologies, Inc.

3. Plaintiff United Steelworkers District 2 ("USW District 2") is a labor organization within the meaning of § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(5), and §111.02(9g) of the Wisconsin Employment Peace Act. USW District 2 has its principal place of business at 1244A Midway Road, Menasha, WI 54952, and represents employees of employers engaged in interstate commerce throughout Wisconsin. USW District 2 historically has negotiated union security clauses in its collective bargaining agreements that require both members and nonmembers to pay their fair share of the costs of collective bargaining, contract administration and grievance adjustment. Act 1 prohibits USW District 2 from negotiating successor contracts that will contain provisions requiring nonmembers to pay their fair share of collective bargaining costs.

4. Plaintiff Wisconsin State AFL-CIO ("Wisconsin AFL-CIO") is an unincorporated federation of labor organizations and has as its principal place of business offices located at 6333 W. Bluemound Road, Milwaukee, WI 53213. Its

member organizations include unincorporated labor organizations which represent employees of employers in the private sector within the State of Wisconsin, including Plaintiffs District 10, Lodge 1061 and USW District 2, and many other labor organizations in the same position as the Plaintiffs. Wisconsin AFL-CIO represents in excess of 200 affiliated organizations that in turn represent in excess of 100,000 private sector employees of employers in Wisconsin engaged in interstate commerce.

5. Defendant State of Wisconsin is a political entity the elected and appointed officials of which are charged with the responsibility to represent all of the citizens of the State consistent with obligations imposed on them by the Constitution of the State of Wisconsin. The Takings Clause of the Wisconsin Constitution acts as a self executing constitutional waiver of sovereign immunity. *Wis. Retired Teachers Ass'n v. Employee Trust Funds Bd.*, 207 Wis. 2d 1, 18, 558 N.W.2d 83 (1997).

6. Defendant Scott Walker is the sitting governor of the State of Wisconsin and in that capacity is charged with the enforcement of the laws of the State of Wisconsin including Wis. Act 1. Defendant Walker is sued in his official capacity.

7. Defendant Brad Schimel is the Attorney General of Wisconsin, charged with enforcement of its laws and the investigation of crimes of statewide significance, and to consult with and advise district attorneys who prosecute misdemeanors. Defendant Schimel is sued in his official capacity.

8. Defendant James R. Scott is the chair of the Wisconsin Employment Relations Commission (WERC), which is responsible for implementing, enforcing, administering and resolving disputes arising under Wisconsin Employment Peace Act, Wis. Stats. §§111.01 et seq., including but not limited to the prevention of unfair labor

practices by employers and unions with regard to the negotiation and enforcement of union security clauses. Defendant Scott is sued in his official capacity.

9. Defendant Rodney G. Pasch is the sole other Commissioner of the WERC. Defendant Pasch is sued in his official capacity.

GENERAL ALLEGATIONS

10. The National Labor Relations Act in §9 provides that “Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.” Wisconsin Statutes §111.05(1) similarly provides “Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining.”

11. These statutes impose upon labor organizations, including the Plaintiffs and the member organizations of Plaintiff Wisconsin State AFL-CIO, the duty to represent fairly all persons in a bargaining unit regardless whether or not such persons become and remain members of the labor organization. This duty furthermore applies to all aspects of the labor organization’s relationship with the employees and their employer including without limitation the negotiation, administration, and enforcement of collective bargaining agreements, including the processing of grievances up to and through arbitration. The fulfillment of this duty requires the labor organizations to expend considerable sums of money to employ trained staff, outside professionals, and

arbitrators, and other property including meeting halls, offices, libraries, computers and other physical, tangible property, as well as the services of the members of the organization.

12. The Plaintiffs, including the member organizations of Plaintiff Wisconsin State AFL-CIO, have collective bargaining agreements with union shop clauses or other forms of union security, whereby employees in the bargaining units that they represent are required to pay dues and fees, or their equivalents in a sum constituting the proportion of dues and fees germane to collective bargaining and contract administration, as a condition of employment. These sums are the primary source of income for these organizations, without which they would be unable to fulfill their purposes of collective bargaining and the representation of employees, including nonmember employees.

13. Plaintiffs, including the member organizations of Plaintiff Wisconsin State AFL-CIO, represent nonmembers of their organizations in collective bargaining units. These nonmembers are employees who refuse to join or remain a member of the labor organizations, but who are nonetheless entitled to fair representation because of the principle of exclusive majority representation heretofore mentioned. The representation of these nonmembers costs a substantial sum of the property of the labor organizations.

14. On March 6, 2015, the legislature of the Defendant State of Wisconsin passed the right to work bill, Wis Act 1, and on March 9, 2015, Defendant Walker signed such bill into law, which states in pertinent part in Section 5 thereof:

111.04 (3) (a) No person may require, as a condition of obtaining or continuing employment, an individual to do any of the following:

1. Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.
2. Become or remain a member of a labor organization.
3. Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization.
4. Pay to any 3rd party an amount that is in place of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of, or employees represented by, a labor organization.

15. Subsection (b) of §111.04(3) further makes a union security clause violating subsection (a) of §111.04(3) void. Section 6 of Act 1 likewise repeals those portions of former Wis. Stats. §§111.06(1)(c) that permitted labor organizations to negotiate contracts containing union security clauses.

16. The enforcing of a union security contract is criminalized by Wis. Act 1 by making it a misdemeanor to require the payment of dues, fees or other money of any kind to a union by a nonmember as a condition of employment in Section 12 thereof.

17. By virtue of Wis. Stats. §111.06(1)(L), it is also an unfair labor practice to commit any misdemeanor relating to labor relations.

18. Wis. Stats. §111.06(1)(e) prohibits minority unions in Wisconsin by making it an unfair labor practice “To bargain collectively with the representatives of less than a majority of the employer’s employees in a collective bargaining unit.” Section 8 of Act 1 deletes the portion of former §111.06(1)(e) that permitted negotiation of union security clauses, and now makes entering into such an agreement an unfair labor practice.

VIOLATION OF THE TAKINGS CLAUSE

19. Article I, Section 13 of the Constitution of the State of Wisconsin states “The property of no person shall be taken for public use without just compensation therefor.”

20. Wisconsin Act 1 forbids union security clauses and any other agreement that would require the payment of dues, fees, assessments, or other charges of any kind to a labor organization as a condition of employment.

21. Wisconsin law in Wis. Stats. §111.06(1)(e) makes it an unfair labor practice for an employer to bargain with a minority union; therefore, all legal bargaining within the State of Wisconsin is necessarily in bargaining units where a union represents a majority of employees as an exclusive representative. The labor organizations do not have the option to function as associations of employees bargaining with employers on a basis other than a majority, exclusive representation basis.

22. Plaintiffs, including the member organizations of Plaintiff Wisconsin State AFL-CIO, have a property interest in their collective bargaining agreements with employers in the private sector. These collective bargaining agreements include union security clauses that ensure the unions have the resources to provide the fair representation they are required to provide by federal and Wisconsin law. They similarly have a property interest in their money, tangible property used in the representation of employees, and the services of their members and agents for the purposes of contract negotiation, administration, enforcement and grievance processing and arbitration.

23. Wis. Act 1 deprives the unions of their property without just compensation by prohibiting the unions from charging nonmembers who refuse to pay for representative services which unions continue to be obligated to provide.

24. The Wisconsin law also compels unions that bargain with employers to be majority unions that have the power of exclusive representation, because bargaining

with a minority union is forbidden by the state statutes in Wis. Stats. §111.06(1)(e). The unions therefore do not have the option to be “members only” unions which provide services only to their paying members.

25. Wisconsin Act 1 was passed for the public purpose making the business climate in the State more favorable by eliminating the power of labor organizations to collect fair share fees from nonmembers. Assembly Majority Leader Jim Steinek explained, “Passing right-to-work legislation builds on our successful efforts to improve Wisconsin’s business climate and keeps Wisconsin competitive with regional states, Michigan and Indiana.” Republican Speaker Robin Vos said during the debate over Wis. Act 1, “Right to work is simple for Wisconsin: It means being more competitive.” Defendant Walker made this purpose explicitly clear by referring to Act 1 as one more “tremendous tool” because “if you’re a company that is here and you’re looking to grow or if you’re talking to one of your colleagues in the industry and you’re trying to get someone to come here, we now have given one more big thing on the checklist to say that Wisconsin is open for business.”

26. Wisconsin Act 1 effects a transfer of property from the Plaintiffs, including the member organizations of Plaintiff Wisconsin AFL-CIO, to nonmembers who by state action are under Act 1 can no longer be required to pay for the representation the Plaintiffs are required to use their property to provide.

27. The foregoing acts are causing irreparable injury to the Plaintiffs.

28. Because Act 1 upon its face takes the property of Plaintiffs without just compensation, the statute should be held void.

WHEREFORE, it is prayed that the Circuit Court for the County of Dane issue its decision and declaratory judgment, declaring the enactment of Act 1 to be an unconstitutional taking of private property for a public purpose without just compensation; and that said enactment is therefore null and void; and further that the Circuit Court permanently enjoin the implementation and enforcement of Act 1; and that the Circuit Court grant such other and further relief as may be appropriate including without limitation, attorneys fees and costs.

Dated this Tenth Day of March, 2015.

Respectfully submitted,

THE PREVIANT LAW FIRM, S.C.

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District 2, and Wisconsin State AFL-CIO