

May 11, 2015

Via Hand Delivery

Mr. Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse, Room 1000
215 South Hamilton Street
Madison, Wisconsin 53703

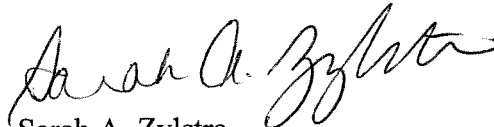
RE: Norman Sannes v. Madison Metropolitan School District, et al.
Case No.: 15-CV-974

Dear Mr. Esqueda:

Enclosed for filing is Defendants' Motion to Strike, Answer and Affirmative Defenses. A copy is being served on counsel by mail today, together with a copy of this letter. Thank you.

Very truly yours,

BOARDMAN & CLARK LLP



Sarah A. Zylstra

SAZ/ms

Enclosure

cc: Attorney Richard M. Esenberg (w/enc., via mail and email)
Attorney Lester A. Pines (w/enc., via mail and email)
Attorney Tamara B. Packard (w/enc., via mail and email)

NORMAN SANNES,
5345 Queensbridge Road
Madison, WI 53714

Plaintiff,

v.

Case No.: 15-cv-974
Case Code: 30701
Declaratory Judgment

MADISON METROPOLITAN SCHOOL
DISTRICT BOARD OF EDUCATION,
MADISON METROPOLITAN SCHOOL DISTRICT
545 West Dayton Street, Room 110
Madison, WI 53703

and

MADISON TEACHERS, INC.,
821 Williamson Street
Madison, WI 53703

Defendants.

**DEFENDANTS' MOTION TO STRIKE
and
ANSWER AND AFFIRMATIVE DEFENSES**

Defendants Madison Metropolitan School District (“MMSD” or the “District”) and Madison Metropolitan School District Board of Education (the “Board”) (collectively, “defendants”), by their attorneys Boardman & Clark LLP, hereby move the Court to strike certain portions of plaintiff’s complaint to plaintiff’s complaint:

FIRST DEFENSE - MOTION TO STRIKE

Pursuant to Wis. Stat. §802.06(6), Defendants MMSD and the Board move the Court to strike from plaintiff’s complaint 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 that

plaintiff is not a teacher in the District nor an employee of the District and he therefore lacks both standing and a factual basis on which to assert those allegations. Plaintiff has alleged only that plaintiff is a taxpayer and his pleading is devoid of any factual basis for any allegations regarding teachers. Accordingly, those portions of the complaint are immaterial and warrant being stricken.

SECOND DEFENSE

ANSWER¹

For their answer, defendants allege and show to the court as follows:

1. Answering paragraph 1, defendants have moved to strike paragraph 1(c) from plaintiff's complaint on grounds that plaintiff has no standing to assert that "the CBAs violate the rights of teachers under Wis. Stat. § 111.70(2)." To the extent that motion is denied, paragraph 1(c) is denied. In regard to the remainder of paragraph 1, deny that plaintiff is entitled to bring a taxpayer action, deny that plaintiff is entitled to a declaratory judgment, deny that the collective bargaining agreements (CBAs) are invalid, and deny each and every remaining allegation.

2. Answering paragraph 2, admit that plaintiff seeks a declaration and injunction but deny that plaintiff is entitled to either and deny each and every remaining allegation.

3. Answering paragraph 3, lack knowledge or information sufficient to form a belief as to the truth thereof and, therefore, deny the same, putting plaintiff to his proof.

4. Answering paragraph 4, admit.

5. Answering paragraph 5, admit 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

¹ Plaintiff's complaint included a number of headings that are not included in this answer, as defendants do not understand those headings to be a part of the allegations in plaintiff's complaint. However, to the extent any answer to those headings is necessary, defendants deny any allegations contained in the headings in plaintiff's complaint.

Dayton Street Madison, WI, 53703, deny that the Board is a proper party to this lawsuit, and deny any other allegations in paragraph 5.

6. Answering paragraph 6, admit that MTI represents the District's public school teachers and some other District employees under Wis. Stat. §111.70, admit MTI has an office at 821 Williamson Street in Madison, and lack knowledge or information sufficient to form a belief as to the truth of whether MTI is a domestic non-stock corporation and, therefore, deny the same, putting plaintiff to his proof.

7. Answering paragraph 7, state that paragraph 7 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that the court has jurisdiction but deny this case is proper under Wis. Stat. §806.04, deny that there is a controversy between the parties, deny that interests of the parties are adverse, deny that plaintiff and other taxpayers have suffered and will continue to suffer a pecuniary loss, deny plaintiff is a real party in interest, and deny any other allegations in paragraph 7. Affirmatively allege that the Wisconsin Institute for Law & Liberty, Inc. (WILL) is the real party in interest.

8. Answering paragraph 8, state that paragraph 8 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that venue is proper in this Court under §801.50(2)(c) on the basis of defendants' residency but deny there is any claim such that a claim could arise under §801.50(2)(a).

9. Answering paragraph 9, state that paragraph 9 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that the legislature passed 2011 Act 10 and 2011 Act 32 (collectively, "Act 10"), admit that the original effective date of Act 10 was June 29, 2011 and Act 32 was July 1, 2011, deny that portions of those Acts were in effect for these defendants from September 2012 through July 2014 pursuant

to the trial court's decision in *Madison Teachers, Inc. v. Walker*, and deny any other allegations in paragraph 9, and affirmatively allege that Act 10 speaks for itself.

10. Answering paragraph 10, state that paragraph 10 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that the legislature passed Act 10, affirmatively allege that Act 10 and the statutes speak for themselves, and deny any allegations inconsistent with Act 10 and the statutes.

11. Defendants have moved to strike paragraph 11 from Plaintiff's complaint; to the extent that motion is denied, answering paragraph 11, state that paragraph 11 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, affirmatively allege that Act 10 speaks for itself and deny any allegations inconsistent with Act 10.

12. Answering paragraph 12, state that paragraph 12 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that after the passage of Act 10, several lawsuits regarding Act 10 were filed, affirmatively allege that the lawsuits and the arguments in them speak for themselves, affirmatively allege that the courts' rulings in those lawsuits speak for themselves, deny that the decision of the trial court in *Madison Teachers, Inc. v. Walker* upheld Act 10, and deny any allegations inconsistent with the lawsuits.

13. Answering paragraph 13, admit that MMSD bargained with five separate units of employees represented by MTI and reached a collective bargaining agreement with each of those units for 2014-2015 and a separate collective bargaining agreement with each of those units for 2015-2016 (collectively, the "CBAs"), deny that portions of Act 10 was in effect for these defendants from September 2012 through July 2014 because the trial court in *Madison Teachers,*

Inc. v. Walker ruled portions of Act 10 unconstitutional, null and void, deny that MMSD, the Board, and MTI collectively bargained on subjects prohibited by Act 10, deny that the collective bargaining agreements that were reached with units represented by MTI for 2014-2015 and 2015-2016 contain terms prohibited by Act 10 for these answering defendants, and deny any other allegations in paragraph 13.

14. Answering paragraph 14, admit.

15. Answering paragraph 15, admit that in May of 2013 MTI requested that the District collectively bargain a contract for the 2014-2015 school year with each of the five separate units of employees represented by MTI, admit that this bargaining occurred in September of 2013, admit 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 allege that Exhibit A to Plaintiff's Complaint speaks for itself, affirmatively allege that MTI and the District were acting in conformance with the ruling from the trial court in *Madison Teachers, Inc. v. Walker*, and deny any other allegations in paragraph 15.

16. Answering paragraph 16, admit that a true and correct copy of a letter sent to the District on October 3, 2013 is attached as Exhibit B to Plaintiff's Complaint, deny that the letter indicates that it is from plaintiff's counsel as the letter does not refer to plaintiff at all, affirmatively allege on information and belief that at the time Exhibit B was sent, neither WILL nor Attorney Esenberg represented plaintiff, admit that the text quoted in paragraph 16 is text that is included in that letter, affirmatively allege that the letter contains other terms and that it speaks for itself, admit that the letter includes a signature block and letterhead indicating that it was sent by the Wisconsin Institute for Law & Liberty ("WILL"), the organization that is now representing plaintiff in the lawsuit, and indicating that it was sent by Richard M. Esenberg, one

of the attorneys who is now counsel for Plaintiff in this lawsuit, and deny any other allegations in paragraph 16.

17. Answering paragraph 17, admit that as a result of collective bargaining that occurred in September of 2013, the Board ratified the collective bargaining agreements for 2014-2015 with each of the five separate units of employees represented by MTI on October 7, 2013, deny the October 3 letter was a “notice” and deny any other allegations in paragraph 17.

18. Answering paragraph 18, admit.

19. Answering paragraph 19, admit that a true and correct copy of a letter sent to members of the Board on May 15, 2014 is attached as Exhibit C to plaintiff’s complaint, deny that the letter indicates that it is from plaintiff’s counsel as the letter does not refer to plaintiff at all, affirmatively allege on information and belief that at the time Exhibit C was sent, neither WILL nor Attorney Esenberg represented plaintiff, admit that the text quoted in paragraph 19 is text that is included in that letter, affirmatively allege that the letter contains other terms and that it speaks for itself, admit that the letter includes a signature block and letterhead indicating that it was sent by WILL, the organization that is now representing plaintiff in the lawsuit, and indicating that it was sent by Attorney Esenberg, one of the attorneys who is now counsel for Plaintiff in this lawsuit, and deny any other allegations in paragraph 19.

20. Answering paragraph 20, admit that the text quoted in paragraph 20 is text that is included in the May 25, 2014 letter attached as Exhibit C to plaintiff’s complaint, affirmatively allege that the letter contains other terms and that it speaks for itself, deny that the letter indicates that it is from plaintiff’s counsel as the letter does not refer to plaintiff at all, affirmatively allege on information and belief that at the time Exhibit C was sent, neither WILL nor Attorney Esenberg represented plaintiff, admit that the letter includes a signature block and letterhead

indicating that it was sent by WILL, the organization that is now representing plaintiff in the lawsuit, and indicating that it was sent by Attorney Esenberg, one of the attorneys who is now counsel for plaintiff in this lawsuit, and deny any other allegations in paragraph 20.

21. Answering paragraph 21, admit that after the Board's vote on May 15, 2014, representatives of the District met and collectively negotiated with MTI as a representative of five separate units of employees of the District, including one unit of employees who are teachers, affirmatively allege that MTI and the District were acting in conformance with the ruling from the trial court in *Madison Teachers, Inc. v. Walker*, deny that the letter indicates that it is from plaintiff's counsel as the letter does not refer to plaintiff at all and deny any other allegations in paragraph 21.

22. Answering paragraph 22, admit that on June 2, 2014, representatives of the District reached tentative agreements with each of the five separate units of employees represented by MTI on a collective bargaining agreement for 2015-2016, admit that on June 3, 2014, the membership of each of the five bargaining units represented by MTI ratified the tentative agreements reached with their bargaining unit, admit that on June 4, 2014, the Board unanimously approved the tentative agreements reached with each unit, and deny any other allegations in paragraph 22.

23. Answering paragraph 23, admit that there is currently a collective bargaining agreement in place between the District and each of the five units of employees represented by MTI for 2014-2015, admit that the District and MTI have entered into a collective bargaining agreement for 2015-2016 with each of the five units of employees represented by MTI, affirmatively allege that MTI and the District were acting in conformance with the ruling from

the trial court in *Madison Teachers, Inc. v. Walker*, and deny any other allegations in paragraph 23.

24. Answering paragraph 24, deny; affirmatively allege that ACT 10 does not limit what an employer can spend, affirmatively allege 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 allege that plaintiff has suffered no pecuniary loss and would not pay any less in taxes even if the court were to invalidate the CBAs.

25. Answering paragraph 25, admit that a true and correct copy of a letter sent to members of the Board on November 26, 2014 is attached as Exhibit F to plaintiff's complaint, affirmatively allege that the letter speaks for itself, admit that the letter requests an acknowledgment that the CBAs are unlawful, void and of no force and effect, deny that the CBAs are unlawful, void and of no force and effect, admit that the letter requests cessation of any actions by the Board or District to implement the CBAs, deny that such action is warranted, and deny any other allegations in paragraph 25.

26. Answering paragraph 26, admit that a true and correct copy of a notice of disallowance dated March 24, 2015 is attached as Exhibit G to plaintiff's complaint, admit that the District believed the CBAs are valid and enforceable, deny any remaining allegations.

27. Answering paragraph 27, deny that the CBAs include numerous provisions that are unlawful subjects of collective bargaining under Act 10 for these answering defendants, admit that a true and correct copy of a June 3, 2014 letter from the District is attached as Exhibit D to plaintiff's complaint, affirmatively allege that the letter speaks for itself, lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding Exhibit E and, therefore, deny the same, putting Plaintiff to his proof, deny any other allegations in paragraph

27, and affirmatively allege that portions of Act 10 were not in effect for these defendants from September 2012 through July 2014.

28. Answering paragraph 28, deny that the CBAs run collectively and deny that any CBA runs from July 1, 2014 through June 30, 2016, admit that the 2014-2015 CBAs run from July 1, 2014 through June 30, 2015 and the 2015-2016 CBAs run from July 1, 2015 through June 30, 2016, and deny any other allegations in paragraph 28.

29. Answering paragraph 29, Defendants incorporate the answers of the previous paragraphs as if fully set forth herein.

30. Defendants have moved to strike paragraph 30 from Plaintiff's complaint; to the extent that motion is denied, answering paragraph 30, state that paragraph 30 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations to the extent plaintiff suggests that the statute applied at the relevant time period in the complaint, affirmatively allege that this portion of Act 10 was not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*, affirmatively allege that the statute speaks for itself.

31. Answering paragraph 31, state that paragraph 31 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations to the extent plaintiff suggests that the statute applied at the relevant time period in the complaint, affirmatively allege that this portion of Act 10 was not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*, affirmatively allege that the statute speaks for itself.

32. Answering paragraph 32, state that paragraph 32 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations

to the extent plaintiff suggests that the statute applied at the relevant time period in the complaint, affirmatively allege that this portion of Act 10 was not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*, affirmatively allege that the statute speaks for itself.

33. Answering paragraph 33, state that paragraph 33 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations to the extent plaintiff suggests that the statutes applied at the relevant time period in the complaint, affirmatively allege that these portions of Act 10 were not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*, affirmatively allege that the statutes speak for themselves, and deny any remaining allegations.

34. Answering paragraph 34, admit that representatives of MMSD collectively bargained with units of employees represented by MTI, deny that this bargaining violated Wis. Stat. § 111.70(4)(mb)(1), affirmatively allege that this portion of Act 10 was not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*, and deny any other allegations in paragraph 34.

35. Defendants have moved to strike paragraph 35 from plaintiff's complaint; to the extent that motion is denied, answering paragraph 35, state that paragraph 35 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations, and affirmatively allege that this portion of Act 10 was not in effect for these defendants from September 2012 through July 2014 because of the trial court decision in *Madison Teachers, Inc. v. Walker*.

36. Answering paragraph 36, state that paragraph 36 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, admit that the cases cited contain those quotations, affirmatively allege the cases speak for themselves, deny any remaining allegations.

37. Answering paragraph 37, state that paragraph 37 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations, and affirmatively allege that the Board has authority to spend the funds regardless of the CBAs.

38. Answering paragraph 38, deny.

39. Answering paragraph 39, deny.

40. Answering paragraph 40, defendants incorporate the answers of the previous paragraphs as if fully set forth herein.

41. Answering paragraph 41, deny.

42. Answering paragraph 42, state that paragraph 42 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations, affirmatively allege that the Board has authority to spend the funds regardless of the CBAs, and affirmatively allege that there are not additional costs to administer the CBAs.

43. Defendants have moved to strike paragraph 43 from plaintiff's complaint; to the extent that motion is denied, answering paragraph 43, state that paragraph 43 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations.

44. Answering paragraph 44, state that paragraph 44 recites legal conclusions and arguments that require no answer, but to the extent any answer is necessary, deny the allegations

and affirmatively allege that the status quo is that the CBAs are in place and therefore plaintiff seeks the opposite of maintaining the status quo.

45. For any allegation that is not expressly admitted in the paragraphs above, it is hereby denied.

AFFIRMATIVE DEFENSES

For their affirmative defenses, defendants allege and show the Court as follows:

46. Plaintiff has failed to state any claim upon which relief can be granted.

47. Plaintiff lacks standing to assert his claims.

48. Plaintiff is not the real party in interest.

49. Plaintiff's claims do not have an adequate basis in law or in fact.

50. Plaintiff's claims may be barred by the doctrines of estoppel and laches.

51. Plaintiff's claims may be barred by the doctrines of claim preclusion and/or issue preclusion.

52. Plaintiff's claim for an injunction may be barred because plaintiff can show no valid basis for an injunction, has no irreparable harm, and has suffered no damages.

53. Plaintiff's has no colorable claim and his claims are moot because the defendants have authority to implement unilaterally the terms and conditions of the CBAs as personnel policies, and would do so, if the CBAs were to be found unenforceable; further, plaintiff has suffered no pecuniary loss and would not save any money in taxes even if he were successful.

54. Plaintiff's claims are barred by the trial court decision in *Madison Teachers, Inc. v. Walker*, which decision was in effect at the time of the entering of the CBAs and the actions of which plaintiff complains, and on which defendants reasonably relied.

55. Plaintiff's counsel may be barred from bringing this suit because they sent multiple letters to defendants and failed to disclose that they represented plaintiff, an allegedly adverse party.

56. Defendants are entitled to qualified and good-faith immunity.

57. The Board is not a proper party to this action.

58. Defendants acted at all times in good faith based on the current state of the law.

59. Plaintiff's claims violate the United States and Wisconsin Constitutions in that plaintiff seeks relief that would improperly impair existing contracts by holding defendants liable retroactively and applying a later court decision retroactively to void contracts that were lawful when entered.

WHEREFORE, defendants demand judgment as follows:

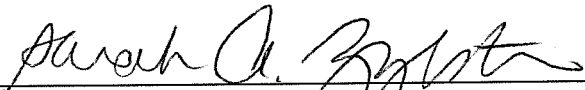
- A. Dismissal of plaintiff's complaint;
- B. Defendants' costs and disbursements of this action;
- C. Such other and further relief as the Court deems just and appropriate.

DEFENDANTS DEMAND A TRIAL BY JURY.

Dated this 11th day of May, 2015.

BOARDMAN & CLARK LLP

By



Sarah A. Zylstra, State Bar No. 1033159

Andrew N. DeClercq, State Bar No. 1070624

Attorneys for Defendants Madison Metropolitan

School District Board of Education and

Madison Metropolitan School District

P.O. Box 927

Madison, Wisconsin 53701-0927

(608) 257-9521

szylstra@boardmanclark.com

adeclercq@boardmanclark.com