



August 10, 2015

***Via Hand Delivery***

Honorable Peter C. Anderson  
Circuit Court Chambers, Branch 17  
Dane County Courthouse, Room 6103  
215 South Hamilton Street  
Madison, Wisconsin 53703

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

Dear Judge Anderson:

Enclosed is MMSD Defendants' Emergency Notice of Motion and Motion to Stay Proceedings, or in the Alternative, Stay Summary Judgment Briefing. A copy is being sent to all counsel of record by email 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 email)  
Attorney Lester A. Pines (w/enc., via email)  
Attorney Tamara B. Packard (w/enc., via email)

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NORMAN SANNES,

Plaintiff,

v.

Case No.: 15-cv-974

Case Code: 30701

Declaratory Judgment

MADISON METROPOLITAN SCHOOL  
DISTRICT BOARD OF EDUCATION,  
MADISON METROPOLITAN SCHOOL DISTRICT

and

MADISON TEACHERS, INC.,

Defendants.

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**MMSD DEFENDANTS' EMERGENCY NOTICE OF MOTION AND  
MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE,  
STAY SUMMARY JUDGMENT BRIEFING**

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TO: All Counsel of Record

Defendants Madison Metropolitan School District and Madison Metropolitan School District Board of Education (collectively "MMSD"), by their attorneys, Boardman & Clark LLP, move the court, pursuant to the court's inherent authority to control its calendar and Wis. Stat. § 802.10, to enter an order staying all proceedings in this matter until Dane County Circuit Court Branch 9 rules on a jurisdictional issue in *Blaska v. Madison Metropolitan School District Board of Education, et al*, Circuit Court Case No. 2014-CV-2578. The grounds for this motion are:

1. As the court is aware, *Blaska* is currently pending before the Honorable Richard G. Niess and involves the same substantive issues and defendants as this case. In addition, while the named plaintiff in *Blaska* is different than the named plaintiff here, both cases have been brought solely as taxpayer actions and the attorneys for the plaintiffs in the two cases are the same.

2. Because *Blaska* was filed before this case, it is at a more advanced stage of litigation. At this point, the parties in *Blaska* have fully briefed cross-motions for summary judgment, and Judge Niess has scheduled an oral argument on summary judgment for August 13.

3. On June 30, 2015, Judge Niess sent a letter to the parties asking them to be prepared to address at oral arguments a jurisdictional/competency issue that was not raised or briefed by either party. (A copy of this letter is attached.) Specifically, Judge Niess noted that the case involved a request for a declaratory judgment under Wis. Stat. § 806.04 concerning the application of Wis. Stat. § 111.70 to collective bargaining agreements. He questioned whether the Joint Committee on Legislative Organization had been served and whether such service was required under Wis. Stat. § 806.04(11). If the Joint Committee was not served, Judge Niess asked whether he had jurisdiction/competency to proceed further in the case. In addition to § 806.04(11), Judge Niess directed the parties' attention to *Richards v. Young*, 150 Wis. 2d 549 (1989) as the basis for these questions.

4. In preparing to address the issues raised in Judge Niess's letter, MMSD has concluded that Wis. Stat. § 806.04(11), as interpreted by the Wisconsin Supreme Court in *Richards*, required timely service of the Complaint in this matter on the Joint Committee on Legislative Organization, and lack of such service deprives Judge Niess of jurisdiction/competency in *Blaska*. Section 806.04(11) and *Richards* suggest that if the Joint Committee is not timely served in a case addressing the application of Wis. Stat. ch. 111 (as *Blaska* and *Sannes* do), the court lacks jurisdiction to hear the case.

5. MMSD intends to present this argument to Judge Niess at the August 13 oral argument and expects that Judge Niess will issue a decision shortly thereafter. If Judge Niess

agrees with MMSD's interpretation of § 806.04(11) and *Richards*, he will have to dismiss the *Blaska* case for lack of jurisdiction/competency.

6. After evaluating this issue in the context of *Blaska*, MMSD believes that the court in this case faces the same jurisdictional/competency impediment. Both cases involve the application of Wis. Stat. ch. 111. In both cases, the Joint Committee has not been served. Therefore, the court does not have jurisdiction/competency to hear this case. MMSD believes that this jurisdictional issue must be resolved before the court moves forward with any other matters currently pending in this case, including MMSD's motion to strike and Sannes's motion for summary judgment.

7. In addition, judicial economy suggests that this Court need not duplicate Judge Niess's efforts, as the analysis of Wis. Stat. § 806.04(11) and *Richards* will be consistent for both *Blaska* and *Sannes*.

8. MMSD therefore requests that the court stay all proceedings in this case. Given the procedural posture of this case and the *Blaska* case, MMSD suggests that to maximize the efficient use of judicial resources, a stay remain in effect until Judge Niess rules on the jurisdictional/competency issue in *Blaska*. This will allow the court to receive the benefit of Judge Niess's analysis before addressing the identical question in this case. After Judge Niess analyzes and decides the issue in *Blaska*, the court can determine how best to proceed in this case (e.g., by following Judge Niess's analysis or asking the parties to brief the issue in this case). Further, the parties themselves may agree to voluntary dismissal depending on Judge Niess's ruling.

9. In the alternative, MMSD asks that the court stay the summary judgment briefing in this case and issue a briefing schedule on the jurisdictional/competency issue so that the court

can determine whether it has jurisdiction/competency before proceeding with any other matters in this case.

Dated this 10th day of August, 2015.

BOARDMAN & CLARK LLP

By:

  
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June 30, 2015

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BY EMAIL TRANSMISSION ONLY

Attorney Lester Pines  
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Re: *Blaska v. Madison Metropolitan School District, et al.*  
Case No. 14-CV-2578

Dear counsel:

At oral argument, please be prepared to address the following issues beyond those addressed in the briefing.

This case involves a request for a declaratory judgment under § 806.04, Stats., concerning the application of § 111.70, Stats., to the collective bargaining agreements at issue. The application of the statute is disputed, i.e. placed in issue, by the parties.

Section 806.04 (11) provides in part:

...  
**In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01(13) is placed in issue by the parties, the joint committee on legislative organization shall be served with a copy of the petition and the joint committee on legislative organization, the**

senate committee on organization or the assembly committee on organization may intervene as a party to the proceedings and be heard.

(Emphasis added.)

The issues are these. (1) Was plaintiff required to serve the Summons and Complaint on the Joint Committee on Legislative Organization? If not, why not? (2) If so, did he do so? (3) If not, do I have jurisdiction/competency to proceed further in this case? See, e.g., *Richards v. Young*, 150 Wis. 2d 549 (1989).

Because the parties did not brief these issues, it is entirely possible that I'm just barking up the wrong tree, but I thought it best to address the issues head on.

Thank you.

Sincerely yours,

Richard G. Niess