

To: Marty Beil
From: Peg Lautenschlager
Date: October 4, 2011
Re: Pending WSEU Legal Matters

Significant developments occurred in the last two weeks regarding our legal efforts to stop Scott Walker and legislative republicans in their attempts to eviscerate the workplace rights of public employees and attack the middle class on a variety of fronts.

We have challenged the provisions of Act 10 itself in federal court, positing that the law violates the First and Fourteenth Amendments.

WSEU joined with WEAC, AFT-WI, SEIU Healthcare WI, AFSCME Councils 40 and 48, and the Wisconsin AFL-CIO Federation in a legal response to the provisions of 2011 Wisconsin Act 10. The complaint was filed in the federal district court in Madison in mid-June. It asserts that the law should be struck down because its provisions are unconstitutional; violating the Equal Protection provisions of the Fourteenth Amendment and the First Amendment provisions guaranteeing the rights to speak freely and associate.

We also filed a motion for a temporary restraining order and a preliminary injunction that seeks to stay enforcement of some of the sections of the act and brief in support of the motion. The court, disappointingly, has not yet ruled on that motion.

A telephonic scheduling conference was held with the parties in August. Magistrate Judge Crocker presided. He set dates for the filing of motions (September 23), responses to the motions (October 21) and replies to the motions (November 2). He set no trial date. These dates were extended last week because the Judge Conley has not yet ruled on our motion for temporary relief.

Of interest was an affidavit by Cynthia Archer, filed by the defendants with their responsive motions. The defendants relied heavily on the Archer affidavit in their arguments. She essentially stated that the exemption of certain law enforcement and fire fighting personnel from the provisions of Act 10 were determined pursuant to a needs analysis of public safety concerns—done by her and other Walker appointees prior to the introduction of the legislation. Shortly after Archer's abrupt resignation from her DOA position and the search of her home by local and federal agents, the affidavit was withdrawn by the defendants.

Most encouraging in the matter is a ruling by a federal trial court in Arizona on September 23. In *UFCW v. Brewer*, CV-11-921-PHX-GMS, District of Arizona, District Court Judge G. Murray Snow, appointed to the federal bench in 2007 by George W. Bush, ruled that the Arizona scheme to disallow payroll deductions for union dues violated the First Amendment of the U.S. Constitution. In his 13-page decision, Snow noted that the prohibition was an effort to stifle the speech of the unions and their members.

On September 26, we filed with the court in our case a Notice of Recent Pertinent Authority, citing Federal Rule 28(j). This brings to the court's attention the ruling in the Arizona case.

We are still awaiting word from the court on the temporary motion and will continue to file written materials pursuant to the amended motions schedule.

We sued the state for failure to extend the furlough agreement for WSEU members.

The disparate treatment of various categories of state employees has been continued by the Walker administration in its decision to recognize certain furlough agreements and not others.

As you know, WSEU was the first union to reach agreement with the state regarding furloughs. The WSEU agreement served as a template for other unions reaching like agreements. Some of these unions included in their agreements language referred to as "me too" clauses. Essentially, the clause locked their furlough provisions to those of other state employee groups—in other words, all bargaining units would be treated alike. Indeed this was the agreement between the state and the unions—that furlough provisions would be the same for all.

The Walker administration has taken the position that it needs only deal with the "me too" bargaining units and not the remainder of units in recognizing furlough agreements. This contradicts the verbal promises on which WSEU and other unions relied in reaching these agreements.

On August 19, WSEU filed a complaint against the state, specifically Mike Huebsch and Greg Gracz, seeking declaratory relief and the restoration to WSEU members of six furlough days. Yesterday, the state responded with a motion to dismiss and brief in support of the motion. The WSEU response to that motion will next be filed.

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There are other pending matters that were included in previous updates or involve particular individuals with matters that do not impact WSEU members as a whole. Those matters continue to move forward, but none have reached resolution.