

Dear Local 2748 member,

Many of you have asked for updates on the many legal actions the union is pursuing on our behalf. Please read the following for the most up to date information, provided through WSEU Council 24. Please read the WSEU Legal Matters update below written by union attorney, Peg Lautenschlager:

To: Marty Beil  
From: Peg Lautenschlager  
Date: June 20, 2011  
Re: Pending WSEU Legal Matters

**Significant developments** occurred last week in our legal efforts to stop Governor 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. As you know, in the legal arena, we have been involved in a number of court cases focused on preventing the enforcement of 2011 Wisconsin Act 10 and ensuring the free speech and association rights of all citizens, especially our members, are not abrogated by the actions of Walker and his administration and legislature.

***The Wisconsin Supreme Court ignored the Open Meetings Law and overturned Judge Sumi.***

As you know, a complaint was filed with the Dane County District Attorney, requesting him to file an open meetings violation complaint for the legislature's illegal action in passing the Budget Repair Bill. That complaint, along with several others, prompted the district attorney to file an open meetings complaint with the court. It sought to find the action of the joint conference committee of the legislature that amended the bill in violation of the open meetings law. The district attorney asked the court to void that action, and hence void the law, exactly as the Wisconsin statutes provide.

Judge Maryann Sumi, a Thompson appointee, generally agreed with this analysis and issued a temporary injunction that effectively stayed the enactment of the law. It was scheduled to be published and enacted on March 25, 2011. The state, through Attorney General JB Van Hollen, appealed that ruling, and the appellate court sent the case to the state supreme court. Judge Sumi issued a final order in the matter, ruling that Act 10 was voided by the violation of the open meetings law.

Sumi's written decision was thorough and complete, leaving no room for the high court to find good legal cause to overrule her decision. Nonetheless, only days after the June 6<sup>th</sup> oral argument on the matter, the Wisconsin Supreme Court took action, deciding to overturn Judge Sumi's findings and allow the law to be enacted.

Ironically, the court's decision is absolutely contrary to its recent decision to allow for the release of names of correctional officers under the Wisconsin Public Records Law, which parallels the Open Meetings Law. In that case, the court considered whether the legislature's approval of our collective bargaining agreement, with a provision prohibiting the release of names of certain DOC employees, exempted these names from the Public Records Law. The court ruled that even though approved by the legislature, *the*

*legislature could not trump the state's Public Records Law unless it changed the statute itself. In contrast, the court now says that the legislature may take action in its own and trump the state's Open Meetings Law by a mere change in its rules. In other words, the legislature has the prerogative to violate state law.*

This decision is a stark reminder of the power of our courts and the need to elect judges and justices who will follow the law, and not the politics of a few.

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

WSEU has 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. This week, a complaint was filed in the federal district court in Madison. 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.

Today in that case, we 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. Also filed today was a brief in support of the motion. That contains a good summary of our arguments both for the temporary stay and the reasons the bill should be found unconstitutional. *The act is currently scheduled to go into effect on June 29, 2011.*

Our primary argument focuses on Equal Protection. The different treatment of relatively like categories of employees is the basis for that claim. The act treats several categories of public employees differently, with no rationale for the differentiation. Some employees of the University of Wisconsin System, the University of Wisconsin Hospital and Clinics, and home health and child care providers are stripped of all bargaining rights. Most public employees are stripped of all bargaining rights except the right to bargain collectively for a base wage. Police officers, the state patrol, and firefighters have no changes made to their bargaining rights.

The arbitrary nature of these categories is best exemplified by the exclusion from the public safety group a number of employees currently classified in the protective services. WSEU includes conservation wardens, fire crash and rescue specialists, correctional officers and sergeants, youth counselors, and probation and parole agents. Capitol and University of Wisconsin police officers, who currently bargain with state troopers, also are excluded from the public safety group. Investigators who are members of AFT-WI likewise are excluded.

Further, First Amendment rights are also limited by the act. The speech and association rights of public employees and their unions are limited by effectively eliminating their rights in the workplace and the ability of their unions to represent them.

We should learn in the coming week or two whether or not Judge William Conley, who has been assigned the case, will enjoin the state from its implementation of the law.

***Our lawsuit regarding access to the state capitol has been successfully resolved.***

WSEU was the lead plaintiff in a state court case against the State of Wisconsin and DOA Secretary Mike Huebsch to regain rights to capitol access. WSEU filed for an *ex parte* temporary injunction that was approved twice by Dane County Circuit Court judges. Following a three day hearing, a temporary injunction was entered by the court, ordering the state to reopen the capitol in the same fashion as it was on January 28, 2011. The state did not comply with the judge's order, so WSEU filed a motion to find the state in contempt for its failure to comply with the order.

Rather than hear the case, the presiding judge, John Albert, appointed a mediator to seek resolution of the matter. Retired judge Gordon Myse served as the mediator. Last Monday we participated in more than nine hours of mediation, ending in a resolution favorable to our members and to the citizens of the state.

The settlement requires DOA to open all eight entries on the ground floor of the Wisconsin capitol beginning next Monday. DOA must also remove the magnetometers from those entries. DOA has agreed to allow public demonstrations on both the ground floor and the first floor of the capitol rotunda, and promises never again to utilize queue lines for admission to the capitol nor ask citizens' reasons for seeking entry to the capitol. Judge Myse will maintain the authority to enforce this agreement if violations of the agreement are alleged.

We agreed to dismiss our lawsuit and the contempt citation therein. We also recognize in the agreement that state law provides that DOA is the managing authority for the capitol. Nonetheless, we preserve our rights to contest the validity of any and all DOA rules in the Wisconsin Administrative Code that govern DOA's management of the capitol. Further, we preserve our right to bring further legal action regarding DOA's implementation of those rules.

All-in-all, I think this agreement creates a good framework to ensure citizen access to the capitol as we move forward in our efforts to protect our members and all of Wisconsin's middle class.

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There are several other pending matters that were included in previous updates. Those matters continue to move forward, but none have reached resolution.

These are unchartered times, but the union continues to work tirelessly to represent our interests as public employees. The world continues to watch closely with unwavering and overwhelming support. Please join us in our fight to take back our workplace rights and to stand up for our families. You can do so by remaining a union member by

signing up at <https://wseu.wisconsinunionstrong.org/apply/ec3c3c2d-6ff8-4182-aaa6-35c5f5cf76de>. Together, we will prevail. One day longer, one day stronger!!!

In Solidarity,

Your Local 2748 Leadership  
Dave Kopplin, President  
Georgette Gehring, Vice President  
Amy Huss, Secretary  
Amy Keller, Treasurer  
Paul Spink, Membership Secretary