FILED
01-23-2025
CIRCUIT COURT
DANE COUNTY, WI
2023CV003152

BY THE COURT:

DATE SIGNED: January 23, 2025

Electronically signed by Jacob B. Frost
Circuit Court Judge

STATE OF WISCONSIN **CIRCUIT COURT BRANCH 9** **DANE COUNTY**

ABBOTSFORD EDUCATION ASSOCIATION; AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 47; AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 1215; BEN GRUBER; BEAVER DAM EDUCATION ASSOCIATION; MATTHEW ZIEBARTH; SEIU WISCONSIN; TEACHING ASSISTANTS' ASSOCIATION, LOCAL 3220, AMERICAN FEDERATION OF TEACHERS; and INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 695,

Plaintiffs,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION; JAMES J. DALEY, in his official capacity as Chair and Sole Commissioner of the Wisconsin Employment Relations Commission; DEPARTMENT OF ADMINISTRATION; KATHY BLUMENFELD, in her official capacity as Secretary of the Department of Administration; DIVISION OF PERSONNEL MANAGEMENT; and JEN FLOGEL, in her official capacity as Administrator of the Division of Personnel Management,

Defendants.

Case No. 23CV3152

ORDER GRANTING INTERVENOR-DEFENDANT THE WISCONSIN STATE LEGISLATURE'S MOTION FOR STAY PENDING APPEAL

Intervenor-Defendant, Wisconsin State Legislature, filed a Notice of Motion and Motion for Stay Pending Appeal. A group of affected non-parties filed a brief in support of this Motion. Plaintiffs filed a response brief in which they put forth different reasons, but ultimately agreed that this Court should stay its decision pending appeal.

As the Motion is unopposed, the Court need not get into the entirety of the legal reasoning involved. However, applying the factors as set forth in *State v. Gudenschwager*, 191 Wis. 2d 431, 440, 529 N.W.2d 255 (1995) and *Waity v. LeMahieu*, 2022 WI 6, 400 Wis. 2d 356, 969 N.W.2d 263, the present situation strikes the Court as a textbook example of when a circuit court should stay its decision pending appeal. The harms to both sides from staying or not staying are great. Allowing an unconstitutional law to continue to have effect is serious, and the seriousness of its impact on citizens affected by their unequal treatment under the current statutes do concern this Court and weigh in favor of not staying my decision.

Compared to that, though, is the extremely high risk of utter chaos if I do not stay my decision. The status quo of the past decade plus is the Act 10 statute. All public employers and employees have operated under it for many years. If I do not stay my decision, public employers and employees will begin to engage in negotiations under the laws as existed prior to Act 10. This will involve time, energy and expense on all involved – employers and employee groups alike. These public employers and employees might be in the middle of negotiations or have reached agreements by the time the Court of Appeals issues its eventual decision. If the Court of Appeals reverses this Court's decision, all that time, effort and expense engaging in collective bargaining will have been a waste. Chaos will again ensue as the newly negotiated terms may no longer be valid, but the employment terms used under Act 10 may now be dated or ineffective until renewed by the employers. The hope public employees put on these negotiations and compromises reached will be dashed. The case likely then will proceed to the Wisconsin Supreme Court, which could just as easily agree with this Court and reverse the Court of Appeals, again turning the tables upside down (or right-side up, depending on your perspective).

This is the exact sort of chaos and uncertainty that a stay pending appeal can avoid while the State awaits a final pronouncement from the highest court on the important issues in this lawsuit. For those reasons, the Court ORDERS that Intervenor-Defendant's Motion for Stay is GRANTED.

The Court does not address Plaintiffs request to make this order without prejudice. If and when any party believes grounds exist to request that this Stay be lifted, the issue should be raised at that time to the appropriate court.