In the Matter of Dane County and Dane County Employee Associations

OPINION

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I. INTRODUCTION AND BACKGROUND

Dane County and the Dane County Employee Associations jointly request an advisory opinion to address conflicting interpretations of 2011 Wisconsin Act 10. Dane County expresses concern that post-Act 10 amendments to Ch. 18 of the Dane County Ordinances and the Employee Benefit Handbook authorize what it terms "*de facto* collective bargaining" activities that are now statutorily banned. The Employee Associations contend that the Ordinance and Handbook fully comply with the post-Act 10 "Municipal Relations Employment Act" (MERA).

2011 Wisconsin Act 10 fundamentally altered the relationship between public employers and employees. The Wisconsin Supreme Court stated the Act's basic proscriptions as follows:

> Act 10 prohibits general employees from collectively bargaining on issues other than base wages, prohibits municipal employers from deducting labor organization dues from paychecks of governmental employees, imposes annual recertification requirements, and prohibits fair share agreements requiring non-represented governmental employees to make contributions to labor organizations.

Madison Teachers, Inc. v. Walker, 2014 WI 99, ¶ 1, 358 Wis. 2d 1.

There is no doubt that Act 10 shifted the balance in governmental employment relations in favor of the employer. One can agree or disagree with that policy decision, but it remains ultimately a matter of legislative choice. Moreover, this opinion does not address constitutional issues: the Courts have spoken and the constitutionality of Act 10 is now settled law.[1]

Understanding the context within which the disputes before me arise requires a brief summary of the factual and legal background.

II. LEGAL FRAMEWORK

A. Act 10 and cases interpreting it

Before Act 10, MERA (§§ 111.70-111.77, Wis. Stats.,) governed the relationship between governmental employers and employees. Collective bargaining regarding wages and conditions of employment was authorized and encouraged. Section 111.70(1)(a) defined collective bargaining as "the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under an agreement, with respect to wages, hours and conditions of employment."

[1] See: *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1; *Laborers Local 236, AFL-CIO v. Walker*, 749 F. 3rd 628 (7th Cir. 2014). The facts leading up to the controversies surrounding Act 10 are well summarized in those cases and will not be repeated here.

Act 10[2] changed § 111.70(1)(a) to limit collective bargaining to public safety and transit employees, and general municipal employees only with respect to base wages. Section 111.70(4)(mb) further lists the now- prohibited subjects of collective bargaining for general municipal employees:

> Any factor or condition of employment except wages, which includes only total base wages and excludes any other compensation, which includes, but is not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

In addition, § 111.70(3)(a)2. prohibits municipal employers from contributing financial support to "labor organizations." Section 111.70(1)(h), Wis. Stats., defines "labor organization" as an "employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment."

Act 10 also created § 66.0508(1m), Wis. Stats., which states: "Except as provided under subch. IV of ch. 111 [the amended post-Act 10 MERA], no local governmental unit may collectively bargain with its employees." In *Laborers Local v. Walker*, 749 F. 3rd 628, 634, the Seventh Circuit Court of Appeals gave independent effect to this provision to prohibit "municipal employers from reaching binding agreements with their general employees on a collective basis, if the agreement concerns anything other than employees' base wages."

[2] 2011 Wisconsin Act 32 amended Act 10 in ways not relevant here, for example, reinstating the collective bargaining rights of certain municipal transit employees.

Act 10 did not repeal § 111.04 or § 111.70(2), Wis. Stats., protecting the rights of employees:

> Employees have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Municipal employees have the right to refrain from any or all such activities.

The Wisconsin Supreme Court in *MTI v. Walker,* 2014 WI 99, ¶ 18, recognized that the term "collective bargaining" has two meanings. The first is the right of individuals to associate for purposes of advocacy regarding matters of mutual interest: "When used in this way the term 'collective bargaining' is descriptive of a collective effort and refers to an activity where the party that is the object of the advocacy, the employer, has no legal obligation to respond affirmatively to the advocacy, but may do so voluntarily."

The Court explained that the second meaning of "collective bargaining" refers to "a statutorily mandated relationship between an association of employees and their employer, by the terms of which an employer and its employees are obligated to negotiate, in 'good faith', for the purpose of reaching an agreement regarding the employees' wages and conditions of employment." 2014 WI 99, ¶ 18. The Court emphasized that its decision, consistent with Act 10, addresses *only* this second meaning of "collective bargaining."

Act 10, then, extinguished the statutory mutual obligation of the municipal employer and its general employees to negotiate in good faith to reach an agreement regarding wages (other than base wages) and conditions of

employment. Act 10 removed one half of that equation by cancelling the employer's obligation, leaving in its place the employer's voluntary choice whether or not to respond to employee advocacy. In addition, pursuant to *Laborers Local*, Act 10 also prohibits municipal employers from reaching "binding agreements with their general employees on a collective basis." 749 F. 3rd at 634.

What authority, then, remains for municipal employers to exercise in the wake of 2011 Wisconsin Act 10?

B. Dane County's Power to Manage Employment Relations

Act 10 did not dismantle all sources of county authority to manage employment relations. Section 59.22(2)(c)1.c., Wis. Stats., provides counties with broad authority to "[e]stablish regulations of employment for any person paid from the county treasury."

Dane County, like all other Wisconsin counties, continues to have broad statutory authority to create and administer its civil service system. Section 59.52(8)(a), Wis. Stats., authorizes county boards to establish civil service systems which may include "uniform provisions in respect to classification of positions and salary ranges, payroll certification, attendance, vacations, sick leave, competitive examinations, hours of work, tours of duty or assignments according to earned seniority, employee grievance procedure, disciplinary actions, layoffs and separations for just cause..." Chapter 63, Wis. Stats.,

provides additional authority for county civil service systems. Section 66.0509(1m), Wis. Stats., requires civil service systems to include employee grievance procedures.

Section 59.03, Wis. Stats., entitled "Home rule," instructs that "[e]very county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county." Although counties do not have constitutional home rule powers pursuant to Wis. Const. Art. XI, § 3, the narrower statutory home rule power is interpreted in much the same manner. As the Wisconsin Supreme Court stated in *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, ¶ 37, 269 Wis. 2d 549, "counties have statutory home rule authority pursuant to § 59.03, but may not exercise that authority in a way that conflicts with legislative enactments of statewide concern that uniformly affect all counties."

Section 59.04, Wis. Stats., further directs:

> "to give counties the largest measure of self-government under the administrative home rule authority granted to counties in § 59.03(1), this chapter shall be liberally construed in favor of the rights, powers and privileges of counties to exercise any organizational or administrative power."

C. Chapter 18 of the Dane County Ordinances and the Employee Benefit Handbook

In the wake of Act 10 and anticipating the expiration of its collective bargaining agreements, in 2013 Dane County amended its civil service

ordinance, Ch. 18 of the Dane County Code of Ordinances (DOC), and adopted the Employee Benefit Handbook (Handbook) now in effect.

In his August 15, 2013 Memorandum to the Board of Supervisors, Dane County Executive Parisi acknowledged that, because Act 10 prohibits collective bargaining agreements on any condition of employment except base wages, Dane County's collective bargaining agreements could no longer include those items. Instead, he proposed a new process for employer-employee discussions regarding conditions of employment. He cautioned, however: "the ordinance is clear that those discussions are not collective bargaining which would be prohibited under Act 10."

Dane County Ordinance Chapter 18 was adopted under the authority of and for the purposes authorized by § 59.52(8)(a), Wis. Stats., which include promoting "full and open communication between the County and its employees" and establishing "conditions of employment for County employees" (§ 18.03). The Ordinance, § 18.04 (17) defines "employee group" as a "group consisting of represented or non-represented employees identified in wage schedules adopted by the County Board as part of the Employee Benefit Handbook." Section 18.04 (23) defines "interested stakeholders" as follows:

> Interested stakeholders shall be defined as employees covered by the Employee Benefit Handbook, employee groups and their representatives engaged with the County in discussions regarding adoption, amendment or termination of provisions contained in this chapter, or the Employee Benefit Handbook.

Section 18.06(3), Employees Right to Self-Organization, sets forth the rights of all employees to participate—or refrain from participating—in employee organizations as long as the organizations do not function as "labor organizations" and do not engage in collective bargaining.

Section 18.24 authorizes the County Board and Executive to establish the terms and conditions of employment for Dane County employees through the Dane County Handbook. This section also establishes a procedure for review and modification of the Handbook, with multiple opportunities for "interested stakeholders" to provide verbal and written input. At the conclusion of the process and before County Board action, the County Employment Relations Division or an "interested stakeholder" may engage an "independent consultant"[3] to make recommendations to the Personnel and Finance Committee and the Board (§ 18.24(4)(a)-(f)). Subsection (4) ends as follows:

> (g) At the conclusion of steps (a-e) and, if necessary, (f), the Committee and Board shall vote on any such resolution as a whole. However, if any party has engaged the independent consultant under (f), the Committee and Board shall vote to accept or reject the final recommendations of the consultant as a whole.

Significantly, §18.24(6) reaffirms the supremacy of the Wisconsin Statutes over any provision of the Employee Benefit Handbook or the Ordinance:

> Nothing in this section shall prevent the County or its Elected Officials from acting to fulfill any duties, responsibilities or deadlines imposed by law, including the powers and duties set forth in Wis. Stats. Chs. 66, 111, 118 and 119.

[3] Section 18.04 (22) defines "independent consultant" as "a contracted standing advisor to the County, its employees and its interested stakeholders."

III. QUESTIONS PRESENTED

The fundamental question underlying this entire dispute is the proper interaction between state law—here, Act 10—and municipal authority. The limitation, according to the Wisconsin Supreme Court, is straightforward:

> Counties have statutory home rule authority pursuant to § 59.03, but may not exercise that authority in a way that conflicts with legislative enactments of statewide concern that uniformly affect all counties.

State ex rel. Ziervogel v. Washington County Board of Adjustment, 2004 WI 23, ¶37. Act 10 is undeniably an enactment of statewide concern that uniformly affects all counties. Accordingly, nothing in Chapter 18 or the Handbook may conflict with the provisions of Act 10.

Dane County and the Employee Associations presented 15 questions arising from the Ordinance and the Handbook and their implementation. The parties group them in three categories: the legality of Chapter 18 and the Handbook, "specific practices," and "other organizational concerns."

In their November 13, 2015 Brief, the Employee Associations do not dispute the following propositions:

1. The County's power extends to its choices on whether and how to receive input from its general employees regarding employment relations, as long as, pursuant to Act 10, it retains the ultimate authority on its choices (p.8);

2. The employee group representatives do not enjoy any of the benefits or conditions that are associated with certified labor organizations (p. 10);
3. The Handbook's "meet and confer" process does not culminate in a contract binding on the county, and has no effect on the "ultimate and unilateral statutory powers enjoyed by and exercised by the County Board over the County's employment policies and practices" (pp. 12-13); and
4. The County Board has unfettered power to amend the Ordinance at will; "the ordinance is the primary legal authority and the handbook is subordinated to the ordinance" (p. 15).

In this Opinion I will first address questions related to the legality of the Ordinance and Handbook.

A. Legality of Chapter 18 and the Handbook

1. **The Civil Service Ordinance currently requires the County to engage in discussions with interested stakeholders about changes to the Employee Benefit Handbook. This will include the Employee Associations. These discussions would include changes to wages, benefits, and other conditions of employment. May the Civil Service Ordinance include a requirement to engage in these discussions?**

2. **May the County provide exclusive access in these discussions or any other special privileges to the leadership of the Employee Associations?**

These questions focus on the process for revising the Employee Benefit Handbook established in § 18.24(4) of the Ordinance. Subsection (4)(b)

provides that the Division "shall meet with interested stakeholders to comprehensively review, discuss and obtain input. . .interested stakeholders shall be given the opportunity to provide verbal or written input." Subsection (c) requires the Division to share draft revisions with interested stakeholders. Subsection (d) provides that the County Executive *may* meet with interested stakeholders to discuss proposed revisions. Following preparation of a draft resolution, subsection (e) provides that the County "shall share the draft resolution with interested stakeholders."

What is notable about § 18.24 is the *absence* of any obligation on the part of the employer to agree with any of the interested stakeholders' input. Furthermore, the opportunity for input and discussion is not limited to employee groups or their representatives. The Ordinance stops far short of creating an employer obligation to make an agreement regarding the proposed revisions.

The County contends that these provisions establish a process that amounts to *de facto* collective bargaining. But the very definition of "collective bargaining" set forth in § 111.70(1)(a) defeats the County's claim because there is no "mutual obligation" to reach agreement. Section 111.70(1)(a), Wis. Stats. Section 18.24(4)(a)—(d) sets up exactly what the Supreme Court described as the first meaning of "collective bargaining": an activity where "the employer has no legal obligation to respond affirmatively to the advocacy, but may do so voluntarily." *MTI v. Walker*, 2014 WI 99, ¶ 18.

Accordingly, the answer to Question 1 is **yes.**

The second question presumes that the County has decided to grant "exclusive access" and "special privileges" to the employee group leadership. Lacking a factual basis for reaching that conclusion, the question must be addressed as a hypothetical. By the plain language of § 18.24, the Handbook revision process is open to all "interested stakeholders." Beyond that, the Seventh Circuit Court of Appeals' decision in *Laborers Local* is instructive. Relying on the United States Supreme Court decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), the Court of Appeals noted with approval the informal "meet and confer" process some post-Act 10 Wisconsin municipal employers have used. 749 F. 3rd at 636. As the *Knight* Court indicated, the governmental employer "may legitimately choose to listen to one group of employees over another." 465 U.S. 271, 291.

3. **Discussions about modifications to the Employee Benefit Handbook that do not result in consensus between the County and the interested stakeholders may be submitted to a consultant or mediator who will make a final recommendation on modifications to the County Board. County funds will be used to pay the consultant or mediator. Under current language, the outside party's recommendation must be adopted as a whole without modification by the County Board. May the County Board authority be legally limited in this way?**

Section 18.24(4)(f) and (g) establish a process by which either the Division or an interested stakeholder may engage the County "independent consultant" to assist in making recommendations for revisions of the Handbook. The consultant's final recommendations to the Board must be approved or rejected

as a whole. The Ordinance does not make lack of "consensus" a precondition, nor does it mention a mediator.

The answer to this question is **no**. Imposing an "all or nothing" rule on the County Board impermissibly restricts the Board's ultimate authority to "establish conditions of employment for County employees," § 59.52(8)(a), Wis. Stats. It also conflicts with § 18.24(1) of the Ordinance, affirming the County Executive and Board's authority to establish the terms and conditions of County employment. I recommend that subsection (g) be amended to restore the Board's ability to modify the consultant's recommendation.

4. May Employee Group Associations submit issues to the independent consultant or mediator paid with County funds if it only represents the interests of members?

Under the Ordinance, the ability to engage the independent consultant extends to any interested stakeholder in addition to the Division. Nothing impedes the ability of an employee, whether a member or non-member of an Employee Group Association, to use the independent consultant. In addition, § 18.06(4) of the Ordinance—a provision the County does not challenge—states that the right to refrain from employee group representation removes "the expectation of any aid, assistance or representation that an employee group's representative provides to its members." Accordingly, the answer to this question is **yes**.

5. The grievance process extends the scope of grievances beyond what is required under state statutes. The current County

grievance process includes grievances involving the interpretation or application of the Employee Benefit Handbook, or an alleged violation of the Employee Benefit Handbook. May the County extend the scope of the grievance procedure requiring it to entertain grievances beyond the scope required under statute?

Yes, for the following reasons. As earlier noted, § 59.52(8)(a), Wis. Stats., empowers counties to adopt grievance procedures. Dane County has done so in its Handbook at pages 46-49. Section 66.0509(1m)(c), Wis. Stats., supplements the statutory authority by establishing minimum elements of a grievance procedure:

> (c) Any civil service system that is established under any provision of law, and any grievance procedure that is created under this subsection, shall contain *at least* all of the following provisions:
> 1. A grievance procedure that addresses employee terminations.
> 2. Employee discipline.
> 3. Workplace safety.

(emphasis supplied). The phrase "at least" indicates the legislature's intent to provide a floor, not a ceiling, on the issues a grievance procedure may address.

The County mistakenly claims that § 18.06(6) of the Ordinance "allows only an employee group's representative [to] grieve the location of a position or positions in an employee group" (Statement, p. 11). The Handbook is clear, however, that the grievance procedure is available to "all employees."

6. **The grievance appeal process culminates in a hearing with an Impartial Hearing Officer paid for in part by County funds. The current Handbook provision allows for an appeal of the Hearing Officer's decision to the County Board that is the same process formerly contained in the collective bargaining agreements. However, this provision limits the County Board's ability to overturn the Impartial Hearing Officer's decision only upon determining that:**

- **The decision was procured by corruption, fraud or undue means;**
- **There was evident partiality or corruption on the part of the Impartial Hearing Officer;**
- **The Impartial Hearing Officer was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or**
- **The Impartial Hearing Officer exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite determination upon the subject matter submitted was not made;**
- **The Board may modify or correct a monetary award included in the Impartial Hearing Officer's determination only if there is a material miscalculation of figures or material mistake in the description of any person, thing or property referred to in the award.**

May the County impose these restrictions on the ability of the County Board to overturn an Impartial Hearing Officer's decision?

The County Board's adoption of this provision in the Handbook represents its decision to give deference to the hearing officer's decision without surrendering the Board's own authority to review and if necessary, reject or modify the decision. Unlike the all-or-nothing action on the consultant's recommendations for Handbook revision, the conditions set forth above retain sufficient authority for the Board to correct an erroneous or unfair decision. In particular, the Board may reject a decision in which the hearing officer "exceeded his or her powers, or so imperfectly executed them, that a mutual, final and definite determination" was not made. The answer to question 6 is **yes.**[4]

[4] Secition 66.0509(1m)(d) provides a slightly different set of requirements for newly-created grievance procedures. They include a "hearing before an impartial hearing officer" and an

7. May County funds be used to pay for hearing officers in matters brought by Employee Group Associations if the Employee Group Associations only represent the perspective of employees that [sic] pay dues?

For the reasons stated in answer to question 4, the answer is **yes.**

B. Specific Practices

8. May the County continue to use voluntary payroll deductions to collect funds for the Employee Associations knowing that at least some of those funds are being distributed to a national labor organization?

Yes. In its October 30, 2015 Statement, the County agrees that employees "may voluntarily have deductions taken to contribute to any organization of their choice" (p. 18). The only Act 10 limitation on dues deduction appears in § 111.70(3g), Wis. Stats., which provides: "A municipal employer may not deduct labor organization dues from the earnings of a general municipal employee or supervisor."

Section 111.70(1)(h), Wis. Stats., defines "labor organization" as any "employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment." Thus, dues deductions are only forbidden if the organization engages in collective bargaining.

On August 13, 2014 the Wisconsin Legislative Council provided an opinion concerning this same provision of MERA. The opinion concluded at page 2:

"appeal process in which the highest level of appeal is the governing body of the local governmental unit." This matches the procedure established by the Handbook.

> If a local association of employees does not collectively bargain with a municipal employer and does not exist for the purpose of engaging in collective bargaining with a municipal employer, the association is not a "labor organization." Consequently, the prohibition on the deduction of labor organization dues does not apply to that association's dues. Thus, MERA does not prohibit a municipal employer from deducting that association's dues from employee wages.

The County does not challenge the Legislative Council's opinion.

9. The Employee Benefit Handbook allows leaders of the Employee Associations to use paid time to conduct "representational activities" during the workday, including but not limited to the posting of notices, the investigation and processing of grievances and participation in discussions related to personnel relations. May Association leaders use paid time to conduct representational activities?

10. May County resources such as work time or email be used to communicate Employee Association activities?

11. May County employees conduct membership drives or otherwise encourage employees to participate in and contribute to an Employee Association while on paid County time?

12. May County employees participate in Employee Association leadership elections on County time if only their members may vote?

I have grouped these four questions together because they ask essentially the same question: under what circumstances may the County authorize use of paid time and County resources by its employees? The question arises because the Handbook, p. 38, "Employee Group Representation and Pay," states:

> Employees selected by an Employee Group's Representatives to act as employee and group representatives shall be known as stewards...Reasonable time spent in the conduct of Employee Group

> representational activity during the workday, including but not limited to the posting of notices, the investigation and processing of grievances and participation in discussions related to personnel relations shall not be deducted from the pay of the stewards or other officials.. .

The County's position is that it can only authorize Employee Association's use of paid time resources for activities "directly relating to employee discipline" (Statement, p. 19). The Associations contend that "paid time to EGRs facilitates a representative voice with whom the County can meet, and the County's choice of a reasonably efficient way of getting any input it seeks" (Nov. 13, 2015 brief, p. 17).

It is certainly true that the County has wide latitude under § 59.52(8)(a), Wis. Stats., to establish "uniform provisions in respect to . . . payroll certification, attendance, vacations, sick leave . . . hours of work, tours of duty or assignments . . ." The key, however, is that the provisions must be *uniform.* If the County chooses to exercise its discretion to allow use of paid time and resources for certain activities, it must make that opportunity available to other employees as well. To be consistent with the Ordinance's emphasis on protecting "interested stakeholders," the Handbook's provision for paid time and use of County resources cannot fairly be limited to one category of employee.

I recommend that the Handbook develop a rule of general application for authorizing the use of paid time and resources.

C. Other Organizational Concerns

13. The County has established labor management advisory committees on a variety of topics. Two of the most active are the Insurance Advisory Committee and the County Safety Committee. The County has also voluntarily established labor management advisory committees on an ad hoc basis to address particular topics. Historically, membership on those committees was reserved for bargaining unit members who were appointed by the bargaining unit to participate. May the County continue to source committee members exclusively from an Employee Association or should that selection process be broadened?

The Employee Benefit Handbook addresses membership in both committees. The Insurance Advisory Committee is authorized as follows:

> There shall be an insurance advisory committee consisting of employee and management representatives to advise the parties on matters of insurance with one representative from each employee group with the exception of the 720 group, which shall have two (2) representatives.

(Handbook, p. 69).

"Employee group" includes both represented and non-represented employees pursuant to § 18.04(17) of the Ordinance. By its terms, the Handbook does not limit membership on the Insurance Advisory Committee to the Employee Associations.

The Safety and Working Conditions Study Committee is formulated differently:

> There shall be a countywide Safety and Working Conditions Study Committee with one (1) person elected or appointed by each Employee Group's representative and an equal number of managerial/unrepresented representatives selected by the County. . .

(Handbook, p. 144(Handbook, p. 144). This provision assures that the membership on the Committee is balanced. The County is entitled to seek advice and input on its policies as long as it retains the ultimate authority.

Nothing about either of these Committee authorizations interferes with or limits that authority.

14. In order to facilitate both payroll deduction and to demonstrate that more than fifty percent of employees had elected to form an Association, the County accepted opt-in forms from employees in the same way it accepted them for proof of union membership. An opt-out form is also available to suspend the payroll deduction and membership in the Association. However, the Association would like all employees choosing to opt-out of the Association to obtain opt-out forms from a leader in the Association so that those leaders may have a conversation with the member about the consequences of withdrawing from the Association. May the County support this requirement since it may inhibit an employee from suspending a voluntary payroll deduction?

The County is free to determine how to administer its own payroll system. Nothing obligates the County to delegate its distribution of forms to an Employee Association, but it may choose to do so in the exercise of its discretion.

15. May the County use its current "opt-in" process for determining Employee Group representatives?

The County contends that the "opt-in" process offends non-represented employees' First Amendment rights to refrain from union membership. In support, it cites *Knox v. SEIU*, 132 S. Ct. 2277 (2012) and cases upon which *Knox* was based.

Knox concerned a California law pertaining to state-sanctioned "agency shops" utilizing fair-share agreements. Cases prior to *Knox,* in particular *Abood*

v. Detroit Bd. Of Education, 431 U.S. 209 (1977) and *Teachers v. Hudson*, 475 U.S. 292 (1986) established the rule that "public sector unions, while permitted to bill nonmembers for chargeable expenses, may not require nonmembers to fund its political and ideological projects," *Knox,* 132 S. Ct. 2277, 2284. *Abood, Hudson* and *Knox* all address procedures for insuring that non-union employees of agency shops are *only* assessed fees or dues for non-political union services related to collective bargaining.

But Act 10 eliminated agency shops from public employment, with narrow exceptions. Membership dues in employee organizations now must be voluntary. Thus, there is no question of nonmembers being forced to fund union political or ideological speech in violation of First Amendment rights because there is no forced dues assessment. Accordingly, the *Hudson-Abood-Knox* line of cases is inapposite. The County may use its opt-in process.

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I appreciate the efforts of Dane County and the Employee Associations to frame the issues needing resolution, and for their statements and briefs in this matter. I hope that this advisory opinion is helpful.

Dated this 11th day of January 2016.

Maryann Sumi

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