

STATE OF WISCONSIN

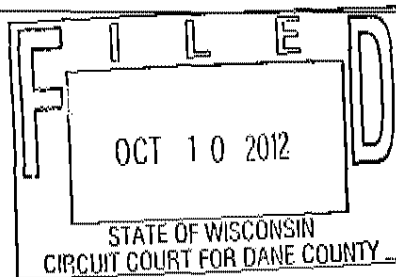
CIRCUIT COURT  
Branch 10

DANE COUNTY

Madison Teachers, Inc., et al.  
Plaintiffs,

v.

Scott Walker, et al.  
Defendants



Case No. 11CV3774

AMENDMENT CLARIFYING SEPTEMBER 14, 2012 DECISION AND ORDER

The plaintiffs have moved for an order clarifying the September 14, 2012 decision and order in this case by amending the order enumerating statutes found unconstitutional to include Wis. Stat. §111.70(2). The relevant part of that section allows a general municipal employee to refuse to pay union dues while remaining a member of a collective bargaining unit represented by a union.

Defendants oppose the motion, arguing 1) that the omission of §111.70(2) was not an error because plaintiffs did not mention it in their briefs, 2) that even if the court found the clause in §111.70(2) unconstitutional it would not have the effect the plaintiffs seek because of the language that would remain and 3) the court was wrong on the merits.

The plaintiffs asked to be allowed to file a reply to defendants' arguments and submitted a six-page brief in reply. The court allows the reply brief. Because the motion and reply brief were filed on the date the defendants' response was due, and because a decision on the motion to stay was delayed to allow plaintiffs to respond to defendants untimely affidavits, allowing a reply brief on this issue does not delay a decision on the motion to stay.

The issue is whether the September 14, 2012 order needs to be clarified to express the

court's intent. A court has authority to clarify an order that is ambiguous or unclear. *Cashin v. Cashin*, 2004 WI App 92, ¶¶11-12, 18, 273 Wis. 2d 754, 681 N.W.2d 255. Whether a clarified order ultimately accomplishes what plaintiffs would like and whether the court was wrong on the merits of its decision are irrelevant to whether the order needs to be clarified.

In the decision in this case the court listed §111.70(2) among the statutes alleged by plaintiffs to burden their associational rights. Decision, 9/14/12 at p. 11-12. The court omitted the section from its summary listings of the challenged statutes on pages 2 and 16 of its decision and from the listing in the order on page 27 of its decision. In its decision the court described the prohibition of fair share agreements for general municipal employees as one of the burdens on employees' speech and associational rights. Decision, 9/14/12 at pp.15-16. The court also found that §111.70(1)(f), which by definition excludes general employees from fair share agreements, to be unconstitutional.

In determining whether a judgment is ambiguous a court does not look at particular provisions in isolation, but in the context of the entire judgment. *Cashin*, 273 Wis. 2d 754 at ¶11. Section §111.70(2) prohibits agreements that require employees of a bargaining union represented by a union to pay dues to the union even if they choose not to belong to it, precisely the prohibition the court found unconstitutional. As a result, the omission of §111.70(2) from the order makes the order ambiguous, or at least unclear, with respect to §111.70(2). *Id.* at ¶18. It was the court's intent to include the third sentence of §111.70(2) (beginning "A general municipal employee...") in its order as an unconstitutional provision and its omission was inadvertent.

The court is unpersuaded by the defendants' arguments that even if the third sentence is stricken the prohibition remains because the second sentence of §111.70(2) (incorrectly


identified by defendants as the first sentence) separately prohibits general municipal employee fair share agreements and because permitting fair share agreements for public safety and transit employees necessarily implies the prohibition of them for general employees. The defendants' interpretation would mean that the third sentence of §111.70(2) is superfluous, since it is encompassed by the sentence preceding it and necessarily implied by the sentence following it. Interpretations of statutes which make statutory language superfluous are to be avoided. *Kollasch v. Adamany*, 104 Wis. 2d 552, 563, 229 N.W.2d 891. In addition, relying on the rule of interpretation that expression of one thing is the exclusion of another to restore the effect of a provision found unconstitutional is a misapplication of the rule for which defendants offer no authority. However, to provide further clarity, to the extent that provisions of Wis. Stat. §111.70(2) other than the third sentence prohibit general employee fair share agreements they too are unconstitutional and void.

ORDER

For the reasons stated above, the order on page 27 of the September 14, 2012 Decision and Order, is amended to add the third sentence of §111.70(2) to the statutes found unconstitutional and therefore void.

Dated October 10, 2012.

BY THE COURT.

  
Juan B. Colás  
Circuit Court Judge

Copy: Counsel BY FAX ONLY