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DISTRICT IV

October 28, 2013

To:

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You are hereby notified that the Court has entered the following order:

2013XX1404

Madison Teachers Inc. v. Scott Walker (L.C. # 2011CV3774)

Before Blanchard, P.J., Lundsten and Higginbotham, JJ.

Commissioners James Scott and Rodney Pasch of the Wisconsin Employment Relations Commission have moved this court for both temporary ex parte relief pending appeal and relief pending appeal. Briefly stated, the commissioners ask us to stay the effect of the circuit court's order finding them in contempt and ordering them to cease enforcement of certain statutory

provisions relating to certification elections for collective bargaining agents, and also ordering them to take various other actions.

We note that, in the normal course, a motion for a stay of the circuit court's order should first be presented to the circuit court. WIS. STAT. RULE 809.12. It is not apparent why that did not occur here. The circuit court's oral ruling was issued on Monday, October 21, 2013, and nothing we are aware of prevented the commissioners from promptly requesting a stay from the circuit court before the circuit court issued its written order on October 25, 2013. However, that was not done and, so far as we can tell from the moving papers of the commissioners, due to time constraints, it would be impractical to direct the movants to the circuit court now to give that court an opportunity to exercise its discretion in the first instance.

We next note that the commissioners have simultaneously moved for similar relief, although on somewhat different grounds, in the supreme court. That creates the potential for the supreme court and this court to issue conflicting decisions, or to needlessly duplicate the considerable effort that can be necessary to resolve a matter such as this properly and in a short time. At this point, we have no information about when the supreme court will act on the motion before it, or whether it will do so within the time that the commissioners claim is necessary to prevent injury. Accordingly, in the absence of direction from the supreme court, at this point we will move forward on the motion before us.

The motion was filed in the office of our clerk at approximately 4:30 p.m. on Friday, October 25, 2013. According to the commissioners, there are two significant dates quickly approaching. The first is Tuesday, October 29, 2013, the day on which the commission had previously intended to send lists of eligible voters to the independent election administrator, so

as to enable the elections to begin November 1, 2013. The second significant date is Tuesday, November 5, 2013. We understand the commissioners to assert that, if they are not able to take that action on October 29, additional work on their part will be necessary to enable the elections to be completed by December 1, 2013, which the commissioners assert is required by statute. To complete the election by December 1, 2013, the commissioners assert that they must be able to resume administration of the election provision "no later than November 5, 2013."

Because of the short time frame, the commissioners ask that we grant relief *ex parte*, which means without obtaining a response from the respondent collective bargaining agents. We decline to grant relief *ex parte* as requested.

The issues raised by the motion are complex and are of the type where a response from the opposing parties may help clarify the issues. The respondents may dispute the assertions of the movant about the necessity for urgent action, or may otherwise provide a legal perspective that is not provided by the movants. It is not practicable to expect the respondents to file a meaningful response, and for this court to consider that response, on a schedule that will allow the commissioners to proceed as intended on October 29. And, the commissioners have not made a sufficient showing that the injury that may occur if it cannot act by October 29 is so irreparable that we must decide the motion without the benefit of a response. While inability to act by October 29 may cause the commission additional work or expense, the main injury it seeks to prevent is the inability to hold the certification elections within the statutory time. Because the commission has acknowledged that this injury can be prevented by granting relief by November 5, we do not regard it as necessary to use the extraordinary measure of *ex parte* relief as to the October 29 actions.

We have the authority to shorten the time for respondents to respond to the motion. WIS. STAT. RULE 809.82(2). With our focus now on the November 5 date, it is apparent that there is sufficient time available for the respondents to file a meaningful response on a schedule that will also allow this court time to consider the materials and prepare an order. The rules do not provide for a subsequent reply by the movants, but it is possible the court will order a reply shortly after receiving the response. Assuming that actions of the supreme court do not obviate the necessity of our issuing a decision on this motion, it is our goal to issue a decision by the close of business on Monday, November 4, 2013.

IT IS ORDERED that the motion for temporary ex parte relief is denied.

IT IS FURTHER ORDERED that, as to the motion for relief, the respondents shall file a response in our clerk's office by noon on Wednesday, October 30, 2013.

Diane M. Fremgen
Clerk of Court of Appeals