

**STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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**STATE ENGINEERING ASSOCIATION,**

**Complainant,**

**Case No.**

**vs.**

**GOVERNOR SCOTT K. WALKER;  
STATE OF WISCONSIN**

**Respondents.**

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**COMPLAINT OF UNFAIR LABOR PRACTICES**

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The Complainant, State Engineering Association (SEA), by its counsel, Haus, Roman and Banks, LLP, by William Haus hereby files this Complaint of Unfair Labor Practices and state as follows:

1. Complainant State Engineering Association is a “labor organization” as defined by Wis. Stats. § 111.81 (12) as follows:

“Labor organization” means any employee organization whose purpose is to represent employees in collective bargaining with the employer, or its agents, on matters pertaining to the terms and conditions of employment; . . . .

and as that phrase is used throughout the State Employment Labor Relations Act (hereinafter “SELRA”; Sec. 111.80– 111.94). The State Engineering Association has its offices at 4510 Regent Street, Madison, WI 53705 and its President is Mark Klipstein.

2. The State Engineering Association has been, for approximately forty (40) years, and continues to be the exclusive collective bargaining agent for the statutorily defined collective bargaining unit of approximately 1,100 State employee professionals in the Engineering occupational group (See Wis. Stats. § 111. 825(1)) and working throughout the State of Wisconsin. Such State employees represented by the State Engineering Association include engineering professionals who plan and design highways, bridges and other transportation structures; inspect and direct the

maintenance of such structures; review construction plans for buildings and other facilities to enforce compliance with health and safety codes; inspect the maintenance and operation of facilities and machines using nuclear materials; performing air and water environmental quality functions; as well as performing numerous other engineering and architectural functions.

3. Respondent Scott K. Walker is the Governor of the State of Wisconsin and is its Chief Executive Officer. Upon information and belief Governor Walker resides in the Governor's Mansion in the Village of Maple Bluff, Wisconsin.

4. The powers and duties of the Governor are set forth in the Wisconsin Constitution under Article V, and include the duty that the Governor "...shall take care that the laws be faithfully executed."

5. Respondent State of Wisconsin ("the State") is the "Employer" as defined in Wis. Stats. §111.81 (8).

6. Governor Walker directs and controls the actions of the Office of State Employment Relations through his appointment of its Director, one Gregory L. Gracz, who directs all employees of that State agency in compliance with directives issued by Governor Walker, the State's chief executive. Mr. Gracz serves as director of the Office of State Employment Relations "at the pleasure of the Governor." (§15.105 (29)(a)). The Office of State Employment Relations under the auspices of Governor Walker negotiates and administers the collective bargaining agreements to which the State is a party, including its collective bargaining agreement with the State Engineering Association.

7. Employees of the State of Wisconsin have the Constitutional right of assembly and freedom of association; they also have the statutory right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under chapter 111, Subchapter V, Wis. Stats., and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid and protection. (Wis. Stats. §111.82).

8. The Governor determines the policies and directs the collective bargaining negotiations of the State of Wisconsin as employer and, as part of his constitutional function of seeing to it that the laws of the State of Wisconsin are faithfully executed, oversees the State's duty to collectively bargain in good faith with the State Engineering Association, the labor organization that is the statutory exclusive bargaining representative of the State's professional engineering bargaining unit.

9. The most recent collective bargaining agreement of the State of Wisconsin and the State Engineering Association has for its term April 25, 2010 – June 30, 2009 (yes, the dates are correct). The State Engineering Association and the State of Wisconsin entered into an agreement to extend the collective bargaining agreement while a successor agreement was to be negotiated between the parties. Thereafter, on February 11, 2011, Respondents issued a notice cancelling the extension agreement effective March 13, 2011. The Respondents have not engaged in a single bargaining session for a collective bargaining agreement covering the 2009-2011 biennium and have

publicly and notoriously communicated that they have no intention of engaging in such collective bargaining, thereby renouncing their statutory collective bargaining obligations.

10. Instead of fulfilling his Constitutional obligation, to “take care that the laws be faithfully executed”, Governor Walker has renounced the law and called a special session of the Wisconsin legislature to radically alter the labor laws of Wisconsin so as to effectively eliminate any substantive collective bargaining rights for most public employees of the State and local governments and to effectively and practically destroy public sector labor organizations. The Respondents have thus demonstrated a high level of anti-union animus. Not only have the Respondents attacked the rights of employees to collectively bargain terms with economic impact, but they have also proposed eliminating many subjects of bargaining that are non-economic in nature for the purpose of destroying collective bargaining and labor organizations and bringing down virtually the entire institution of public sector collective bargaining. In doing so, Governor Walker has directly and personally interfered with the statutory collective bargaining process and has explicitly and repeatedly stated that he/the State refuses to bargain with the labor organizations with whom the State is statutorily obligated to collectively bargain. Governor Walker’s legislative agenda or proposal to change the law does not modify or nullify his obligations under the existing law.

11. The Respondents have repeatedly and publicly denied or failed to respond to requests that the State engage in good faith collective bargaining negotiations for successor collective bargaining agreements covering the July 1, 2009 – June 30, 2011 biennium. Governor Walker has repeatedly stated that the State of Wisconsin is “broke” and therefore has nothing to bargain with. In fact, the State of Wisconsin has the second highest credit rating possible. The State of Wisconsin has had a \$2 plus billion structural deficit since the Thompson/McCallum administration, but this has not stopped the State of Wisconsin from fulfilling its collective bargaining obligations. A governor cannot legally suspend the State of Wisconsin’s legal obligation to collectively bargaining in good faith for any reason.

12. Governor Walker has the power to **propose** draconian legislation grounded in his anti-union animus. However, such proposals do not change the law or repeal the obligations of the Respondents under Wisconsin law. Chapter 111 is the law and has been the law before and ever since Governor Walker arrived on the scene. It has the distinction of being duly enacted law whether or not the Respondents like its provisions. Governor Walker’s **proposed** legislation does not displace the Wisconsin statutes currently in effect. The failure and refusal of the Respondents to comply with their statutory duty to bargain in good faith is a blatant public display of contempt for the laws of Wisconsin fueled by anti-union animus. Governor Walker has engaged in repeated unfair labor practices as County Executive of Milwaukee and has earned the sobriquets of “repeat offender” or “scofflaw” in terms of fulfilling his obligations under the labor laws of the State of Wisconsin. He is thus in violation of his constitutional duty to “take care that the laws be faithfully executed.” Governor Walker has introduced legislation that would remove the General Counsel of the Wisconsin Employment Relations Commission from the protection of the civil service law so that said General Counsel would serve at the Governor’s pleasure without the ability to exercise unfettered independent judgment in legal matters in which the State and/or the Governor have an interest, such as the present filing.

13. By these and other acts the Respondents have engaged in unfair labor practices by interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by §111.82 Wis. Stats., all in violation of §111.84 (1)(a) Wis. Stats.

14. By these and other acts the Respondents have refused to bargain collectively, on matters set forth in §111.91 (1), with the State Engineering Association, the exclusive statutory representative of a majority of the State of Wisconsin's employees in the professional engineering statutory bargaining unit, all in violation of §111.84 (1)(d) and (3).

WHEREFORE, in view of the flagrant and egregious unfair labor practices committed by the Respondents and anti-union animus demonstrated by the Respondent Governor Walker, the Complainant requests that the Commission make the appropriate findings of fact and issue the following remedial orders as well as additional remedial orders that it finds appropriate:

- A. Declare that the Respondents have denied and continue to deny employees their rights under §111.82 Wis. Stats.
- B. Declare that the Respondents have committed and continue to engage in unfair labor practices as defined by §111.84(1)(a) and (d).
- C. Issue an Order requiring that the Respondents forthwith commence "collective bargaining" as defined by §111.81:

"Collective Bargaining" means the performance of the mutual obligation of the state as an employer, by its officers and agents, and the representative of its employees, to meet and confer at reasonable times, in good faith, with respect to the subjects of bargaining provided in s. 111.91 (1) with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document.

- D. Extend the provisions of the Complainant's most recent Collective Bargaining Agreement under the dynamic status quo doctrine until the current collective bargaining dispute is resolved and the unfair labor practices fully remedied.
- E. Provide a make-whole remedy as to any violations of the dynamic status quo committed by the Respondents in furtherance of their unfair labor practices or as a result of their unfair labor practices.

- F. Prohibit the conduct described herein and similar unfair labor practices by the Respondents in the future, including an order that Respondent Governor Walker not take any action that would interfere with the remedies ordered herein.
- G. Prohibit any retaliatory action by the Respondents, including threatening or implementing layoffs of bargaining unit employees. In the event layoffs are imposed in furtherance of the unfair labor practices set forth herein, the Respondents should be ordered to reinstate the affected employees with full backpay and benefits.
- H. Require the posting of appropriate notices in conspicuous places to fulfill the purposes of SELRA.
- I. Require and order such other and further relief as the Commission deems appropriate, including the expediting of the proceedings in this matter.

The filing fee required pursuant to Wis. Stat. §111.94(2) accompanies this Complaint.

Respectfully Submitted,

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