

JOHN W. MARKSON
CIRCUIT COURT, BR 1

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

DANE COUNTY

2009 NOV 17 PM 3: 38

DANE CO. CIRCUIT COURT

STATE ENGINEERING ASSOCIATION

4510 Regent Street
Madison, Wisconsin 53705, and

JOHN BOLKA

S73 W25295 High Ridge Road
Waukesha, Wisconsin 53189, and

TIMOTHY HANLEY

2849 Ellis Street
Stevens Point, Wisconsin 54481, and

MARK KLIPSTEIN

660 Glen Erin Drive
Hartford, Wisconsin 53027, and

LARRY LEGRO

1248 Gaslight Drive
Sun Prairie, Wisconsin 53590, and

DENNIS KEYSER

1241 Carole Lane
Green Bay, WI 54313, and

GRETCHEN WHEAT

1218 East Dayton Street
Madison, Wisconsin 53703,

Plaintiffs,

vs.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

SUMMONS

CASE NO. 09CV5786

STATE OF WISCONSIN

c/o Attorney General J.B. Van Hollen

114 East State Capitol
Madison, WI 53707-7857, and

OFFICE OF STATE EMPLOYMENT RELATIONS

101 East Wilson Street, 4th Floor
Madison, Wisconsin 53703, and

DIRECTOR JENNIFER DONNELLY

Office of State Employment Relations
101 East Wilson Street, 4th Floor

Madison, Wisconsin 53703, and

DEPARTMENT OF TRANSPORTATION

4802 Sheboygan Avenue, P.O. Box 7999,
Madison, Wisconsin 53707-7999, and

Case Code: 30704
Other Injunction or
Restraining Order

SECRETARY FRANK BUSALACCHI

Department of Transportation
4802 Sheboygan Avenue, P.O. Box 7999,
Madison, Wisconsin 53707-7999, and

DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street, P.O. Box 7921
Madison, Wisconsin 53707-7921, and

SECRETARY MATTHEW FRANK

Department of Natural Resources
101 South Webster Street, P.O. Box 7921
Madison, Wisconsin 53707-7921, and

DEPARTMENT OF ADMINISTRATION

101 East Wilson Street, P.O. Box 7866
Madison, Wisconsin 53707-7921, and

SECRETARY MICHAEL MORGAN

Department of Administration
101 East Wilson Street, P.O. Box 7866
Madison, Wisconsin 53707-7921, and

DEPARTMENT OF WORKFORCE DEVELOPMENT

210 East Washington Avenue, P.O. Box 7979
Madison, Wisconsin 53707-7979, and

SECRETARY ROBERTA GASSMAN

Department of Workforce Development
210 East Washington Avenue, P.O. Box 7979
Madison, Wisconsin 53707-7979, and

DEPARTMENT OF COMMERCE

201 West Washington Avenue, P.O. Box 7970
Madison, Wisconsin 53707-7970, and

SECRETARY DICK J. LEINENKUGEL

201 West Washington Avenue, P.O. Box 7970
Madison, Wisconsin 53707-7970, and

DEPARTMENT OF HEALTH SERVICES

1 West Wilson Street
Madison, Wisconsin 53707, and

SECRETARY KAREN TIMBERLAKE

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53707, and

**DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION**

2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911, and

SECRETARY ROD NILSESTUEN

Department of Agriculture, Trade and
Consumer Protection

2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911, and

PUBLIC SERVICE COMMISSION

610 Whitney Way, P.O. Box 7854

Madison, Wisconsin 53707-7854, and

CHAIRPERSON ERIC CALLISTO

610 Whitney Way, P.O. Box 7854

Madison, Wisconsin 53707-7854, and

DEPARTMENT OF CORRECTIONS

3099 East Washington Avenue, P.O. Box 7925

Madison, Wisconsin 53707-7925, and

SECRETARY RICK RAEMISCH

Department of Corrections

3099 East Washington Avenue, P.O. Box 7925

Madison, Wisconsin 53707-7925, and

STATE HISTORICAL SOCIETY

816 State Street

Madison, Wisconsin 53706-1417, and

DIRECTOR ELLSWORTH H. BROWN

State Historical Society

816 State Street

Madison, Wisconsin 53706-1417, and

DEPARTMENT OF MILITARY AFFAIRS

2400 Wright Street, P.O. Box 7865

Madison, Wisconsin 53707-7865, and

COL. DONALD DUNBAR

Department of Military Affairs

2400 Wright Street, P.O. Box 7865

Madison, Wisconsin 53707-7865, and

UNIVERSITY OF WISCONSIN SYSTEM

1720 Van Hise Hall, 1220 Linden Drive

Madison, Wisconsin 53706, and

PRESIDENT KEVIN P. REILLY

University of Wisconsin System

1720 Van Hise Hall, 1220 Linden Drive

Madison, Wisconsin 53706, and

Defendants.

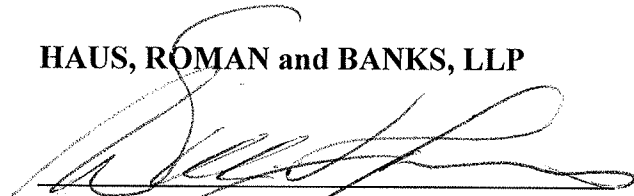
THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action. Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an Answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Clerk of Courts, 215 S. Hamilton Street, Room 1000, Madison, Wisconsin 53703, and to Attorney William Haus, Plaintiffs' attorney, whose address is Haus, Roman & Banks, LLP, 148 E. Wilson Street, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper Answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated in the City of Madison, Wisconsin this 17th day of November, 2009.

HAUS, ROMAN and BANKS, LLP



By: Attorney William Haus
State Bar No. 1015390

Haus, Roman and Banks LLP
148 East Wilson Street
Madison, Wisconsin 53703
Tel: (608) 257-0420
Fax: (608) 257-1383

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 2009 NOV 17 PM 3:38

DANE CO. CIRCUIT COURT

STATE ENGINEERING ASSOCIATION

4510 Regent Street

Madison, Wisconsin 53705, and

JOHN BOLKA

S73 W25295 High Ridge Road

Waukesha, Wisconsin 53189, and

TIMOTHY HANLEY

2849 Ellis Street

Stevens Point, Wisconsin 54481, and

MARK KLIPSTEIN

660 Glen Erin Drive

Hartford, Wisconsin 53027, and

LARRY LEGRO

1248 Gaslight Drive

Sun Prairie, Wisconsin 53590, and

DENNIS KEYSER

1241 Carole Lane

Green Bay, WI 54313, and

GRETCHEN WHEAT

1218 East Dayton Street

Madison, Wisconsin 53703,

Plaintiffs,

vs.

COMPLAINT

09CV5786

CASE NO. _____

STATE OF WISCONSIN

c/o Attorney General J.B. Van Hollen

114 East State Capitol

Madison, WI 53707-7857, and

OFFICE OF STATE EMPLOYMENT RELATIONS

101 East Wilson Street, 4th Floor

Madison, Wisconsin 53703, and

DIRECTOR JENNIFER DONNELLY

Office of State Employment Relations

101 East Wilson Street, 4th Floor

Madison, Wisconsin 53703, and

DEPARTMENT OF TRANSPORTATION

4802 Sheboygan Avenue, P.O. Box 7999,

Madison, Wisconsin 53707-7999, and

Case Code: 30704

Other Injunction or

Restraining Order

SECRETARY FRANK BUSALACCHI

Department of Transportation
4802 Sheboygan Avenue, P.O. Box 7999,
Madison, Wisconsin 53707-7999, and

DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street, P.O. Box 7921
Madison, Wisconsin 53707-7921, and

SECRETARY MATTHEW FRANK

Department of Natural Resources
101 South Webster Street, P.O. Box 7921
Madison, Wisconsin 53707-7921, and

DEPARTMENT OF ADMINISTRATION

101 East Wilson Street, P.O. Box 7866
Madison, Wisconsin 53707-7921, and

SECRETARY MICHAEL MORGAN

Department of Administration
101 East Wilson Street, P.O. Box 7866
Madison, Wisconsin 53707-7921, and

DEPARTMENT OF WORKFORCE DEVELOPMENT

210 East Washington Avenue, P.O. Box 7979
Madison, Wisconsin 53707-7979, and

SECRETARY ROBERTA GASSMAN

Department of Workforce Development
210 East Washington Avenue, P.O. Box 7979
Madison, Wisconsin 53707-7979, and

DEPARTMENT OF COMMERCE

201 West Washington Avenue, P.O. Box 7970
Madison, Wisconsin 53707-7970, and

SECRETARY DICK J. LEINENKUGEL

201 West Washington Avenue, P.O. Box 7970
Madison, Wisconsin 53707-7970, and

DEPARTMENT OF HEALTH SERVICES

1 West Wilson Street
Madison, Wisconsin 53707, and

SECRETARY KAREN TIMBERLAKE

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53707, and

**DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION**

2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911, and

SECRETARY ROD NILSESTUEN

Department of Agriculture, Trade and
Consumer Protection

2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911, and

PUBLIC SERVICE COMMISSION

610 Whitney Way, P.O. Box 7854

Madison, Wisconsin 53707-7854, and

CHAIRPERSON ERIC CALLISTO

610 Whitney Way, P.O. Box 7854

Madison, Wisconsin 53707-7854, and

DEPARTMENT OF CORRECTIONS

3099 East Washington Avenue, P.O. Box 7925

Madison, Wisconsin 53707-7925, and

SECRETARY RICK RAEMISCH

Department of Corrections

3099 East Washington Avenue, P.O. Box 7925

Madison, Wisconsin 53707-7925, and

STATE HISTORICAL SOCIETY

816 State Street

Madison, Wisconsin 53706-1417, and

DIRECTOR ELLSWORTH H. BROWN

State Historical Society

816 State Street

Madison, Wisconsin 53706-1417, and

DEPARTMENT OF MILITARY AFFAIRS

2400 Wright Street, P.O. Box 7865

Madison, Wisconsin 53707-7865, and

COL. DONALD DUNBAR

Department of Military Affairs

2400 Wright Street, P.O. Box 7865

Madison, Wisconsin 53707-7865, and

UNIVERSITY OF WISCONSIN SYSTEM

1720 Van Hise Hall, 1220 Linden Drive

Madison, Wisconsin 53706, and

PRESIDENT KEVIN P. REILLY

University of Wisconsin System

1720 Van Hise Hall, 1220 Linden Drive

Madison, Wisconsin 53706, and

Defendants.

NOW COME the Plaintiffs, above named, and by their attorneys, Haus, Roman and Banks, LLP, by

Attorney William Haus, and as and for a complaint against the Defendants above named, allege as follows:

I. **PARTIES.**

A. **Plaintiffs.**

1. **Plaintiff State of Wisconsin** (hereinafter also referred to as “the State”) is
2. **Plaintiff State Engineering Association** (hereinafter also referred to as SEA) is a labor organization as defined by Wis. Stat. § 111.81(12). SEA is the exclusive bargaining representative of the statutory collective bargaining unit for the Professional/Engineering occupational groups as established by Wis. Stat. § 111.825. Said collective bargaining unit consists of approximately one thousand one hundred and twenty (1,120) employees in the classified service of the State of Wisconsin and is “structured on a statewide basis.” SEA represents state employees in a number of state agencies, including the Department of Transportation; the Department of Natural Resources; the Department of Commerce; the Department of Administration; the Department of Health Services; the University of Wisconsin System; the Department of Agriculture, Trade, and Consumer Protection; the Public Service Commission; the Department of Corrections; the Department of Workforce Development; the Department of Military Affairs; and the State Historical Society. SEA is a party to a Collective Bargaining Agreement with the State of Wisconsin as the exclusive bargaining representative of the Professional/Engineering employees. The most recent Collective Bargaining Agreement between the State of Wisconsin and the State Engineering Association has for its term May 27, 2006 to June 30, 2007; however, said Collective Bargaining Agreement has been extended by mutual agreement of the parties so as to continue to be in effect until a successor agreement is concluded. The State Engineering Association has its principal offices located at 4510 Regent Street, Madison, Wisconsin 53705.
3. **Plaintiff John Bolka** is an adult resident of the State of Wisconsin, residing at S73 W25295 High Ridge Road, Waukesha, Wisconsin 53189. John Bolka has been continuously employed as a civil engineer with the State of Wisconsin Department of Transportation for more than ten years and has been laid off and is subject to future layoff as alleged in this complaint. John Bolka is a Wisconsin taxpayer.
4. **Plaintiff Timothy Hanley** is an adult resident of the State of Wisconsin, residing at 2849 Ellis Street, Stevens Point, Wisconsin 54481. Timothy Hanley has been continuously employed as a civil engineer with the State of Wisconsin Department of Transportation for more than ten years and has been laid off and is subject to future layoff as alleged in this complaint. Timothy Hanley is a Wisconsin taxpayer.
5. **Plaintiff Mark Klipstein** is an adult resident of the State of Wisconsin residing at 660 Glen Erin Drive, Hartford, Wisconsin 53027. Mark Klipstein has been continuously employed as

a civil engineer with the State of Wisconsin Department of Transportation for more than ten years and has been laid off and is subject to future layoff as alleged in this complaint. Mark Klipstein is also President of the State Engineering Association and is a Wisconsin taxpayer.

6. **Plaintiff Larry Legro** is an adult resident of the State of Wisconsin residing at 1248 Gaslight Drive, Sun Prairie, Wisconsin 53590. Larry Legro has been employed continuously by the Department of Health Services (or its predecessor agency) for more than twenty consecutive years and is subject to the layoffs as alleged in this complaint. Larry Legro is a Wisconsin taxpayer.
7. **Plaintiff Dennis Keyser** is an adult resident of the State of Wisconsin residing at 1241 Carole Lane, Green Bay, Wisconsin 54313. Dennis Keyser has been continuously employed as a surveyor for the State of Wisconsin Department of Transportation for more than ten years and has been laid off and is subject to the future layoff as alleged in this complaint. Dennis Keyser is a Wisconsin taxpayer.
8. **Plaintiff Gretchen Wheat** is an adult resident of the State of Wisconsin residing at 1218 East Dayton Street, Madison, Wisconsin 53703. Gretchen Wheat has been continuously employed as an engineer with the State of Wisconsin Department of Natural Resources for more than ten years and is subject to the layoffs as alleged in this complaint. Gretchen Wheat is a Wisconsin taxpayer.
9. All individual plaintiffs and all members of the bargaining unit represented by the State Engineering Association are employees of the State of Wisconsin and as such are “employees” within the meaning of Wis. Stat. § 108.02(12) and Defendant State of Wisconsin and state agencies are employers within the meaning of the Unemployment Compensation Chapter, Wis. Stat. § 108.02 (13).

B. Defendants.

10. **Defendant State of Wisconsin** (hereinafter also referred to as “the State”) is an “Employer” within the meaning of Wis. Stat. § 108.02(13) and a government unit within the meaning of Wis. Stat. § 108.02(17) and is subject to the laws of Wis. Stat. Chapter 108. The State of Wisconsin is also the “Employer” within the meaning of Wis. Stat. Chapter 111, Subchapter V and is subject to the laws of said Subchapter. The State of Wisconsin is party to the collective bargaining agreement between the State of Wisconsin and the State Engineering Association. This is an action for injunctive relief. The proper agent for service on behalf of the State of Wisconsin is the State of Wisconsin Attorney General, 114 East State Capitol, Madison, Wisconsin 53707-7857.
11. **Defendant Office of State Employment Relations** (hereinafter also referred to as “OSER”) is an agency of the State of Wisconsin which, pursuant to Wis. Stat. § 111.815, is charged with the statutory responsibilities of negotiating and administering collective bargaining agreements on behalf of the State of Wisconsin; “is responsible for the employer functions

of the executive branch . . . and [coordinates] its collective bargaining activities with operating state agencies. . . .” The principal offices of OSER are located at 101 East Wilson Street, 4th Floor, Madison, Wisconsin 53703.

12. **Defendant Jennifer Donnelly** is the Director of the Office of State Employment Relations and, together with the “appointing authorities” for the State, or their representatives, as head of OSER is charged with the responsibility of establishing and maintaining, wherever practicable, consistent employment relations policies and practices throughout State service. (See Wis. Stat. § 111.815(2)) Director Donnelly’s office is located at 101 East Wilson Street, Madison, Wisconsin 53703.
13. **Defendant Department of Transportation** (hereinafter also referred to as “DOT”) is an agency of the State of Wisconsin. DOT employs more than thirty three hundred employees (3,300), including approximately 750 SEA bargaining unit members, has an annual budget approaching three (3) billion dollars, and has responsibilities affecting all modes of transportation in the State of Wisconsin. DOT receives hundreds of millions of dollars from the federal government which funding is contingent on compliance with applicable federal regulations. DOT’s main offices are located at 4802 Sheboygan Avenue, P.O. Box 7999, Madison, Wisconsin 53707-7999.
14. **Defendant Frank Busalacchi** is Secretary of the Department of Transportation and serves as the head of that agency. Secretary Busalacchi has his main office located at 4802 Sheboygan Avenue, P.O. Box 7999, Madison, Wisconsin 53707-7999.
15. **Defendant Department of Natural Resources** (hereinafter also referred to as “DNR”) is a State of Wisconsin agency with its main offices located at 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921. The DNR employs approximately 200 SEA bargaining unit employees.
16. **Defendant Matthew Frank**, Secretary of the Department of Natural Resources, serves as the head of the DNR and has his office at 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921.
17. **Defendant Department of Administration** (hereinafter also referred to as “DOA”) is a State of Wisconsin agency with its main offices located at 101 East Wilson Street, P.O. Box 7866, Madison, Wisconsin 53707-7921. The Department of Administration employs approximately 21 SEA bargaining unit employees.
18. **Defendant Michael Morgan**, Secretary of the Department of Administration, serves as the head of the DOA and has his office located at 101 East Wilson Street, P.O. Box 7866, Madison, Wisconsin 53707-7921.
19. **Defendant Department of Workforce Development** (hereinafter also referred to as “DWD”) is a State of Wisconsin agency with its main offices located at 210 East Washington

Avenue, P.O. Box 7979, Madison, Wisconsin 53707-7979. The Department of Workforce Development includes the Unemployment Compensation Division, which administers the unemployment compensation statutes. The Department of Workforce Development employs approximately 2 SEA bargaining unit employees.

20. **Defendant Roberta Gassman**, Secretary of the Department of Workforce Development, serves as the head of the DWD and has her office located at 210 East Washington Avenue, P.O. Box 7979, Madison, Wisconsin 53707-7979.
21. **Defendant Department of Commerce** is a State of Wisconsin agency with its main offices located at 201 West Washington Avenue, P.O. Box 7970, Madison, Wisconsin 53707-7970. The Department of Commerce employs approximately 38 SEA bargaining unit employees.
22. **Defendant Dick J. Leinenkugel**, Secretary of the Department of Commerce, serves as the head of the Department of Commerce and has his office at 201 West Washington Avenue, P.O. Box 7970, Madison, Wisconsin 53707-7970.
23. **Defendant Department of Health Services** (hereinafter also referred to as “DHS”) is a State of Wisconsin agency with its main offices located at 1 West Wilson Street, Madison, Wisconsin 53707. The Department of Health Services employs approximately 29 SEA bargaining unit employees.
24. **Defendant Karen Timberlake**, Secretary of DHS, serves as the head of the Department of Health Services and has her office at 1 West Wilson Street, Madison, Wisconsin 53707.
25. **Defendant Department Agriculture, Trade and Consumer Protection** (hereinafter also referred to as “DATCP”) is a State of Wisconsin agency with its main offices located at 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911. DATCP employs approximately 11 SEA bargaining unit employees.
26. **Defendant Rod Nilsestruen**, Secretary of the Department Agriculture, Trade and Consumer Protection, serves as the head of the DATCP and has his office located at 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911.
27. **Defendant Public Service Commission** (hereinafter also referred to as “PSC”) is a State of Wisconsin agency with its main offices located at 610 Whitney Way, P.O. Box 7854, Madison, Wisconsin 53707-7854. The Public Service Commission employs approximately 20 SEA bargaining employees.
28. **Defendant Eric Callisto** is Chairperson of the PSC, serves as the head of said agency and has his office located at 610 Whitney Way, P.O. Box 7854, Madison, Wisconsin 53707-7854.
29. **Defendant Department of Corrections** is a State of Wisconsin agency with its main offices

located at 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin 53707-7925. The Department of Corrections employs approximately 2 SEA bargaining unit employees.

30. **Defendant Rick Raemisch**, Secretary of the Department of Corrections, serves as the head of the Department of Corrections, has his office located at 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin 53707-7925.
31. **Defendant Wisconsin State Historical Society** (hereinafter also referred to as “WHS”) is a State of Wisconsin agency with its main offices located at 816 State Street, Madison, Wisconsin 53706-1417. The WHS employs approximately 2 SEA bargaining unit employees.
32. **Defendant Ellsworth H. Brown**, Director of the Wisconsin State Historical Society, serves as the head of WHS and has his office located at 816 State Street, Madison, Wisconsin 53706-1417.
33. **Defendant Department of Military Affairs** (hereinafter also referred to as “DMA”) is a state of Wisconsin agency with its main offices located at 2400 Wright Street, P.O. Box 7865, Madison, Wisconsin 53707-7865. The DMA employs approximately 9 SEA bargaining unit employees.
34. **Defendant Col. Donald Dunbar**, Adjutant General of the Department of Military Affairs, serves as the head of the DMA and has his office located at 2400 Wright Street, P.O. Box 7865, Madison, Wisconsin 53707-7865.
35. **Defendant University of Wisconsin System** (hereinafter also referred to as “UWS”) is a state of Wisconsin agency with its main offices located at 1720 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706. The UWS employs approximately 32 SEA bargaining unit employees.
36. **Defendant Kevin P. Reilly**, President of UWS, serves as the head of the UWS and has his office located at 1720 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

II. **BASIS FOR INJUNCTIVE RELIEF.**

37. The State of Wisconsin, is the Employer under the State Employment Labor Relations Act (Wis. Stat. Chapter 111, Subchapter V, § 111.81 (8)) and is a party to approximately nineteen collective bargaining agreements with various bargaining units established and covered under said Chapter 111, Subchapter V. The State of Wisconsin is obligated to collectively bargain in good faith with regard to the wages, hours and conditions of employment of the employees included in said bargaining units. The State of Wisconsin conducts its collective bargaining function through Defendant Office of State Employment Relations (OSER).

38. On June 23, 2009 Governor James Doyle issued Executive Order #285 relating to Furloughing State Employees in Response to the Emergency Economic Situation Facing Wisconsin, which included the following directives:

2. Require employees of state agencies and the University of Wisconsin System (UWS), including faculty and academic staff, to take eight days or their equivalent (64 hours) of unpaid leave (furlough days) during each fiscal year of the 2009-11 fiscal biennium, for a total of sixteen furlough days (128 hours) in the 2009-11 biennium;

3. Direct state agencies and the UWS to develop furlough plans, in accordance with guidelines issued by the Office of State Employment Relations (OSER) and in compliance with federal and state laws and applicable state employee collective bargaining agreements, under which state employees, including UWS employees, shall take the equivalent of eight unpaid furlough days (64 hours) during each fiscal year of the 2009-2011 biennium.

. . . .

6. Direct state agencies and UWS to submit their furlough plans, which must be in compliance with federal and state laws as well as applicable state employee collective bargaining agreements, to the Office of State Employment Relations for approval; and

7. Direct the Office of State Employment Relations to work with state agencies and UWS to develop and approve furlough plans that provide flexibility to accommodate operational needs.

(A copy of said Executive Order #285 is attached hereto as Exhibit A)

39. OSER defines its use of the term “furlough” as follows:

“Furlough” is the term being used to describe the recent mandate that state employees temporarily reduce their hours of work by 64 hours/eight days each of the next two fiscal years, for a total of 128 hours/16 days over the course of the 2009-2011 biennium. These hours will be prorated for part-time employees the term “furlough” refers to this temporary reduction of work hours or days.

40. The SEA Collective Bargaining Agreement contains no terms or provisions that would permit a reduction of hours by the use of furloughs or the implementation of “layoffs” on non-consecutive days or through a reduction in hours. The relevant portions of Section 1 of the Layoff Procedure Article in the SEA Collective Bargaining Agreement reads as follows:

Section 1

Application of Layoff

8/1/1 The Association recognizes the right of the Employer to layoff employees in accordance with the procedures set forth in this Article and subject to the provisions in Article X, Section 7. Such procedures, however, shall not apply to:

A. Temporary layoff of less than twenty-one (21) consecutive calendar days; and/or

41. By contrast, the State's Collective Bargaining Agreement(s) with the Wisconsin State Employee Union, which represents in excess of twenty-four thousand (24,000) state employees, contain(s) a provision that explicitly allows for the reduction of hours, as proposed in the furlough program. Said provisions read as follows:

8/4/1 In the event that management determines to reduce work hours, it may, at its option, reduce the weekly scheduled hours of some or all employees by class who are assigned to the work unit(s) who normally perform the work involved not to exceed sixteen (16) hours per pay period nor thirty-two (32) hours in a four (4) week period nor sixty-four (64) hours in a twelve (12) month period, unless mutually agreed otherwise. Such reduction shall not be considered a layoff. Reduction of hours of part-time employees will be prorated, based on the percentage of their budgeted full time equivalency (FTE). See also 8/14/2

. . . .

8/14/2 The Employer agrees that employee(s) on temporary layoff under 8/1/1/A, or reduced hours under 8/4/1, shall continue to earn vacation and sick leave credits during each temporary layoff and/or hours reduction conducted by the Employer during the term of the Agreement.

42. The length of the furloughs imposed by Governor Doyle in his Executive Order are precisely equivalent to the maximum limitations set forth in the above quoted WSEU Collective Bargaining Agreement.
43. In early July, 2009, Defendant OSER contacted the State Engineering Association and requested a meeting for the purpose of discussing the implementation of Governor Doyle's furlough directives. OSER and SEA representatives met on July 7, 2009 at the OSER offices. OSER presented a Memorandum of Understanding (MOU) it had previously drafted and requested that SEA sign it. A copy of the MOU draft is attached as Exhibit B and incorporated herein. The MOU would have permitted the various state agencies employing SEA bargaining unit employees (Defendants) to implement eight (8) day furloughs for each year of the 2009-2011 biennium; notwithstanding the terms of the SEA Collective

Bargaining Agreement. SEA proposed some modifications to the MOU proposed by OSER. A number of drafts of the MOU were exchanged; however, the parties were not able to reach an agreement. OSER refused to negotiate, stating that the discussions and exchanges of MOU drafts were:

. . . not to be considered negotiations but rather a “meet and discuss” to see whether SEA was amenable to working outside the contract to accomplish the furloughs.

44. SEA expressed interest in accommodating the State’s requests if certain changes were made to the MOU and if the MOU could be concluded in the context of an overall settlement of the 2007-2009 contract negotiations. OSER at first accepted this concept orally and offered to meet with one or two representatives from each side to resolve the 2007-2009 Collective Bargaining Agreement. During the process of trying to schedule the meeting OSER changed its position, stating as follows in a communication to SEA:

We also discussed your statement that SEA would consider the MOU “in the context of a broader discussion that includes resolution of the 2007-2009 contract dispute.” There cannot be a linkage between this MOU and a successor contract. Negotiations on a SEA successor agreement and the MOU covering furloughs must remain separate.

45. OSER insisted on a sequential process that started with SEA acceptance of OSER’s MOU on or before July 23, 2009 followed by the meeting relative to the Collective Bargaining Agreement, which was not to be scheduled before July 27, 2009. SEA did not agree to the MOU and on or about August 4, 2009, OSER refused altogether to have the above-described meeting regarding resolution of the 2007-2009 Collective Bargaining Agreement. SEA and OSER failed to reach agreement on the subject of furloughs and the 2007-2009 Collective Bargaining Agreement remains unresolved as well. By letter dated August 17, 2009, OSER advised SEA that it would be implementing layoffs in lieu of furloughs. A copy of said letter is attached hereto as Exhibit C and incorporated herein by reference.
46. OSER, by its Director, Defendant Jennifer Donnelly, then determined to implement layoffs instead of furloughs as to all SEA bargaining unit employees. Under Wisconsin law, SEA bargaining unit employees laid off in accordance with the OSER directive are eligible for unemployment compensation benefits during their layoffs. Such benefits are payable by the state/state agency through payments in lieu of contributions pursuant to Wis. Stat. § 108.15. Defendant Donnelly directed that said layoff periods be extended to nine (9) days so as to reduce the wages payable to the laid off employees by an amount approximating the amount of the unemployment benefits to which they would be entitled under Wisconsin law because of and in order to recoup the state’s payments in lieu of contributions. SEA bargaining unit employees are thus being forced to fund their own unemployment compensation benefits, are being discouraged from applying for benefits and are being discriminated against for their claims to unemployment compensation benefits. Furthermore, the re-employment of SEA

bargaining unit employees is being delayed in retaliation for their anticipated or actual claim for unemployment benefits to which they are legally entitled. These layoffs have been partially implemented to date or are in the process of being implemented by the Defendants for the 2009-2010 fiscal year and for the 2010-2011 fiscal year. Attached hereto and incorporated herein by reference is Exhibit D is an internal DOT e-mail communication dated September 23, 2009 indicating that the directive for the length of layoffs was issued by OSER.

47. Defendant Busalacchi has implemented the above described layoff plan at the Department of Transportation, laying off all SEA bargaining unit employees working for the DOT for a period of nine (9) consecutive workdays for the 2009-2010 fiscal year with plans to do so for the 2010-2011 fiscal year as well. All other DOT employees (non-SEA bargaining unit employees) subject to the furloughs have had their wages reduced by the equivalent of eight (8) days pay using varying schedules and techniques. Secretary Busalacchi has approved of and directed the implementation of the layoffs of SEA bargaining unit employees employed by the DOT in the manner and for the purposes described in Paragraph 45 herein.
48. The Department of Transportation has issued Guidelines for scheduling the layoffs of SEA bargaining unit employees for the 2009-2010 biennium as follows:
 1. Number of temporary layoff days for each SEA member will be 9 consecutive days for each full time permanent employee (or prorated based on FTE percentage). This is as a result of potential unemployment compensation liability.
 2. Temporary layoffs will be scheduled over a three-week period for each SEA employee, with the following provisions:
 - a. First week — Thursday and Friday
 - b. Second week — Monday through Friday
 - c. Third week — Monday and Tuesday
 3. Temporary layoffs for all department SEA members will be staggered using one of the three below options.
 - Option A.**
 - 1 October 22-23, October 26-30, November 2-3
 - Option B.**
 - 2 October 29-30, November 2-6, November 9-10
 - Option C.**
 - 3 November 5-6, November 9-13, November 16-17

A copy of said guidelines is attached hereto as Exhibit E.

49. By letter dated October 6, 2009, Plaintiff Dennis Keyser received notification of his layoff for the 2009-2010 fiscal year. Attached hereto as Exhibit F is a copy of said notice which is incorporated by reference herein.
50. All other individually named defendants herein, including Secretaries Matthew Frank, Dick J. Leinenkugel, Michael Morgan, Karen Timberlake, Rick Raemisch, Rod Nilsestuen, and Roberta Gassman, as well as Chairperson Callisto, Col. Donald Dunbar, Director Ellsworth H. Brown and President Kevin P. Reilly have also authorized, adopted, and/or are in the process of implementing the extended layoffs of the SEA bargaining unit employees respectively employed by their agencies for the express purposes of reducing the wages of said employees in order to recoup the approximate amount of their unemployment compensation benefit entitlements during the subject layoff periods. A copy of a Department of Commerce memo regarding the layoffs is attached hereto as Exhibit G and incorporated by reference.
51. The Defendants have implemented and/or are in the process of implementing, presently and in the future, layoffs of all SEA bargaining unit members (approximately 1,120 employees), including plaintiffs. Such layoffs have been or are being extended for the purposes described in Paragraphs 45-46 herein for each year of the 2009-2011 biennium. The stated and obvious purpose of the nine (9) day layoffs is to have the state/state agencies recoup projected unemployment compensation costs/benefits associated with the layoffs. This has the effect of making plaintiffs and similarly situated SEA bargaining unit members fund their own unemployment compensation benefits through additional losses or reductions in income by virtue of the increase in the duration of the layoffs. These actions of the Defendants are also in retaliation for Plaintiffs attempting to exercise their right to collectively bargain under the State Employment Labor Relations Act (SELRA) — Wis. Stat. Chapter 111, Subchapter V; thereby interfering with their statutory right to bargain through SEA, their exclusive bargaining agent.
52. The Defendants' layoffs of SEA bargaining unit employees and Defendants' stated intent to continue such actions violate and/or are in derogation of the following statutes:

108.11 Agreement to contribute by employee void. (1) No agreement by an employee or by employees to pay any portion of the contributions or payments in lieu of contributions required under this chapter from employers shall be valid. No employee shall make a deduction for such purpose from wages. . . .

108.12 Waiver of benefit void. No agreement by an employee to waive the employee's right to benefits or any other rights under this chapter shall be valid. No employee shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to the employee's

eligibility, regardless of any prior erroneous representation with respect to such facts.

108.15 Benefits for public employees. (1) BENEFIT PAYMENTS. Benefits shall be payable from the fund to any public employee, if unemployed and otherwise eligible, based on “employment” by any government unit which is an “employer” covered by this chapter.

(2) REIMBURSEMENT FINANCING. The state and every other government unit which is an employer subject to this chapter shall be subject to all its provisions except that, in lieu of contributions under ss. 108.17 and 108.18, it shall reimburse the fund for benefits charged to its account.

108.24 Penalties. . . .

(3) Any person who knowingly makes a deduction from the wages of an employee because of liability for contributions or payments in lieu of contributions under this chapter or because of the employee’s potential right to benefits . . . or who, directly or indirectly by promise of reemployment or by threat not to employ or not to reemploy or by any other means, attempts to induce an employee to refrain from claiming or accepting benefits or to waive any other right under this chapter . . . shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 90 days or both; and each such deduction from wages, every day of such refusal or failure, and each such attempt to induce constitutes a separate offense.

53. Since the actions taken by the Defendants are unlawful, they are also *ultra vires* in nature.
54. The Department of Workforce Development (DWD) administers the Unemployment Insurance laws (Wis. Stat. Chapter 108.) DWD is also a Defendant in this action as an employer of SEA bargaining unit employees imposing layoffs as described herein. DWD does not have jurisdiction to regulate the imposition of layoffs by an employer and does not have the authority to issue injunctive relief. Notwithstanding these jurisdictional issues, DWD does not have provisions for hearing claims on a collective basis so that any claim implicated by the allegations herein would need to be heard individually.
55. Defendants’ actions cannot adequately be redressed by an action at law. Plaintiffs will suffer irreparable injury unless injunctive relief is granted by this Court. If the conduct of the Defendants is not enjoined, there is no practical remedy for the improper wage reductions imposed by the Defendants, there being a potential for approximately 1,120 individual claims **for each year** of the 2009-2011 biennium. Each such claim would involve a maximum of one week of benefits or a maximum of approximately \$388 consisting of a \$363 maximum benefit plus a temporary additional payment/stipend of \$25 (total: \$388) that is in effect. Furthermore, Wis. Stat. § 108.09 (8) (b) provides as follows:

(8) REPRESENTATION AND LIMITATION OF FEES.

(b) Any party in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under this chapter concerning such a dispute, may be represented by counsel or another agent; but no such counsel or agent may together charge or receive from an employee for all such representation in connection with such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits at issue unless the department has first approved a specified higher fee. This paragraph does not apply to any fee charged for representation before a court of law.

The difficulty in finding a lawyer willing to accept the statutory fee limitation may discourage claimants from seeking a remedy. There is no practical remedy at law for dealing with the self-help and unlawful methods adopted by the Defendants for limiting their (the respective agency's) unemployment compensation liability associated with the layoffs which are the subject of this action.

56. The State of Wisconsin and SEA Collective Bargaining Agreement for the 2007-2009 biennium remains unsettled; with the parties operating under the terms of an extension agreement relative to the Collective Bargaining Agreement covering the period May 26, 2006-June 30, 2007 (covering the 2005-2007 biennium). The parties have not yet begun negotiations for a Collective Bargaining Agreement for the 2009-2011 biennium (covering the period July 1, 2009-June 30, 2011) and no collective bargaining negotiations are scheduled, as of this time, regarding the SEA bargaining unit. In this context OSER, representing the State of Wisconsin, has refused to bargain in good faith regarding the furloughs and has retaliated against plaintiffs for attempting to exercise their collective bargaining rights under Wis. Stat. Chapter 111.
57. The Department of Transportation layoff schedule for the 2009-2010 fiscal year for its SEA bargaining unit employees, as shown in attached Exhibit E, ensures that at least one-third of all such state engineers will be on layoff status for the period of October 22, 2009 through November 17, 2009 and on four such days at least two-thirds of such bargaining unit engineers will be on layoff status. These layoffs are scheduled during the busiest period of the year when DOT is trying to close out its construction season. The duties of said state engineers include the design of transportation facilities (including highway and bridge construction), the management of transportation construction projects on behalf of the State and the administration of DOT contracts on behalf DOT.
58. The DOT has contracted out approximately 70% of its engineering work to private consultants at significantly higher cost than would be incurred if such work were performed by civil service employees in the SEA bargaining unit. DOT enters into "Master Agreements" with engineering consulting firms to purchase engineering services that do not relate to or involve any particular project. The contracted engineering services are then

available on an ad hoc basis to DOT, with DOT assigning work to the consulting engineers by the use of “work orders”. These consulting engineers number in the hundreds and report to work at DOT office facilities just like State Engineering Association bargaining unit employees. In many cases these consulting engineers have been working for DOT at DOT facilities continuously for years. These consulting engineers are being assigned work that would have been performed by Plaintiffs and State Engineering Association bargaining unit members during the layoffs which are the subject of this action. Consulting engineers closing out projects in which their firms or competing firms are involved presents a dire potential for conflicts of interest. The consultant engineers perform such work at significantly higher cost to the state/DOT/federal government. The layoff of the SEA bargaining unit employees during the construction season closing down process will greatly reduce the efficiency of the process and will result in substantial additional cost to state taxpayers, including the Plaintiffs herein. A copy of a sample cost-benefit analysis prepared by DOT for a Master Contract is attached hereto as Exhibit H and incorporated herein by reference. This cost-benefit analysis reflects a total cost difference of 46% with the cost of DOT civil service employees being \$65,791 cheaper than contracting out. Additional samples of specific project cost-benefit analyses (Exhibit I(a)-I(c)) are incorporated herein by reference and reflect potential cost savings of 33-36 percent if the work involved were assigned to DOT civil service employees. All of these contracts were nonetheless awarded to private consultants.

59. The State of Wisconsin receives a very substantial level of funding for the State’s transportation program from the federal government. Such funding is heavily regulated and conditioned upon the State of Wisconsin/DOT complying with such regulations. One of the regulations is that the State is required to maintain a sufficient work force to oversee the Federal Highway Administration (FHWA) transportation program in Wisconsin. The layoffs directed at engineering positions in the Department of Transportation amount to tens of thousands of productive and compensated work hours taken away from SEA bargaining unit members, including DOT Plaintiffs herein and in violation of the regulations by which the federal funding is governed. This risks the loss of substantial federal funding for Wisconsin Department of Transportation projects that are currently in progress.
60. Unless Defendants and their agents are restrained and enjoined, the Plaintiffs will be irreparably harmed with respect to the loss of employment opportunity during the improperly imposed layoff and with respect to their exercise of their protected concerted activities under the State Employment Labor Relations Act. Furthermore, Plaintiffs do not have an adequate remedy at law because of the multiplicity of actions required and the likely unavailability of counsel if actions are brought individually. The Plaintiffs are likely to ultimately succeed in this action due to the documented nature of the allegations and the clarity of the law with regard thereto

THEREFORE, Plaintiffs demand:

- a) That the Court order Defendants and their agents/subordinates to collectively bargain

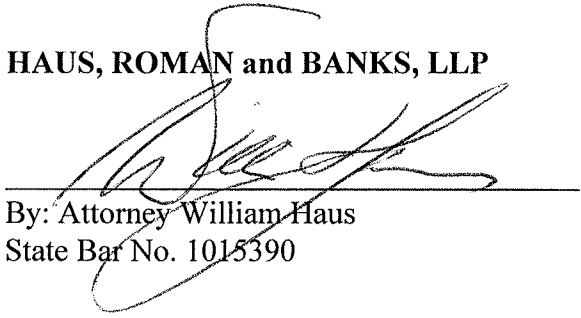
in good faith as to all mandatory subjects of bargaining;

- b) That the Court issue an order temporarily restraining Defendants and their agents/subordinates from continuing to implement the layoffs of State Engineering Association bargaining unit employees as described herein and to halt such layoffs forthwith, to the extent that such layoffs exceed the eight (8) days per employee for each year of the 2009-2011 biennium, pending final determination of this action and/or until further order of this Court;
- c) That the Court issue an order temporarily restraining the Defendants and their agents/subordinates from retaliating against the Plaintiffs for engaging in protected concerted activities including collective bargaining administration of and enforcement of their Collective Bargaining Agreement;
- d) That the Court issue a permanent injunction against Defendants and their agents/subordinates enjoining them from retaliating against the Plaintiffs for engaging in protected concerted activities, including collective bargaining administration of and enforcement of their Collective Bargaining Agreement;
- e) That the Court issue a permanent injunction enjoining the Defendants and their agents/subordinates from in any way interfering with the ability of SEA bargaining unit employees receiving the unemployment insurance compensation benefits to which they are entitled under the law, including laying off such employees for the purpose of recouping anticipated or actual unemployment compensation benefits, retaliating against SEA bargaining unit employees because of their eligibility for and anticipated collection of unemployment compensation insurance benefits or reducing the wages/incomes of SEA bargaining unit employees in order to recoup all or part of their cost or their anticipated cost of providing unemployment compensation benefits to their employees.
- f) That the temporary orders be issued immediately and without bond.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Dated in the City of Madison, Wisconsin this 17th day of November, 2009.

HAUS, ROMAN and BANKS, LLP



By: Attorney William Haus
State Bar No. 1015390

Haus, Roman and Banks LLP
148 East Wilson Street
Madison, Wisconsin 53703
Tel: (608) 257-0420
Fax: (608) 257-1383



EXECUTIVE ORDER # 285

**Relating to Furloughing State Employees in Response to
the Emergency Economic Situation Facing Wisconsin**

WHEREAS, the national and state economic downturn has resulted in an unprecedented budget deficit for the State of Wisconsin; and

WHEREAS, after cutting \$533 million in the current 2007-09 budget, and in response to a \$6.6 billion deficit in the upcoming biennium, I have proposed \$3 billion in reductions to spending; and

WHEREAS, in response to the budget deficit and the dire economic situation that exists, it is necessary for the State, in conjunction with implementing spending reductions, cost-saving measures and layoffs, to furlough state employees;

NOW, THEREFORE, I, JIM DOYLE, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the laws of this State, and specifically by sections 111.90, 230.34(2) and 230.35(5)(b) & (c) of the Wisconsin Statutes, do hereby:

1. Declare that the national economic situation and the budget deficit facing Wisconsin has resulted in an emergency situation as contemplated by sections 230.34(2) and 230.35(5)(c) of the Wisconsin Statutes, which grant the governor the authority to take certain actions, including those set forth herein;
2. Require employees of state agencies and the University of Wisconsin System (UWS), including faculty and academic staff, to take eight days or their equivalent (64 hours) of unpaid leave (furlough days) during each fiscal year of the 2009-11 fiscal biennium, for a total of sixteen furlough days (128 hours) in the 2009-11 biennium;
3. Direct state agencies and the UWS to develop furlough plans, in accordance with guidelines issued by the Office of State Employment Relations (OSER) and in compliance with federal and state laws and applicable state employee collective bargaining agreements, under which state employees, including UWS employees, shall take the equivalent of eight unpaid furlough days (64 hours) during each fiscal year of the 2009-2011 biennium;

EXHIBIT

A

TABULET



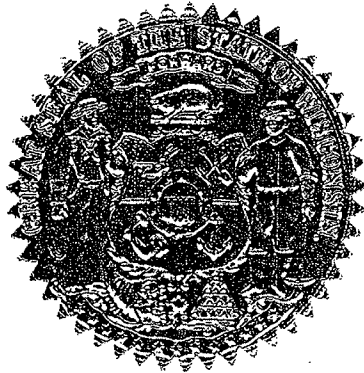
4. Direct state agencies and the UWS, as part of their furlough plans, to close their offices and facilities for business if possible on the following days:

- a. Monday, October 12, 2009, Columbus Day,
- b. Friday, November 27, 2009, Day after Thanksgiving,
- c. Monday, February 15, 2010, Presidents' Day,
- d. Friday, May 28, 2010, Friday before Memorial Day,
- e. Monday, October 11, 2010, Columbus Day,
- f. Friday, November 26, 2010, Day after Thanksgiving,
- g. Monday, February 21, 2011, Presidents' Day, and
- h. Friday, May 27, 2011, Friday before Memorial Day;

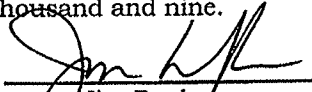
5. Authorize additional closures of state government and UWS offices and/or facilities and other deviations in the office hours or standard basis of employment that are necessary to implement the furlough plans described herein;

6. Direct state agencies and UWS to submit their furlough plans, which must be in compliance with federal and state laws as well as applicable state employee collective bargaining agreements, to the Office of State Employment Relations for approval; and

7. Direct the Office of State Employment Relations to work with state agencies and UWS to develop and approve furlough plans that provide flexibility to accommodate operational needs.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twenty-third day of June in the year two thousand and nine.


Jim Doyle
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

MEMORANDUM OF UNDERSTANDING FURLOUGH IMPLEMENTATION

The parties met and discussed implementation of furloughs for state employees which are being taken during the 2009-2011 biennium in response to the emergency economic situation facing the State of Wisconsin. It was recognized that implementation of furloughs is complex due to the fact that they cannot be implemented in a uniform manner for all employees due to an employee's status under the Fair Labor Standards Act, worksite location, and a variety of other factors. Nevertheless, the parties agreed that furloughs should be implemented in a fair and equitable manner and with sufficient flexibility to accommodate different operational needs which, in turn, may aid in minimizing the impact on employees.

For these reasons and notwithstanding current contract language, the parties agree that the State has the right to utilize any of the four options listed under A., below, as well as the options available under current contract language, singularly or in combinations thereof, to administer state agency furlough plans announced to date and referenced above. The Association recognizes the State's right to take the action listed in the options listed below as well as the actions permitted to be taken under the current contract language.

A. Furlough Options

1. Option 1 – Designation of Specific Days for Furlough. OSER has designated four days for furlough each fiscal year when agencies will close offices for business, where operational needs permit doing so. Agencies, with OSER approval, may designate additional days in order to meet operational needs. OSER-designated furlough days are:
 - Monday, October 12, 2009, Columbus Day
 - Friday, November 27, 2009, Day after Thanksgiving
 - Monday, February 15, 2010, Presidents' Day
 - Friday, May 28, 2010, Friday before Memorial Day
 - Monday, October 11, 2010, Columbus Day
 - Friday, November 26, 2010, Day after Thanksgiving
 - Monday, February 21, 2011, Presidents' Day
 - Friday, May 27, 2011, Friday before Memorial Day
2. Option 2 – Uniform Reduction in Salary and Administration of New Flexible Furlough Days. Employees' gross wages (inclusive of add-ons but exclusive of overtime and differential pay) will be reduced a determined percentage each pay period over the next two fiscal years and eight flexible furlough days will be created each fiscal year that employees may then schedule, with supervisory approval.
3. Option 3 – Uniform Reduction in Work Hours. The current 40 hour work week will be reduced a determined number of hours each week over the next two fiscal years. This could be accomplished either through a permanent shortening of office hours or staggering start and stop times for employees.

EXHIBIT

B

4. Option 4 – Flexibility in Determination of Furlough Days and Hours. The agency, with OSER approval, will designate certain days for furlough based on specific operational needs, such as closing offices/sections the same day each month.
- B. If furlough administration issues arise during the term of this MOU, at the request of either party, OSER and the Association President will meet at a mutually agreed time to discuss those issues.
- C. OSER and the Association President will meet, if necessary, at a mutually agreed time in June, 2010, to review and discuss administration of the furloughs.
- D. This MOU will expire on June 30, 2011, unless the parties mutually agree to extend.

FOR THE ASSOCIATION:

FOR THE STATE:

Mark Klipstein, President
State Engineering Association

Date

Jennifer Donnelly, Director
Office of State Employment Relations

Date

DRAFT



August 17, 2009

Mark Klipstein, President
State Engineering Association
4510 Regent Street
Madison, WI 53705

Dear Mr. Klipstein:

In accordance with Article 8/2/1/A.1., of the labor agreement, the Office of State Employment Relations (OSER) hereby notifies the State Engineering Association (SEA) of impending layoffs or other personnel actions involving members of your bargaining unit across all state agencies.

This action is necessary due to the recently enacted biennial budget bill which deleted funds from all agency budgets in the dollar equivalent of eight furlough days in each of the next two fiscal years. Agencies must take action to decrease their expenditures, in each year of the biennium, by the equivalent of these budget reductions.

Staff from OSER met with SEA representatives on July 7, 2009, to discuss implementation of furloughs for SEA-represented employees. OSER presented a Memorandum of Understanding (MOU) that included options for implementing the furloughs that would have a less harsh result for SEA members than if the furloughs were implemented under current language included in the SEA Agreement. Recent communication to OSER indicated that SEA was not interested in entering into the MOU, consequently, state agencies will implement furloughs under existing contract language.

The SEA contract allows the State to implement permanent layoff provisions or temporary layoffs of less than twenty-one consecutive calendar days. While notice of temporary layoff is not required under the contract, I wanted you to be aware that this is also an option that state agencies may utilize in order to accomplish the required budget cuts.

Currently, the number of employees represented by SEA affected by these layoffs is unknown. Agencies will notify their employees individually according to the provisions of the collective bargaining agreement.

The scheduled effective date of any layoffs or temporary layoffs may vary by agency depending on which action is taken and the dollar amount of reductions required.

Sincerely,

James A. Pankratz, Administrator
Division of Compensation & Labor Relations

cc: Agency Human Resources Directors

From: Feggestad, Bonnie L - DOT on behalf of Chesnik, Kevin - DOT
Sent: Wednesday, September 23, 2009 2:06 PM
Subject: This email is being sent to all DTSD employees represented by the State Engineering Association (SEA)

The Division has now received direction on implementation for SEA Temporary Layoff procedures. As is outlined below from BHRS, the division management team is working to define all SEA employees temporary layoff periods under the options provided by Oct 1, 2009.

Once the identified temporary layoff periods have been collected and returned to BHRS, individual SEA employees will be notified of their temporary layoff dates during the week of October 5, 2009. Notification of individual SEA employees of their temporary layoff date will be from their respective supervisor and via mail during the week of October 5th.

We recognize the difficulty of this issue for all employees. The division is committed to carrying out the direction provided, while doing our best to preserve the continuing operations and services expected of us all. If there are any questions, please contact your supervisor or Randy Sarver. Thank you.

Kevin

From: Sarver, Randy - DOT
Sent: Wednesday, September 23, 2009 10:02 AM
To: Sarver, Randy - DOT
Subject: SEA Temporary Layoff Update - 9/23/09

This email is being sent to the WisDOT Board of Directors, staff in the Bureau of Human Resource Services, the DTSD HR/Payroll Coordinators, all supervisors/managers in DTIM and DTSD and applicable supervisors/managers in other divisions that have employees represented by the State Engineering Association (SEA).

With no signed Memo of Understanding (MOU) on furlough implementation between the State Engineering Association (SEA) and the Office of State Employment Relations (OSER), the department is continuing our planning for implementing the temporary layoff provisions in the SEA labor agreement.

The department has received direction from OSER indicating the length of the temporary layoff for each SEA members will be **nine (9) consecutive days**. This number was arrived at by determining the value of days on temporary layoff, as well as the State's potential liability for unemployment compensation. These temporary layoffs will be without loss of benefits. In addition, the temporary layoffs will not affect WRS earnings or creditable service for SEA members.

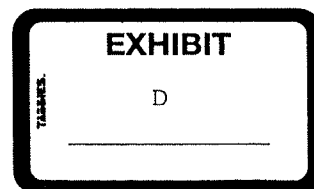
BHRS will be sending a spreadsheet to each DTSD Region and Bureau, as well as the other divisions that have SEA members. This spreadsheet has a listing of all SEA members by that region/bureau or division. Each division should complete the "Option" column with either Option A, B or C (see below). This must be completed and returned to me by Thursday, October 1st. BHRS will then create temporary layoff letters and mail them to employees. These are the only three options supervisors will use when identifying the temporary layoffs for SEA members:

Option A.

- October 22-23, October 26-30, November 2-3

Option B.

- October 29-30, November 2-6, November 9-10



Option C.

- **November 5-6, November 9-13, November 16-17**

Attached to this email is a document providing guidance as to how supervisors/managers should plan for the temporary layoffs. Supervisors/managers with SEA members should read through this guidance document.



SEA Temp Layoff
Guidelines.doc...

If anyone has any questions, please don't hesitate to contact me. Thank you in advance for your help and quick turnaround.

Randy Sarver
Human Resources Program Officer
WisDOT - Bureau of Human Resource Services
randy.sarver@dot.wi.gov

**Department of Transportation
Guidelines for Supervisors/Managers for
Scheduling Temporary Layoffs for State Engineering Association (SEA) members**

Guidelines:

1. Number of temporary layoff days for each SEA member will be 9 consecutive days for each full time permanent employee (or prorated based on FTE percentage). This is as a result of potential unemployment compensation liability.
2. Temporary layoffs will be scheduled over a three-week period for each SEA employee, with the following provisions:
 - a. First week – Thursday and Friday
 - b. Second week – Monday through Friday
 - c. Third week – Monday and Tuesday
3. Temporary layoffs for all department SEA members will be staggered using one of the three below options.
 - Option A.**
 - 1 October 22-23, October 26-30, November 2-3**
 - Option B.**
 - 2 October 29-30, November 2-6, November 9-10**
 - Option C.**
 - 3 November 5-6, November 9-13, November 16-17**
4. Temporary layoffs should be scheduled with appropriate coverage and operational needs in mind. Temporary layoffs do not have to be scheduled by classification, work unit or seniority.
5. Temporary layoffs do not apply to employees in project project positions. Those employees are not represented by SEA. They are subject to the department's furlough implementation plan.
6. Employees will have their schedules changed during the three weeks of temporary layoff to be scheduled five 8-hour days (or prorated based on FTE percentage).
7. Employees cannot be in stand-by status or on call during times of temporary layoffs. Employees may not be contacted via telephone or email during their temporary layoff. Employees should be directed not to work during their temporary layoff.
8. Supervisors and managers should review pre-approved annual leave when assigning the temporary layoff option. Pre-approved annual leave may be canceled accordingly if a temporary layoff must be scheduled over that time.
9. Employees on Leave without Pay (LWOP) are also subject to temporary layoffs. Temporary layoffs may be scheduled during the employee's leave and may account for the full complement of temporary layoff days.
10. Temporary layoffs should not result in overtime for other employees who may need to work to cover for employees in temporary layoff status.
11. Supervisors and managers should select the Option (see above options) for each of their employees, which provides the dates of the temporary layoff. Divisions will indicate this on the "Temporary Layoff Schedule" spreadsheet which will be sent by BHRS.

EXHIBIT

E

12. **Completed spreadsheets must be returned to BHRS by October 1, 2009.** BHRS will tentatively send out temporary layoff letters to SEA employees (cc:ing supervisors) during the week of October 5th; letters will include notice of their schedule change to five 8-hr days (or prorated), the dates of their temporary layoffs, information on TEAL coding and information on health insurance premiums.

End.



Division of Business Management
Bureau of Human Resource Services
PO Box 7915
Madison, WI 53707-7915

Jim Doyle, Governor
Frank J. Busalacchi, Secretary
Internet: www.dot.wisconsin.gov

Telephone: 608-266-2615
Teletypewriter (TTY): 608-267-0259
Facsimile (FAX): 608-264-9972

October 6, 2009

DENNIS KEYZER
1241 CAROLE LANE
GREEN BAY, WI 54313

Dear DENNIS:

In August 2009, the Office of State Employment Relations (OSER) and the Bureau of Human Resource Services (BHRS) notified the State Engineering Association (SEA) members of impending layoffs. This notification was necessary due to the biennial budget bill which deleted funds from all agency budgets in the dollar amount equivalent of eight furlough days in each of the next two fiscal years. Due to the lack of a Memo of Understanding (MOU) between SEA and OSER on furlough implementation, the department must take action to decrease expenditures by the equivalent of these budget reductions. Although formal notice of temporary layoff is not required under the SEA collective bargaining agreement, this letter is being provided to you to inform you of your temporary layoff dates so you may plan accordingly.

The length of the temporary layoff for each SEA member has been established at nine (9) consecutive work days (13 consecutive calendar days) based on 100% FTE. The number of days will be prorated for less than full-time employees. This number was arrived at by determining the value of days on temporary layoff, as well as the State's potential liability for unemployment compensation. Your temporary layoff will occur on the following work days:

- **October 22-23, October 26-30, November 2-3, 2009**

During all three work weeks when your temporary layoff will occur, you will be required to change your schedule to eight (8) hours each day (or prorated by your FTE %). You will be required to enter your new schedule for these three weeks in TEAL and work any scheduled days accordingly. Any pre-approved annual leave during your temporary layoff will be canceled. Any pre-approved leave (absent a medical leave) during the weeks the department is implementing temporary layoffs may also be canceled due to operational needs. Employees should work with their supervisor to reschedule canceled leave. Employees are directed not to come to work or complete any work activities at home during their temporary layoff. In addition, the department's policy related to outside employment or secondary employment applies during this period of temporary layoff.

Although the SEA contract does not provide for "no loss of vacation and sick leave credits" during periods of temporary layoff, the Employer will not reduce these two benefits during your temporary layoff. This is consistent with how temporary layoffs were treated during the 2003-2005 biennium. In addition, these temporary layoffs will have no effect on your WRS earnings or creditable service. Treating benefits in this manner makes implementation of your temporary layoff somewhat more consistent with how furloughs are being administered for non-represented employees and for represented employees under their respective MOUs. This non-reduction of benefits applies only to those temporary layoffs imposed in lieu of furloughs.

There will also be no effect on your health insurance coverage during your temporary layoff. Your health insurance premiums are paid two months in advance. Due to the timing of when health insurance premiums are taken out of your pay check, you will not miss a health insurance deduction during your temporary layoff. If you have concerns about any payroll deductions during your temporary layoff, please contact your payroll coordinator.

It is unfortunate we must take this action and understand the burden this will place on you. These are difficult economic times and all department employees are being impacted by the budget reductions.

Sincerely,

Randy T. Sarver

Randy T. Sarver, Human Resources Program Officer

cc: personnel file

EXHIBIT

F

