

STATE OF WISCONSIN

CIRCUIT COURT

GRANT COUNTY

MICHAEL S. JOHNSON (EMIR SIEIDI

MIKHA'EL ET SHABAZZ),

XAVIER J. RUIZ,

PAUL PRICE,

~~JOHN BACHER~~, AND ALL SIMILARLY

SITUATED

PLAINTIFF(S)

01CV 329

CASE NO. _____

V.

SECRETARY OF DEPARTMENT OF CORRECTIONS

JONAS LITSCHER,

WARDEN GERRARD BERGE,

SECURITY DIRECTOR BOUGHTON,

UNIT MANAGERS JOHN SHARPE,

VICKIE SHARPE, LONDA HODDY TRIPP,

AND TIM HAINES

CLERK OF CIRCUIT COURT

FILED

JUL 24 2001 ah

DIANE PERKINS, Clerk
GRANT COUNTY, WIS.

DEFENDANT(S)

"COMPLAINT UNDER THE CIVIL RIGHTS ACT 42 U.S.C § 1983"

"NATURE OF THE CAUSE"

THIS IS A CIVIL RIGHTS ACTION ALLEGING VIOLATION OF PLAINTIFFS' RIGHTS UNDER THE 1ST, 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND 42 U.S.C § 1983. PLAINTIFFS SEEK INJUNCTIVE, DECLARATORY, AND MONETARY RELIEF.

"JURISDICTION"

THE COURT HAS JURISDICTION PURSUANT 28 U.S.C § 1331, WIS STATS 801.04(1)(2) AND 801.05(1)(3)

"EXHAUSTION"

PLAINTIFFS HAVE EXHAUSTED ALL ADMINISTRATIVE REMEDIES AVAILABLE THROUGH THE DEPARTMENT OF CORRECTIONS (D.O.C), INMATE COMPLAINT REVIEW SYSTEM (I.C.R.S) PROCESS BY FILING COMPLAINTS FROM 1ST STEP TO LAST STEP, HAVING THEM DENIED ON EACH CLAIM.

PARTIES OF ACTION

PLAINTIFFS: MICHAEL S. JOHNSON (EMIR SIEIDI, MIKHA'EL ET SHABAZZ) (HEREINAFTER 1ST PLAINTIFF), XAVIER J. RUIZ (HEREINAFTER 2ND PLAINTIFF), PAUL PRICE (HEREINAFTER 3RD PLAINTIFF)

CORRESPONDENCE

~~AND JOHN BACHER~~ (HEREIN THE PLAINTIFF) ARE ~~Both~~ NATURAL BORN CITIZENS OF THE UNITED STATES OF AMERICA, CURRENTLY INCARCERATED TO THE Supermax Correctional Institution (S.M.C.I.) P.O. Box 9900, Boscobel, WI 53805, AND WERE AT ALL TIMES RELEVANT TO THIS ACTION.

DEFENDANTS: GERALD BERGE IS EMPLOYED AS WARDEN OF S.M.C.I.; SECURITY DIRECTOR BOUGHTON IS EMPLOYED AS SECURITY DIRECTOR OF S.M.C.I.; JOHN SHARPE IS EMPLOYED AS FOXTROT UNIT MANAGER, OF S.M.C.I., VICKIE SHARPE IS EMPLOYED AS PROGRAM DIRECTOR AND FORMER UNIT MANAGER OF S.M.C.I. LINDA HODDY TRIPP IS EMPLOYED AS UNIT MANAGER OF CHARLIE UNIT OF S.M.C.I., TIM HAINES IS EMPLOYED AS UNIT MANAGER OF FOXTROT UNIT AT S.M.C.I.; ALL DEFENDANTS ARE LOCATED AT S.M.C.I 1101 MORRISON DRIVE. P.O. BOX 9900 BOSCOBEL, WI 53805 AND SECRETARY JON LITSCHER IS EMPLOYED AS SECRETARY OF DEPARTMENT OF CORRECTIONS (D.O.C) AND MAY BE LOCATED AT DEPARTMENT OF CORRECTIONS P.O. BOX 7925 MADISON, WI 53707. ALL OF THE ABOVE DEFENDANTS ACTED UNDER COLOR OF STATE LAW AND ARE BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES.

"FACTS"

- 1) PLAINTIFFS (PTIFFS) ARE CONFINED TO S.M.C.I. IN WHICH THEY ARE FULLY REQUIRED TO LEAVE ALL PERSONAL NON LEGAL OUT-GOING MAIL UNSEALED OR NOT HAVE THEIR MAIL PROCESSED BY THIRD SHIFT PRISON OFFICIALS.
- 2) ON DECEMBER 17TH 1999 DEFENDANT GERALD BERGE ALLOWED FORMER SECURITY DIRECTOR JAMES PARISI TO IMPLEMENT A ARBITRARY "BLANKET MAIL POLICY" ON ALL PRISONERS' OUT-GOING MAIL.
- 3) DEFENDANTS HAVE DELIBERATELY IMPLEMENTED A ARBITRARY AND UNCONSTITUTIONAL "BLANKET MAIL POLICY" THAT IS CONTRARY TO DEFENDANTS' OWN DEPARTMENTAL RULES AND REGULATIONS GOVERNING OUT-GOING MAIL. WIS. D.O.C 5309.

1ST PLAINTIFF MICHAEL JOHNSON AND 2ND PLAINTIFF XAVIER RUIZ ON NUMEROUS OCCASIONS HAVE WRITTEN FORMAL COMPLAINTS TO EACH DEFENDANTS IN CONCERN OF THE "BLANKET MAIL POLICY", HOW IT WAS UNCONSTITUTIONAL, HOW DEFENDANTS WAS PURPOSELY MISQUOTING AND VIOLATING ^{LEGAL} THEIR OWN DEPARTMENTAL RULES AND REGULATIONS. DEFENDANTS REFUSED TO CHANGE THE BOGUS POLICY.

5) On 12-2-00 AND 12-17-00 1st Plaintiff JOHNSON CONTACTED Security Director BOUGHTON by WRITTEN REQUEST CONCERNING THE "OUT-going blanket mail policy" ASKING WHAT IS THE PENOLOGICAL INTEREST AND REASON BEHIND THE policy AND S. DIRECTOR BOUGHTON REFUSED TO ANSWER MY REQUEST AND REFERRED ME TO MY INMATE COMPLAINT DECISION.

6) DEFENDANT SECRETARY Jon E. LITSCHER HAS THE FINAL SAY SO OVER A INMATE'S COMPLAINT AGAINST THE policies AND practices of A INSTITUTION. PLAINTIFFS' ALL HAVE BEEN DENIED ADMINISTRATIVE REDRESS OR THE REVIEWING OF THEIR INMATE COMPLAINT APPEALS, CHALLENGING THE ARBITRARY, CAPRICIOUS AND UNCONSTITUTIONAL "blanket mail policy" ON S.M.C.I INMATES OUT-going CORRESPONDENCE. EACH DEFENDANT HAS A OBLIGATORY DUTY TO UPHOLD THE Departmental rules AND regulations of Supermax Correctional Institution Administrative Cases D.O.C Handbook.

7) DEFENDANTS' BERGE & FORMER S. DIRECTOR J. Parisi ENACTED THIS policy SOLELY BECAUSE THEY WANTED TO CENSOR PLAINTIFFS' OUT-going CORRESPONDENCE EXPOSING THE RACIAL DISCRIMINATION, CRUEL AND UNUSUAL TREATMENT, ARBITRARY AND CAPRICIOUS practices AT Supermax Correctional Institution. PARTICULARLY MORE SO WITH PLAINTIFF MICHAEL V. JOHNSON BECAUSE HE & ANOTHER PRISONER ARE THE PRISONERS WHO FILED JONES V. JOHNSON V. BERGE ET AL W.D. 2000 CHALLENGING THE TOTALITY OF CONDITIONS AT S.M.C.I.

8) DEFENDANTS' BERGE, Vickie Sharpe, Tim Haines, John Sharpe AND LINDA HODDY TRIPP ADMITTEDLY KNOWS THAT THE CURRENT "blanket mail policy" ON THE OUT-going CORRESPONDENCE IS ARBITRARY AND CAPRICIOUS, BUT EACH DEFENDANT ONLY QUOTES THEIR FAVORITE SAYING, WHICH IS:—"THIS IS SUPERMAX AND WE DO THINGS DIFFERENT HERE AND WE DO WHAT WE WANT HERE." THE COURT SHOULD NOTE THAT THE CURRENT practice IS ONLY BEING UNEQUALLY APPLIED TO Supermax PRISONERS AND NOT ANY OTHER WISCONSIN DEPARTMENT OF CORRECTIONS PRISONERS.

9) THEIR ISNT ANY "LEGITIMATE PENOLOGICAL INTEREST" INVOLVED IN THIS S.M.C.I policy BUT TO CENSOR Plaintiff's THOUGHTS AND VIEWS ABOUT S.M.C.I. WISCONSIN DEPARTMENT OF CORRECTIONS (D.O.C) 309 HAVE GUIDELINES ESTABLISHED IN PLACE TO ADDRESS PRISONER'S OUT-GOING AND INCOMING MAIL THAT MAY POSSIBLY POSES A THREAT TO INSTITUTIONAL ORDER, PRISON STAFF AND THE PUBLIC. THIS HONORABLE COURT SHOULD NOT STRAY FROM THOSE DEPARTMENTAL GUIDELINES.

1ST CAUSE OF ACTION

10) DEFENDANTS ARE LIABLE FOR VIOLATING Plaintiff's 1ST AMENDMENT RIGHT OF THE UNITED STATES CONSTITUTION BY SUBJECTING THEM TO DENIALS OF THEIR RIGHTS TO FREE SPEECH, FREEDOM OF EXPRESSION AND NON-CENSORING OF OUT GOING CORRESPONDENCE, AND/OR DIRECTING, PROMULGATING, OR FAILING TO PREVENT, SUCH VIOLATIONS OF Plaintiff's RIGHTS WHICH WERE AND ARE CLEARLY ESTABLISHED BY LAW. (SEE COMP. AT 1-4 INTER ALIA).

2ND CAUSE OF ACTION

11) DEFENDANTS ARE LIABLE FOR VIOLATING Plaintiff's 5TH AND 14TH AMENDMENT RIGHT OF THE UNITED STATES CONSTITUTION BY SUBJECTING THEM TO ARBITRARY AND CAPRICIOUS PRACTICES AND DRASTICALLY UNEQUAL TREATMENT, THOUGH THEY ARE WISCONSIN PRISONERS AND SIMILARLY SITUATED AND GOVERNED BY EXACT SAME DEPARTMENTAL RULES AS OTHERS; AND BY DOING SO, INTER ALIA, WITHOUT ANY FORM OF DUE PROCESS; BY DIRECTING, PROMULGATING, OR FAILING TO PREVENT, SUCH VIOLATIONS OF Plaintiff's RIGHTS, WHICH WERE AND ARE CLEARLY ESTABLISHED BY LAW. (SEE COMP. AT 5-8 INTER ALIA).

"TRIAL BY JURY"

Plaintiff's DEMANDS A TRIAL BY JURY, SHOULD THEY NOT WIN BY PRE-TRIAL JUDGEMENT.

"RELIEF REQUESTED"

Plaintiffs SEEK INJUNCTIVE RELIEF: PROHIBITING DEFENDANTS FROM FORCING THEM TO LEAVE THEIR OUT-GOING MAIL UNSEALED FOR THE READING BY S.M.C.I PRISON OFFICIALS, PROHIBITING DEFENDANTS FROM PURPOSELY DISREGARDING

THE MANDATORY GUIDELINES OF DEFENDANT'S DEPARTMENTAL RULES OF WIS. D.C. 309 RELATING TO OUT-GOING, PROHIBITING DEFENDANTS' FROM THE CENSORSHIP OF PLAINTIFFS AND ALL SIMILARLY SITUATED OUT-GOING MAIL, AND PROVIDE THAT PLAINTIFFS' BE ALLOWED TO SEAL OUT-GOING CORRESPONDENCE WITHOUT PRISON OFFICIAL INSPECTION AT ANY TIME UNLESS PRISON OFFICIALS HAVE LEGITIMATE REASON TO BELIEVE PLAINTIFFS OUT-GOING MAIL POSES A ~~SECURITY~~ LEGITIMATE SECURITY RISK, PROVIDE THAT DEFENDANTS ADHERE TO GUIDELINES OF WIS D.C. 309.

2)(A) PLAINTIFFS SEEKS COMPENSATORY DAMAGES OF \$25,000 FROM EACH DEFENDANT IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES FOR EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL VIOLATION THEY'RE FOUND IN VIOLATION OF, IN INDIVIDUAL AND OFFICIAL CAPACITY.

3)(A) PLAINTIFFS SEEKS PUNITIVE DAMAGES IN THE AMOUNT OF \$35,000 FROM EACH DEFENDANT IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, AND \$ ~~25,000~~ IN THEIR OFFICIAL CAPACITY AND INDIVIDUAL CAPACITY FOR EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL VIOLATION THEY'RE FOUND IN VIOLATION OF.

4)(A) PLAINTIFFS' ALSO SEEK DECLARATORY JUDGEMENT FINDING THAT DEFENDANT DID IN FACT VIOLATE EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL RIGHT ALLEGED TO HAVE BEEN VIOLATED.

5)(A) PLAINTIFFS ALSO SEEK ANY AND ALL OTHER RELIEF THE COURT DEEMS NECESSARY, OR ALLOWED, INCLUDING BUT NOT LIMITED TO THE COSTS OF PURSUING THIS ACTION AND ATTORNEY FEES SHOULD ONE APPEAR LATER.

" VERIFICATION "

PLAINTIFFS, MICHAEL V. JOHNSON, XAVIER RUIZ, PAUL PRICE AND ~~JIM BOGUE~~, UNDER THE PENALTY OF PERJURY PURSUANT TO 28 U.S.C. § 1746 DO ATTEST THAT ALL OF THE ABOVE ALLEGEMENTS ARE TRUE AND CORRECT.

DATED THIS _____ DAY OF MARCH 2001

Respectfully Submitted,

LEGAL

CORRESPONDENCE

2nd Plaintiff ~~John Baker~~
~~JAMES BAKER~~

3rd Plaintiff Paul Price
Paul Price

2nd Plaintiff ~~Xavier J. Ruiz~~
XAVIER J. RUIZ

1st Plaintiff ~~Michael S. Johnson~~
MICHAEL S. JOHNSON

MICHAEL S. JOHNSON (EMIR SIGIDI MEKAIL
EL-SHABAZZ),
XAVIER J. RUIZ,
PAUL PRICE,
~~JOHN BACHER~~ AND ALL SIMILARLY

CLERK OF CIRCUIT COURT
FILED

JUL 24 2001

DIANE PERKINS, Clerk CASE NO#

01CV 329

SITUATED,
Plaintiffs

v.
GERALD BERGEE, JON E. LITSCHER,
S. DIRECTOR BOUGHTON, JOHN SHARPE,
WICKIE SHARPE, LINDA HODDY TRIPP,
AND TIM HAINES

Defendants

MEMORANDUM OF LAW IN SUPPORT
OF 42 U.S.C § 1983 ACTION

Plaintiffs, MICHAEL S. JOHNSON, XAVIER RUIZ, PAUL PRICE AND ~~JOHN BACHER~~, ARE ALSO PETITIONERS SEEKING LEAVE TO PROCEED IN FORMA PAUPERIS; AND IN SUPPORT THEREOF, HEREBY CITES LAWFUL AUTHORITY TO THE MERITS OF EACH CLAIM RAISED IN THIS ACTION.

"LAWFUL AUTHORITIES ON CLAIM."

1. COMPLAINT AT 1-3:

See PROCTOR V. MARTINEZ 416 U.S. 396 415-16 (1974) (THE COURT HELD THAT RESTRICTIONS ON OUT-GOING CORRESPONDENCE ARE VALID ONLY WHEN "GENERALLY NECESSARY" TO FURTHER A VALID PENAL INTEREST. 416 U.S. AT 414.)

See THORNBURGH V. ABBOTT 490 U.S. 401, 413-14, 109 S. CT. 1874 (1989) (

"FIRST, THE REGULATION OR PRACTICE IN QUESTION MUST FURTHER AN IMPORTANT OR SUBSTANTIAL GOVERNMENTAL INTEREST UNRELATED TO THE SUPPRESSION OF EXPRESSION. PRISON OFFICIALS MUST SHOW THAT A REGULATION AUTHORIZING MAIL CENSORSHIP FURTHERS ONE OR MORE OF THE SUBSTANTIAL GOVERNMENTAL INTERESTS OF SECURITY, ORDER, AND REHABILITATION. SECOND

THE LIMITATION OF FIRST AMENDMENT FREEDOMS MUST BE NO GREATER THAN IS NECESSARY OR ESSENTIAL TO THE PROTECTION OF THE PARTICULAR GOVERNMENTAL INTEREST INVOLVED. THUS A RESTRICTION ON INMATE CORRESPONDENCE THAT FURTHERS AN IMPORTANT OR SUBSTANTIAL INTEREST OF PENAL ADMINISTRATION WILL NEVERTHELESS BE UNVALID IF ITS SWEEP IS UNNECESSARILY BROAD." ID AT 413-414, 94 S. CT. AT 1881.

SEE Daniels v. Williams 474 U.S. 397, 331 (1986), HOLDING THAT "FIRST, THE CLAUSE INCORPORATED MANY OF THE SPECIFIC PROTECTIONS DEFINED IN THE BILL OF RIGHTS. A PLAINTIFF MAY BRING SUIT UNDER § 1983 FOR STATE OFFICIALS' VIOLATIONS OF HIS RIGHTS TO E.G. FREEDOM OF SPEECH OR FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES. SECOND, THE DUE PROCESS CLAUSE CONTAINS A SUBSTANTIVE COMPONENT THAT BARS CERTAIN ARBITRARY WRONGFUL GOVERNMENT ACTION REGARDLESS OF THE FAIRNESS OF THE PROCEDURES USED TO IMPLEMENT THEM. Daniels AT 331, ID. CITED BY Colon v. Schneider 899 F.2d 660, 666 (7th Cir. 1990). (THIS REFERS SPECIFICALLY TO THE 14th AMENDMENT, AND FOR CAUSE OF ACTION/CLAIM THIS IS THE CONTEXT IN WHICH PETITIONERS SEEK SUPPORT FOR COMMON BILL OF RIGHTS VIOLATIONS AND SUBSTANTIVE DUE PROCESS

LASTLY SEE Turner v. Safley 107 S. CT. 2254 (1987) (THE TURNER TEST SHOULD BE APPLIED IN DETERMINING WHETHER THE ARBITRARY AND UNREASONABLE CENSORSHIP OF PLAINTIFFS MAIL RAISES REASONABLE AND LEGITIMATE SECURITY RISKS)

2. COMPLAINT AT 4-17:

SEE Bell v. Wolfish 441 U.S. 520, 546, 99 S. CT. 1861, 1878, 60 L. ED. 2D 447 (1979) ("WHILE MAINTAINING INSTITUTIONAL AND SECURITY AND PRESERVING INTERNAL ORDER AND DISCIPLINE ARE ESSENTIAL GOALS THAT MAY REQUIRE LIMITATION OR RETRACTION OF THE RETAINED CONSTITUTIONAL RIGHTS; OF PRISONERS DEFENDANTS WILL LIKE THE COURT TO BELIEVE THAT IMPLEMENTING A BLANKET MAIL POLICY CONTRARY TO ITS OWN RULES AND REGULATIONS IS A PART OF SECURITY AND INSTITUTIONAL ORDER TO ALLEGESLY PROTECT THE PUBLIC BUT THAT'S GENERALLY TOO BROAD AS DEFINED IN Thornburgh v. Abbott."

TO THE EXTENT THE blanket mail policy AND censoring of all PRISONER'S MAIL IS AN "EXAGGERATED RESPONSE" TO THE valid considerations of ORDER, discipline AND Security. See Pell v. Procunier 417 U.S. 817, 826-27, 94 S.Ct. 2800, 2806, 41 L.Ed.2d 495 (1974)

"THE COURT MUST THEREFORE CONCLUDE THAT THE CENSORSHIP OF ALL OUT-GOING MAIL IS A RESTRICTIVE CONDITION NOT REASONABLY RELATED TO A 'LEGITIMATE GOAL'."

See also Cleavinger v. Saxner 4174 U.S. _____, _____ S.Ct. 496, 504, 88 L.Ed.2d 567 (1985) (THE SUPREME COURT ~~has~~ REPEATEDLY HELD THAT ROUTINE AND AUTOMATIC ARGUMENTS TO THE EFFECT THAT "EVERY STEP TAKEN TO PROTECT CONSTITUTIONAL RIGHTS OF PRISONERS WILL LEAD TO A BREAKDOWN IN INSTITUTIONAL DISCIPLINE AND SECURITY" ARE INADEQUATE TO SUPPORT RESTRICTIVE PRISON REGULATIONS OR POLICIES.)

3. COMPLAINT AT 8-9:

See STATE EX REL RILEY v. DHS 151 Wis. 2d 618, 623, 445 N.W. 2d 693 (Ct. App. 1989) (AN AGENCY IS BOUND BY THE PROCEDURAL REGULATIONS WHICH ITSELF HAS PROMULGATED.) See also Caldwell v. Miller 790 F.2d 589 (7th Cir. 1986) (THE INMATE HAS A RIGHT TO EXPECT PRISON OFFICIALS TO FOLLOW ITS POLICIES AND REGULATIONS. PLAINTIFFS EXPECT DEFENDANTS TO DO THE SAME. THE WIS. D.C. 309 PROMULGATES THE GUIDELINES AND REGULATIONS IN ADDRESSING INMATE'S OUT-GOING CORRESPONDENCE AND SPECIFICALLY STIPULATES CENSORSHIP AND RANDOM READING OF INMATE'S OUT-GOING MAIL IS PROHIBITED. THIS HONORABLE COURT SHALL HOLD DEFENDANTS TO THEIR OWN RULES ALSO.

See also WIS. STATS. § 227.10(c) holds THAT EACH PERSON AFFECTED BY THE RULE IS ENTITLED TO FULL BENEFIT OF IT. WIS. STATS § 227.11 MANDATES THAT EACH AGENCY MUST CORRECTLY INTERPRET A STATUTE ON ITS BASIS A RULE ON (AS IN ADMIN. CODE) AND THE AGENCY ONLY HAS AUTHORITY TO ACT IN SO MUCH AS IT FOLLOWS ITS OWN RULES (LAWFUL RULES)

WI. STATS. § 227.11(1)(2)(A) AND (C). IF THE AGENCY VIOLATES ITS OWN RULES. IT IS ACTING CONTRARY TO STATE LAW, AND IT'S AUTHORITY IN ADDITION, ART 1, SEC. 9, OF THE WI. CONST. HOLDS THAT EVERY PERSON WRONGED IS ENTITLED TO REMEDY. BASED UPON THIS DEFENSE AT LITSER IS ALSO FAIR GAME FOR THIS ACTION, WITH OTHERS.

LASTLY, SEE CITY OF CANTON V. HARRIS, 489 U.S. 378, 388 (1989), HOLDING THAT " — — — THOSE WHO PROMULGATED THE POLICIES FOLLOWED BY THE WRONG DOERS ARE HELD RESPONSIBLE; CANTON, AT 388, ET. SO, DEFENDANTS CAN AT NO POINT CLAIM NOT TO BE INVOLVED WITH THEIR OWN RULES AND WHERE SUCH HAS BEEN COMPLAINED ABOUT.

Conclusion of Memorandum

BASED UPON ALL OF THE ABOVE, THE CLARITY, AND BREVITY OF COMPLAINT, PLAINTIFFS SHOULD BE ALLOWED TO PROCEED ON EACH OF THESE CLAIMS, HEREBY REQUESTS TO DO SO.

DATED THIS _____ DAY OF MARCH, 2001.

Respectfully Submitted,

1ST PTF signed: Michael S. Johnson
MICHAEL S. JOHNSON

2ND PTF signed: Xavier J. Ruiz
XAVIER J. RUIZ

3RD PTF signed: Paul Price
Paul Price

4TH PTF signed: John Backus
~~John Backus~~

MICHA'EL S. JOHNSON,
XAVIER J. RUIZ PLAINTIFF(S)

v

CASE NO⁷ 01-CV-0329

JON E. LITSCHER, GERALD BERGE,
JOHN SHARPE, TIM HAINES,
LINDA H. TRIPP, VICKIE SHARPE AND
GARY BOUGHTON DEFENDANT(S)

FIRST AMENDED COMPLAINT

PLEASE TAKE NOTICE, THAT THE PLAINTIFFS, MICHA'EL S. JOHNSON AND XAVIER J. RUIZ, PROCEEDING PRO SE, SHALL AND HEREBY DOES MOVE THIS HONORABLE CIRCUIT COURT, PURSUANT TO WIS. STATUTES 802.09, BY THUS AMENDING THE COMPLAINT.

PRELIMINARY STATEMENT

1. THIS IS A ACTION BROUGHT PURSUANT TO 42 U.S.C § 1983, SEEKING DECLARATORY, INJUNCTIVE AND MONETARY RELIEF FOR PLAINTIFFS. THIS ACTION ALLEGES THAT THE DEFENDANTS ARE KNOWINGLY, INTENTIONALLY AND ARBITRARILY VIOLATING PLAINTIFFS CONSTITUTIONAL RIGHTS UNDER THE 1ST AND 14TH AMENDMENTS TO THE U.S.C AND WIS. STATE LAW BY CENSORSHIP OF OUT-GOING MAIL TO THEY LOVED ONES.
2. PLAINTIFF M. JOHNSON FURTHER ALLEGES IN THIS AMENDED COMPLAINT THAT DEFENDANTS ARE VIOLATING HIS 14TH AMENDMENT CONSTITUTIONAL RIGHTS AND STATE LAW RIGHTS BY FORCING HIM TO DO A BEHAVIOR MODIFICATION PROGRAMS WHILE ON ADMIN. CONFINEMENT, DESTROYING EVIDENCE OUT OF HIS INSTITUTION FILE, SHAM AND PERFUNCTORY HEARINGS WHILE ON ADMIN. CONFINEMENT, AS SET FORTH MORE FULLY HEREIN.

JURISDICTION

3. THIS COURT HAS JURISDICTION PURSUANT 28 U.S.C § 1331, WIS. STATS 801.04(1)(2) AND 801.05(1)(3).

AMENDED PARTIES

4. PLAINTIFF PAUL PRICE IS NO LONGER A PARTY TO THIS ACTION AND ALL PLAINTIFF PRICE'S CLAIM ARE AND SHALL BE PRESERVED FOR FUTURE PROSECUTION AND PROCEEDINGS.

LEGAL
CORRESPONDENCE

5. PLAINTIFFS: MICHAEL S. JOHNSON (HEREINAFTER 1ST PLAINTIFF) AND XAVIER J. RUIZ (HEREINAFTER 2ND PLAINTIFF) ARE BOTH NATURAL BORN CITIZENS OF THE UNITED STATES, CURRENTLY INCARCERATED TO THE SUPERMAX CORRECTIONAL INST., P.O. BOX 9900 BOSCOBEL, WI 53805 AND WERE AT ALL TIMES RELEVANT TO THIS ACTION.

6. DEFENDANTS: JON E LITSCHER IS EMPLOYED AS THE SECRETARY OF D.O.C., GERALD BERGE IS EMPLOYED AS THE WARDEN OF SUPERMAX CORR. INST., JOHN SHARPE IS EMPLOYED AS A UNIT MANAGER OF SUPERMAX CORR. INST., TIM HAINES IS EMPLOYED AS A UNIT MANAGER OF SUPERMAX CORR. INST., VICKIE SHARPE IS EMPLOYED AS A UNIT MANAGER OF SUPERMAX CORR. INST., LINDA H. TRIPP IS EMPLOYED AS A UNIT MANAGER OF SUPERMAX CORR. INST. AND GARY BOUGHTON IS EMPLOYED AS THE SECURITY DIRECTOR OF SUPERMAX CORR. INST. ALL ARE BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, ALL DEFENDANTS MAY BE LOCATED AT S.M.C.I P.O. BOX 9900 BOSCOBEL, WI 53805 AND DEPARTMENT OF CORRECTIONS P.O. BOX 7925 MADISON, WI 53707. ALL OF THE ABOVE DEFENDANTS ACTED UNDER THE COLOR OF STATE LAW.

FACTS

7. DEFENDANTS BERGE AND LITSCHER ARE VIOLATING PLAINTIFF M. JOHNSON'S RIGHTS BY FORCING HIM TO DO A BEHAVIOR MODIFICATION LEVEL SYSTEM WHILE ON ADMINISTRATIVE CONFINEMENT. THIS IS CONTRARY TO PLAINTIFF'S STATUS WHICH IS GOVERNED BY ADMINISTRATIVE CODES AOC 309.
8. PLAINTIFF JOHNSON HAS BEEN ON ADMINISTRATIVE CONFINEMENT AT S.M.C.I SINCE 3-1-00 AND DEFENDANTS HAVE VIOLATED PLAINTIFF'S RIGHTS TO HAVE "MEANINGFUL" ADMINISTRATIVE CONFINEMENT REVIEWS. THE REVIEWS ARE A SHAM AND PERFORMATORY BECAUSE DEFENDANTS HAVE DETERMINED I MUST GO THROUGH AND COMPLETE THEIR BEHAVIOR MODIFICATION LEVEL SYSTEM IN ORDER TO BE RELEASED FROM S.M.C.I.
9. PLAINTIFF JOHNSON HAS ON SEVERAL AND NUMEROUS OCCASIONS COMPLAINED TO THE DEFENDANTS BY INMATE COMPLAINTS AND INFORMALLY ABOUT DEFENDANTS DESTROYING OF PLAINTIFF'S RECORDS THAT WILL PROVE THE EVIDENCE BEING RELIED UPON FOR HIS PLACEMENT AT S.M.C.I AND ON ADMINISTRATIVE IS FABRICATED AND THE EVIDENCE IS PROTECTED UNDER THE 1ST AMENDMENT OF THE UNITED STATES CONSTITUTION.
10. DEFENDANT BERGE IS VIOLATING PLAINTIFF'S STATE LAW RIGHTS BY FORCING THEM TO PARTICIPATE IN A BEHAVIOR MODIFICATION SYSTEM IN WHICH DEFENDANT BERGE NEVER ~~PROMULGATED~~ PROMULGATED BY THEIR STATE LAW CHAPTER 227. THE BEHAVIOR MODIFICATION SYSTEM HAS THE EFFECT OF A "RULE", BECAUSE YOU CAN BE PUNISHED FOR NOT PARTICIPATING.
11. PLAINTIFF JOHNSON'S RIGHTS HAVE BEEN VIOLATED BY DEFENDANT BERGE'S SECURITY STAFF DESTROYING EVIDENCE OUT OF PLAINTIFF'S INSTITUTION FILE SO THAT THE EVIDENCE COULDN'T BE PRESENTED TO REFUTE DEFENDANT'S ALLEGATIONS

THAT HE IS NOT GREYER WAS SEEKING TO CAUSE HARM TO STAFF OR INMATES AND SEEKING TO OVERTHROW G.B.C.I. DEFENDANTS REASONS FOR ADMINISTRATIVE CONFINEMENT CLAIMS SUCH. PLAINTIFF JOHNSON HAS A CONSTITUTIONAL AND STATE LIBERTY INTEREST TO HAVE ACCURATE INFORMATION IN HIS FILE, ESPECIALLY WHEN INFORMATION IS BEING RELIED UPON TO KEEP HIM ON ADMINISTRATIVE CONFINEMENT AT SUPERMAX.

12. PLAINTIFF JOHNSON RIGHTS ARE BEING VIOLATED, BECAUSE DEFENDANTS DESTRUCTION OF THE EVIDENCE THAT CAN PROVE HIS PLACEMENT ON ADMIN. CONFINEMENT AT S.M.C.I IS NOT NEEDED INFRINGES UPON PLAINTIFFS RIGHTS TO A EQUAL LEVEL OF PLAYING IN THE COURTS.

1ST CAUSE OF ACTION

13. DEFENDANTS LITSCHER AND BERGE ARE LIABLE FOR VIOLATING PLAINTIFFS 14TH AMENDMENT RIGHT OF THE UNITED STATES CONSTITUTION BY SUBJECTING THEM TO ARBITRARY AND CAPRICIOUS PRACTICES AND DRASTICALLY UNEQUAL TREATMENT, THOUGH THEY ARE WISCONSIN PRISONERS AND SIMILARLY SITUATED AND GOVERNED BY THE EXACT SAME DEPARTMENTAL RULES AS OTHERS; AND BY DOING SO, INTER ALIA, WITHOUT ANY FORM OF DUE PROCESS; BY DIRECTING, PROMULGATING, OR FAILING TO PREVENT SUCH VIOLATIONS OF PLAINTIFFS RIGHTS, WHICH WERE AND ARE CLEARLY ESTABLISHED BY LAW. (SEE COMP. AT 1-12 INTER ALIA)

2ND CAUSE OF ACTION

14. DEFENDANTS ARE LIABLE FOR VIOLATING PLAINTIFFS 1ST AMENDMENT RIGHT OF THE UNITED STATES CONSTITUTION BY SUBJECTING THEM TO DENIALS OF THEIR RIGHTS TO FREE SPEECH, FREEDOM OF EXPRESSION AND ~~NON~~-CENSORING OF OUT-GOING CORRESPONDENCE, AND/OR DIRECTING, PROMULGATING, OR FAILING TO PREVENT, SUCH VIOLATIONS OF PLAINTIFFS RIGHTS WHICH WERE AND CLEARLY ESTABLISHED BY LAW. (SEE ORIGINAL COMPLAINT) PLAINTIFF JOHNSON AND RUIZ HEREBY PRESERVES ALL ISSUES AND CAUSES OF ACTION IN FIRST ACTION.

TRIAL BY JURY

PLAINTIFFS DEMANDS A TRIAL BY JURY, SHOULD THEY NOT WIN BY PRE-TRIAL JUDGEMENT.

RELIEF REQUESTED

PLAINTIFFS: SEEK INJUNCTIVE RELIEF; PROHIBITING DEFENDANTS FROM FORCING THEM TO LEAVE THEIR OUT-GOING MAIL UNSEALED FOR CENSORING BY S.M.C.I. PRISON OFFICIALS, PROHIBITING DEFENDANTS FROM PURPOSELY OBTAINING THE MANDATORY GUIDELINES OF DEFENDANTS DEPARTMENTAL RULES OF WIS. D.O.C 309 RELATING TO OUT-GOING MAIL PROCESSING, PROHIBITING DEFENDANTS FROM THE CENSORSHIP OF PLAINTIFFS OUT-GOING MAIL, ENJOINING PLAINTIFFS BE ALLOWED TO SEAL OUT-GOING CORRESPONDENCE WITHOUT PRISON OFFICIALS CENSORING AT ANY TIME UNLESS PRISON OFFICIALS HAVE LEGITIMATE REASON TO

LEGAL

CORRESPONDENCE

BELIEVE PLAINTIFFS OUT-GOING MAIL POSES A LEGITIMATE SECURITY RISK, PROVIDE THAT DEFENDANTS ADHERE TO THE GUIDELINES OF WIS. ADMINISTRATIVE CODES DOC 309. PROHIBITING DEFENDANTS FROM HOLDING MEANINGLESS ADMINISTRATIVE CONFINEMENT REVIEWS ON PLAINTIFF JOHNSON, ENJOINING DEFENDANTS TO REMOVE FABRICATED DOCUMENTS FROM PIFF JOHNSON INSTITUTIONAL FILES AND CORRECT THE FILES. PROHIBITING DEFENDANTS FROM FORCING PLAINTIFF THROUGH A BEHAVIOR MODIFICATION SYSTEM, ENJOINING DEFENDANTS TO REMOVE PLAINTIFF JOHNSON FROM J.M.C.I AND OFF ADMINISTRATIVE CONFINEMENT. ENJOINING THE INVALIDATION OF THE BEHAVIOR MODIFICATION LEVEL SYSTEM FOR BEING VIOLATIVE OF STATE LAW CHAPTER 227 AND D.O.C. 308.

(1)(A) PLAINTIFFS SEEKS COMPENSATORY DAMAGES OF \$25,000 FROM EACH DEFENDANT IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES FOR EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL VIOLATION THEY'RE FOUND IN VIOLATION OF IN INDIVIDUAL AND OFFICIAL CAPACITY.

(2)(A) PLAINTIFFS SEEKS PUNITIVE DAMAGES OF \$20,000 FROM EACH DEFENDANT IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES FOR EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL VIOLATION THEY'RE FOUND IN VIOLATION OF IN INDIVIDUAL AND OFFICIAL CAPACITY.

(3)(A) PLAINTIFFS ALSO SEEK DECLARATORY JUDGEMENT FINDING THAT DEFENDANT DID IN FACT VIOLATE EACH CAUSE OF ACTION AND/OR CONSTITUTIONAL AND STATE RIGHTS ALLEGED TO BEEN VIOLATED.

(4)(A) PLAINTIFFS ALSO SEEK ANY AND ALL OTHER RELIEF THE COURT DEEMS NECESSARY OR ALLOWED, INCLUDING BUT NOT LIMITED TO THE COSTS OF PURSUING THIS ACTION AND ATTORNEY FEES SHOULD ONE APPEAR LATER.

VERIFICATION
PLAINTIFFS MICHAEL S. JOHNSON AND XAVIER J. RUIZ UNDER THE PENALTY OF PERJURY PURSUANT TO 28 U.S.C § 1746 DO ATTEST THAT ALL OF THE ABOVE 12 AVERMENTS ARE TRUE AND CORRECT.

DATED THIS 19TH DAY OF September 2001

Respectfully Submitted

Mr. Michael S. Johnson

Respectfully Submitted

Xavier J. Ruiz

State ex rel.
Jay Thomas Widmer-Baum
P.O. Box 500
Appleton, MN 56208-0500

vs.

Case No. 01-CV-2106

Jon Litscher
P.O. Box 7925
149 Wilson Street
Madison, WI 53701

-and-

Thomas Borgen
P.O. Box 147
W10237 Lake Emily Road
Fox Lake, WI 53933-0147

CIRCUIT COURT
01 NOV - 1 PM 1:34
DANE COUNTY WI
THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

SUMMONS

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

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which was previously served, 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 215 Martin Luther King, Jr. Blvd., Madison, WI 53703 and to the Plaintiff, Jay Thomas Widmer-Baum (Pro Se) at P.O. Box 500, Appleton, MN 562-8-0500. You may have an attorney assist 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 this 30 day of October, 2001

Respectfully,



Jay Thomas Widmer-Baum (7075)
Prairie Correctional Facility
445 Munsterman
P.O. Box 500
Appleton, WI 56208-0500

cc:

Joint Committee for Review of Administrative Rules
John Glinski, Assistant Atty. Gen.
Dane County Cir. Court, Branch 10
Joint Committee for Legislative Organization

SEARCHED BY _____ INDEXED BY _____
SERIALIZED BY _____ FILED BY _____
OCT 30 2001
FBI - APPLETON
GARY H. HANCLIN

PERRY, SHAPIRO, QUINDEL, SAKS, CHARLTON & LERNER, S.C.

ATTORNEYS AT LAW
823 NORTH CASS STREET
P.O. BOX 514005
MILWAUKEE, WISCONSIN 53203-3405



414/272.7400
FAX 414/272.7450

RICHARD PERRY
AMY L. SHAPIRO
BARBARA ZACK QUINDEL
RICHARD SAKS
KATHERINE L. CHARLTON
B. MICHELE SUMARA
OF COUNSEL:
ROBERT J. LERNER

November 13, 2001

HAND DELIVERED

Judith A. Coleman, Clerk of Court
Dane County Circuit Court
210 Martin Luther King, Jr. Blvd.

Re: *Lehmann et al. v. ETF Board*

Dear Ms. Coleman:

Please find enclosed for filing the original summons and complaint in the above-named matter. Please have your representative authenticate and date stamp the copies provided and return them to our messenger.

Because of the nature of this matter and defendants' ongoing implementation of their instructions which are challenged as contrary to law, plaintiffs respectfully request that a scheduling conference be held in this matter as soon as is practicable.

Thank you.

Sincerely,

Barbara Zack Quindel
B. Michele Sumara

cc: Sam Carmen, Executive Director, MTEA
Bruce Meredith, General Counsel, WEAC
James E. Doyle, Jr., Attorney General
Eric O. Stanchfield, Secretary, DETF
✓ Hon. Judith Robson, Co-Chair, JCRAR
Hon. Glenn Grothman, Co-Chair, JCRAR

STATE OF WISCONSIN

CIRCUIT COURT
Branch

DANE COUNTY

BOB LEHMANN, President, and
MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION
5130 West Vliet Street
Milwaukee, WI 53208,

MICHAEL DREYER
4800 Ivywood Trail
McFarland, WI 53558,

HEDY REYNOLDS
325 Trowbridge Drive, PO Box 1195
Fond du Lac, WI 54936,

JOLENE SMANEY
1136 North Military Avenue
Green Bay, WI 54303, and

WISCONSIN EDUCATION
ASSOCIATION COUNCIL
33 Nob Hill Drive, PO Box 8003
Madison, WI 53708-8003,

Plaintiffs,

v.

EMPLOYE TRUST FUNDS BOARD,
DEPARTMENT OF EMPLOYE TRUST
FUNDS, and
ERIC O. STANCHFIELD, Secretary,
801 West Badger Road
Madison, WI 53702

Defendants.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT
DANE COUNTY, WI
01 NOV 15 PM 2:54
CIRCUIT COURT

01CV3142

Case No. _____

DECLARATORY JUDGMENT
Case Code 30701

SUMMONS

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

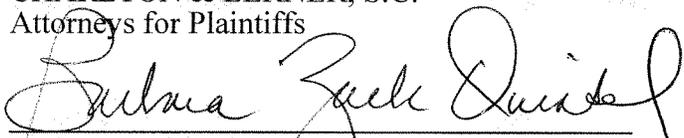
action.

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 210 Martin Luther King, Jr. Blvd., Madison, WI 53709-0001, and to Barbara Zack Quindel, plaintiffs' attorney, whose address is 823 North Cass Street, PO Box 514005, Milwaukee, WI 53203-3405. 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.

Date: November 13, 2001

PERRY, SHAPIRO, QUINDEL, SAKS,
CHARLTON & LERNER, S.C.
Attorneys for Plaintiffs



Barbara Zack Quindel
State Bar No. 1009431
B. Michele Sumara
State Bar No. 1010181

Address:
823 North Cass Street
PO Box 514005
Milwaukee, WI 53203-3405
Telephone 414-272-7400
Facsimile 414-272-7350

STATE OF WISCONSIN

CIRCUIT COURT
Branch

DANE COUNTY

BOB LEHMANN, President, and
MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION
5130 West Vliet Street
Milwaukee, WI 53208,

MICHAEL DREYER
4800 Ivywood Trail
McFarland, WI 53558,

HEDY REYNOLDS
325 Trowbridge Drive, PO Box 1195
Fond du Lac, WI 54936,

JOLENE SMANEY
1136 North Military Avenue
Green Bay, WI 54303, and

WISCONSIN EDUCATION
ASSOCIATION COUNCIL
33 Nob Hill Drive, PO Box 8003
Madison, WI 53708-8003,

Plaintiffs,

v.

EMPLOYE TRUST FUNDS BOARD,
DEPARTMENT OF EMPLOYE TRUST
FUNDS, and
ERIC O. STANCHFIELD, Secretary,
801 West Badger Road
Madison, WI 53702

Defendants.

CIRCUIT COURT
DANE COUNTY
01 NOV 13 11:25 AM
THIS IS AN AUTHENTICATED COPY OF THE
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COUNTY CLERK OF CIRCUIT COURT.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

01CV3142

Case No. _____

DECLARATORY JUDGMENT
Case Code 30701

COMPLAINT

Plaintiffs BOB LEHMANN, MILWAUKEE TEACHERS' EDUCATION
ASSOCIATION, MICHAEL DREYER, HEDY REYNOLDS, JOLENE SMANEY, AND

WISCONSIN EDUCATION ASSOCIATION COUNCIL, by their attorneys, PERRY, SHAPIRO, QUINDEL, SAKS, CHARLTON & LERNER, S.C., by Barbara Zack Quindel and B. Michele Sumara, allege as follows:

Parties

1. Plaintiff Bob Lehmann is a teacher employed by the Milwaukee Public Schools, a participating employee in the Wisconsin Retirement System (WRS), and the president of the Milwaukee Teachers' Education Association (MTEA). His principal place of business is at 5130 West Vliet Street, Milwaukee, WI 53208.

2. Plaintiff MTEA is the collective bargaining representative of Milwaukee teachers who are employee participants in the WRS. The MTEA's principal place of business is at 5130 West Vliet Street, Milwaukee, WI 53208.

3. Plaintiff Michael Dreyer is a teacher employed by the Stoughton Area School District, a participating employee in the WRS, and a member of defendant Wisconsin Education Association Council (WEAC). His principal place of business is at 4800 Ivywood Trail, McFarland, WI 53558.

4. Plaintiff Hedy Reynolds is a teacher employed by the Fond du Lac School District, a participating employee in the WRS, and a member of WEAC. Her principal place of business is at 325 Trowbridge Drive, PO Box 1195, Fond du Lac, WI 54936.

5. Plaintiff Jolene Smaney is an educational support professional employed by the Oconto Falls School District, a participating employee in the WRS, and a member of WEAC. Her principal place of business is at 1136 North Military Avenue, Green Bay, WI 54303.

6. Plaintiff WEAC is an unincorporated labor association representing approximately 85,000 members who are participants in the WRS. WEAC's principal place of business is at 33 Nob Hill Drive, PO Box 8003, Madison, WI 53708-8003.

7. Defendant EMPLOYE TRUST FUNDS BOARD (ETF Board) is responsible for the general direction and supervision of defendant DEPARTMENT OF EMPLOYE TRUST FUNDS (DETF). Defendant ETF Board's principal place of business is at 801 West Badger Road, Madison, WI 53702.

8. Defendants DETF and ERIC O. STANCHFIELD, Secretary of DETF, are responsible for the administration of the WRS, pursuant to sec. 40.03(2) and ch. 75, Stats. Defendants DETF and Secretary Stanchfield's principal place of business is at 801 West Badger Road, Madison, WI 53702.

Basis of the Request for Declaratory Relief

9. This is an action for a declaratory judgment, pursuant to sec. 806.04, Stats.

10. The purpose of this action is to determine whether defendants' implementation of the employer credits of Act 11, sec. 27(1)(b)1 contravene the unambiguous language of Act 11, sec. 27(1)(b)1 and are an invalid exercise of defendants' authority.

11. On December 16, 1999, the legislature enacted Act 11, which made changes to benefits provided under WRS and to the financial structure of the WRS.

12. The legislature enacted nonstatutory provisions in Act 11 creating a credit balance of \$200 million, which the ETF Board was directed to allocate to each participating employer in a share based on that employer's percentage of the 1998 total WRS payroll. Act 11, Sec. 27(1)(b).

13. In unambiguous language, Sec. 27(1)(b)1 directs defendant ETF Board to deduct from each employer's reserve account on a monthly basis an amount that the employer would otherwise have contributed, thereby giving the affected employers a holiday from certain monthly contributions until their credit balance is exhausted. Act 11, Sec. 27(1)(b)1 reads, as follows:

The employe trust funds board shall determine each participating employer's share of the increase in the accumulation reserve that results from the distribution under paragraph (a) and shall establish for each employer a credit balance in the employer accumulation reserve that equals the employer's share of the increase in the employer accumulation reserve that results from the distribution under paragraph (a), based on each employer's share of covered payroll in 1998. The total amount that shall be reserved for credit balances under this subdivision shall be \$200,000,000. In lieu of requiring that an employer make required employer contributions under section 40.05(2)(b) of the statutes, the employe trust funds board, beginning no later than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05(2)(b) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). For any employer that is not required to make contributions under section 40.05(2)(b) of the statutes, the employe trust funds board, beginning no later than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05(2)(a) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). The employe trust funds board shall make such deductions until the credit balance is exhausted, at which time the employer shall resume making all required employer contributions.

(emphasis added)

14. Following enactment, numerous provisions of Act 11, including sec. 27(1)(b)1, were challenged and were found to be constitutional in a decision issued on June 12, 2001.

Wisconsin Prof'l Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807.

15. Pursuant to the unambiguous language of Act 11, deducting the employer credits on a monthly basis creates a monthly holiday from certain WRS contributions until the credit

balance is exhausted, thereby providing employer funds for other purposes.

16. Pursuant to the unambiguous language of Act 11, monthly credit holidays result in reduced monthly WRS contributions which require employer school districts to recalculate the Qualified Economic Offer (QEO), under the formula of sec. 111.70(1)(nc), Stats., thereby freeing funds for teacher salary increases.

17. On June 22, 2001, the DETF issued *Employer Bulletin* vol. 18, No. 8, explaining the Act 11 employer credits.

18. DETF's *Employer Bulletin* vol. 18, No. 8 also instructed employers that, contrary to the unambiguous language of the Act requiring employer credits to be deducted on a monthly basis, the Act 11 credits could be taken *three* ways: on a monthly basis, in a lump sum, and/or by delaying use of the credit.

19. The DETF Act 11 employer credit instructions in the *Employer Bulletin* vol. 18, No. 8 are not a rule and are not subject to the procedures for the promulgation of rules, as set forth in ch. 227, Stats.

20. DETF did not treat the Act 11 employer credit instructions in the *Employer Bulletin* vol. 18, No. 8 as a rule in formulating them and did not follow the procedures for the promulgation of rules, as set forth in ch. 227, Stats.

21. The DETF instructions to employers that the Act 11 credits may be taken by means other than on a monthly basis adversely affect plaintiff employee participants in that employers will not have additional funds for potential wage increases, as contemplated by Act 11.

22. The DETF instructions to school district employers that the Act 11 credits may be

taken by means other than on a monthly basis adversely affect plaintiff teachers, in that school district QEO calculations will not reflect additional funds available for increased teacher salaries.

23. A judgment in this action will terminate the controversy giving rise to this proceeding.

WHEREFORE, plaintiffs seek judgment against defendants declaring and ordering the following:

(A) The unambiguous language of Act 11, Sec. 27(1)(b)1 requires the ETF Board to apply the employer credits on a monthly basis;

(B) The DETF Act 11 implementation instructions of June 22, 2001 to participating employers contravene the unambiguous language of Act 11, Sec. 27(1)(b)1, are an invalid exercise of defendants' power to implement Act 11, and are outside the scope of defendants' authority;

(C) Defendants are enjoined from implementing the June 22, 2001 instructions to employers which allow employer credits in any manner except on a prospective, monthly basis, from the date on which the Supreme Court lifted the injunction on implementation of Act 11;

(D) Defendants are ordered to correct the implementing instructions to employers to comport with the unambiguous statutory language of Act 11, such that:

(1) For an employer required to make contributions under sec. 40.05(2)(b), Stats., the ETF Board will deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under sec. 40.05(2)(b), Stats., had there been no establishment of the credit balance from the distribution under Act 11 ¶27(1)(a);

(2) For any employer that is not required to make contributions under Sec. 40.05(2)(b), Stats., the ETF Board will deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under sec. 40.05(2)(a), Stats., had there been no establishment of the credit balance from the distribution under Act 11 ¶27(1)(a); and

(3) The employe trust funds board shall make such deductions until the credit balance is exhausted, at which time the employer shall resume making all required employer contributions.

(E) Defendants are ordered to make any adjustments necessary to restore employer credit balances in any employer accounts which were affected by implementation of Act 11 pursuant to defendants' invalid implementing instructions;

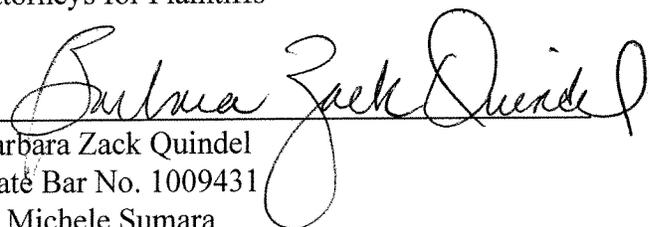
(F) Costs are awarded to plaintiffs;

(G) And any further relief as the Court deems appropriate.

Date: November 13, 2001

PERRY, SHAPIRO, QUINDEL, SAKS,
CHARLTON & LERNER, S.C.
Attorneys for Plaintiffs

Address:
823 North Cass Street
PO Box 514005
Milwaukee, WI 53203-3405
Telephone 414-272-7400
Facsimile 414-272-7350


Barbara Zack Quindel
State Bar No. 1009431
B. Michele Sumara
State Bar No. 1010181

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH III

AUTOMATICALLY COATED COPY
FILED

AUG 28 2001

State of Wisconsin ex. rel

Quinn Johnson,

Petitioner,

PAUL G. JANQUART
CLERK OF COURTS
BROWN COUNTY, WI

Writ of Certiorari

v.

Case No. 01-HP-11 *01CW1283*

FILED

Deirdre Morgan, Chairperson Wisconsin Parole Commission

Respondent(s).

AUG 28 2001

CLERK OF COURTS
BROWN COUNTY, WI

The attached petition for writ of certiorari having been presented to this court alleging that the respondent(s) acted without jurisdiction, erroneously, arbitrarily and capriciously, and contrary to law; and this court being willing to be certified of all proceedings had in relation to this matter and upon which the erroneous determination is founded; the respondent(s) is commanded to certify and return to the clerk of this court within 30 days after service of this writ upon the respondent(s), all records in this matter or such other return as may lawfully be made, together with any legal statement or brief of the position of the respondent(s) in this matter, so that this court may further act on this matter as of right and according to the law ought to be done.

Dated at Green Bay, Wisconsin, this *28 Aug* day of ~~July~~, 2001

WITNESS MY HAND AND SEAL

[Signature]
Circuit Court Judge