

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

Marion O'Neill, as a legislator and in her individual capacity; and Mark Koran, as a legislator and in his individual capacity,

Petitioners,

v.

Jim Schowalter, in his official capacity as Commissioner of Minnesota Management and Budget, or his successor; and Minnesota Management and Budget,

Respondents.

Court File No. _____

**PETITION FOR WRIT OF QUO
WARRANTO OR, IN THE
ALTERNATIVE, A DECLARATORY
JUDGMENT**

INTRODUCTION

1. Former Commissioner Myron Frans violated Minnesota law when he unilaterally imposed the collective bargaining agreements (“CBAs”) negotiated between the State and public sector labor unions despite not receiving Senate approval. Commissioner Schowalter continues those illegal actions by continuing to implement the un-ratified CBAs.

2. Under Minnesota law, both houses of the legislature must approve, or ratify, any CBAs for state employees before they can formally take effect.

3. Under this process, the Legislature has the authority to accept or reject any CBA proposed by the Respondent Commissioner. Unless the Legislature formally approves a CBA, it does not take effect. If the Legislature adjourns before acting on a proposed CBA, any wages or benefit increases in that CBA “must cease to be paid.”

4. Although the Commissioner proposed ratification of the CBAs to the Legislature,

they were only approved by the House, and not the Senate. They were never ratified.

5. Because the CBAs were not ratified, they can have no legal effect, and any wages or benefit increases contained in them “must cease to be paid.”

6. The Commissioner ignored the law and has begun paying those wages and benefits anyway. Thus, this Court should restrain the Commissioner’s unlawful conduct.

PARTIES

7. Petitioner Marion O’Neill is a taxpayer and Minnesota resident. She is also a member of the Minnesota House of Representatives and represents District 29B, which includes Maple Lake and Buffalo in Wright County, Minnesota. Petitioner O’Neill voted against passage of HF2768, described below, and her vote has been nullified as a result of the Respondent Commissioner’s actions.

8. Petitioner Mark Koran is a taxpayer and Minnesota resident. He is also a member of the Minnesota Senate and represents District 32, which includes Cambridge and other locations in east central Minnesota. Petitioner Koran voted to pass HF2796, described below, and his vote has been nullified as a result of the Respondent Commissioner’s actions.

9. Respondent Jim Schowalter is Commissioner of Minnesota Management and Budget. He is sued in his official capacity only. His office address is 400 Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155. The Commissioner is the employer of state executive branch employees for purposes of the Minnesota Public Employment Labor Relations Act.

10. Respondent Minnesota Management and Budget is a state agency with its office address at 400 Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155.

JURISDICTION AND VENUE

11. The Minnesota Constitution, Article VI, Section 2, gives the Minnesota Supreme

Court “original jurisdiction in such remedial cases as are prescribed by law.” This includes the power to issue the writ of quo warranto. Minn. Stat. § 480.04 (2018). *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020).

12. Although the Minnesota Supreme Court has original jurisdiction to issue the writ of quo warranto, in *Rice v. Connolly*, the Minnesota Supreme Court instructed that petitions for the writ should be filed in the first instance in district court. 488 N.W.2d 241, 243-44 (Minn. 1992). *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020).

13. Actions for declaratory judgment may be heard alongside petitions for a writ of quo warranto. *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992).

14. Therefore, this Court has jurisdiction over this petition.

15. Venue is proper in this Court because the Respondents are located in Ramsey County, Minnesota.

FACTS AND REASONING

The CBA Ratification Process

16. The process of CBA and compensation plan ratification is described in Minnesota Statutes 3.855, 43A.06, and 179A.22.

17. Under section 3.855, the Commissioner of Management and Budget submits negotiated collective bargaining agreements to the Legislative Coordinating Commission, Subcommittee on Employee Relations, for approval. If the Commission approves the CBAs, the Commission then submits the CBAs to the Legislature for approval.

18. If the Commission does not mark up or debate the CBA, then the CBA is provisionally implemented pending full ratification by the Legislature, which is required for official implementation.

19. The Legislature may approve, disapprove, or adjourn without ratifying a CBA. Minn. Stat. § 3.855, Subd. 2.

20. If a majority of both houses of the Legislature approves a CBA, it may then be implemented by the Commissioner.

21. If a majority of either house of the Legislature rejects or does not approve a CBA, it may not be implemented by the Commissioner, and any wages or benefits that were paid to state employees affected by the proposed CBA during a time of interim approval by the Commission “must cease to be paid.”

22. If the Legislature adjourns without both houses approving a CBA, it may not be implemented by the Commissioner. In fact, any wages or benefits that were paid to state employees affected by the proposed CBA during a time of interim approval by the Commission “must cease to be paid.”

23. The Minnesota House Research Department, which describes itself as providing “nonpartisan, neutral research and legal services to the Minnesota House of Representatives,” published a Legislative Review of State Employee Collective Bargaining Agreements in 2014.

24. In that publication, the House Research Department concluded that “[i]f the legislature rejects the collective bargaining agreement or adjourns without acting on it, wages or benefit increases provided in the contract must cease to be paid effective upon the rejection of the agreement or adjournment.”

25. In that publication, the House Research Department also concluded that “[t]he statute does not specifically state that the entire contract is void upon legislative rejection or adjournment without action. However, this seems implicit. If the legislature rejects or fails to ratify a collective bargaining agreement, affected state employees and the state could resume

negotiations. Also, state employees have the right to strike upon legislative rejection of an agreement or legislative failure to ratify an agreement.”

26. In other words, the House Research Department concluded that if a majority of either house of the Legislature failed to approve a CBA, it cannot be implemented by the Commissioner.

27. The Commissioner is the “employer” of state employees, including those subject to the CBAs at issue, for purposes of collective bargaining. Minn. Stat. § 179A.22.

28. The Commissioner is the “chief personnel and labor relations manager of the civil service in the executive branch” and is the “state labor negotiator for purposes of negotiating and administering agreements with exclusive representatives of employees.” Minn. Stat. § 43A.04, 06.

29. Upon ratification of a CBAs, the Commissioner is the authority responsible for implementing that CBA.

30. Upon rejection or adjournment without ratification of a CBA, the Commissioner is responsible for *not* implementing that CBA.

***The Legislature Did Not Ratify the State Employee CBAs,
and the Commissioner Broke the Law by Implementing Them Anyway***

31. Earlier this year, the Commissioner proposed to the Legislature the ratification of the CBAs applicable to a large number of state employees. These CBAs include those for:

- a. American Federation of State, County, and Municipal Employees, Council 5;
- b. Minnesota Association of Professional Employees;
- c. American Federation of State, County, and Municipal Employees, Unit 225, Radio Communications Operators.
- d. Middle Management Association
- e. Minnesota State University Association of Administrative and Service Faculty
- f. Inter Faculty Organization

- g. American Federation of State, County, and Municipal Employees, Unit 8, Corrections Officers
- h. State Residential Schools Education Association
- i. Minnesota State College Faculty
- j. Minnesota Government Engineers Council
- k. Minnesota Nurses Association.

32. The CBAs generally provide for an across-the-board cost-of-living increase of 2.5% for all covered employees for 2020-2021, to take effect in July 2020. However, these are not the whole of the contracts—approximately 53% of state employees were entitled to increases other than this 2.5%.

33. On May 11, 2020, the Minnesota House of Representatives passed HF2768, which, if passed by both houses of the Legislature, would have ratified the CBAs without contingency.

34. Petitioner O'Neill voted against HF2768.

35. The House transmitted HF2768 to the Minnesota Senate the same day, May 11.

36. The Senate received HF2768 but tabled it on May 12 and did not vote on it.

37. Instead of voting on HF2768, the Senate amended HF2796 on May 16. HF2796 made ratification of the CBAs contingent on the following:

The general increases, enhancements to salary schedules, and the supplement to the MnSCU Personnel Plan for Administrators in section 1 are not ratified until the commissioner of management and budget determines, based on a forecast of general fund revenues and expenditures issued before July 1, 2021, that there will be a positive unrestricted general fund balance at the close of the biennium ending June 30, 2021, exclusive of any use of the budget reserve account and the budget reduction authority under Minnesota Statutes, section 16A.152. If second year wage adjustment and increases are ratified under the terms of this subdivision, they are effective retroactively to July 1, 2020.

38. The same day, the Senate reconsidered HF2796 based on Petitioner Koran's motion. Petitioner Koran moved to amend HF2796 as it was passed. The amendment modified HF2796 so that it read, in relevant part, as follows:

The general increases, enhancements to salary schedules, and the supplement to the MnSCU Personnel Plan for Administrators for the second year in section 1 are not ratified until the commissioner of management and budget determines, based on a forecast of general fund revenues and expenditures issued before July 1, 2021, that there will be a positive unrestricted general fund balance at the close of the biennium ending June 30, 2021, exclusive of any use of the budget reserve account and the budget reduction authority under Minnesota Statutes, section 16A.152. If second year wage adjustment and increases are ratified under the terms of this subdivision, they are effective retroactively to July 1, 2020.

39. The Senate passed HF2796 in this form.
40. The House did not vote on HF2796 before the Legislature adjourned, and thus did not approve HF2796.
41. The Senate never approved HF2768.
42. Had it been passed by the House, HF2796 would have provided the 2.5% pay increase for the employees covered by HF2768 for the year 2020-2021, with the contingency quoted above.
43. Had it been passed by the Senate, HF2768 would have provided the 2.5% pay increases for the employees covered by it for the year 2020-2021 without contingency.
44. The two bills were different, and ratification would have required approval of one by both houses.
45. Because the Senate never passed HF2768, and the House never passed HF2796, the Legislature did not ratify the CBAs before adjournment.
46. The Legislature formally adjourned on May 17, 2020.
47. The Legislature has not ratified the CBAs in any subsequent special session.
48. Despite the Legislature's adjournment without ratifying the CBAs, Commissioner Myron Frans announced that Minnesota Management and Budget would implement the terms of the CBAs.

49. Former Commissioner Frans or the Respondents then illegally implemented the terms of the non-ratified CBAs and has illegally paid and continues to illegally pay monies from public funds pursuant to the terms of the non-ratified CBAs.

50. The Respondents' illegal implementation of the non-ratified CBAs is continuing and ongoing.

51. Commissioner Frans seized the powers of the Legislature by adopting his own interpretation of HF2796—in practice, striking out language passed by the Senate—or, essentially, adopting HF2768, which was only passed by the House.

52. Petitioners O'Neill and Koran's votes in the Legislature—against HF2768 and in favor of HF2796—have been nullified by the Respondents' actions.

53. The Respondents' actions described herein are not substantially justified, and no special circumstances make an award of attorney fees and costs in Petitioners' favor unjust.

PRAYER FOR RELIEF

A. As alleged herein, former Commissioner Frans and the Respondents' implementation of the CBAs without approval of both houses of the Legislature violates Minn. Stat. § 3.855 and exceeds the Commissioner's authority because the Commissioner did not "cease to pay" any unratified wage or benefit increases for state employees affected by the proposed CBAs after adjournment without ratification.

B. Former Commissioner Frans and the Respondents' actions violate the Minnesota Constitution, Article XI, section 1, as they are an appropriation contrary to law.

C. Alternatively, former Commissioner Frans and the Respondents' actions violate the Minnesota Constitution, Article III, section 1 by seizing for the Executive Branch the powers of the Legislative Branch by implementing a bill that has not been passed by both houses.

D. Alternatively, former Commissioner Frans and the Respondents' actions violate Minn. Stat. § 16A.15 and its implementing rules by illegally allotting or encumbering funds that may not legally be paid from funds appropriated by the Legislature for this biennium.

E. Petitioners request that the Court grant this Petition for writ of quo warranto.

F. Petitioners request that the Court order a hearing on this Petition as soon as possible. Expedited treatment of this petition is warranted because the amount of damage caused by the Commissioner's violations of law increases with each paycheck illegally issued to thousands of state employees at higher wage rates than allowed by law.

G. Petitioners request that the Court order the Respondents to respond to the petition no later than 14 days before the hearing.

H. Petitioners request that the Court allow the Petitioners to reply no later than 7 days before the hearing.

I. Petitioners request that the Court, after the hearing, issue a writ of quo warranto:

- a. enjoining the Commissioner and MMB from implementing any of the terms of the CBAs listed in HF2768, and
- b. ordering the Commissioner and MMB to engage in further collective bargaining with the exclusive representatives affected by HF2768 to reach new CBAs to be proposed to the Legislature for approval in any subsequent legislative session for this biennium.

J. Petitioners may bring an action for a declaratory judgment under Minn. Stat. § 555.01, *et seq.* in the same proceeding in which they seek a writ of quo warranto. *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992). Thus, Petitioners alternatively request that the Court issue a declaratory judgment declaring the Commissioner's actions described herein unlawful, and enjoin the Respondents' implementation of the CBAs consistent with the relief sought in paragraph I above.

K. Petitioners request that the Court award Petitioners and their attorneys attorney fees and costs under the Equal Access to Justice Act, Minn. Stat. § 15.471 *et seq.*, upon prevailing and after application for the same; and

L. Petitioners request an award of all other relief that the court may deem just, proper, or equitable.

Respectfully submitted,

UPPER MIDWEST LAW CENTER

Dated: December 30, 2020

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: December 30, 2020

/s/ James V. F. Dickey
James V. F. Dickey (#393613)