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December 2, 2011

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Kaleem Caire

Mr. Ed Hughes
Board of Education
Madison Metropolitan School District
545 West Dayton Street
Madison, WI 53703

Dear Mr. Hughes:

This letter is intended to respond to your November 18, 2011 email and to suggest that there is a viable option for moving forward with Urban League's proposal for the Madison Preparatory Academy ("Madison Prep") that: (i) will reduce cost; and (ii) will not sacrifice the union security provisions of the Collective Bargaining Agreement ("Agreement" or "Contract") between the Madison Metropolitan School District ("MMSD" or "District") and Madison Teachers, Inc. ("MTI").

Your email asks for a response to a question concerning how the school district could authorize Madison Prep as a non-instrumentality charter without thereby violating the terms of the District's Agreement with MTI. Your email references a provision in the MTI Agreement that provides "that instructional duties where the Wisconsin Department of Public Instruction requires that such be performed by a certificated teacher, shall be performed only by 'teachers.'" See Article I, Section B.3.a. In addition you note that "the term 'teacher' refers to anyone in the collective bargaining unit." See Article I, Section B.2. You conclude your email by stating that "it appears that all teachers in MMSD schools -- including non-instrumentality charter schools -- must be members of the MTI bargaining unit."

The Urban League is aware of the Agreement's language and concedes that the language, if enforceable, poses an obstacle as we look for School Board approval of the plan to open and operate a "non-instrumentality" school. Under an instrumentality charter, the employees of the charter school must be employed by the school board. Under a non-instrumentality charter, the school board may not be the employer of the charter school's staff. See § 118.40(7)(a). Thus, the statement in your email that all teachers, including those in a non-instrumentality charter school -- "must be members of the MTI bargaining unit" and, presumably, employed by the school board is not permitted under Wisconsin law.

Under Wisconsin's charter school law the School Board has the exclusive authority to determine whether a school is an instrumentality or not an instrumentality of the school district. See § 118.40(7)(a). That decision is an important decision reserved to the School Board alone. The effect of that decision drives whether teachers and staff must be, or cannot be, employees of the School Board. The language of the Contract deprives the School Board of the decision reserved to it under the statute and that language cannot be harmonized to give effect to both the statute and the Agreement. Alternatively the Contract language creates a situation whereby the School Board may exercise its statutory authority to approve a non-instrumentality charter but it must staff the school with school district employees, a result clearly prohibited under the statute. In our view the law trumps the Contract in either of these situations.



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The situation described above could likely only be resolved in a court of law. The Contract includes a "savings clause" that contemplates that where a court invalidates a provision in the Agreement, the invalid provision is deleted and the remainder of the contract remains intact. *See* Article VIII, Section E.

The Urban League is, however, mindful that litigation is both expensive and time consuming. Moreover it is clear that the Contract language will become a prohibited subject of bargaining in the near future when the current Agreement expires. Unfortunately, the children we seek to serve, do not have the time to wait for that day.

Our second purpose in writing is to make you aware of a possible solution to a major obstacle here. One of the major obstacles in moving forward has been the cost associated with an instrumentality school coupled with MTI's reluctance to work with the District in modifying the Contract to reduce costs associated with staffing and certain essential features of Madison Prep, like an extended school day. As we understand it MTI does not want to modify the Contract because such a modification would result in an earlier application of 2011 Wisconsin Act 10 to the District, members of the bargaining unit and to MTI itself.

We understand MTI's reluctance to do anything that would hasten the application of Act 10 in the school district. With the passage of 2011 Wisconsin Act 65, that concern is no longer an obstacle. Act 65 allows the parties to a collective bargaining agreement to enter into a memorandum of understanding that would run for the remaining term of the collective bargaining agreement, for the purpose of reducing the cost of compensation or fringe benefits in the collective bargaining agreement.

The Act also provides that entering into such a memorandum would not be considered a "modification" of the collective bargaining agreement for the purposes of Act 10. Act 65 was published on November 23, 2011 and took effect the following day. The law allows the parties to a collective bargaining agreement to enter into such a memorandum no later than 90 days after the effective date of the law.

The Urban League believes that Act 65 gives the Board and MTI the opportunity to make changes that will facilitate cost reductions, based in compensation and fringe benefits, to help Madison Prep move forward. And, the law allows the parties to do so in a way that does not adversely impact the teachers represented by MTI or the union security provisions of the Collective Bargaining Agreement.

For example, the parties could agree to reduce the staffing costs for Madison Prep. The parties could also agree that a longer school day would not have to cost more. And, the parties could agree that the work preservation clause referenced in the first part of this letter does not apply where the School Board has determined a charter school will be a non-instrumentality of the District, a move that would also most certainly reduce costs. These changes would not be forced upon any existing MTI represented teacher as teachers would apply for vacancies in the school.

We hope that the School Board will give serious consideration to the opportunity presented by Act 65. On behalf of the Urban League of Greater Madison and Madison Preparatory Academy, we thank you for your support of Madison Prep.

Respectfully,



Kaleem Caire
President & CEO

cc: Dan Nerad, MMSD Superintendent
Dylan Pauly, MMSD Legal Counsel
MMSD Board of Education Members
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Godfrey & Kahn, S.C.