

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,)

Plaintiff,)

v.)

PLUMBERS & PIPEFITTERS,)

LOCAL 367,)

Defendant.)

Case No. 3AN-11- _____ Civil

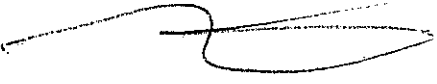
MOTION FOR PRELIMINARY INJUNCTION

COMES NOW, the Municipality of Anchorage, by and through the Municipal Attorney's Office, and moves the Court for a Preliminary Injunction Order, pursuant to Alaska R. Civ. P. 65 and Anchorage Municipal Code 3.70.110.B. This motion is supported by the attached Memorandum. Counsel for Plumbers and Pipefitters, Local 367 has been notified and does not oppose this motion.

Respectfully submitted this 1st day of September, 2011.

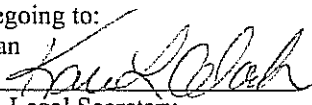
DENNIS A. WHEELER
Municipal Attorney

By: _____


William A. Earnhart
Assistant Municipal Attorney
Alaska Bar No. 9411099

Certificate of Service

I hereby certify that on September 1, 2011,
I caused to be hand delivered a true and correct
copy of the foregoing to:
Chuck Dunnagan


Karen L. Clark, Legal Secretary

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ANCHORAGE

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MUNICIPALITY OF ANCHORAGE,)
)
 Plaintiff,)
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PLUMBERS & PIPEFITTERS,)
 LOCAL 367,)
)
 Defendant.)

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MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65, Alaska Rules of Civil Procedure and Anchorage Municipal Code, Section 3.70.110.B, the Municipality of Anchorage (“Municipality” or “MOA”) seeks a preliminary injunction enjoining the Plumbers & Pipefitters Union, Local 367 (“Union”) from continuing to engage in a work stoppage (“strike”) against the Municipality.

The current Collective Bargaining Agreement between the MOA and the Union expired on June 30, 2010 and has continued in force since that time under its own terms, essentially maintaining the status quo while negotiations over a successor agreement were underway. The parties have been engaged in negotiations and subsequent proceedings over a successor contract since March, 2010. Those negotiations reached a point where mediation, pursuant to AMC 3.70.100.A, was necessary. Mediation was not successful and the parties proceeded to fact finding, pursuant to AMC 3.70.100.B.

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Following fact finding, the parties negotiated further and were successful in resolving a number of outstanding issues. However, there remained the basic economic issues, including wages, cost of living adjustments and others. The parties then proceeded to arbitration, pursuant to AMC 3.70.110.C. The arbitrator issued his award on August 8, 2011. That award, along with a financial analysis of the award and of the Municipality's Last Best Offer ("LBO"), was presented to the Anchorage Assembly on August 16, 2011, pursuant to AMC 3.70.110.C.10.b. On August 30, 2011, the Anchorage Assembly rejected the arbitrator's award.

Pursuant to AMC 3.70.110.C.10.b, the Union has exercised its right to strike. The Union took a strike vote on August 30 and will go on strike tomorrow (September 2) at 10 a.m.

Under AMC 3.70.110.A, bargaining units are classified in one of three service classes: A1 – under which services may not be interrupted at all; A2 – under which services may be interrupted for a limited period of time; and, A3 – under which an extended work stoppage can be sustained. Under AMC 3.70.110.B, Class A1 services consist of the police, fire protection and emergency medical services. Class A2 services include sewer and water treatment, electrical generation, and the port operation. Most of the employees in the Plumbers & Pipefitters Union, Local 367 work in the Municipality's Water and Wastewater Utility (AWWU). *Affidavit of John McAleenan.*

AMC 3.70.110.B further defines the limits of a strike for Class A2, stating that "(t)he limit is determined by the interests of the health, safety and welfare of the public." It then provides for an application for injunctive relief from the strike if it is shown that

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the strike has begun to threaten the health, safety and welfare of the public. This code provision goes on to state:

A court in deciding whether or not to enjoin the strike shall consider the total equities in the particular class. For purposes of this section, the term "total equities" includes not only the impact of the strike on the public but also the extent to which employee organizations and public employers have met their obligations under this chapter.

While AMC 3.70.110.B refers to the "Board:" applying to the court to enjoin a strike, the Employee Relations Board has stated that its right to pursue an injunction is not exclusive of the rights of other interested parties. In this matter, the Municipality of Anchorage is a real party in interest.

A. The Union and the MOA have met their obligations under the code.

At no time during the negotiations between the Union and the MOA has there been any allegation that either party has failed to comply with its obligations under the code. In fact, as discussed above, the parties have negotiated in good faith at all times, have mutually agreed to attempt mediation, fully participated in fact finding, continued to negotiate in good faith following fact finding, fully participated in arbitration, and finalized negotiations on those issues identified at arbitration as no longer in dispute.

As the result of this process, with both sides working hard to reach agreement, an arbitrator's award legally resolved the remaining, primarily economic, issues between the parties. At that point, it was up to the Assembly to vote the contract with the arbitrator's award included, up or down. The Assembly voted it down, which now brings the parties to this proceeding.

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B. The Strike poses a direct and imminent threat to the health, safety and welfare of the public.

1. The public health is directly impacted by the quality of the water it drinks and the proper treatment and disposal of its wastewater. The process of providing water to Anchorage is highly technical, with many safeguards in place to protect the public.

~~*Affidavit of John McAleenan.* The members of the Union who perform this work are experienced, highly trained and motivated employees of the Municipality. Special licenses, training and other qualifications are required of them, again to ensure public safety and welfare. *Id.* Water for the Municipality primarily comes from Eklutna Lake, and requires specialized safety considerations, given the great water pressures involved, and treatment of the water before it is sent to the consuming public. *Id.* Another major source of water for the community is a series of water wells. Each of these sources must be monitored and the water treated to maintain public health. Any deviation from the proper handling of this water, whatever its source, could immediately jeopardize the health of the citizens of Anchorage. *Id.*~~

Similarly, the treatment of wastewater is crucial to public health and safety. AWWU operates under a number of permits from state and federal authorities, which specify the treatment requirements for wastewater and its discharge into the environment.

~~*Affidavit of John McAleenan.* This part of the equation may be even more technical than the drinking water side. Again, the operators must be trained, certified, licensed and experienced, in order for the utility to comply with its legal obligations and to protect the health and safety of the community. *Id.*~~

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Improperly treated (or untreated) water and wastewater pose both immediate and long-term dangers to public health. *Id.* AWWU depends on its skilled employees to fulfill its health and safety obligations to the public. According to senior management at AWWU, if the Union employees were to strike, non-represented and executive employees would have to maintain the system for as long as they were able. See, *Affidavit of John McAleenan*. ~~That time period is extremely short, so much so as to be non-existent: a maximum of 48 hours. *Id.* Given the start date of the strike (tomorrow), the Municipality's ability to ensure safe, reliable water and wastewater treatment potentially ends as early as Sunday morning. Keeping the water and wastewater systems properly staffed, monitored, and repaired as necessary requires enjoining the strike and keeping the union members at work or returning the union members to work immediately.~~

Plumbers and Pipefitters 367 agrees that irreparable harm would result from a walk out and does not oppose this motion. Ex. A.

The parties will continue to operate under the prior Collective bargaining agreement and thus the defendants will be compensated for their time, suffering no loss as a result of being ordered to work.

As an A-2 Union, the defendants are no entitled to strike at a time when public health safety or welfare a re endangered.

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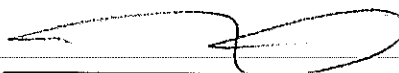
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CONCLUSION

This motion is unopposed as all parties agree that the preceding negotiations have been in good faith and there is a direct and substantial risk to the public health and safety should the strike continue.

Respectfully submitted this 1st day of September, 2011.

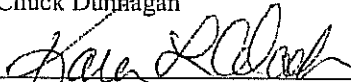
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Municipal Attorney

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Jermain Dunnagan & Owens, P.C.

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September 1, 2011

Will Earnhart, Assistant Municipal Attorney
Municipality of Anchorage
Division of Law – Civil Division
632 W. Sixth Avenue, Ste. 730
Anchorage, AK 99501

RE: AWWU Strike at 10:00-AM Friday, September 2, 2011

Dear Will:

This letter comes after 19 months of negotiations, which included mediation, fact finding, and finally arbitration on the very few issues still remaining at the end. Those few issues were put before local business man and retired judge, Douglas Serdahely. He issued a fact finding report and, when we still could not agree, he issued a conservative split arbitration decision on the remaining issues. The package of the agreements the parties had made between themselves and the Arbitrator's decision on the contested issues (the contract) was placed squarely before the Assembly for an up and down vote. For this bargaining unit, the code requires a super majority vote (8 votes) for approval. On Tuesday, August 30, four assembly members voted "no." Under the rules, that meant that the Assembly voted down the AWWU contract.

Under the Code when the Assembly does not approve the Arbitrator's decision the parties are at impasse. The Mayor has the option to implement on AWWU employees his last best offer, which would give AWWU employees the worst labor contract in the city. We understand he intends to do so. The AWWU employees have the lawful right to strike. See AMC 3.70.110.C.10.b.

The Union purposefully and out of respect for the Assembly did not take a strike vote before the August 30th meeting. Neither the Union nor the AWWU employees want to strike. However, our only other option is to accept the worst labor contract in the city and one that a neutral, retired judge has rejected. As expected, the AWWU employees followed the lead of Judge Serdahely and they rejected the Mayor's last best offer like he did. On August 31, AWWU employees voted overwhelmingly to authorize a strike.

This will confirm that my office and the office of the city attorney have had a number of conversations about the possibility that the Arbitrator's award would not be approved. That was not the result anyone wanted, but it was always a possibility. Our discussions focused on ways to preserve public safety and minimize possible damage to

Will Earnhart
September 1, 2011
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the plant, equipment, and infrastructure of AWWU in the event of a strike. I understand from our discussions immediately after the Assembly meeting and shortly after 7:00 AM this morning, you have the injunction pleadings and supporting documents substantially complete.

Going forward we are concerned that trying to agree on a stipulation may be overly time consuming and unproductive. Below are the Union's positions. This letter may be introduced in court as an official communication made for the purpose of conveying and confirming these points.

1. All represented employees in the AWWU bargaining unit will go on strike at 10:00 AM Friday, September 2, 2011. This includes facilities maintenance personnel and mechanical inspectors. At 10:00 AM Friday all represented employees will exercise their right to strike by quitting work and leaving their work facilities. We have advised all members against any form of demonstration or misconduct. They will simply turn in their keys and phones and leave.

2. The Municipality of Anchorage has standing to file for an injunction applicable to the entire bargaining unit.

3. An attempt to get an injunction requiring only selected workers to return to work would be an unfair labor practice. The Municipality has no standing and the court has no jurisdiction to issue any injunction in this matter that divides or reorganizes the bargaining unit. Will, I raise this because of reports that the Mayor is on the radio saying that he will attempt to bring only selected employees back to work. If that's true it's not only illegal, but it directly contradicts your email to me on Monday.

4. A strike by AWWU employees will threaten the health, safety and welfare of the public. Although AWWU could continue to operate for a short period of time, we believe the danger to the public, in many respects, would be immediate once a strike begins. If an injunction is going to issue at some point anyway (which we both believe will happen), lets get it done before there is any chance of damage to persons or property.

5. It is not necessary to the court's jurisdiction, or to the exercise of its equitable powers to protect the public, that the strike be allowed to start or that it be allowed to continue until there is actual damage to public health, safety and welfare. The danger is real, the strike is scheduled, and the public welfare is clearly at risk.

6. Accordingly, the Union will consent to the issuance of a preliminary injunction enjoining the strike. But, it must be clear in the preliminary injunction that:

- The preliminary injunction to protect the public welfare is not a waiver by either party of any argument, right or issue with respect to the permanent injunction; and

Will Earnhart
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- The court must preserve the current status quo pending a full opportunity of both parties to propose and brief all outstanding legal question(s) prior to the issuance of a final injunction. That means that the Mayor's LBO may not be imposed on the unit during the term of any preliminary injunction; and
- The preliminary injunction applies to the entire unit, and not just to selected employees; and
- The court and the parties agree to a reasonable briefing schedule for resolution of all outstanding issues.

Will, I'm traveling out of state during the next couple of weeks. That will need to be reasonably accommodated.

Our intent is to allow the administration to stop the strike, before it starts, if it so desires. That's the Mayor's call.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, PC



Chuck Dunnagan
General Counsel, UA-367

cc: UA 367
Media

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,)
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Plaintiff,)
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vs.)
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PLUMBERS & PIPEFITTERS,)
LOCAL 367,)
))
Defendant.)

) Case No. 3AN-11-_____ CI

AFFIDAVIT OF JOHN J. McALEENAN, JR.

STATE OF ALASKA)
)) ss.
THIRD JUDICIAL DISTRICT)

JOHN J. McALEENAN, JR., being first duly sworn upon oath, hereby deposes
and states as follows:

1. I am the Acting General Manager and the Director of Customer Service for the Anchorage Water & Wastewater ("AWWU") and have personal knowledge of the matters addressed in this affidavit.

2. The Anchorage Water and Wastewater Utility (AWWU) operates two water treatment plants, several high-production water wells, three wastewater treatment plants, the water distribution system and the wastewater collection system. This infrastructure provides essential public health services 24 hours per day to citizens of Anchorage, Eagle River and the Northern Communities, and Girdwood.

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3. AWWU cannot operate these systems in compliance with State and Federal regulations without a State of Alaska certified operator with the appropriate level of certification in charge. A total of 10 non-represented Alaska certified operators are available to operate, maintain and repair AWWU's treatment, water distribution and sewage collection systems in the event of a strike. Under a non-strike situation, these 10 ~~staff members rely upon many additional staff of represented employees from the~~ Plumbers and Pipefitters Local 367 to operate these facilities.

4. These non-represented employees have the licenses and detailed knowledge and experience to effectively operate AWWU's infrastructure for a maximum of 48 hours without help from Plumbers and Pipefitter 367 employees. There is only one non-represented individual with the proper certifications to oversee each of our facilities. A walkout lasting longer than 48 hours would result in serious risks to the public health, safety and economy of the Municipality of Anchorage. These risks would include:

- Damage to AWWU's facilities due to equipment failures or malfunctions that could not be mitigated in a timely manner.
- Loss of water service to portions of AWWU's service area due to line breaks and/or equipment failures that could not be mitigated in a timely manner.
- Loss or reduction in water available to fight fires in portions of AWWU's service area.
- Untreated sewage overflows from manholes and pump stations and backups in public buildings and/or private residences due to collection system plugs and/or equipment failures that could not be repaired in a timely manner.
- Failure to meet wastewater permit discharge requirements of AWWU's three wastewater treatment facilities and potential for fines and/or compliance orders from responsible regulatory agencies.
- Failure to meet State and Federal drinking water quality standards and the resultant need to restrict water use or require additional in-home treatment (i.e., boil water notice).

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- Inability to meet all field sampling needs required by law or regulation to monitor drinking water quality throughout more than 830 miles of water distribution system piping.
- Potential misapplication of chemicals and/or treatment process controls resulting in plant upsets leading to deteriorated drinking water quality or improperly treated wastewater that would fail to meet required standards necessary for protection of public health or the receiving waters of AWWU facilities

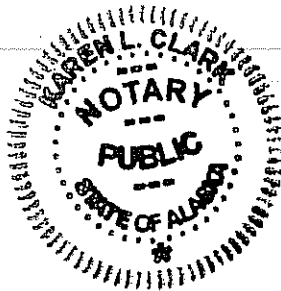
Any of these risks could occur in less than forty eight hours in an unexpected event or equipment failure occurs.

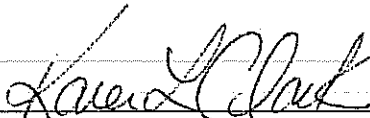
FURTHER YOUR AFFIANT SAYETH NAUGHT.



 JOHN J. McALEENAN, JR.

SUBSCRIBED and SWORN to before me this 1st day of September, 2011.





 Notary Public in and for Alaska
 My commission expires: 3/9/15

Certificate of Service

I hereby certify that on September 1, 2011,
 I caused to be hand delivered a true and correct
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Chuck Duannagan



 Karen L. Clark, Legal Secretary

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PRELIMINARY INJUNCTION

ORDER

Pursuant to agreement by the parties and being fully advised in the premises, the Court hereby immediately and permanently enjoins the Plumbers and Pipefitters, Local 367, and the employees it represents at Anchorage's Water and Wastewater Utility (AWWU) from going on strike over unresolved contract issues for the period of July 2010 through June 2013. The terms of the prior Collective Bargaining Agreement remain in effect during the term of this Order. A hearing will be held on _____ of September, 2011, at _____ a.m./p.m. to establish a schedule for resolving the outstanding contract negotiations

Consistent with this injunction the Court issues the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT
and
CONCLUSIONS OF LAW

1. The rights of Municipal employees with respect to collective bargaining and their rights to strike are governed generally by the Anchorage Municipal Code at 3.70.110, *et seq.*

2. The AWWU employees represented by the Plumbers and Pipefitters, Local 367 are Municipal employees. Their rights in this matter are governed by the Anchorage Municipal Code.

3. The Anchorage Municipal Code breaks employees into three classes, A.1., A.2. and A.3. Employees in Class A1 consist of police, fire protection and emergency medical services. The services provided by A.1. employees may not be given up even for the shortest period of time. AMC 3.70.110.A.1. Employees in this class are prohibited from engaging in a strike or other form of collective work action against the Municipality. AMC 3.30.120.A. Instead, if an impasse at collective bargaining is reached with respect to A.1. employees, there is a process of negotiation, mediation, fact finding and ultimately interest arbitration. See 3.70.110. In the event that the parties utilize the entire process, and in the event that there is an interest arbitration, the decision of the arbitrator is final and binding upon both parties. AMC 3.70.110.C.10. For A.1. employees the right to interest arbitration is substituted for the right to strike.

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4. AWWU employees are engaged in sewer and water treatment work for the City and are in Class A.2. AMC 3.70.110.B. The services which they provide may be interrupted for a limited period of time but not for an indefinite period of time. AMC 3.70.110.A.2. They may engage in a strike for a limited period of time determined by the interest of health, safety and welfare of the public.

~~AMC 3.70.110.B. Defendant Union and its members are Class A.2. members.~~

5. A strike by A.2. employees may be enjoined if it is shown that it has begun to threaten the health, safety or welfare of the public. AMC 3.70.110.B.

6. A court in deciding whether or not to enjoin a strike by A.2. employees shall consider the total equities in the particular class. AMC 3.70.110.

7. While the term "total equities" is not defined in the Municipal Code, the Code does provide that the term includes not only the impact of the strike on the public but also the extent to which the employee organizations and public employers have met their obligations under the Municipal Code. AMC 3.70.110.B.

8. By stipulation the parties state and the Court finds as a matter of law that both the Municipality and the Union have complied with all relevant and necessary Municipal Code provisions concerning negotiations, mediation, fact finding and arbitration of their dispute. Neither side accuses the other of having committed any unlawful conduct in the course of their negotiations or other proceedings.

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9. In the event that negotiations for A.2. employee groups cannot be mutually agreed on, the parties ultimately go to interest arbitration. However, the decision of the interest arbitrator for bargaining units or portions of bargaining units within the A.2. category shall be final and binding upon the parties only after approval by eight votes of the Assembly. AMC 3.70.110.C.10.b. If the arbitrator's ~~decision is not approved by the Assembly within twenty-one (21) days after~~ delivery to the Municipal Clerk, the parties are considered at an impasse. The Municipality may then implement its Last Best Offer and the affected bargaining unit may exercise its right to strike. AMC 3.70.110.C.10.b.

10. After issuance of the interest arbitration award for AWWU employees the Assembly did not approve the arbitrator's award by eight (8) votes when it came up for consideration on August 30, 2011. The Court finds as a matter of law that the Municipality may lawfully implement its Last Best Offer. AMC 3.70.110.C.10.b.

11. For the same reason, the Court finds as a matter of law that the Local 367 represented employees of AWWU may lawfully exercise their right to strike. *Id.*

12. The Municipality has shown and the Court has found in the Findings of Fact above that a strike by this bargaining unit will very quickly result in detrimental effects on the interests of the health, safety and welfare of the citizens

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of the Municipality of Anchorage. As a result the Court finds it has jurisdiction to enjoin the strike after considering and ruling on the total equities.

13. The Municipality has declared its intent to impose its Last Best Offer. The Union has declared its intent to strike. There is a real and substantial controversy before the Court.

~~14. The Alaska Supreme Court applies to preliminary injunctions a~~
balance of hardships approach which entails a three-part test: plaintiff must be faced with irreparable harm; the opposing party must be adequately protected; and plaintiff must raise serious and substantial questions going to the merits of the case. *North Kenai Peninsula Road Maintenance Service Area v. Kenai Peninsula Borough*, 859 P.2d 636 (Alaska 1993). This Court has the jurisdiction and authority to issue preliminary and permanent injunctions. AS 09.40.230. ARCP 65.

15. Because the Court finds as a matter of fact that a strike by the AWWU employees would threaten the health, safety and welfare of the public, the Court finds as a matter of law that an injunction may issue which prohibits the strike. AMC 3.70.110.B.

16. The Municipality of Anchorage and the public would suffer irreparable harm should the Members of Plumbers and Pipefitters 367 walk out; the defendants will continue to be compensated under the terms of the prior Collective Bargaining Agreement; and the public safety health and welfare are threatened, thus pursuant

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AMC 34.70.110, the Union is not entitled to strike. A balancing of the hardships requires an injunction pursuant AS 9.40.230.

17. Pursuant Civil Rule 65(c), the Municipality does not need to post bond, as a public entity.

18. The parties are currently operating under the prior Collective Bargaining Agreement.

19. This agreement will remain in place until a new agreement is reached by the parties; this preliminary injunction expires; or this court imposes a new agreement on the parties.

20. In agreement to this injunction, the parties have not waived any argument right or issue in respect to the permanent injunction.


DATED this _____ day of _____, 2011.

Superior Court Judge

Certificate of Service

I hereby certify that on September 1, 2011,
I caused to be hand delivered a true and correct
Copy of the foregoing to:

Chuck Dunnagan


Karen L. Clark, Legal Secretary

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