
VICTORIA MARONE

Plaintiff,

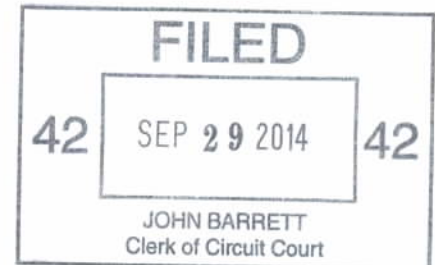
v.

Case No. 13-CV-004154

MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT,
Defendant,

AMERICAN FEDERATION OF TEACHERS,
LOCAL 212, WFT, AFL-CIO,

Intervenor-Defendant.



**MOTION TO STRIKE JOINT MEMORANDUM IN FURTHER SUPPORT OF
DEFENDANT'S AND INTERVENOR DEFENDANT'S RESPECTIVE MOTION FOR
JUDGMENT ON THE PLEADINGS AND MOTION TO DISMISS**

The Plaintiff, Victoria Marone, hereby moves to strike the "Joint Memorandum In Further Support of Defendant's and Intervenor-Defendant's Respective Motion for Judgment on the Pleading and Motion to Dismiss (the "Joint Memorandum"). The grounds for this motion are as follows:

1. The Joint Memorandum was filed and served on September 25, 2014, three business days before the hearing scheduled in this matter. That does not give the Court sufficient time to read, and the Plaintiff sufficient time to respond to this filing.
2. The Defendant and Intervenor-Defendant do not offer any excuse for this late filing.
3. Counsel for all parties had a telephonic scheduling conference with the Court on August 4, 2014. All counsel agreed to the September 30, 2014 hearing date. Counsel for the Defendant and Intervenor-Defendant did not request permission to file an additional brief at that time. If they had, counsel for Plaintiff would have requested an equal opportunity and the Court could have factored that in when setting a hearing date.
4. At the Scheduling Conference, the Court informed the parties that they should submit a letter on the status of settlement by September 4, 2014 because, if the case did not settle the Court wanted the amount of time between September 4th and the hearing date of September

30th to review the briefs and prepare for the hearing. Counsel for the Defendant and the Intervenor-Defendant were fully aware of the schedule set by the Court in that regard but chose to ignore it and submit a new brief very close to the hearing date.

5. The Joint Memorandum addresses the legal effect of the Wisconsin Supreme Court's **July 31, 2014** decision in *Madison Teachers v. Walker*. That means that counsel for the Defendant and the Intervenor-Defendant have had 56 days to submit a brief on that issue but intentionally decided to wait until three business days prior to the hearing which denies the Plaintiff a realistic chance to effectively respond.

6. The Joint Memorandum briefs issues that are not present in the motions to be decided by the Court on September 30th. Instead, the Joint Memorandum is in truth a disguised motion for summary judgment on the alleged ground of mootness. The Defendant and Intervenor-Defendant are capable of filing such a summary judgment motion but if they do so then the Plaintiff is entitled to time to file a response brief and response materials.

7. In the Joint Memorandum the Defendant and Intervenor-Defendant assert the following alleged "fact":

In February 2014, when the Conditional Successor Agreements were proposed to commence if Judge Colas' decision was upheld, MATC implemented terms and conditions of employment that reflected the relationship between the employer (MATC) and the employees. MATC did not implement any terms and conditions of employment that related to fair share or dues deductions.

8. The Defendant and Intervenor-Defendant offer no affidavit to support this statement and no further explanation. Are the terms and conditions that have been in effect since February 16th identical to the terms and conditions that were unlawfully collectively bargained? If they are the same then doesn't that mean the contract is in effect? Now that the employer and the union are submitting a joint memorandum is that an indication that they have agreed on the terms and conditions to now be in effect. If so, isn't that simply further illegal collective bargaining? Before the Court entertains a motion to dismiss on grounds of mootness, the Plaintiff is entitled to discovery on these issues.

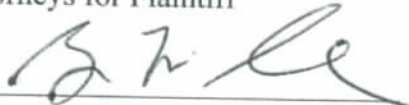
WHEREFORE, the Plaintiff requests that the Joint Memorandum be stricken, or in the alternative it be treated as a brief in support of motion for summary judgment and the Plaintiff be

given the opportunity to take discovery on the facts asserted in the Joint Memorandum, and to file an opposing brief.

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Date:

9/29/14



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