STATE OF WISCONSIN **CIRCUIT COURT** **MILWAUKEE COUNTY**
BRANCH 42

VICTORIA MARONE,

Plaintiff,

v.

Case No. 13 CV 4154

MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT,

Defendant,

and

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

Intervenor-Defendant.

DECISION AND ORDER

This declaratory judgment action was filed by plaintiff Victoria Marone ("Marone") against the Milwaukee Area Technical College District ("MATC"). Intervenor-defendant American Federation of Teachers, Local 212, WFT, AFL-CIO ("Local 212") [1] were permitted to intervene in this action pursuant to court order. MATC responded to the complaint with a Motion for Judgment on the Pleadings, while Local 212 responded with a Motion to Dismiss. For the reasons stated herein, MATC's motion is denied in part and granted in part; Local 212's motion is denied in its entirety.

STATEMENT OF FACTS

This is a declaratory judgment action involving legislation known as "Act 10." Under Act 10, collective bargaining over anything other than total base wages is prohibited for many public employers and their employees. Wis. Stat. § 111.70(4)(mb). This modification took effect in the summer of 2011 and litigation challenging Act 10's constitutionality ensued shortly thereafter. On September 14, 2012, Dane County Circuit Court Judge Juan Colas declared various

[1] Local 212 is the labor organization representing MATC employees.

provisions of Act 10 unconstitutional. Judge Colas' decision was immediately appealed and the Wisconsin Supreme Court accepted certification of the appeal from the court of appeals. The Court heard oral arguments on the constitutionality of Act 10 on November 11, 2013. The Court has issued its decision on July 31, 2014 upholding Act 10 in its entirety.

After Judge Colas' decision, before the Supreme Court issued its decision, MATC and Local 212 opened discussions over successor contracts to their then-current collective bargaining agreements. On February 26, 2013, the Wisconsin Institute for Law and Liberty ("WILL"), Marone's attorneys, sent a letter to Ann Wilson, Chairwoman of the MATC Board, reminding her that Act 10 was in effect, that Judge Colas' decision had no precedential value, and that if MATC renegotiated or approved a labor contract in violation of Act 10, it did so at risk of legal challenge and having the contract declared "unlawful." Later that day, MATC voted to ratify a "Summary of Proposed Labor Agreement," a summary of Conditional Successor Agreements, allegedly tentative agreements reached with the three bargaining units represented by Local 212. The Conditional Successor Agreements include subjects other than total base wages in contravention of Act 10. MATC maintains that the "Conditional Successor Agreements" were made contingent on a Wisconsin appellate court ruling that Act 10 is unconstitutional.

On May 2, 2013, Marone, a part-time English teacher at MATC, filed suit against MATC. Local 212 later intervened in the case as an additional defendant. Marone seeks declarations that: (1) MATC violated Act 10, (2) the Conditional Successor Agreements are invalid because they violate Act 10; and (3) the Conditional Successor Agreements illegally restrain trade in violation of Chapter 133 of the Wisconsin Statutes. Marone also seeks costs and attorney's fees under Wis. Stat. § 133.18.

On November 15, 2013, MATC filed a Motion for Judgment on the Pleadings. MATC seeks dismissal on two grounds: (1) Marone failed to comply with the notice of injury and notice of claim provisions of Wis. Stat. § 893.80; and (2) Marone lacks standing to bring this suit. Alternatively, MATC seeks dismissal of Marone's claims for costs and fees, arguing that Chapter 133 precludes such an award. On the same day, Local 212 filed a Motion to Dismiss. Local 212 seeks dismissal of all claims on the basis that Marone's claims are not justiciable, in that she lacks standing to bring this lawsuit and her claims are not ripe for adjudication. Alternatively, Local 212 argues that the Plaintiff's illegal restraint of trade claim should be

dismissed because Local 212 is exempt from liability under Chapter 133 of the Wisconsin Statutes. These motions are currently before the Court.[2]

STANDARD OF REVIEW

1. Judgment on the Pleadings

"A judgment on the pleadings is essentially a 'summary judgment minus affidavits and other supporting documents.'" *Freedom from Religion Found., Inc. v. Thompson*, 164 Wis. 2d 736, 741, 476 N.W.2d 318 (Ct. App. 1991) (citation omitted). The Court performs the first two steps of the summary judgment methodology. *See id.* Specifically, the Court looks to see whether the complaint states a claim and whether the responsive pleadings join issue. *See id.* "If the complaint is sufficient to state a claim and the responsive pleadings raise no material issues of fact, judgment on the pleadings is appropriate." *Id.*

2. Motion to Dismiss

A motion to dismiss tests the legal sufficiency of the complaint, and only looks within the four corners of the complaint. *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). All facts pleaded and reasonable inferences drawn from those facts are accepted as true for the purpose of testing the complaint's legal sufficiency; however, legal conclusions and unreasonable inferences need not be accepted. *Scarpaci v. Milwaukee County*, 96 Wis. 2d 663, 670, 292 N.W.2d 816 (1980). A complaint should not be dismissed unless it appears certain that a plaintiff cannot recover under any circumstances. *Torres v. Dean Health Plan, Inc.*, 2005 WI App 89, ¶ 6, 282 Wis. 2d 725, 698 N.W.2d 107 (Wis. Ct. App. 2005).

ANALYSIS

A. MATC's Motion for Judgment on the Pleadings

1. Wis. Stat. § 893.80, the Notice of Claim Statute, Applies

Wis. Stat. § 893.80 establishes conditions that must be satisfied prior to initiating a lawsuit against a governmental entity such as MATC. *Rouse v. Theda Clark Medical Center, Inc.*, 2007 WI 87, ¶ 19, 302 Wis. 2d 358, 735 N.W.2d 30 (citations omitted). The statute requires a plaintiff to serve a notice of injury and a notice of claim on a governmental entity within 120 days of the event giving rise to the claim. Wis. Stat. §893.80 applies to MATC. *Powell v. Milwaukee Area Technical College*, 225 Wis. 2d 794, 594 N.W.2d 403 (Ct. App. 1999). MATC contends that the

[2] Originally, Local 212 had also claimed that the Court should send the case to Wisconsin Employment Relations Commission for decision. However, at the motion hearing held on September 30, 2014, Local 212 withdrew that claim in the interest of judicial efficiency.

suit be dismissed since Marone never served it with a notice of injury or a notice of claim. Conversely, Marone argues that Wis. Stat. § 893.80 is inapplicable to declaratory judgment actions and therefore she was not required to comply with it.

Generally, all actions against government entities are subject to Wis. Stat. § 893.80, "not just those in tort and not just those for money damages." *Ecker Bros. v. Calumet County*, 2009 WI App 112, ¶ 5, 321 Wis. 2d 51, 772 N.W.2d 240 (citing *DNR v. City of Waukesha*, 184 Wis. 2d 178, 191, 515 N.W.2d 888 (1994)). However, Wisconsin courts have since carved out exceptions to this rule. *Id.* at ¶ 6. Thus, compliance with Wis. Stat § 893.80

> is a necessary prerequisite to all actions brought against the entities listed in the statute...whether a tort or non-tort action...Except as provided by statute or case law interpreting those statutes, a party must file a notice of claim and follow the statutory procedures set forth in § 893.80(1)(b) before bringing any action against a governmental subdivision.

City of Racine v. Waste Facility Siting Bd., 216 Wis. 2d 616, 620, 575 N.W.2d 712 (1998).

In determining whether an action is exempt from Wis. Stat. § 893.80, the court examines three factors, whether: (1) there is a specific statutory scheme for which a plaintiff seeks exemption, (2) enforcement of Wis. Stat. § 893.80 would hinder a legislative preference for prompt resolution of the type of claim under consideration, and (3) the purposes for which Wis. Stat. § 893.80 was enacted will be furthered by requiring a notice of claim be filed. *E-Z Roll Off, LLC v. County of Oneida*, 2011 WI 71, ¶¶ 23-24, 335 Wis. 2d 720, 800 N.W.2d 421.

In *E-Z Roll Off, LLC v. County of Oneida,* the Wisconsin Supreme Court applied the three-factor test to antitrust actions and found that antitrust actions are subject to Wis. Stat. § 893.80's notice of claim requirements. 2011 WI 71, ¶ 39. First, if a specific statutory scheme conflicts with the general intent behind the 120-day time limit in Wis. Stat. § 893.80(1d)(a), the specific statutory scheme controls. *Id.* at ¶ 25 (citation omitted). A declaratory judgment action does not provide a statute of limitations, is not designed to prevent injury, and "is not, by its nature, in conflict with providing governmental entities a 120-day period to review a claim." *Id.* at ¶ 28. Therefore a declaratory judgment action does not conflict with the notice of claim requirements in Wis. Stat. § 893.80. *Id.* Similarly, the state's anti-trust laws, which provide a six-year statute of limitations,[3] do not conflict with Wis. Stat. § 893.80's notice of claim requirements. *Id.*

[3] The six-year statute of limitations provided for in Wis. Stat. ¶ 133.18 applies only in a civil action for damages or recovery of payments. Presumably, then, when a plaintiff is only seeking declaratory relief pursuant to Chapter 133, the statute of limitations does not apply at all.

Second, the Supreme Court found that Wis. Stat. § 133.18(5), which mandates that "[e]ach civil action under this chapter…shall be expedited in every way and shall be heard at the earliest practicable date," demonstrated the legislature's preference for prompt resolution of antitrust claims. *Id.* at ¶ 31. The Court held that applying notice of claim requirements to such antitrust actions promotes, rather than hinders, the legislative preference for expediency because it forces a plaintiff to bring suit sooner than the six-year statute of limitations requires. *Id.* at ¶¶ 31-32.

Third, the Supreme Court found that applying notice of claim requirements to antitrust actions satisfied the former's dual purposes: (1) to give governmental entities the opportunity to investigate and evaluate potential claims, and (2) to afford governmental entities the opportunity to compromise and budget for potential settlement or litigation. *Id.* at ¶ 34 (citing *Thorp v. Town of Lebanon*, 2000 WI 60, ¶¶ 23, 28). The Court found that requiring earlier filing of claims aided a governmental entity in better investigating the circumstances of a claim and allowed the governmental entity time to adjust budgets.

In another case, the Wisconsin Court of Appeals applied the three-factor test and held that a declaratory judgment action was not exempt from Wis. Stat. § 893.80 where the statute underlying the declaratory judgment claim was silent as to notice and did not require prompt resolution of the claim. *Ecker Bros.*, 2009 WI App 112, ¶ 6.

In the instant case, the Court finds that declaratory judgments construing Act 10 and Chapter 133 are subject to the notice of injury and notice of claim requirements of Wis. Stat. § 893.80. It barely requires mention that a suit pursuant to Wis. Stat. § 111.70 (i.e. Act 10), which governs municipal employment, is necessarily a suit against a municipality body and therefore is subject to notice of claim requirements. Furthermore, the Court is bound by the holding of *E-Z Roll Off* and finds that Chapter 133 claims are subject to notice of claim requirements. Also relying on *E-Z Roll Off*, I find that declaratory judgment actions are likewise subject to those requirements.

The declaratory judgment statute, Wis. Stat. § 806.04, does not have a statutory scheme that conflicts with the notice of claim requirements because it does not provide a statute of limitations, is not designed to prevent injury, and "is not, by its nature, in conflict with providing governmental entities a 120-day period to review a claim." *E-Z Roll Off*, 2011 WI 71, ¶ 28. Moreover, the statute is silent on the issue of notice. Marone's argues that this fact creates a conflict with the notice of claim statute which would place an obligation on parties that the declaratory judgment statue does not. However, case law stands for the proposition that statute

needs to actually contain a provision similar to a notice of injury or claim requirement to create a possible conflict. The Court refuses to imply a statutory conflict where none exists.

Second, the notice of claim requirements would promote rather than hinder the purpose of declaratory judgment actions to resolve "uncertainty and insecurity," Wis. Stat. § 806.04(12). Since declaratory judgment actions are not subject to a statute of limitations, application of notice of injury and claim requirements would force a plaintiff to bring a claim within a short period of time.

However, Marone argues that notice requirements would slow down an "urgent" declaratory judgment action, citing *Little Sissabagama Lake Shore Owners Ass'n, Inc. v. Town of Edgewater*, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997) and *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996). *Little Sissabagama* is not applicable here since the statute at issue there provided only a 90-day waiting period, which is much shorter than the 120 days required by Wis. Stat. § 893.80. Conversely, there is no statute of limitations for declaratory judgment while Chapter 133, Stats., actions are subject to a six-year statute of limitations. Neither of these periods is shorter than 120 days, so *Little Sissabagama* does not apply. In addition, *Auchinleck* is distinguishable because policy considerations that weighed heavily there, namely open access to government and an informed electorate, are not an issue here.

Marone makes two other arguments against the second factor which are irrelevant. She argues that notice requirements would frustrate the purpose of the declaratory judgment statute and render many injunctive cases against municipal misconduct effectively moot. However, the declaratory judgment statute does not provide for injunctive relief and Marone is not seeking it. Marone also argues that applying notice of claim would hinder the legislative purpose of allowing other individuals to be "heard" and later join to the action. This is untrue, however, since individuals can still be heard via an amicus brief and can still join an action, albeit after the 120-day waiting period, or file his or her own lawsuit.

Third, requiring notice of injury and claim would allow MATC the opportunity to investigate and evaluate potential claims – here, that it violated Act 10 – and to budget for potential litigation. Here, MATC was in a "damned if you do, damned if you don't" type of situation in that potential litigation from either Marone (if it approved the Conditional Successor Agreements) or Local 212 (if it refused to collectively bargain beyond base wages). It was for MATC to choose which course of action to take, not Marone. Since declaratory judgment

actions meet none exemption criteria, all Marone's claims are subject to notice of injury and claim requirements.

The fact that Marone is not seeking damages or a penalty against MATC is not relevant, but Marone misconstrues case law in an attempt to make it so. First, Marone quotes *Kettner v. Wausau Ins. Companies*, 191 Wis. 2d 723, 735, 530 N.W.2d 399 (Ct. App. 1995): "The purposes of this statute is to protect the government and taxpayers from excessive claims by limiting the government's exposure to potential liability. However, *Kettner* is distinguishable because the decision was explicitly construing subsection (3), which caps damages against a municipality at $50,000, and not subsection (1d).

In a similar vein, Marone argues that the Court should follow the lead of *Lewis v. Sullivan*, 188 Wis. 2d 157, 524 N.W.2d 630 (1994), which held that the state notice of claim statute, Wis. Stat. § 893.82, was not applicable to claims for declaratory relief. But *Lewis* is distinguishable on important grounds. First, the decision did not address, and expressly distinguished, Wis. Stat. § 893.80: "The court stated that sec. 893.80(1) applies to more actions than tort actions for money. Section 893.80(1) is not at issue in this case." *Id.* at 169, n.9 (emphasis added). Second, while § 893.82 does parallel § 893.80, the two statutes are very different. Wis. Stat. § 893.82(3) provides that, except for medical malpractice cases,

> no civil action or civil proceeding may be brought...unless within 120 days of the event causing the injury, damage or death...the claimant in the action or proceeding serves upon the attorney general written notice of a claim stating the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death...

(emphasis added). Since the state notice of claim statute applies only to damage, it is logical that the Supreme Court would hold that it does not apply to declaratory judgments. On the other hand, Wis. Stat. § 893.80(1d)(a) provides that "no action may be brought or maintained...unless: Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served..." (emphasis added). Since the language of § 893.80(1d) does not limit the statute's reach to "injury, damage or death," but applies broadly to a "claim," *Lewis* is not applicable here.

Marone also claims that there is no point in applying notice of claim requirements to this action because MATC cannot unilaterally reject an unlawful contract and has no ability to right the wrong she claims. While declaring a contract void is a power reserved to the courts, MATC has the power and the right to unilaterally rescind an illegal contract.

2. Marone Substantially Complied with Wis. Stat. § 893.80(1d)

Even if notices of claim and injury are not filed, a plaintiff may still be found to have satisfied the requirements of Wis. Stat. § 893.80(1d). *Thorp v. Town of Lebanon*, 2000 WI 60, ¶¶ 23 and 28, 235 Wis. 2d 610, 612 N.W.2d 59.[4] Subsection (1d)(a), the notice of injury provision, requires that the governmental entity be served with a "signed notice of the circumstances of the claim" within 120 days of the initial event. *Id.* at ¶ 23 (quoting Wis. Stat. § 893.80(1d)(a)). The purpose of the notice of injury is to allow the governmental entity to investigate and evaluate potential claims. *Id.* (citation omitted). However, even if a claimant fails to give the requisite notice, the action will not be barred if the claimant shows that the governmental entity had actual notice of the claim and was not prejudiced by the claimant's failure to give requisite notice. *Id.* (citation omitted). Whether a governmental entity had actual knowledge of a plaintiff's claim and whether that entity suffered prejudice are mixed questions of law and fact. *E-Z Roll Off*, 2011 WI 71, ¶¶ 17-18. However, whether the facts of a governmental entity's knowledge constitute actual notice and whether the facts fit the statutory concept of prejudice are legal questions. *Id.*

In *Thorp v. Town of Lebannon*, the Wisconsin Supreme Court found that the Thorps complied with (1d)(a) by notifying the Town and County by letter of their request to rezone within 120 days of the zoning change becoming official. 2000 WI 60, at ¶ 25. Because the letter set forth sufficient detail of the circumstances of the Thorp's claim, the Town and County were able to investigate and evaluate the possibility of rezoning the Thorp's property. *Id.* at ¶ 26. The Court also found the Town and County had actual notice of the Thorps's was not prejudiced because the Thorps had corresponded with those entities on numerous occasions and presented their case before them in person. *Id.* at ¶ 27. Similarly, the Court of Appeals found that a County was not prejudiced because it had notice of the plaintiffs' dispute well before they filed suit and even before the County took the action complained of. *Ecker Bros.*, 2009 WI App 112, at ¶ 8.

Subsection (1d)(b) is the notice of claim provision, which requires a claim (1) contain a claimant's address, (2) include an itemized statement of relief sought, (3) be presented to the appropriate clerk and (4) be disallowed by the governmental entity. *Thorp*, 2000 WI 60, at ¶ 28 (citing Wis. Stat. § 893.80(1d)(b)). Notice is sufficient if it substantially complies with these

[4] The *Thorp* decision discussed the 2009-10 Wisconsin Statutes. Wis. Stat. § 893.80(1) was renumbered as § 893.80(1d) by 2011 Act 62. For ease of reading, I substitute § 893.80(1d) when discussing the *Thorp* decision.

requirements. *Id.* at ¶ 28 and n.10. Lists the address of the claimant's attorney satisfies the first (1d)(b) requirement. *Id.* at ¶ 29. The third requirement is substantially complied with if notice was presented to a "proper representative," such as the city attorney or individuals involved in the event complained of. *Id.* at ¶¶ 31-32 (citation omitted). The fourth requirement is satisfied when the governmental entity refuses the request in the notice. *Id.* at ¶ 33. Overall, a court looks to see whether the notice provides enough information to apprise a governmental entity of the budget it will need to set aside in case of litigation or settlement. *Id.* at ¶ 28 (citation omitted). The court should construe the notice to preserve bona fide claims." *Id.* (citation omitted).

The facts, as discussed above, are not in dispute. Since the remaining issues are questions of law, it is appropriate for the court to decide them on a motion for judgment on the pleadings or a motion to dismiss.

The Court finds that MATC had actual notice of the basis Marone's claims. Marone's counsel sent a letter to MATC February 26, 2013 warning MATC that its decision to bargain in violation of Act 10 may trigger lawsuits. Although the letter spoke in general terms and did not identify Marone or the exact nature of her claims, it informed MATC of the factual basis of later legal action collective bargaining over subjects beyond base wages in contravention of Act 10 and possible entering several contracts containing those prohibited subjects.

MATC asserts that the notice of injury must identify the claimant, citing *Markweise v. Peck Foods Corp.*, 205 Wis. 2d 208, 556 N.W.2d 326 (Ct. App. 1996). However, the decision explicitly states that subsection (1d)(a) requires that the government entity have knowledge of "the identity and type of damage alleged to have been suffered by a potential claimant." *Id.* at 220 (emphasis added). Thus, *Markweise* requires identity of the damage, not the claimant. It is not necessary for purposes of compliance with subsection (1d)(a) that the governmental entity have actual notice of the claimant. The statute provides that "[f]ailure to give the requisite notice shall not bar action on the claim if the [entity] had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant." Thus, a governmental entity needs notice of the claim; reference to "claimant" is a separate, requiring that the claimant prove there was no prejudice.

MATC was not prejudiced by not receiving a formal notice of injury and claim. Once the letter apprised MATC of the fact that it may be violating Wisconsin law, MATC had the opportunity to investigate and research whether its activities did in fact violate Act 10. At that

point, MATC could have ceased the aspects of collective bargaining complained of or refused to enter into contracts containing the prohibited subjects. Alternatively, if the agreements had already been entered into, MATC could have rescinded the Part-Time Faculty Conditional Successor Agreement on the grounds that it was illegal and therefore void. A formal notice of claim and injury would not have changed MATC's alternatives for action or given it any opportunity to budget or resolve or prevent the present issues that the letter did not provide.

It is irrelevant to the matter of prejudice that MATC was not able to individually bargain a contract with Marone since she does not seek to compel MATC to individually bargain. Rather, she seeks to not be held party to a contract, the allegedly illegal nature of which MATC was informed of in the February letter.

Finally, Marone substantially complied with subsection (1d)(b). First, the letter listed the name and address of her attorneys. *See Thorp*, 2000 WI 60, at ¶ 29. Second, the letter very clearly stated the "relief" requested: do not negotiate in a manner or approve a contract that violates Act 10. Third, the letter was presented to the "appropriate clerk" – the chairperson of MATC's District Board, as required by Wis. Stat. § 801.11(4)(a)5. Fourth, the claim was disallowed by MATC when it allegedly took the action that the letter requested it refrain from: bargaining and approving a contract in violation of Act 10.

Although notice of claim and injury requirements apply, Marone substantially complied with them via a letter her counsel sent to MATC before action was taken. Therefore, suit is not barred for failure to file either notice.

3. Marone has Standing to Bring all the Claims in her Suit

Whether a person has standing to participate in an action or proceeding is a question of law. *In re Guardianship and Protective Placement of Carl F.S.*, 2001 WI App 97, ¶ 5, 242 Wis. 2d 605, 626 N.W.2d 330 (citation omitted). Standing is not a jurisdictional matter, but a question of sound judicial policy. *Id.* (citing *Wisconsin Bankers Ass'n v. Mutual Sav. & Loan Ass'n*, 96 Wis .2d 438, 444 n.1, 291 N.W.2d 869 (1980)). The purpose of a standing requirement is "to ensure that a concrete case informs the court of the consequences of its decision and that people who are directly concerned and are truly adverse will genuinely present opposing petitions to the court." *Id.* The law of standing in Wisconsin is construed liberally, and "even an injury to a trifling interest" may suffice. *McConkey v. Van Hollen*, 2010 WI 57, ¶ 15, 326 Wis. 2d 1, 783 N.W.2d 855 (citation omitted).

The Wisconsin Supreme Court outlined a two-part test for general standing: first, whether the challenged action caused direct injury to a plaintiff's interest and second, whether the interest affected is one recognized by law. *Smerz v. Delafield Town Bd.*, 2011 WI App 41, ¶ 6, 332 Wis. 2d 189, 796 N.W.2d 852 (citing *Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 69 Wis. 2d 1, 10, 230 N.W.2d 243 (1975)). When a party asserts a claim for violation of a statute, it has standing if it was injured and if the asserted claim is within the zone of interests protected by the statute. *Id.* (citation omitted).

At issue in this case are three separate contracts negotiated between MATC and Local 212, one each for Full-Time Faculty, Part-Time Faculty, and Paraprofessionals.[5] Marone has standing to ask the Court determine the validity of the Part-Time Faculty Conditional Successor Agreement because she is a party that contract. The declaratory judgment statute allows "any person interested under a . . . written contract . . . or whose rights, status or other legal relations are affected by a . . . contract" to seek a declaration of rights, status, or other legal relations thereunder. *See* Wis. Stat. § 806.04(2). However, since Marone is part-time faculty, the Court finds that she is not a party to either the Full-Time Faculty or Paraprofessional Conditional Successor Agreements and therefore does not have standing to ask this court to construe those documents.[6] Accordingly, the Court will determine the validity of only the Part-Time Faculty Conditional Successor Agreement

Aside from construing the contract, Marone also asks the Court for a declaration that MATC violated Wis. Stat. §§ 111.70 and 66.0506. With respect to this claim, Wis. Stat. § 806.04 does not in and of itself create standing. *See Darboy Joint Sanitary Dist. No. 1 v. City of Kaukauna*, 2013 WI App 113, ¶ 26, 350 Wis. 2d 435, 838 N.W.2d 103. Therefore, the Court must analyze whether Marion was injured by MATC's alleged violation of these statutes and if the declaration she seeks is within the zone of interests protected by those statutes. Wis. Stat. § 111.70(4)(mb) prohibits municipal employers from bargaining collectively with a collective bargaining unit

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[5] The parties do not dispute the fact that there are three contracts at issue here, not one. Although in her complaint, Marone asserts that only one contract was negotiated and entered into, in her Brief in Opposition to MATC's Motion for Judgment on the Pleadings, Marone concedes that there is more than one contract. Brief p.2 ("the actual contracts entered into between MATC and Local 212"; "found with in the contracts themselves"; "the conditional language does not appear in the contracts." (emphasis added).

[6] At the motion hearing, held on September 30, 2014, Marone asserted that she had taxpayer status with respect to the Full-Time Faculty and Paraprofessionals contracts. However, Marone did not raise the argument in her briefs, and therefore the Court is unable to analyze the argument and opposing counsel is unable to respond to it. Therefore the Court does not address the possibility of Marone's standing as a taxpayer.

containing a general municipal employee about (1) any factor or condition of employment except wages, and (2) specific changes in total base wages that will not be made as provided in Wis. Stat. § 66.0506. As stated above, Marone has an interest in the labor contract to which she is a party. Logically, she also has an interest in ensuring that that contract is legal and was negotiated in a legal manner. Thus, a general municipal employee's interest in ensuring his or her labor contract is legal and ensuring his or her municipal employer negotiates only legally-authorized topics are within the zone of interests protected by Wis. Stat. §§ 111.70 and 66.0506. This interest will have been injured if MATC in fact collectively bargained with Local 212 beyond the legal subjects. Therefore, the Court finds that Marone has standing to pursue a declaration that MATC violated Wis. Stat. §§ 111.70 and 66.0506 in negotiating the Part-Time Faculty Conditional Successor Agreement.

MATC argues in opposition that the "stated" purpose of Act 10 (also known as the Wisconsin Budget Repair Bill) was to address a projected budget deficit, and since that has nothing to do with protecting Marone's interest in individually bargaining with her employer, she does not have standing to enforce Act 10. Furthermore, it is irrelevant that Marone delegated authority to Local 212 to negotiate employment terms on her behalf - she did not also delegate or waive her rights to have a court construe the contract. As a party to the contract, Marone has standing to challenge its validity. Wis. Stat. § 806.04(2).

4. Marone is Not Entitled to Costs and Fees under Wisconsin Statutes Chapter 133

Marone is not entitled to costs and fees under Chapter 133. The language of Wis. Stat. §133.18 is clear and unambiguous: "No . . . costs or attorney fees may be recovered under this chapter from any local governmental unit." *See* Wis. Stat. § 133.18(1)(b). Since MATC is a "local governmental unit" within the meaning of the statute, Marone's claim for fees and costs is barred. However, Marone argues that while Wis. Stat. § 133.18(1)(b) appears to preclude such an award, subsection (6) seems to grant it. Wis. Stat. § 133.18(6) provides that in an action "against a person or entity specified in s. 893.80, the amount recovered may not exceed the amount specified in s. 893.80(3)." Marone argues that subsection (6)'s reference to "amount recovered" is ambiguous. She asserts this ambiguity should be resolved in her favor, and costs and attorneys fees be awarded, because the purpose of fee-shifting statutes is to encourage injured parties to enforce their statutory rights when the cost of litigation, absent the fee-shifting provision, would discourage them from doing so. However, the statute is not ambiguous.

Wis. Stat. § 133.18(1)(a) provides that a person injured by reason of any action prohibited in Chapter 133 "shall recover threefold the damages sustained by the person and the cost of the suit, including reasonable attorney fees. Any recovery of treble damages shall...be reduced by any payments actually recovered..." In contrast, Wis. Stat. § 133.18(1)(b) provides that "[n]o damages, interest on damages, costs or attorney fees may be recovered under this chapter from any local governmental unit..." So, four categories money discussed in subsection (1)(a): damages, costs, attorneys fees, and payments on illegal contracts, while only three are discussed in subsection (1)(b): damages, costs, and attorneys fees. Payment on illegal contracts is the only category of money which a plaintiff is not prohibited from recovering against a local government unit. Marone's citation to an 1851 case is not persuasive because recovery of payments on a contract and damages for breach of contract are not synonymous. Marone's claim for costs and attorneys fees is barred, and so the Court need not address MATC's qualified immunity argument.

B. Local 212's Motion to Dismiss

1. Marone's Claims are Justiciable

As discussed above, Marone has standing to bring this declaratory action as to the Part-Time Faculty Conditional Successor Agreement. The fact that she has not attempted to individually bargain with MATC is irrelevant since she is not seeking to force MATC to bargain. Additionally, Marone's claims are ripe for adjudication. The Wisconsin Supreme Court issued its decision as to the constitutionality of Act 10 and the parties have not been able to settle the case. Thus, Marone is no longer seeking an allegedly advisory opinion, but the resolution to a real dispute as to a contract's validity.

2. Local 212 is Not Exempt from Chapter 133 Under the Circumstances of this Case

Local 212 argues that the Court should at least dismiss Marone's claim against it for illegal restraint of trade because it is not cognizable. Local 212 maintains that the express language of Wis. Stat. §§ 133.08 and 133.09 unequivocally exempts a representative union from liability under antitrust laws for collective bargaining with an employer. However, only authorized bargaining is exempt. Wis. Stat. § 133.07(1) states that Chapter 133 "shall not forbid or restrain individual members of [labor] organizations from lawfully carrying out the legitimate objects thereof..." Collective bargaining is a legitimate object of a labor union, but it is unlawful for MATC to negotiate with a labor union such as Local 212 for anything beyond base wages. If

Marone's allegations are true, the Part-Time Faculty Condition Successor Agreement and Local 212 cannot receive the antitrust laws' protections. Furthermore, Marone is not pursuing damages against Local 212, meaning she is not seeking to hold it "liable" under Wis. Stat. § 133.03. Local 212's exemption (or not) status under Wis. Stat. § 133.03 has no bearing on Marone's ability to pursue a declaratory judgment.

CONCLUSION

For the reasons stated above, MATC's Motion for Judgment on the Pleadings is DENIED in part to the extent that Marone substantially complied notice of injury and claim requirements and Marone has standing to bring the suit. However, MATC's motion is GRANTED in part to the extent that Marone cannot recover costs and attorney's fees against it. Local 212's Motion to Dismiss is DENIED in its entirety.

MATC's and Local 212's claim of mootness, which was argued orally at hearing held on September 30, 2014, will be considered by this Court by formal motion filed by both Defendants on October 7, 2014. Marone has 30 days, that is until November 6, 2014, to respond. Defendants will not reply. This Court will issue a written decision regarding the mootness issue within 30 days of receipt of Marone's brief in opposition.

SO ORDERED.

Dated this 7 day of October, 2014, at Milwaukee, Wisconsin.

BY THE COURT:

Honorable David A. Hansher
Circuit Court Judge

THIS DECISION AND ORDER IS FINAL FOR THE PURPOSES OF APPEAL