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

VICTORIA MARONE,

Plaintiff,

v.

Case No. 13 CV 4154

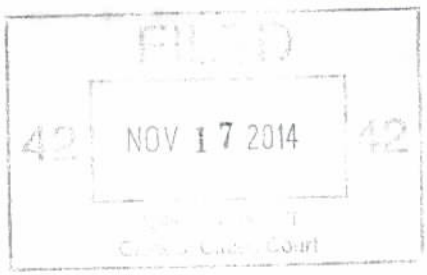
MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT,

Defendant,

and

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

Intervener-Defendant.



DECISION AND ORDER

This declaratory judgment action was filed by plaintiff Victoria Marone ("Marone") against the Milwaukee Area Technical College District ("MATC"). Intervener-defendant American Federation of Teachers, Local 212, WFT, AFL-CIO ("Local 212") [1] were permitted to intervene in this action by court order. MATC and Local 212 jointly filed a motion for judgment on the pleadings and motion to dismiss based on mootness. For the reasons stated herein, MATC and Local 212's motion is denied.

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). Act 10took effect in the summer of 2011 and litigation challenging its constitutionality ensued shortly thereafter. On September 14, 2012, Dane County Circuit Court Judge Juan Colas declared various provisions of Act 10 unconstitutional. Judge Colas' decision was immediately appealed and the Wisconsin Supreme

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

Court accepted certification of the appeal from the Court of Appeals. The Court issued its decision on July 31, 2014 upholding Act 10 in its entirety.

After Judge Colas' decision, but before the Supreme Court issued its decision, MATC and Local 212 opened discussions over successor contracts to their collective bargaining agreements. On February 26, 2013, Marone's attorneys, the Wisconsin Institute for Law and Liberty ("WILL"), sent a letter to Ann Wilson, then-Chairwoman of the MATC Board of Directors, reminding her that Act 10 was in effect and that Judge Colas' decision had no precedential value, and informing her 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, the MATC Board voted to ratify a "Summary of Proposed Labor Agreement," a summary of Conditional Successor Agreements ("CSAs"), the allegedly tentative agreements reached with the three bargaining units represented by Local 212. The CSAs include subjects other than total base wages in contravention of Act 10. MATC and Local 212 maintain that the CSAs 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 Part-Time Faculty CSA is invalid because it violates Act 10;[2] and (3) the Part-Time Faculty CSA illegally restrains trade in violation of Chapter 133 of the Wisconsin Statutes.

On November 15, 2013, MATC filed a motion for judgment on the pleadings and Local 212 filed a motion to dismiss. On October 7, 2014, this Court denied MATC's motion in part and granted it in part, while it denied Local 212's motion in its entirety. At the motion hearing on September 30, 2014, MATC and Local 212 argued orally that Marone's Complaint should be dismissed because the issues are moot. Since the Defendants did not properly develop this argument in their briefs, the Court required them to file a separate motion addressing mootness. MATC and Local 212 filed their joint Motion for Judgment on the Pleadings and Motion to Dismiss on October 7 and Marone filed her opposition brief on November 6, 2014. The Court

[2] Marone originally sought declaratory judgments with respect to all three CSAs. But on October 7, 2014, the Court decided that Marone only had standing to request a declaration with respect to the Part-Time Faculty CSA. Marone's claims are not limited to the Part-Time Faculty CSA.

did not permit Defendants to file a reply brief. For the reasons stated below, MATC's and Local 212's Motion for Judgment on the Pleadings and Motion to Dismiss is denied.

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).

3. Mootness

An issue is moot when its resolution cannot have any practical effect on the underlying controversy. *Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis. 2d 161, 171, 255 N.W.2d 917, 924 (1977) holding modified by *State ex rel. Town of Delavan v. Circuit Court for Walworth Cnty.*, 167 Wis. 2d 719, 482 N.W.2d 899 (1992). "The purpose of a dismissal for mootness is simply to prevent an unnecessary expenditure of time by the court and the parties." *Id.*

ANALYSIS

Defendants' main argument on this motion is that this case is moot since the Part-Time Faculty CSA on which Marone bases her claims never came into existence. Defendants claim that the Part-Time Faculty CSA was expressly conditioned on Act 10 being found

unconstitutional by a state appellate court, as stated in the "Summary of Proposed Labor Agreement," which was the basis of the MATC Board of Directors' vote to ratify the CSA. Since the Wisconsin Supreme Court upheld Act 10 in its entirety, Defendants argue that the condition precedent for the Part-Time Faculty CSA was never satisfied and therefore no contract was ever formed. All of Defendants' other arguments are based on the Part-Time Faculty CSA never having become binding.

The problem with Defendants' argument is that the "Summary of Proposed Labor Agreement" is not a part of the Part-Time Faculty CSA and so cannot constitute terms of the contract and has no effect on its validity. Additionally, there is no conditional language in the Part-Time Faculty CSA itself. Defendants' assertion that the Summary was the only document ever approved by the MATC Board is belied by the Board's own resolution, which states: "[the] Board hereby accepts and approves the agreement reached by MATC and Local 212...and authorizes signatures representing the MATC District Board and the Administration on the approved agreement, at which time said agreement shall be incorporated by reference to this resolution." (Compl. Ex. C). The resolution does not state that the Board approved the Summary; it explicitly states that it approved the agreement reached between the Defendants, and the Summary was not the agreement the Defendants reached – the Part-Time Faculty CSA was. The Board adopted the resolution on February 26, 2013 and the Part-Time Faculty CSA was signed by both Defendants the same day. Thus, the CSA was signed and, by the plain language of the Board's resolution, was accepted, approved, and incorporated into the resolution.

Furthermore, Defendants' assert that, not only did the Summary make the effectiveness of the Part-Time Faculty CSA contingent on the Act 10's unconstitutionality, but their negotiations and ultimate agreement were based on that contingency. Defendants cite case law that states "Where the parties to the proposed contract have agreed that the contract is not be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed." *Fox v. Catholic Knights Ins. Soc.*, 2003 WI 87, ¶ 26, 263 Wis. 2d 207, 6656 N.W.2d 181 (quotation marks and source omitted). The Part-Time Faculty CSA is, therefore, a valid contract. However, there is no evidence that MATC and Local 212 ever agreed to the Act 10-constitutionality contingency. The only evidence of the contingency at all is in the Summary of the CSA put before the MATC

Board. However, that Summary only constitutes MATC's view of the negotiations and cannot stand as evidence of Local 212's acceptance of the same contingency.

There is no contingency in the Part-Time Faculty CSA. Therefore, there is no basis for Defendants' claim of mootness and Marone's claims are justiciable.

CONCLUSION

For the reasons stated above, MATC's and Local 212's Motion for Judgment on the Pleadings and Motion to Dismiss is **DENIED**.

SO ORDERED.

Dated this 17th day of November, 2014, at Milwaukee, Wisconsin.

BY THE COURT:

Honorable David A. Hansher
Circuit Court Judge