STATE OF WISCONSIN | CIRCUIT COURT BRANCH 9 | DANE COUNTY

DAVID BLASKA,

Plaintiff,

vs. Case No. 13-CV-2578

MADISON METROPOLITAN SCHOOL DISTRICT BOARD OF EDUCATION, MADISON METROPOLITAN SCHOOL DISTRICT And MADISON TEACHERS INC.

Defendants.

MADISON TEACHER INC.'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM

Defendant Madison Teachers Inc. ("MTI"), by Cullen Weston Pines & Bach LLP, its attorneys, hereby respectfully moves the court pursuant to Wis. Stat. § 802.08 for summary judgment in favor of MTI.

The grounds for this motion are set forth below.

INTRODUCTION

MTI hereby joins Defendants Madison Metropolitan School District Board of Education (the "Board") and Madison Metropolitan School District (the "District") (collectively, "MMSD") in its Memorandum in Support of Motion for Summary Judgment filed with this Court on May 1, 2015, and adopts the arguments set forth therein.

In particular, MTI agrees that Plaintiff David Blaska ("Blaska") has failed to comply with the notice of claim statute, Wis. Stat. § 893.80, and that such compliance is a necessary prerequisite to the claims Blaska seeks to pursue here. *See* Wis. Stat. § 118.26. Having failed to meet that condition precedent, as MMSD has demonstrated and will not be repeated here, the court lacks competence to adjudicate Blaska's claims, and the entire matter must be dismissed. But in the event the court determines that noncompliance with the notice of claim statute requires only dismissal of the claims against MMSD, but not the entire action, MTI asserts that once MMSD is dismissed from the suit, the lawsuit will be lacking an indispensable party and, therefore, must be dismissed in its entirety for nonjoinder.

DEFENSE

The additional defense presented by MTI in this memorandum is that MMSD is an indispensable party in this challenge to the validity of collective bargaining agreements between MTI and MMSD. If MMSD is dismissed from this suit, the absence of an indispensable party calls for dismissal of the suit in its entirety. The elements to this defense, as articulated in Wis. Stat. § 803.03(1) and (3), are that a case should be dismissed if:

1. A person who is a necessary party is not joined; and
2. If that person cannot be made a party, the court determines that in equity and good conscience the action should not proceed among the parties before it.

The factors to be considered by the court in making the determination under this second part of the analysis include, as stated in the statute:

(a) To what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(b) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(c) Whether a judgment rendered in the person's absence will be adequate; and

(d) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

See also Dairyland Greyhound Park, Inc. v. McCallum, 2002 WI App 259, ¶9, 258 Wis. 2d 210, 655 N.W.2d 474; *United States ex rel. Hall v. Tribal Development Corporation*, 100 F.3d 476, 478-479 (7th Cir. 1996).

PROPOSED UNDISPUTED FACTS

MTI incorporates by reference the proposed undisputed facts presented by MMSD in its memorandum. However, the following facts, excerpted from MMSD's memorandum, are specifically relevant to the nonjoinder of an indispensable party defense addressed herein:

13. MMSD and MTI collectively bargained the 2014-2015 CBAs during September of 2013, reaching a tentative agreement on September 27, 2013. MTI ratified the 2014-2015 CBAs on October 2, 2013. Cheatham Aff., ¶ 5; Matthews Aff., ¶ 7.

14. MMSD and MTI collectively bargained the 2015-2016 CBAs during May and June of 2014, reaching a tentative agreement on June 2, 2014. MTI ratified the 2015-2016 CBAs on June 4, 2014. Cheatham Aff., ¶ 6; Matthews Aff., ¶ 8.

ARGUMENT

I. BLASKA'S CHALLENGE TO THE CBAs BETWEEN MTI AND MMSD SHOULD BE DISMISSED DUE TO THE ABSENCE OF AN INDISPENSIBLE PARTY.

In its memorandum, MMSD presents a compelling argument that Blaska failed to comply with the notice of claim statute, Wis. Stat. § 893.80, and that such compliance is a necessary prerequisite to the claims Blaska seeks to pursue here. Having failed to meet this condition precedent, the court lacks competence to adjudicate Blaska's claims, and the entire matter should be dismissed.

In the event, however, that the court determines that Blaska's noncompliance with the notice of claim statute requires only dismissal of the claims against MMSD, the entire action should still be dismissed. The primary relief Blaska seeks in this lawsuit is (1) a declaration that the 2014-2015 and 2015-2016 collective bargaining agreements existing between MTI and MMSD are unlawful, void, and of no force and effect, and (2) an injunction prohibiting enforcement of those agreements. Once MMSD is dismissed from the suit due to Blaska's failure to provide the required notice of claim and claim, the litigation will be lacking a necessary party, and "in equity and good conscience," the action should not proceed in MMSD's absence. Therefore the case should be dismissed in its entirety for nonjoinder.

A. The District is a Necessary Party.

"No procedural principle is more deeply imbedded in the common law than that, in an action to set aside . . . a contract, all parties who may be affected by the determination of the action are indispensable." *Lomayaktewa v. Hathaway*, 520 F.2d 1324,

1325 (9th Cir. 1975), *cert. denied*, 425 U.S. 903 (1976). As noted above, the first inquiry in an "indispensable party" analysis under Wis. Stat. § 803.03 is whether a person who is a necessary party is absent from the lawsuit. If an absent person "claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter, impair the person's ability to protect that interest," that person is necessary to join in the action. *See* Wis. Stat. § 803.03(1)(b).

In *United States ex rel. Hall v. Tribal Development Corporation*, 100 F. 3d 476 (7th Cir. 1996), the Seventh Circuit found the Menominee Tribe to be a necessary party in an action that sought recession of contracts to which the Tribe was a party, and dismissed the case for nonjoinder. Applying the same standard under Fed. R. Civ. Pro. 19 as exists under Wis. Stat. § 803.03(1)(b) for determining whether an absent party is indispensable, the *Hall* court explained that "[a] judicial declaration as to the validity of a contract necessarily affects, 'as a practical matter,' the interests of both parties to the contract." *Id.* at 479. Therefore, the Menominee Tribe was determined to be a necessary party. *Id.* Here, MMSD, as a party to the collective bargaining agreements challenged by Blaska, is a necessary party under identical reasoning.

B. The Action Should Not Proceed Without the District.

The second inquiry in an "indispensable party" analysis under Wis. Stat. § 803.03 is, if the necessary party cannot be joined, whether "in equity and good conscience" the case should nevertheless proceed, or whether that party is indeed "indispensable" and therefore the action should be dismissed. As demonstrated in MMSD's memorandum,

MMSD cannot be joined: Blaska's failure to comply with the notice of claim statute requires, at a minimum, that MMSD be dismissed from this suit.

This then brings the court to the analysis of whether, "in equity and good conscience," the case should proceed without MMSD, or if MMSD is indeed an indispensable party and therefore the case must be dismissed. Wisconsin Statute § 803.03(3) lists four factors to be included in the court's consideration of whether the case should be dismissed due to an absent necessary party:

> (e) To what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;
>
> (f) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
>
> (g) Whether a judgment rendered in the person's absence will be adequate; and
>
> (h) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

MMSD's absence in this case would be prejudicial to MMSD, for it has an interest in defending the integrity of the contracts which it bargained with MTI. And of course as the Wisconsin Court of Appeals has noted, "it is almost a foregone conclusion that the outcome of the litigation might be prejudicial to the [absent necessary party] if rendered in their absence." *Dairyland Greyhound Park, Inc.*, 2002 WI App 259, ¶ 27. Thus, as in that case, "the prejudice factor weighs strongly in a determination that the action should not proceed in the absence of" MMSD. *Id.* at ¶ 28.

Likewise, the second factor also weighs heavily against proceeding without MMSD. Given the relief sought by Blaska, complete invalidation of the collective

bargaining agreements and corresponding injunctive relief, there is no way for the prejudice to be lessened or avoided. As the *Hall* court recognized, where the plaintiff similarly sought rescission of challenged contracts, "There is no middle ground—either the transactions violate statutory requirements and are void . . . or they comply with the law and are valid." *Hall*, 100 F.3d at 480 (citation omitted). Thus, this factor also weighs in favor of dismissal.

Finally, while the court could theoretically grant the relief sought by Blaska in the absence of MMSD, the fourth factor also cuts against proceeding without all parties to the challenged collective bargaining agreements. If this action is dismissed only due to Blaska's failure to follow the notice of claim statute and thus include an indispensable party, there is arguably nothing preventing Blaska from now following the notice of claim statute and filing a new action at a later time. Moreover, even if Blaska could not do that, the court may take judicial notice that another individual taxpayer, Norman Sannes ("Sannes"), has filed another lawsuit, represented by the same attorneys as Blaska is here, asserting claims identical to those asserted by Blaska.[1] Sannes purports to have followed the notice of claim requirements of Wis. Stat. §893.80. Thus, the interests that Blaska claims to represent in this case, those of District taxpayers, will be adequately represented by Sannes, and consequently Blaska will obtain the same remedy through Sannes' lawsuit as he could obtain here.

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[1] *Norman Sannes v. Madison Metropolitan School District Board of Education, Madison Metropolitan School District, and Madison Teachers Inc.*, Dane County Circuit Court Case No. 15-CV-0974, Hon. Judge Peter C. Anderson, presiding. Complaint filed April 13, 2015.

Yet even if neither Blaska nor anyone else could ever proceed in this sort of challenge to the collective bargaining agreements without all necessary parties present, Blaska's "tenuous and indirect" interest in the contracts he challenges makes this fourth factor weigh only lightly in his favor. *See Hall*, 100 F.3d at 481.

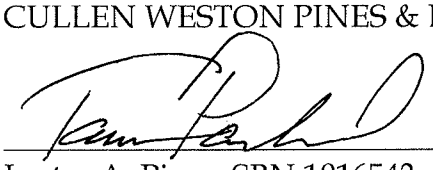
The court should conclude that a fair application of Wis. Stat. § 803.03 to the facts of this case compels dismissal for failure to join an indispensable party.

CONCLUSION

For the reasons stated in this memorandum and the memorandum of MMSD, the court should issue an Order granting MTI's Motion for Summary Judgment and dismissing all of the Plaintiff's claims, as well as awarding statutory fees and costs.

Dated this 1st day of May, 2015.

CULLEN WESTON PINES & BACH LLP



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