STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

David Blaska,

Plaintiff,

v.

Case No. 14-CV-2578

Madison Metropolitan School District Board of Education,
Madison Metropolitan School District, and
Madison Teachers Inc.

Defendants.

RESPONSE OF PLAINTIFF DAVID BLASKA TO THE MOTION FOR SUMMARY JUDGMENT FILED BY THE DEFENDANT MADISON TEACHERS INC.

INTRODUCTION

There is no dispute as to the parties or the procedural facts. The Defendant Madison Teachers Inc. ("MTI") has joined in the motion and brief filed by the Madison Metropolitan School District Board of Education (the "Board") and the Madison Metropolitan School District (the "District") and has filed a separate brief on one additional issue. Namely, MTI asserts that if this Court grants summary judgment to the Board and the District based on Wis. Stat. §893.80 then the Court should also grant summary judgment to MTI because MTI argues that the District is an indispensable party to any lawsuit with MTI relating to the CBAs. The Plaintiff opposes the motion because the District is not an indispensible party under Wis. Stat. § 803.03.

RESPONSE TO DEFENSE

Defense: The District is an indispensable party in this challenge to the validity of collective bargaining agreements between MTI and the District. This is disputed.

Elements

The Plaintiff agrees that MTI has accurately set forth the elements of the defense. The Plaintiff disputes whether MTI can meet the elements as follows:

1. *A person who is a necessary party is not joined.* Not disputed. If the Board and the District are dismissed under Section 893.80 then this element would be met.

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 Plaintiff disputes that this element is met in this case. The Plaintiff does not dispute that there are four factors to be considered by the Court in making the determination under the second element. The Plaintiff disputes that any of the four factors lead to the conclusion that the District is an indispensable party.

RESPONSE TO PROPOSED UNDISPUTED FACTS

Paragraph 13: Not disputed.

Paragraph 14: Not disputed.

ADDITIONAL PROPOSED UNDISPUTED FACTS

15. Plaintiff's counsel herein sent an email to Defendants' counsel on March 31, 2015 attaching a proposed amended complaint in this case which would have added Mr. Norman Sannes as a plaintiff to this case. (May 29, 2015 McGrath Aff. ¶5; Ex 7.)

16. There were no substantive changes to the claims. (*Id.*) Plaintiff's counsel asked defense counsel to consent to the amendment but they refused. (*Id.* at ¶ 6)

17. As a result, Mr. Sannes filed his action as a separate complaint. (*Id.*)

18. Mr. Sannes submitted a Notice of Claim and it was rejected by the Board and the District. (*Id.* at ¶¶ 7-8; Exs. 8-9.)

19. The Board and the District have not raised a defense under Section 893.80 in the Sannes case. (*Id.* at ¶9.)

ARGUMENT

I. THE DISTRICT IS NOT AN INDISPENSABLE PARTY

The Plaintiff agrees that the District, as a party to the CBAs, is a "necessary" party as that term is used under Section 803.03 but that does not end the inquiry. The leading case in Wisconsin is *Dairyland Greyhound Park, Inc. v. McCallum*, 2002 WI App 259, 258 Wis. 2d 210, 655 N.W. 2d 474. In that case, the court pointed out that the indispensable party" inquiry is in two parts. First, the Court must determine if the missing party is "necessary" for one of the three reasons set forth in Wis. Stat. § 803.03(1). Second, if it is, then the Court must consider whether "in equity and good conscience" the action should not proceed in their absence. *Id.* at ¶ 9. It is the second part of this inquiry which is in issue here.

Section 803.03 lists the four factors that this Court should consider in making this inquiry: (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 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. Applying these factors leads to the conclusion that this action could go forward in equity and good conscience even without the District as a defendant.

A. A judgment rendered in the absence of the District would not be prejudicial to the District or to those already parties.

MTI does not argue that it would be prejudiced in going forward. Instead MTI argues that a judgment would be prejudicial to the District because the District is a party to and has an interest in the CBAs. But that argument conflates the two part inquiry under Section 803.03. The fact that the District is a party to the CBAs is what makes them a necessary party. If that

were enough there would not be a second step to the inquiry. *Dairyland Greyhound Park* 2002 WI App at ¶27

The question that this Court has to answer is whether a judgment rendered by this Court would prejudice the District. It would not. What the Plaintiff has asked for is a declaration that the CBAs are unlawful. If the Court grants such a declaration, then the District would be relieved from any obligation to continue to comply with an illegal contract. That is not prejudice to the District. It is a benefit, not a detriment, to be relieved of the responsibility of performing under an illegal contract.

MTI might say but if the CBAs are declared to be illegal then the District does not receive the benefit of the CBAs and that would be prejudicial. In many contractual situations, this is true. But it is not here. Invalidation of the CBAs would relieve the District of certain obligations to MTI. For example, it would no longer have to collect union dues. It would be freed of the numerous provisions regarding working conditions, terminations, discipline and seniority – all of which would now be committed to its discretion. If this Court rules for the Plaintiff then the District will still be able to receive the labor of the employees (the benefit that the District receives under the CBAs) and the District will be able to unilaterally determine the terms and conditions of their employment, including provisions more favorable to the District than are contained in the CBAs. The District, itself, contends in its own summary judgment motion that it can replace the terms and conditions in the CBAs with unilaterally imposed terms and conditions.[1]

Not only would the invalidation of these unlawful provisions not "prejudice" the District, it might even lack standing to challenge these restrictions and requirements of Act 10 because

[1] The Plaintiff agrees that if the CBAs are declared void that the District could unilaterally impose new terms and conditions of employment. However, the new terms and conditions must be truly unilateral and cannot violate Act 10 or other aspects of state law.

they do not harm the District. One cannot be an indispensable party because one has been prevented from asserting a claim that one lacks standing to bring..

B. The extent which, by protective provisions in the judgment, by shaping of relief, or other measures, the prejudice can be lessened or avoided.

This factor is immaterial because there is no prejudice that would need to be lessened or avoided. MTI cites to *United States ex rel. Hall v. Tribal Development Corporation*, 100 F. 3d 476 (7th Cir. 1996) but MTI misses the point. The asserted indispensable party in that case had substantial benefits coming to it under the contract and the Court concluded in that case that if it declared the contract to be void then the party would be prejudiced by losing those benefits and no limiting order could lessen that prejudice. That is just not the case here.

C. Whether a judgment rendered in the District's absence will be adequate.

MTI makes no argument under this factor. It is undisputed that a judgment rendered against MTI in the absence of the District would be adequate.

D. Whether the Plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

MTI argues that even if the Court dismisses the Board and the District under Section 893.80 and then dismisses against MTI for failure to join an indispensable party, Mr. Blaska would not be prejudiced because he could always send a notice of claim, wait 120 days and then file a new action. But MTI ignores the fact that every day that goes by prior to a court ruling means that more taxpayer money is being spent (which is unlikely to ever be recovered). That prejudices Mr. Blaska. *See*, *Dairyland Greyhound Park*, 2002 WI App at ¶35 (denying motion under §803.03 even though one party to the contract could not be joined because the case presented an important legal issue having significant public policy implications.)

MTI also argues that there is another case pending by another taxpayer (Norman Sannes) making the same claims as asserted by Mr. Blaska, so that the interests of taxpayers will ultimately be protected even if Mr. Blaska's claim is dismissed under Section 893.80. What MTI does not tell the Court is that Mr. Blaska (through his counsel) tried to have Mr. Sannes' claims brought in this same case and the Defendants refused to consent. (APUF ¶¶ 15-16.) Plaintiff's counsel sent an email to Defendants' counsel on March 31, 2015 attaching a proposed amended complaint in this case adding Mr. Sannes as plaintiff. (APUF ¶15.) There were no substantive changes to the claims. (APUF ¶16) Plaintiff's counsel asked defense counsel to consent to the amendment but they refused. (*Id.*) As a result, Mr. Sannes filed his action as a separate complaint. (APUF ¶17.)

The reason that this background is material herein is that it relates to the prejudice to Mr. Blaska that is the focal point of this fourth factor. Mr. Blaska's interests as a taxpayer are best served by as prompt a decision on the merits as possible. Every day that goes by, represents further taxpayer dollars being spent under the unlawful CBAs. This is the reason that Mr. Blaska seeks an injunction in this case. Mr. Sannes' complaint was filed on April 13, 2015 which means that it is procedurally about seven months behind Mr. Blaska's case.

Mr. Sannes submitted a Notice of Claim and it was rejected by the Board and the District. (APUF ¶18.) The Board and the District have not raised a defense under Section 893.80 in the Sannes case. (APUF ¶19.) But if Mr. Blaska's claims are not adjudicated on the merits then a decision regarding the illegality of the CBAs will be put of for a number of months and that harms Mr. Blaska.

In this case, the Defendants obviously favor delay (which is presumably why they would not consent to amending the complaint to add Mr. Sannes as a plaintiff) but it harms Mr. Blaska. Thus, the fourth factor weighs in favor of continuing even in the absence of the District.

RELIEF SOUGHT

The Plaintiff requests that the Motion for Summary Judgment of MTI be denied.

Dated this 1st day of June, 2015.

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