



STATE OF WISCONSIN: CIRUCIT COURT: KENOSHA COUNTY

KRISTI LACROIX, et al.

Plaintiff(s),

DECISION AND ORDER ON COSTS

-V-

Case No. 13-CV-1899

FILED

JUN 22 2015

KENOSHA UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION, et al.

REBECCA MATOSKA - MENTINK
CLERK OF CIRCUIT COURT

Defendant(s).

On March 19, 2015, the court entered an order and judgment on a motion for summary judgment brought by the plaintiffs. The complaint of the plaintiffs, as amended, basically presented two causes of action; a declaratory judgment that the collective bargaining agreement between the Kenosha Unified School District and the defendant unions, were illegal and therefore void¹, and secondly that by entering into such agreements the defendants violated §133.03(1) of the Wisconsin Statutes prohibiting restraint of trade², and sought an injunction under the act.³

The court, on plaintiffs' motion for summary judgment, entered a declaratory judgment in plaintiffs favor finding that the collective bargaining agreements entered into between the Kenosha Unified School District and the defendant unions were illegal and void. The court also found in favor of the defendant unions that they did not violate §133.03(1) of the Wisconsin Statutes when they entered into such collective bargaining agreements.

Following the entry of the judgment, plaintiff filed a request for costs, including statutory attorney fees, in the amount of \$2,153.45, which was approved by the Clerk of Court on April 27, 2015. On April 29th, the defendant, Kenosha Education Association, "K.E.A." filed an objection to costs being awarded to the plaintiffs on a number of grounds, and in turn sought an order awarding the K.E.A. costs in the amount of \$1,824.53.⁴

¹ Different causes of action were pleaded in the amended complaint as the basis for this declaration; but the declaration being sought was the same.

² This act has been referred to as the "Mini-Sherman Act"

³ §133.16, Stats. Provides a private party with the right to seek an injunction of the claimed illegal activities in restraint of trade.

⁴ None of the other defendants have filed a written objection to plaintiffs costs or requested costs be awarded to them.

The K.E.A. in its objection set out a number of grounds as to why the plaintiffs were not entitled to an award of costs and as to why costs should be awarded to them. The objection asserted that:

1. Under §814.10(1), Stats., based on the affidavit of counsel indicates that the Wisconsin Institute for Law and Liberty incurred the costs and not the plaintiffs;
2. That even if an award of costs is warranted, it should not include any costs associated with the defendant, Kenosha Unified School District, "KUSD" who had settled the case and was dismissed from the action;
3. That the order of dismissal per the settlement agreement between plaintiff and KUSD stated "without fees, costs or penalties";
4. Any costs awarded to plaintiffs should not include costs they waived from KUSD;
5. That having prevailed on the restraint of trade cause of action KEA is entitled to its costs, pursuant to § 814.03(2);
6. The decision and order of the court granted summary judgment in favor of the union defendants;
7. The District Defendants were not aligned in interest with the Union Defendants;⁵
8. Under §814.03 (2) where there are non-aligned defendants, the court may award judgment to any defendant who obtains judgment in their favor;
9. All the criteria of §814.03(2), Stats., are met here entitling KEA to cost and not entitling plaintiffs to costs.

There are three primary sections under Chapter 814 dealing with the award of costs that state in part as follows:

"814.01. Costs allowed to plaintiff (1) Except as otherwise provided in this chapter, costs shall be allowed of course to plaintiff upon a recovery...

814.02 Costs limited, discretionary. (2) In equitable actions and special proceedings costs may be allowed or not to any party, in whole or in part, at the discretion of the court,....

813.03 Costs to defendant. (1) If the plaintiff is not entitled to costs under s.814.01(1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint...."

The plaintiffs in response to K.E.A.'s objection to an award for costs noted that its recovery of costs is being sought under § 806.04 (10), Stats., the Declaratory Judgment Act. That section provides: "(10) Costs. In any proceeding under this section the court may make such award of costs as may seem equitable and just." The plaintiffs also argue that the K.E.A. would not be entitled to costs under Chapter 814, in that any award of

⁵ The court at this time would note that this assertion is without arguable merit. From the start of this case, until the KUSD settled with the plaintiff, both the KUSD and the union defendants took the same position and were aligned on all matters argued before this court; namely, that the collective bargaining agreements were valid and there was no violation of the "Mini-Sherman Act".

costs is governed by Chapter 133, Stats., and that §133.18 titled “Treble damages: statute of limitations”, does not provide for an award of costs to a defendant.⁶

The question arises as to classification of an action that seeks only an injunction under Chapter 133, as it relates to the entitlement to costs under Chapter 814. It would appear to this court that such an action would constitute a “special proceeding”. In Ryan v. Society Ins., 211 Wis.2d 617 (Ct. App. 1997), the court noted in that regard:

“Historically, special proceedings included only those proceedings that were not an action at law or a suit in equity under traditional common law or equity practice....Special proceedings included all remedies that were not ordinary actions....” at page 619

It would seem then that an action seeking an injunction for a violation of the “Mini Sherman” act would be classified as a “special proceeding”. However, contrary to plaintiff’s assertion that a successful defendant cannot recover costs, since none are provided to a defendant under that chapter, the court believes that any entitlement to costs would still be governed by §814.02 (2), Stats., cited earlier.

The action brought by the plaintiffs were premised on grounds involving the expenditure of taxpayer funds and that of an individual right as an employee to bargain. It was alleged that these rights were being infringed upon, per the plaintiffs, due to an illegal and void collective bargaining agreement under Act 10. The plaintiffs sought a declaration of their rights, which was determined in their favor as to the validity of the CBA’s.

The case before the court was contested strenuously by the K.E.A. based on its position that it could rely on a decision by a trial court in an action to which it was not a party, that found that Act 10 was unconstitutional. This court will not repeat what it set out in its decision on the motion for summary judgment, but relying on a trial courts judgment of the unconstitutionality of Act 10, to which K.E.A was not a party and which was also on appeal, as authority for being able to enter into a CBA was tenuous at best. This tenuous reliance is also evident by the fact that another trial judge from the same county found that Act 10 was constitutional prior to the entry into these CBA’s. The equities here favor an award by this court of the costs plaintiffs have submitted in the amount of \$2,153.45,⁷ and defendant K.E.A.’s objection to the same is denied.

As noted, the K.E.A. has sought an award of costs under §814.03, Stats. As the court has previously determined, any award would be under §814.02(2), Stats., as a

⁶ The court would note here, that the amended complaint of plaintiff’s does not seek monetary damages for a violation of Chapter 133. The amended complaint only seeks injunctive relief that is available under §133.16, Stats. That section states in part, as it relates to a recover of costs, that “The party commencing or maintaining the action or proceeding may demand and recover the cost of suit including reasonable attorney fees.” As with the section noted by the plaintiff, there is no specific language as to a recovery of costs should a party defending the action be successful.

⁷ Neither party has disputed the reasonableness of the costs and disbursements the other has incurred, only the entitlement to the same.

special proceeding. In this regard, the costs and disbursements incurred by the defendant were in its defense of the CBA under Act 10. Except for each parties legal briefs on the issue in the motion for summary judgment, the dispute and the time and effort were centered around the validity of Act 10 and the ability of the defendants to rely upon a trial courts decision as to its constitutionality. The court does not find that an award of costs or disbursements based on the dismissal of the Chapter 133 cause of action is warranted and the court would deny K.E.A.'s request for an award of the same.

Should it be determined that the action for the injunction under the "Mini-Sherman Act" were not a special proceeding, and that K.E.A was then entitled to an award per §813.03, Stats., the court would enter an award for statutory attorney fees in the amount of \$300.00, since the same would be mandatory under the facts of this case, pursuant to §814.03, Stats. **Fouts v. Breezy Point Condominium Assoc.**, 355 Wis.2d 487 (Ct. App. 2014).

In reviewing the other costs & disbursements outlined in the affidavit submitted by the K.E.A. in regards to the other costs, these were not incurred or necessarily related to its defense of the "Mini-Sherman Act". The remaining costs and disbursements incurred were for postage, photo copies, conference calls and transcripts⁸ of proceedings before this court. The court is familiar with the proceedings before this court and with the exception of some minimal argument at the summary judgment hearing, and in the briefs submitted that may have touched on the "Mini-Sherman Act", the crux of the case on which this cause of action centered was the legality of the CBA under Act 10. Consequently, those costs and/or disbursements are not related nor were they necessary to a defense of the "Mini-Sherman Act", and thus would not have be awarded. **Weber v. Auto Owners Ins. Co.**, 361 Wis.2d 287 (Ct. App. 2015).⁹

This document is the final document for purposes of an appeal under § 808.03 (1), Stats.

Dated at Kenosha, Wisconsin this 22nd day of June, 2015.



BY THE COURT:

A handwritten signature in black ink, appearing to read "David M. Bastianelli".

DAVID M. BASTIANELLI
CIRCUIT COURT JUDGE, BR.1

⁸ The costs of transcripts obtained for the convenience of counsel is not a necessary disbursement. **Alswager v. Roundy's Inc.**, 278 Wis.2d 598 (Ct. App. 2005)

⁹ This is an unpublished opinion presented as an attachment to plaintiff's brief.