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

VICTORIA MARONE,

Plaintiff,

v.

Case No. 13 CV 4154

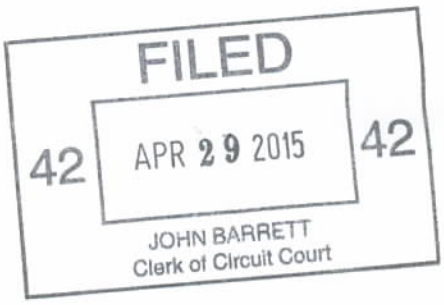
MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT,

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 (collectively, "Defendants") jointly filed a motion for summary judgment based on mootness. For the reasons stated herein, Defendants' motion is granted.

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 10 took 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," or 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. Defendants maintain that the CSAs were made contingent on a Wisconsin appellate court holding Act 10 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 March 2, 2015, Defendants jointly filed a motion for summary judgment, arguing that Marone's complaint is moot. The parties dispute whether a binding contract ever came into existence. Accordingly, as Defendants state in their brief, Marone finds herself in the unorthodox position of first asking the Court to declare that the CSA is binding and valid and then asking the Court to declare that same CSA invalid and unenforceable. For the reasons stated below, Defendants' motion for summary judgment is granted.

[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 limited to the Part-Time Faculty CSA.

STANDARD OF REVIEW

1. Summary Judgment

Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). A "material fact" is one that is of consequence to the merits of litigation. *Schmidt v. Northern States Power Co.*, 2007 WI 136, ¶ 24, 305 Wis. 2d 538, 742 N.W.2d 294. Any inferences should be viewed in the light most favorable to the party opposing the motion. *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶ 23, 241 Wis. 2d 804, 623 N.W.2d 751. The party moving for summary judgment has the burden of proving that there are no genuine issues of material fact and that the law is clear. *Morris v. Juneau Co.*, 219 Wis. 2d 544, 550, 579 N.W.2d 690 (1998). However, "an adverse party may not rest upon the mere allegations or denials of the pleadings" and "must set forth specific facts showing that there is a genuine issue for trial." Wis. Stat. § 802.08(3). The court must deny summary judgment if the opposing party presents any evidence upon which a jury could reasonably find in that party's favor. *Pomplun v. Rockwell Intern. Corp.*, 203 Wis. 2d 303, 307, 552 N.W.2d 632 (Ct. App. 1996).

2. 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 (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 argue that Marone's complaint should be dismissed as moot for three reasons: that the document expired on February 15, 2015, Defendants agree that the document never became a binding contract because conditions precedent were not met, and a final agreement was never assembled or signed by Defendants. Defendants' first argument is dispositive. Also, the Court stated at hearing on January 27, 2015 that Defendants would only be allowed to file a motion to dismiss. Yet, Defendants filed a motion for summary judgment and introduced evidence for issues on which the Court did not allow Marone to take discovery. Therefore, the Court will only address Defendants' first argument and declines to address the other two.

The Part-Time Faculty CSA, by its very terms, expired on February 15, 2015, becoming unenforceable. Since the CSA is unenforceable, any declaration that it is invalid would have no practical effect on the parties. Thus, any declarations regarding the CSA are moot. In addition, the Court ruled in its October 7, 2014 decision that Marone had standing to pursue a declaration that MATC violated Act 10 only as such declaration relates to the validity of the CSA. Marone does not have a free-standing right under Act 10 to seek such a declaration, *see* Wis. Stat. § 111.70, and as noted in the Court's October 7 decision, the Uniform Declaratory Judgments Act itself does not grant Marone this right. Since construal of the CSA is moot, a declaration that Defendants violated Act 10 is also moot.

Marone argues that the Court can still decide her request for a declaration that Defendants' act of collective bargaining was unlawful because subsequent events, such as the expiration of a contract, do not render claims on the legal status of a government body's actions moot. Marone cites *State ex rel. Badke v. Village Board of Greendale*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993) and *State ex rel. Lawton v. Town of Baron*, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304. In both of those cases, the court was construing the Open Meetings Law, by which a citizen has a claim of right to seek declaratory judgment regarding the legal status of acts taken by a government body. *See* Wis. Stat. § 19.97(4). Conversely, Marone has no claim of right under Act 10 to seek declaratory judgment of the legal status of Defendants' acts, as stated above. Thus, *Badke* and *Lawton* are not on point.

Marone also asserts that even if the CSA has expired and the issues are arguably moot, the court still has discretion to decide the case on the merits because the issue "is of great public importance and is likely to rise again." *Kabes v. Sch. Dist. Of River Falls*, 2004 WI App 55, 270 Wis. 2d 502, 677 N.W.2d 667. It is not clear whether this discretion belongs to appellate courts only or to circuit courts also. *See State v. Trent N.*, 212 Wis. 2d 728, 569 N.W.2d 719 (Ct. App. 1997) (citing *Shirley J.C. v. Walworth County*, 172 Wis. 2d 371, 375, 493 N.W.2d 382 (Ct. App. 1992)). To the extent that such discretion in fact lies with the circuit court, the Court declines to exercise it and will not address the moot issue of the legality of the CSA. Although collective bargaining is a matter of great public importance, collective bargaining in contravention of Act 10 is not likely to be repeated. In all of Marone's cited examples of "repeats," the allegedly illegal collective bargaining took place before the Supreme Court definitively upheld Act 10 as constitutional in *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d

337. As mentioned in previous filings in this case, before *Madison Teachers* was decided, there was great confusion regarding the legality of certain forms of collective bargaining and amidst the turmoil, some government entities chose to collectively bargain with their employees' unions. However, the Supreme Court has since put that confusion to rest by its decision upholding Act 10 and it is unlikely that any such "illegal activity" will happen again.[3]

Finally, Marone argues that the Court should decide the legality of the CSA because its terms continue to be implemented and are being incorporated into a collectively-bargained employee handbook. Marone's complaint does not request any declaration regarding an alleged employee handbook, so any argument on that basis is not relevant here. Similarly, to the extent that Marone is alleges that additional collective bargaining took place after the CSA was signed, such allegations are not in her complaint and will not be considered here. Finally, whether any terms of the CSA continue to be implemented is irrelevant since, under Act 10, MATC is free to unilaterally impose terms and conditions of employment.

CONCLUSION

For the reasons stated above, Defendants' motion for summary judgment is **GRANTED**.

SO ORDERED.

Dated this 29th day of April, 2015, at Milwaukee, Wisconsin.

BY THE COURT:

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

Honorable David A. Hansher
Circuit Court Judge

THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL.

[3] This distinction was emphasized by Justice Bablitch in *Badke*, 173 Wis. 2d 553, where he stated, "[w]e also note that the consequences of accepting the Village Board's argument concerning mootness would be to render the open meeting law meaningless in many future cases." The same rationale was applied in *Lawton*, 2005 WI App 16.