

VICTORIA MARONE

Plaintiff,

v.

Case No. 13-CV-004154

MILWAUKEE AREA TECHNICAL COLLEGE
DISTRICT

Honorable Timothy M. Witkowiak

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Milwaukee Area Technical College District, more properly designated as Milwaukee Area Technical College (“MATC”), answers the plaintiff’s complaint as follows:

INTRODUCTION

1. Answering paragraph 1, admits that the plaintiff is a part-time employee of MATC; states that the remaining allegations of paragraph 1 are not factual allegations to which this defendant need respond; to the extent a response is necessary, MATC admits that the plaintiff purports to bring an action for declaratory relief under Wis. Stat. § 806.04 regarding the ratification of various tentative agreements that affect all members of Local 212; denies that the Board voted to ratify a single “Labor Agreement” that governs the plaintiff’s employment, and affirmatively alleges that tentative agreements were ratified with three (3) separate bargaining units represented by Local 212, namely, the Full Time Faculty and Professionals, The Part Time Faculty, and the Paraprofessionals bargaining units, and that the plaintiff is covered only by the labor agreement with the Part Time Faculty unit; admits that labor agreements have been ratified, but denies that these labor agreements are currently in effect because they do not take

effect until 2014, and then only if Act 10 is found to be constitutional (hereinafter, “Conditional Successor Agreements”); denies that the factors and conditions of the plaintiff’s employment other than total base wages purport to be governed by any unlawful agreement; denies that the Conditional Successor Agreements are unlawful, invalid or void as the product of unlawful collective bargaining or in restraint of trade; denies that the plaintiff’s ability to individually negotiate the factors and conditions of her employment other than total base wages is affected by the Conditional Successor Agreements; affirmatively alleges that the plaintiff is free to individually negotiate the factors and conditions of her employment to the extent permitted by law; affirmatively alleges that the Conditional Successor Agreements are contingent upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

2. Answering paragraph 2, alleges information insufficient to form a belief as to the plaintiff’s motivation in seeking declaratory relief; denies that the Conditional Successor Agreements are unlawful, invalid or void; affirmatively alleges that the Conditional Successor Agreements are contingent upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

PARTIES

3. Answering paragraph 3, admits upon representation of counsel.

4. Answering paragraph 4, denies that the facility located at 700 West State Street, Milwaukee, WI is MATC’s headquarters, but admits that MATC’s administrative offices are located at this address; admits the remaining allegations in paragraph 4.

JURISDICTION AND VENUE

5. Answering paragraph 5, admits that this Court has jurisdiction over declaratory judgment actions brought pursuant to Wis. Stat. § 806.04; denies that there is a justiciable

controversy between the parties with regard to the validity and binding effect of the Conditional Successor Agreements; admits that the plaintiff has created a circumstance in which the plaintiff and MATC are adverse, but denies that the Conditional Successor Agreements create such adversity and further alleges that the Conditional Successor Agreements are contingent upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10; states that the allegation that the plaintiff has a legally protected interest in her right to individually negotiate with MATC is a legal conclusion and not a factual allegation to which this defendant need respond; to the extent a response is necessary, denies that the plaintiff has such a legally protected interest; denies that the controversy is ripe for determination; denies that the Conditional Successor Agreements are unconditional; and denies the remaining allegations in paragraph 5.

6. Answering paragraph 6, admits.

FACTS

7. Answering paragraph 7, states that the allegations are not factual allegations to which this defendant need respond; to the extent a response is necessary, MATC objects to the characterization of actions contained in paragraph 7, but admits that in 2011, the Wisconsin Legislature enacted 2011 Act 10 and 2011 Act 32, which amended and modified parts of Act 10; admits that the statutory effective date of Act 10 is June 29, 2011, and the statutory effective date of Act 32 is July 1, 2011.

8. Answering paragraph 8, states that the allegations are legal conclusions and not factual allegations to which this defendant need respond; to the extent a response is necessary, MATC denies the characterization of the provisions in the statute and states that the provisions must be read in context.

9. Answering paragraph 9, states that the allegations are arguments and not factual allegations to which this defendant need respond; to the extent a response is necessary, MATC objects to the characterization of the events and, therefore, denies same.

10. Answering paragraph 10, admits that in February 2011, MATC was engaged in negotiations with Local 212 concerning extension of the existing collective bargaining agreement; affirmatively alleges that such negotiations began in October 2010; admits that the then-current collective bargaining agreement by its terms expired just four months later, in June 2011; states that the allegation that MATC “could have waited” until Act 10 was enacted into law to negotiate the terms and conditions of employment is not a factual allegation to which this defendant need respond; to the extent a response is necessary, denies; affirmatively states that MATC did not know and could not have known in February 2011 when, if ever, Act 10 would be enacted into law (as the Budget Repair Bill was only first introduced in February 2011), and that MATC has a responsibility to bargain in good faith and began negotiations in October 2010 in an effort to obtain monetary concessions from Local 212 for budget purposes; denies the remaining allegations in paragraph 10.

11. Answering paragraph 11, admits that on February 16, 2011, MATC entered into a new three-year contract with Local 212; states that the allegations concerning “favorable” contract provisions are legal conclusions or opinions to which this defendant need not respond; to the extent a response is necessary, MATC admits that the collective bargaining agreement included provisions favorable to MATC and provisions that were favorable to MATC employees; admits that some of the provisions of the contract could not have been collectively bargained for under the provisions of Act 10; admits that the collective bargaining agreement

preserved pension contributions at no cost to employees and guaranteed no layoffs for full-time employees.

12. Answering paragraph 12, states that the legality of contract provisions is a legal conclusion and not a factual allegation to which this defendant need respond; to the extent a response is necessary, denies that the provisions are illegal; objects to the allegations quoting or purporting to quote the Milwaukee Journal Sentinel as they are not factual allegations to which this defendant need respond; denies the quote from the Journal Sentinel is accurate or complete; denies the characterization in the quote.

13. Answering paragraph 13, states that the allegations are legal conclusions and arguments drawn by the plaintiff and not factual allegations to which this defendant need respond; to the extent a response is required, denies.

14. Answering paragraph 14, states that the allegations are not factual allegations to which this defendant need respond; to the extent a response is required, admits that several lawsuits were filed that challenged the validity of Act 10; admits that the Seventh Circuit Court of Appeals issued a ruling in *WEAC v. Walker*, 705 F.3d 640 (7th Cir. Jan. 18, 2013); admits that Dane County Circuit Court issued a ruling in *Madison Teachers, Inc. v. Walker*, No. 11-CV-3774, Circuit Court for Dane County; admits that MATC and Local 212 were not parties to either of the lawsuits; admits that the decision of the Dane County Circuit Court has been appealed to the Wisconsin Court of Appeals and the Wisconsin Court of Appeals has requested that the Wisconsin Supreme Court take the case on certification.

15. Answering paragraph 15, states that the allegations are not factual allegations to which this defendant need respond; to the extent a response is necessary, admits the Wisconsin Court of Appeals denied the request for a stay of the Dane County Circuit Court decision; admits

that the language quoted in paragraph 15 is contained in a footnote in the Court of Appeals decision; denies that the characterization of the decision is accurate or complete.

16. Answering paragraph 16, states that the allegations are legal conclusions and not factual allegations to which this defendant need respond; to the extent a response is necessary, lacks information sufficient to form a belief regarding the allegations concerning the position taken by numerous school districts throughout the state; admits that parties are not entitled to disregard the laws of Wisconsin until such laws are determined invalid or unenforceable; denies the remaining allegations in paragraph 16.

17. Answering paragraph 17, admits that on November 12, 2012, the MATC Board approved a motion; denies that this vote or motion was in violation of Act 10; admits that the collective bargaining agreement currently in place between MATC and Local 212 will expire in February 2014; admits that Exhibit A is an authentic copy of the Board minutes for the 11/12/12 meeting.

18. Answering paragraph 18, admits that MATC Board Chairperson Wilson voted in favor of the motion; denies that the alleged quoted statement from Chairperson Wilson is contained in the cited article from the Milwaukee Journal Sentinel; admits that Local 212 Union President Michael Rosen was quoted in the Milwaukee Journal Sentinel, but denies that the quoted statement is accurate or complete; denies the remaining allegations in paragraph 18.

19. Answering paragraph 19, admits that in a letter dated February 26, 2013, WILL contacted Chairperson Wilson; admits that Exhibit B is an authentic copy of the letter sent by WILL to MATC; denies that the characterization of the letter found in paragraph 19 is accurate or complete; denies that it would be unlawful for MATC to enter into a collective bargaining

agreement with Local 212; denies that MATC took any action in violation of Act 10 or any other laws of the State of Wisconsin.

20. Answering paragraph 20, admits; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

21. Answering paragraph 21, admits; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

22. Answering paragraph 22, denies; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

23. Answering paragraph 23, admits that the term of the Conditional Successor Agreements is February 16, 2014 through February 15, 2015, but affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

FIRST CAUSE OF ACTION

For a Declaration that the Labor Agreement violates Wis. Stat. § 110.70(4)(mb)

24. MATC incorporates paragraphs 1 through 23 above.

25. Answering paragraph 25, states that the allegations are a partial quotation from a statute and are not factual allegations to which this defendant need respond; to the extent a

response is necessary, denies that the plaintiff has fully and completely set forth the provisions in Wis. Stat. § 66.0508(1m) or Wis. Stat. § 66.0506 and, therefore, denies any allegations which are inconsistent with the terms of state statutes.

26. Answering paragraph 26, states that the identification of MATC as a local government unit is a legal conclusion to which the defendant need not respond; to the extent a response is necessary, admits that MATC is a local government unit for purposes of Wis. Stat. § 66.0508(1m) and Chapter 111; and denies that the remainder of paragraph 26 is an accurate or complete quotation from the correspondence from the Wisconsin Attorney General.

27. Answering paragraph 27, states that the allegations are a partial quotation from a statute and are not factual allegations to which this defendant need respond; to the extent a response is necessary, denies that the plaintiff has fully and completely set forth the provisions in Wis. Stat. § 66.0508(1m) or Wis. Stat. § 66.0506 and, therefore, denies any allegations which are inconsistent with the terms of state statutes.

28. Answering paragraph 28, states that the allegations are a partial quotation from a statute and are not factual allegations to which this defendant need respond; to the extent a response is necessary, denies that the plaintiff has fully and completely set forth the provisions in Wis. Stat. § 66.0508(1m) or Wis. Stat. § 66.0506 and, therefore, denies any allegations which are inconsistent with the terms of state statutes.

29. Answering paragraph 29, admits that Act 10 prohibits a municipal employer from collectively bargaining over terms or conditions of employment except total base wages.

30. Answering paragraph 30, denies; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been

conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

31. Answering paragraph 31, states that the allegations are legal conclusions and not factual allegations to which this defendant need respond; denies that the allegations in paragraph 31 are accurate and complete statements of the conclusions in the cited cases.

32. Answering paragraph 32, denies that the Conditional Successor Agreements are unlawful; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10; denies the remaining allegations in paragraph 32.

33. Answering paragraph 33, denies.

SECOND CAUSE OF ACTION

For a Declaration that the Conditional Successor Agreements violates Wis. Stat. § 133.03

34. MATC incorporates paragraphs 1 through 33 above.

35. Answering paragraph 35, states that the allegations are legal conclusions and not factual allegations to which this defendant need respond; to the extent a response is necessary, denies that the allegations in paragraph 35 are an accurate and complete statement concerning the contents of Wis. Stat. § 133.03(1) and, therefore, denies any allegations which are inconsistent with the terms of state statutes.

36. Answering paragraph 36, states that the allegation that plaintiff and defendant are engaged in trade or commerce within the State of Wisconsin as those terms are used in the context of Wis. Stat. § 133.03(1) is a legal conclusion to which this defendant need not respond; to the extent a response is necessary, alleges information insufficient to form a belief as to whether the plaintiff and defendant are engaged in trade or commerce within the State of

Wisconsin as those terms are used in the context of Wis. Stat. § 133.03(1) and, therefore, denies same; denies the remaining allegations in paragraph 36; affirmatively alleges that the plaintiff is free to individually negotiate the factors and conditions of her employment to the extent permitted by law.

37. Answering paragraph 37, denies that the allegations are an accurate and complete representation of the contents of the Conditional Successor Agreements; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

38. Answering paragraph 38, denies; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

39. Answering paragraph 39, denies; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

40. Answering paragraph 40, states that the allegations are legal conclusions or arguments and not factual allegations to which this defendant need respond; to the extent a response is necessary, denies; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

41. Answering paragraph 41, denies that the Conditional Successor Agreements are unlawful contracts to which Chapter 133 applies; denies the remaining allegations in paragraph 41; affirmatively alleges that negotiations between MATC and Local 212, as well as the Conditional Successor Agreements, are and have been conditioned upon all applicable laws and regulations and appellate rulings regarding the constitutionality of Act 10.

42. Answering paragraph 42, denies.

43. Answering paragraph 43, denies.

44. Answering paragraph 44, denies.

AFFIRMATIVE DEFENSES

As affirmative defenses to the plaintiff's complaint, MATC states:

1. The plaintiff's complaint fails to state a claim upon which relief may be granted.
2. The plaintiff has failed to name a necessary and indispensable party or parties to this litigation.
3. The plaintiff has failed to comply with the statutory prerequisites found in Wis. Stat. § 806.04.
4. The plaintiff lacks standing to bring suit in accordance with the allegations of the complaint.
5. The plaintiff has failed to identify any harm that she may sustain from the Conditional Successor Agreements and, therefore, lacks standing to bring this suit.
6. The plaintiff has failed to follow the statutory requirements of Wis. Stat. § 893.80.
7. The plaintiff has failed to identify a controversy that is ripe for adjudication.
8. The plaintiff has failed to identify an actual justiciable controversy.

9. The plaintiff consented to the Conditional Successor Agreements' terms by choosing to remain a member of Local 212 and authorizing Local 212 to act on her behalf.

10. The plaintiff has failed to mitigate the alleged controversy.

11. MATC has not taken any action to prevent the plaintiff from seeking to negotiate the factors and conditions of her employment.

12. The Conditional Successor Agreements are not unlawful contracts to which Chapter 133 of the Wisconsin Statutes applies.

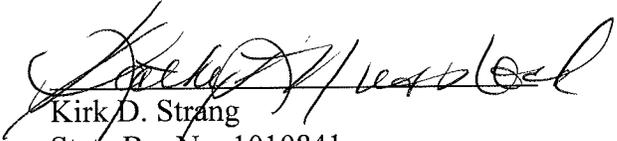
13. MATC is qualifiedly immune from suit, as its conduct did not violate any clearly established statutory rights.

WHEREFORE, MATC requests this Court dismiss Victoria Marone's complaint in its entirety and award MATC its reasonable attorneys' fees, other costs of defense, and such other further relief to which MATC may be entitled.

Dated: May 24, 2013.

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College

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