STATE OF WISCONSIN CIRCUIT COURT BRANCH 1 RACINE COUNTY

LOCAL 321, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, RACINE POLICE ASSOCIATION and LOCAL 67, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Plaintiffs,

vs.

CITY OF RACINE, WISCONSIN,

Defendant.

Case No. 12 CV 1964

DECISION

The Plaintiffs, Local 321, International Association of Firefighters, the Racine Police Association and Local 67, American Federation of State, County and Municipal Employees, AFL-CIO (Unions), seek declaratory relief and ask this Court to declare that the Defendant, the City of Racine (City), has breached their 2013 - 2014 contracts. The City argues that the 2013 - 2014 contracts are illegal based upon 2011 Wisconsin Acts 10 and 32 and that the City acted properly on June 29, 2011, when it rescinded the 2013 - 2014 contracts. Because this Court concludes that Acts 10 and 32 do not have retroactive application, and that the 2013 – 2014 contracts are valid and enforceable, the Plaintiffs' request for declaratory relief is granted.

FACTS

The City entered into two 2-year contracts with each of the Unions. The Unions are five separate groups of City employees including: 1) firefighters, 2) police officers, traffic investigators, and investigators, 3) Department of Public Works and Parks employees, 4) clerical, related and technical employees of the Police Department, and 5) clerical, related and technical employees of the City. The City and each Union entered contracts for 2011 – 2012 and a separate contract for 2013 -2014. Each 2011 – 2012 contract ends December 31, 2012, and each 2013 – 2014 contract comes into effect on January 1, 2013. The firefighter and police union contracts were approved by the Common Council on December 7, 2010, and the remaining contracts were similarly approved on February 16, 2011.

2011 Wisconsin Act 10 became effective on June 29, 2011. 2011 Wisconsin Act 32 became effective on July 1, 2011. While the effect of this legislation on firefighters and police officers (public safety employees) were different than the effect on the other Unions (general municipal employees), Acts 10 and 32 affected the health and life insurance benefits of all the Plaintiff Unions' members. These insurance changes are inconsistent with the insurance benefits provided by each of the 2013 - 2014 contracts.

Further provisions of Act 32 only allowed the City to increase its tax levy above the amount it levied the prior year by the percentage increase in the equalized value from net new construction. The City concluded that the tax levy restriction would limit its ability to increase or retain revenues and that, as a result of the terms of the 2013 - 2014 contracts, it would experience a multi-million dollar shortfall in its employee health care fund and operating budget for 2013 and thereafter. On July 17, 2012, the Racine Common Council, by resolution, rescinded those

provisions of the 2013 - 2014 contacts with firefighters and police prohibited by Acts 10 and 32. By that same resolution, the Common Council rescinded the entire 2013 - 2014 contracts with the three remaining Unions.

THE LAW

A. Declaratory Judgment

Sec. 806.04, Wis. Stats., is the Uniform Declaratory Judgments Act and provides in Sec. 806.04 (3) that "A contract may be construed either before or after there has been a breach thereof".

An issue must be justiciable before it can be decided on a request for declaratory relief. Justiciability requires the establishment of the following factors:

> 1.) A controversy in which a claim of right is asserted against one who has an interest in contesting it;
> 2.) The controversy must be between persons whose interests are adverse;
> 3.) The party seeking declaratory relief must have a legal interest in the controversy --- that is to say, a legally protected interest; and
> 4.) The issue involved in the controversy must be ripe for judicial determination. Loy v. Bunderson, 107 Wis. 2d 400 at 410, 320 N.W.2d 175 (1982).

Here the Unions assert their rights under the 2013 - 2014 contracts. The City has rescinded in all or in part of these contracts. Their interests are adverse. The Unions assert their legally protected interests under the contracts. This controversy is ripe for determination as the effective date of the 2013 - 2014 contracts, January 1, 2013, is at hand.

Finally, judicial determination under these circumstances is consistent with the intent of the declaratory judgment statutes which are for the stated purpose of settlement and relief from uncertainty. Sec. 806.04(12), Wis. Stats.

B. Summary Judgment

Sec. 802.08 (2), Wis. Stats., provides that summary judgment shall be granted when no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law.

The Supreme Court of Wisconsin has described the procedure to be used by trial courts in deciding motions for summary judgment. In Grams v. Boss, 97 Wis. 2d 332, 282 N.W. 2d 637 (1980), the Supreme Court of Wisconsin stated:

> ...The court must initially examine the pleadings to determine whether a claim has been stated and whether a material issue of fact is presented. If *the complaint states a claim and the pleadings show* the existence of a factual issue, the court examines the moving party's...affidavits or other proof to determine whether the moving party has made a prima facie case for summary judgment under sec. 802.08(2). To make a prima facie case for summary judgment, a moving defendant must show a defense which would defeat the plaintiff. If the moving party has made a prima facie case for summary judgment, the court must examine the affidavits and other proof of the opposing party...to determine whether there exist disputed material facts, or undisputed material facts from which reasonable alternative inferences may be drawn, sufficient to entitle the opposing party to a trial.
> On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed issue as to any material fact. On summary judgment the court does not decide the issue of fact. A summary judgment should not be

> granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of fact should be resolved against the party moving for summary judgment. (citations omitted) at pp. 338-339.

Wisconsin courts have long recognized that where on a motion for summary judgment the material facts are not in dispute and the inferences which may reasonably be drawn from the facts are not doubtful and lead only to one conclusion, then only an issue of law is presented and should be decided on the motion. Bolen v. Bolen, 39 Wis. 2d. 91, 158 N.W. 2d 316 (1968), Skyline Const., Inc. v. Sentry Realty, Inc., 31 Wis. 2d 1, 141 N.W. 2d 909 (1966), McWhorter v. Employers Mutual Casualty Co., 28 Wis. 2d 275, 137 N.W. 2d 49 (1965).

Finally, the interpretation of an unambiguous written contract presents a question of law properly addressed on a motion for summary judgment. ADMANCO v. 700 STANTON DRIVE, 326 Wis. 2d 586, 599, 786 N.W.2d 759 (2010).

DISCUSSION

The determinative issue here is: Are the 2013 - 2014 collective bargaining agreements between the City and the Unions valid and enforceable in spite of the enactment of Acts 10 and 32?

A. Effective Date of the 2013 – 2014 Contracts

The parties to each of these consecutive collective bargaining agreements for 2011 - 2012 and 2013 -2014 signed and enacted these agreements on December 7, 2010, (firefighters) December 21, 2010, (police) and February 16, 2011 (remaining unions). The terms of the 2011 - 2012 contract became effective on January 1, 2011. The terms of the 2013 - 2014 contracts will become effective on January 1, 2013. When enacted, these contracts complied with all provisions of law. They were valid, enforceable contracts.

B. Effective dates and language of Acts 10 and 32

Act 10 took effect on June 29, 2011 and Act 32 on July 1, 2011.

The 2013 – 2014 agreements contain terms that do not comply with the current law as a result of Acts 10 and 32. The 2013 – 2014 contracts do not comply with provisions relating to employee contributions to health insurance and retirement payments and, as to three of the Unions, the right to collectively bargain on those issues.

The City argues that similar language in Acts 10 and 32, that discusses the applicability of the Acts to collective bargaining agreements which are inconsistent with the Acts, bars the 2013 – 2014 contracts. That language found in Section 9332 of each Act states:

> ... the statutes first apply to employees who are covered by a collective bargaining agreement ... that contains provisions inconsistent with those sections on the day on which the agreement expires or is terminated, extended, modified, or renewed,

whichever occurs first.

The 2013 - 2014 contracts became binding on the parties when enacted or signed. The terms take effect on January 1, 2013. The 2013 - 2014 contracts have not expired, been terminated, extended, modified or renewed. The wording of the Acts do not state that Acts 10 and 32 have retroactive application. Had the legislature intended for Acts 10 and 32 to apply retroactively to all valid, existing contracts, it could have included language to do so. However, it did not. Acts 10 and 32 do not apply retroactively to these contracts.

C. Effect of Acts 10 and 32 on the 2013 - 2014 contracts

The Supreme Court of Wisconsin has recognized that changes to a law after a contract has been entered will not interfere with an existing contract. In Dairyland Greyhound Park v. Doyle, 295 Wis. 2d 1, 48-49, 719 N.W.2d 408 (2006), the Court noted:

> ... the laws in existence at the time of the contract are incorporated into that contract... Subsequent changes to a law will not interfere with an existing contract. When a law changes, however, contracts entered into after the date of a change in law are subject to the new law. (citations omitted)

The 2013 - 2014 collective bargaining agreements were all entered prior to the effective dates of Acts 10 and 32.

The City cites cases to support its position that because the agreements violate a statute that now exists, the 2013 - 2014 agreements are invalid in part or in whole. But in the cases cited the statute or public policy making the contracts illegal existed at the time the contracts were executed. That is not the case here.

In Abbott v. Marker, 295 Wis. 2d 636, 722 N.W.2d 162 (2006), Marker, an attorney, entered an agreement to pay Abbott a percentage of recoveries in cases Abbott referred. It was unethical for Marker to enter the contract at its commencement. The statute prohibiting compensating a non-lawyer for client referral existed prior to the entry of the contract. The Abbott Court, at 641, noted:

> ... A contract is considered illegal when its formation or performance is forbidden by civil or criminal statute or where a penalty is imposed for the action agreed to. A court generally will not aid an illegal agreement, whether executed or executory, but instead leave the parties where it found them. However, Wisconsin courts generally seek to enforce contracts rather than set them aside. (citations omitted.)

Similarly, in Madison v. Madison Police Ass'n, 144 Wis. 2d 576, 581, 425 N.W. 2d 8 (1988), the Supreme Court discussed the residency requirement created by a 1956 ordinance in the context of an arbitrato's decision allowing police officers to live outside the city based upon a "me too" clause in their contract. (The police sought to invoke the "me too" clause because members of other unions had been allowed to reside outside the city, in spite of the ordinance.) The contract was entered well after the creation of the 1956 ordinance.

Similarly, in WERC v. Teamsters Local No. 563, 75 Wis. 2d 602, 612 250 N.W.2d 696 (1977), where the City of Neenah fired an employee for not complying with a residency requirement, the Supreme Court discussed a residency requirement created by an ordinance and a contract entered well after the ordinance had been created and noted:

> The city and the union could not have included a provision in the contract stating that the ordinance did not apply to union members. Such a term would have been void because it provided for violation of the ordinance and perhaps constitutional equal protection. A labor contract term whereby parties agree to violate a law is void.

The 2013 - 2014 contracts in this case were legal at the time the contract were signed, ratified and approved. Clearly, had this enactment occurred after the passage of Acts 10 and 32, they would be in violation of the law and be voidable.

CONCLUSION

This Court concludes that the retroactive application of Acts 10 and 32 to the 2013 - 2014 contracts is contrary to the wording of the Acts and contrary to case law, contract law, and the concepts of fairness and equity. The City has breached these contracts by passing resolutions which rescind them in part or in whole. The 2013 - 2014 contracts are valid and enforceable.

Plaintiffs' counsel shall submit a written order consistent with this decision for the Court's consideration and signature.

OTHER MATTERS

This Court recognizes that resolution of disputes based on the law often do not resolve the very real problems of parties. That may well be the case here. The City is faced with the very real problem of trying to meet its obligations under these contracts while working within the financial constraints imposed upon it by the provisions of Acts 10 and 32. Will the City be able to meet its financial obligations under the 2013 -2014 contract? Will the City be unable to meet its obligations and experience a budget deficit? If a deficit, will it resort to employee layoffs to meet its budget? Will Union members, recognizing the financial impact Acts 10 and 32 have had on the City and other municipalities and employees state-wide, consider a "give back" to

assist the City in operating within its budget? Only time will tell. The judicial process remains available to resolve legal disputes that may arise in the future and to assist parties in arriving at settlements to resolve those disputes.

Finally, the Parties sought by stipulation to set a specific date by which this Court was to issue its decision. This Court struck that provision before signing the resulting order. While the effort to affect a resolution by a specific date for this decision was understandable, Courts need to be mindful of calendared events and the right of all litigants to have timely access to the court process. Further, this Court was readily available to the parties to discuss the timing of this decision before being presented with an order which had the effect of the Court ordering itself to issue a decision by a specific date. January 1, 2013 is at hand. The issue of timeliness is obvious. This Court invites the parties to engage in discussions with the Court regarding scheduling dates in any proceeding in the future. But presenting an order containing a date for decision was inappropriate.

Dated at Racine, Wisconsin, this 18th day of December, 2012.

By the Court,

Gerald P. Ptacek
Circuit Court Judge