

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 17

DANE COUNTY

MADISON TEACHERS INC., et al.,

Plaintiffs,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Defendant.

[NOTE: This document was re-keyed by
WERC. Original pagination has been
retained.]

Case No. 02-CV-0601

Decision No. 02-CV-0601C1.doc

NOTICE OF ENTRY OF ORDER

To: Lester A. Pines
Cullen, Weston, Pines & Bach
122 W. Washington Ave., Ste. 900
Madison, WI 53703

PLEASE TAKE NOTICE that an Order dismissing this action on grounds of mootness, of which a true and correct copy is hereto attached, was signed by the court on the 25th day of February, 2003, and duly entered in the Circuit Court for Dane County, Wisconsin, on the 25th day of February, 2003.

Notice of entry of this Order is being given pursuant to Wis. Stat. §§ 806.06(5) and 808.04(1).

Dated this 7th day of March, 2003.

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MADISON TEACHERS INC.,
et al.,

Plaintiffs,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,
Defendant.

Memorandum Order on Motion to Dismiss

Case No. 02 CV 0601

ORDER

I. INTRODUCTION

The Defendant, the Wisconsin Employment Relations Commission (WERC), moves for dismissal of Madison Teachers, Inc. (MTI), Green Bay Education Association, Kenosha Education Association and Wisconsin Professional Police Association, Inc.'s action for a declaratory judgment. For the reason set forth below, the Court grants the Defendant's motion.

II. STATEMENT OF THE CASE

In 2001 the WERC experienced a number of top-level retirements. (Br. of Wisconsin Employment Relations Commission in Supp. of Mot. to Dismiss, 2.) (Hereafter Def's Br.) First, Tom Yaeger, a supervisor for the WERC retired on July 7, 2001. (Id.) James Meier, the WERC's chairperson, apparently assigned Yaeger's responsibilities to Peter Davis, the WERC's general counsel. (Id.) Later in 2001, Meier announced his retirement and on December 21, 2001 signed a document transferring “any function vested by law in the chairperson of the [WERC]” to Davis. (Id., citing Aff. of Peter G. Davis, ¶5.) Meier's retirement officially began on January 4, 2002. (Def.'s Br., 2.)

Between April 20, 2001 and February 27, 2002, Davis supervised teams within the WERC, signed performance evaluations concerning the commission's staff, and participated in matters related to the WERC's budget. (*Id.*) Davis also directed efforts toward the administrative affairs of the WERC. (*Id.*) On February 27, 2002, in response to a law suit filed by the Plaintiffs on February 21, 2002, Davis sent a memorandum to the state's governor's office returning any administrative duties assigned to him by Meier. (*Id.*; Pls.' Br. in Opp'n to Def's Mot. to Dismiss, 2.)

However, despite turning over any duties delegated to him on December 21, 2001, Davis continued to perform some supervisory duties concurrently with the two remaining commissioners of the WERC between February 27, 2002 and March 25, 2002. (Def's Br., 3.) On March 25, 2002, Steven Sorenson stepped into the role of the WERC's chairperson. (*Id.*) Once Sorenson stepped into his position as chairperson, Davis apparently ended all administrative duties associated with the WERC's chairperson. (*Id.*)

III. LEGAL ARGUMENTS AND RELIEF SOUGHT

The Defendant's motion to dismiss centers on the issue of mootness. In making this argument, the WERC contends that due to Meier's resignation, Sorenson's appointment as chairperson for the WERC, and the fact that Davis has not performed any administrative duties since March 25, 2002 the case is moot. Essentially, the Defendant suggests that a determination by this Court of whether Meier contravened his statutory authority by delegating his duties as the WERC chairperson can have no practical effect on any existing controversy since Meier has stepped down and Davis has relinquished any duties Meier may have delegated to him.

The Plaintiffs maintain that the case is, in fact, not moot. In making this assertion, the Plaintiffs caution that Davis has not forgone all the WERC duties assigned to him by Meier.

Additionally, the Plaintiffs posit that the merits of this case should come under review by the Court because this action presents a question that will emerge in the future. As a component of this assertion, the Plaintiffs argue that the matters presented in this suit represent a great public importance.

IV. STANDARD OF REVIEW

A. Motion to Dismiss

Courts treat a motion to dismiss as a review for summary judgement if materials outside the pleadings are presented. Wis. Stat. § 802.06(3). A court should liberally construe the pleadings and a dismissal proves improper if any conditions exist which permit recovery pursuant to the claim. See Hermann v. Town of Delavan, 215 Wis.2d 371, 378, 572 N. W.2d 855 (1998). However, "claims based on future or hypothetical facts are not ripe for judicial determination."¹ Clark v. Mudge, 229 Wis.2d 44, 50, 599 N.W.2d 67 (Ct. App. 1999).

B. Mootness

Courts usually do not resolve questions that when a determination is made "cannot have any practical effect upon an existing controversy." Schwarzbauer v. Town of Menasha, 33

¹ Governed by Wis. Stat. § 802.08, summary judgment exists as a means of avoiding trials. See Rollins Burdick Hunter of Wis. Inc. v. Hamilton, 101 Wis.2d 460, 470, 304 N.W.2d 752 (1981). Summary judgment allows a court to render a decision on the merits of a case when no genuine issue of material fact remains or no reasonable competing inference arises from undisputed facts. See Heck & Paetow Claim Service, Inc. v. Heck, 93 Wis.2d 349, 356, 286 N.W.2d 831 (1980). In a summary judgment motion, the moving party carries the burden of establishing its rights with sufficient clarity to leave no room for controversy. See Kramer Bros. Inc. v. U.S. Fire Ins. Co., 89 Wis.2d 555, 565-66, 278 N.W.2d 857 (1979).

When faced with a motion for summary judgment, a court must first examine the pleadings to determine whether an appropriate claim for relief or a defense presents itself. See Dziewa v. Vossler, 149 Wis.2d 74, 77, 438 N.W.2d 565 (1989). If the court finds a stated claim or a defense, inquiry then shifts to whether a material issue of facts exists. See id. To find a possible issue of fact, a court should look to the pleadings, affidavits, or any other proof submitted by the moving party. See Kallembach v. State, 129 Wis.2d 402, 404-05, 385 N.W.2d 215 (Ct. App. 1986). If a *prima facie* case for summary judgment exists, the court should then examine the affidavits and other materials presented by the opposing party. See Preloznik v. Madison, 113 Wis.2d 112, 116, 334 N.W.2d 580 (Ct. App. 1986). If a genuine issue of material fact emerges, then a court should dismiss the motion for summary judgment. See id. Proof submitted must meet general evidentiary standards and any doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. See Wis. Stat. § 802.08(2); see also Independence Bank v. Equity Livestock, 141 Wis.2d 776, 781, 417 N.W.2d 32 (1987).

Wis.2d 61, 63, 146 N.W.2d 402 (1966). Wisconsin's courts, as a general rule, "will not consider questions which have become moot due to a change in circumstances." Oshkosh Student Ass'n v. Bd. of Regents of Univ. of Wis. Sys., 90 Wis.2d 79, 82, 279 N.W.2d 740 (Ct. App. 1979). Exceptions to this rule do exist.

As provided by the supreme court, "It is a well-recognized exception that a reviewing court will retain jurisdiction and decide the issue if the question is one of great public importance." State v. Seymour, 24 Wis.2d 258, 261, 128 N.W.2d 680 (1964). Additionally, Wisconsin's courts have decided moot cases on the merits when the constitutionality of a statute is challenged. See City of Racine v. J-T Enter. of Am., Inc., 64 Wis.2d 691, 701, 221 N.W.2d 869 (1974). And finally, if the "precise situation under consideration arises so frequently that a definitive decision is essential" the supreme court has approved of reaching a determination on the merits. Id. As a caveat, though, "[m]oot cases will be decided on the merits only in the most exceptional or compelling circumstances." Id. at 701, 221 N.W.2d at 875.

V. MERIT ANALYSIS

The Defendant contends that this action proves moot. (Def's Br., 5.) In support of this position, the WERC points to the fact Meier has resigned and Davis has not performed any administrative duties for the commission since the appointment of Sorenson as chairperson. (*Id.*) As such, the Defendant argues that any determination made by this Court will have no practical effect on an existing controversy. See Schwarzbauer, 33 Wis.2d at 63, 146 N.W.2d at 403. Furthermore, the WERC asserts that this matter presents no issue of great public importance, no constitutional concern, and is unlikely to reoccur. (Def's Br., 5.) In support of this last claim, the Defendant states, "In the last quarter century, no WERC chairperson other than Meier ever

Similarly, a court should view competing inferences in a light most favorable to the non-moving party. See Kramer Bros., 89 Wis.2d at 565-67, 278 N.W.2d 861-62.

delegated the administrative duties vested by law in the WERC chairperson." (*Id.*) This Court agrees.

In countering the Defendant's claim of mootness, the Plaintiffs argue that Davis's memorandum to the governor's office did not surrender all the powers transferred to him by Meier. (Pls.' Br. in Opp'n to Def's Mot. to Dismiss, 3.) In particular, the Plaintiffs focus on the sentence written by Davis, which states, "I will continue to perform my current supervisory responsibilities." (Def's Br., Ex. 3.) From the exhibits presented by the Defendant, it is clear that these "supervisory responsibilities" stem from the retirement of Yaeger and the WERC's decision not to replace him due to the current budget crisis faced by state government and not from Meier's administrative duties. (*Id.*, Ex. 1.) The Plaintiffs' contention that Davis did not return all of Meier's powers proves tenuous at best.

The Plaintiffs also argue that this matter is of great public importance, in that the state's citizens should be secure in knowing that Wisconsin's administrative agencies are not violating the law. (Pls.' Br. at 4.) The Plaintiffs further support this by suggesting that this situation, if not ruled on, will allow appointed officials, such as the WERC's chairperson, to further "flout the law." (Pls.' Br. in Opp'n to Def's Mot. to Dismiss, 5.) While some truth may exist as to this assertion, the Court focuses on the supreme court's admonition that moot cases "will be decided on the merits only in the most exceptional or compelling circumstances." City of Racine, 64 Wis.2d at 702, 221 N.W.2d at 875. And this is a moot case.

Nothing this Court can do will effect the current situation at the WERC. See Schwarzbauer, 33 Wis.2d at 63, 146 N.W.2d at 403. Meier has stepped down, Davis has turned over all the administrative duties granted him by Meier, and Sorenson now holds the position of chairperson for the commission. To grant an injunction as requested by the Plaintiffs will have

no practical effect. See id. Moreover, this action does not represent a situation of great public importance. It appears to the Court that the actions taken by Meier extend from a desire to assist the WERC during a short transitional phase. This has nothing to do with rulemaking; rather it represents an effort to meet a need during a time of crisis at the WERC, i.e., the current fiscal problems faced by Wisconsin State Government. Additionally, the Court does not see this particular problem arising in the future. See City of Racine, 64 Wis.2d at 701, 221 N.W.2d at 875. The actions taken by Meier embody a stopgap measure to fill a vital position within the WERC. The likelihood of such an incidence reoccurring proves slim. In fact, as averred to by Davis, nothing like this has taken place at the WERC in at least the last twenty-five years and most likely in its entire history. (Aff. Peter G. Davis ¶10.)

VI. CONCLUSION

This case is moot. Nothing the Court can do will change the situation as it now stands. Moreover, the likelihood of this issue arising in the future, in the judgment of this Court, proves unlikely. To that end, the Court finds this action does not signify any matter of great public concern. In addition, the Court finds that this particular event does to rise to the level of a "most exceptional or compelling circumstance."

VII. ORDER

For the reason stated above, the Defendant's motion to dismiss on grounds of mootness is GRANTED.

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Dated: February 20, 2003

By the Court:

Paul B. Higginbotham /s/

Hon. Paul. B. Higginbotham

Circuit Court Judge

cc. AGA David C. Rice
Atty. Lester A. Pines