

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No.: BCD-CV-15-23

MILLINOCKET SCHOOL COMMITTEE

Plaintiff

v.

ROWENE GOSS et al.

Defendants

MILLINOCKET EDUCATION ASSOCIATION

Party In Interest

ORDER OF DISMISSAL

This matter comes before the court on the court's own motion to show cause why the case should not be dismissed for a lack of justiciable controversy or pursuant to the court's discretion to deny declaratory relief.

I. Background

This case is rooted in the recent history of the Town of Millinocket, previously a thriving and prosperous manufacturing community and home to the Great Northern Paper mill (hereinafter "GNP Mill"), one of the largest paper mills in the United States. Plaintiff Millinocket School Committee alleges that, since the closing of the GNP Mill in 2008, the community of Millinocket has faced an unprecedented and ongoing financial crisis requiring substantial and immediate reductions in the budgets for school and municipal services. (First Am. Compl. ¶ 58-59.)

Among the budget items considered for reduction, and the focus of this case, is approximately \$600,000 per year in retiree health insurance coverage. (Pl. Resp. to Show Cause Ord. 3.) Plaintiff filed this action in October 2014 seeking declaratory judgment to clarify its

contractual obligation to continue to provide the fifty-four defendants—all retirees or surviving spouses of former Millinocket teachers and administrators—with ongoing health insurance reimbursement payments under various collective bargaining agreements (CBAs or CBA) in effect at various times since 1985. (First Am. Compl. ¶ 63.)

Of the fifty-four defendants, three retired under the CBA in effect from 1985 to 1987, three under the 1987 to 1989 CBA, and four under the 1991 to 1996 CBA. (*See id.* ¶¶ 64-91.) Plaintiff asserts that each of these CBAs only requires ongoing payments of the actual dollar amount of health insurance premium contributions made towards each person’s health insurance at the time of their retirement. (*See id.*) The significant majority of the defendants—forty-four in total—retired subject to different CBAs in effect during periods after 2001. (*See id.* ¶¶ 92-99.) Plaintiff avers that these CBAs contained substantively different language, which only provided health insurance premium contributions during retirement for a limited duration. (*See id.*) Specifically, premium contributions terminated at the end of the CBA operative at the time of each individual’s retirement. (*Id.*) Notwithstanding these interpretations, Defendants assert that Plaintiff’s practice over the retirement period in all four CBA groups has been to pay retirees the full benefit value for a state-administered health insurance plan. (*See* First. Am. Countercl. ¶¶ 3-231.)

Certain Defendants and the Party in Interest, Millinocket Education Association, filed a motion to dismiss arguing that the matter did not meet the statutory requirements of the Declaratory Judgment Act and that adjudication “does not promise to terminate the uncertainty or controversy giving rise to the proceeding.” (Am. Mot. to Dismiss 2.) These Defendants and the Party in Interest further argued that the dispute should be submitted to arbitration. (*Id.*) Plaintiff opposed the motion.

On October 8, 2015, the court held oral argument and raised, *sua sponte*, the issue of whether or not this case presented a justiciable controversy appropriate for adjudication. That same day, the court ordered a stay to allow Plaintiff to show cause why the dispute should not be dismissed for lack of jurisdiction or pursuant to the court's discretion to deny declaratory relief. (Stay Order 1.) The court explained that in its view, it would be "only after the [Plaintiff] makes a concrete decision on how to resolve budget issues that an actual controversy may or may not emerge." (*Id.* at 2)

The Plaintiff has attempted to address the court's concern. On November 10, 2015, the Millinocket School Committee voted on reducing the payment levels for retiree health insurance benefits under the 1985-1987, 1987-1989 and 1991-1996 CBA to the level contributed at the time of each retirement. (Ex. A to Boynton Aff.) However, the reduction votes for the 1985-87, 1987-89, 1991-96 CBA retirees provided, in pertinent part:

Therefore, upon the later of September 1, 2016, or the Maine Business and Consumer Court's ruling on the School's Declaratory Judgment Action, and contingent upon the outcome of the Court's ruling on the School's Declaratory Judgment Action, the School will reduce its contribution to such persons' health insurance premiums to the actual dollar amount that the School contributed at the time of each person's respective retirement or by such other amounts as may be negotiated between the School and such persons as a result of the outcome of the Declaratory Judgment Action.

(*Id.* at 3-4.)

Plaintiff also voted to confirm that it will reduce payments to the post-2001 defendant retirees based on its belief that the post-2001 CBAs entitled retirees to health insurance payments only during the term of the CBA operative at the time of each individual's retirement. (*Id.* at 4.) Benefit reductions for the post-2001 retirees were scheduled to begin:

[U]pon the later of September 1, 2016, or the Maine Business and Consumer Court's ruling on the School's Declaratory Judgment Action, and contingent upon the outcome of the Court's ruling on the School's Declaratory Judgment Action, the School will, through negotiations reduce the amounts of its contribution to the post-August 2001 Retirees' health insurance benefits by an amount the School deems equitable.

(*Id.*)

II. Discussion

“A justiciable controversy involves a claim of present and fixed rights based upon an existing state of facts. Accordingly, rights must be declared upon the existing state of facts and not upon a state of facts that may or may not arise in the future.” *Madore v. Maine Land Use Regulation Comm'n*, 1998 ME 178, ¶ 7, 715 A.2d 157 (quoting *Campaign for Sensible Transp. v. Maine Turnpike Auth.*, 658 A.2d 213, 215 (Me. 1995)) (internal quotations omitted). A justiciable controversy can be addressed by an order for specific and definite relief through a “decree of a conclusive character,” and not an advisory opinion offering possible interpretations of the law under assorted hypothetical situations. *Aetna Life Ins. Co. v. Harworth*, 300 U.S. 227, 240-241 (1937). While the Declaratory Judgment Act, 14 M.R.S.A. §§ 5951-5963, extends the range of relief available, it does not remove the prerequisite of a justiciable controversy, *Maine Tpk. Auth. v. Brennan*, 342 A.2d 719, 723 (Me. 1975), and “[c]ourts may correctly refuse to resolve issues which are not presented in a properly justiciable fashion.” *Nichols v. City of Rockland*, 324 A.2d 295, 297 (Me. 1974).

Plaintiff contends that by operation of its November 10, 2015 vote, it has “determined to make specific changes to the retiree health insurance benefits.” (Pl. Resp. to Show Cause 5.) Despite the laudable efforts by Plaintiff to address this issue before any specific retirees' health coverage has been affected, the language affirmed by the votes does not reflect a specific or concrete decision to alter or terminate the health insurance benefits of the Defendant retirees.

Though the wording of the vote regarding the ten Defendants who retired under the 1985-87, 1987-89, and 1991-96 CBA retirees appears specific in referring to a reduction to the actual dollar amount paid at the time of retirement, the specificity is illusory. Any reduction is “contingent upon the outcome of the Court's ruling on the School's Declaratory Judgment Action,” and might instead consist of “such other amounts as may be negotiated between the School and such persons as a result of the outcome of the Declaratory Judgment Action.”

The vote addressing the vast majority of the Defendants—forty-four post-2001 retirees making up more than eighty percent of those affected—proves to be even less specific and more contingent in that no reduction amount is stated, and the vote calls for a negotiated reduction in payments that the School “deems equitable,” contingent on the outcome of this case.

It is obvious that the Plaintiff is attempting to obtain this court’s advice on the parties’ rights and responsibilities regarding retiree health insurance coverage before developing a negotiating position on the issue, much less before making a concrete, specific decision. The Plaintiff’s November 2015 votes ultimately decide nothing except a tentative timetable and procedure for reaching an actual decision, and thus do not cure the absence of a justiciable controversy.

In the absence of a justiciable controversy, the court cannot and should not act. *See Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (“A decision issued on a non-justiciable controversy is an advisory opinion, which [courts] have no authority to render except on solemn occasions, as provided by the Maine Constitution.”) In so concluding, the court emphasizes that this ruling does not touch on the merits of the case or the intention of the

parties in bringing or opposing the action. The court merely decides that the case fails for want of jurisdiction.

Regarding whether or not to reduce retiree health insurance coverage and, if so, by how much and on what effective date, it is to the Committee's own lawyers that the Committee must look for legal advice. Whether or not to negotiate any change and what position to adopt in any negotiation are also matters on which the court cannot give legal advice. Once a definite decision is made, review of the decision may be available, either in the courts directly, or through the arbitration process. The way to achieve what the Committee is evidently trying to accomplish—to obtain judicial review before changes actually take effect—is to make a definite decision, but to delay the effective date of any change for long enough to give the arbitration process and/or the court process, whichever is applicable, a reasonable opportunity to resolve these issues.

Lastly, even if, despite the contingent nature of the Committee's November 2015 vote, there could be deemed to be a justiciable controversy, whether to issue declaratory relief would be within the court's discretion, and the court would decline to respond to this case in its present posture with any declaratory judgment.

Given this outcome, it is not necessary to address the extent to which the changes that Plaintiff is contemplating are arbitrable under any of the CBA's at issue, or to address the parties' other arguments.

At oral argument, counsel for all Defendants and for the Party in Interest agreed that the Defendants' counterclaims should be dismissed on the same basis as Plaintiff's claims, so this Order dismisses all pending claims and counterclaims as to all parties, without prejudice.

III. Conclusion

Therefore, for the foregoing reasons, the First Amended Complaint and the First Amended Counterclaim are dismissed without prejudice. The Defendants and the Party In Interest are awarded court costs as the prevailing parties.

IT IS SO ORDERED.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Order by reference in the docket.

Dated: April 8, 2016

s/ J. Horton
A.M. Horton
Justice, Business & Consumer Court