

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CITY OF BELOIT,

Plaintiff,

v.

LOCAL 643 OF THE AMERICAN
FEDERATION OF STATE, LOCAL
AND MUNICIPAL EMPLOYEES, AFL-CIO,

Defendant.

OPINION AND
ORDER

00-C-220-C

This is a civil action for declaratory relief brought by plaintiff City of Beloit against its transportation union, defendant Local 643 of the American Federation of State, Local and Municipal Employees, AFL-CIO. Plaintiff is seeking declarations that 1) an agreement it made with defendant does not require it to provide reasons for its layoffs if the layoffs are the result of economic conditions; and 2) the agreement does not require it to arbitrate this matter before the Wisconsin Employment Relations Commission.

Presently before the court is defendant's motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Defendant contends that this court lacks

jurisdiction because plaintiff has failed to present a federal cause of action or a substantial question of federal law as required by 28 U.S.C. § 1331. In response, plaintiff argues that jurisdiction is conferred by 1) the declaratory judgment statute, 28 U.S.C. § 2201; 2) section 13(c) of the Urban Mass Transit Act of 1964; or 3) the fact that a declaration of arbitrability has been requested. Because I find that this court lacks subject matter jurisdiction over this case, defendant's motion to dismiss will be granted.

For the purpose of deciding defendant's motion to dismiss, the allegations in the complaint are accepted as true.

ALLEGATIONS OF FACT

Since 1982, plaintiff and defendant have entered into agreements pursuant to § 13(c) of the Urban Mass Transit Act of 1964 to allow plaintiff to receive periodic federal grants for its transportation system. See 49 U.S.C. § 5333 (2000). Section 13(c) requires such agreements to insure that the federal assistance does not have an adverse effect on the union members' employment situation. To this end, the most recent § 13(c) agreement between plaintiff and defendant provides in part that, "the City shall have the burden of affirmatively establishing that any deprivation of employment or other worsening of employment position has not been a result of the Project." The agreement also includes the provision that "changes

in volume and character of employment brought about by causes other than the Project . . . are not within the purview of this agreement.”

As a result of a decline in ridership and a desire to reduce the tax burden on local residents, plaintiff laid off two part-time employees and decided not to fill the vacancy created by the departure of a third part-time employee. Plaintiff then refused to give defendant formal notification regarding the staff reductions, despite defendant’s assertion that such notice is required by the § 13(c) agreement. Unable to convince plaintiff of this obligation, defendant requested arbitration of the issue before the Wisconsin Employment Relations Commission.

OPINION

“The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. Under the well-pleaded complaint rule, federal law must create the cause of action, or some substantial, disputed question of federal law must be an element in the plaintiff’s claim.” GNB Battery Technologies v. Gould, Inc., 65 F.3d 615, 619 (7th Cir. 1995) (citations omitted). Because plaintiff’s complaint does not allege a federal cause of action or raise a substantial question of federal law, this court lacks subject matter jurisdiction under 28 U.S.C. § 1331.

A. The Declaratory Judgment Statute

Plaintiff misses the mark when it argues that this court has jurisdiction pursuant to 28 U.S.C. § 2201. Section 2201 allows federal courts to “declare the rights and other legal relations of any interested party seeking such declaration.” The statute creates the *remedy* of declaratory judgment; it does not confer jurisdiction. The Court of Appeals for the Seventh Circuit has made this clear, stating, “because the Declaratory Judgment Act is not an independent source of federal subject matter jurisdiction, the district court must possess an independent basis for jurisdiction.” GNB Battery, 65 F.3d at 619. Thus, plaintiff’s claim for declaratory relief under § 2201 cannot serve as a basis for jurisdiction.

B. Section 13(c) of the Urban Mass Transit Act of 1964

Plaintiff is also incorrect in its contention that this court has jurisdiction because the contract at issue was written pursuant to § 13(c) of the Urban Mass Transit Act of 1964. A federal question would be raised if determination of the issue in this case were dependent upon construction of § 13(c), as it was in the two cases cited by plaintiff. See United Transportation Union v. Brock, 815 F.2d 1562 (D.C. Cir. 1987); Amalgamated Transit Union, AFL-CIO v.

Donovan, 582 F.Supp. 522 (D.D.C. 1984). However, the present controversy will be resolved by interpreting provisions in the contract between plaintiff and defendant, not by construction of § 13(c).

Section 13(c) does not create a federal cause of action. The Supreme Court made this clear in Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 U.S. 15 (1982), a case in which the local transportation union had sued the transit authority for breach of the parties' § 13(c) agreement. The Supreme Court concluded that "we cannot read § 13(c) to create federal causes of action for breaches of § 13(c) agreements . . . legislative history indicates that Congress intended those contracts to be governed by state law applied in state courts." Id. at 24.

Plaintiff contends that Jackson Transit's holding applies only to actions for *breaches* of § 13(c) agreements and not to actions for declaratory judgment. However, "in declaratory judgment cases . . . jurisdiction is determined by whether federal question jurisdiction would exist over the presumed suit by the declaratory judgment defendant." GNB Battery, 65 F.3d at 619. Because defendant would have brought a breach of contract action for plaintiff's failure to provide the required notice or for not submitting to arbitration, plaintiff's action for declaratory judgment is effectively a breach of contract action for the purpose of determining federal question jurisdiction. As the Supreme Court has stated, federal courts do not have

jurisdiction over such cases. See Jackson Transit, 457 U.S. at 24.

C. The Arbitrability Issue

Plaintiff's final contention is that a federal question exists because it seeks a declaration that it is not contractually bound to arbitrate this issue. Plaintiff cites a number of cases in which federal courts have ruled on issues of arbitrability. See AT&T Technologies v. Communications Workers, 475 U.S. 643 (1986); John Wiley & Sons v. Livingston, 376 U.S. 543 (1964); Ralph Andrews Productions v. Writers Guild of America, West, 938 F.2d 128 (9th Cir. 1991); Camping Construction Co. v. District of Iron Workers, 915 F.2d 1333 (9th Cir. 1989). However, in each of these cases, the court had an independent, statutory justification for subject matter jurisdiction, 29 U.S.C. § 185. Section 185 provides that, "suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." Although this statute grants federal courts jurisdiction over employer - union disputes, § 152 of the same chapter defines "employer" as excluding "any State or political subdivision thereof." See 29 U.S.C. § 152. Because plaintiff falls under this § 152 exemption, it cannot rely on § 185 for federal subject matter jurisdiction.

ORDER

IT IS ORDERED that defendant's motion to dismiss for lack of subject matter

jurisdiction is GRANTED.

Entered this 26th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge