

[Cite as *Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 2016-Ohio-5934.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104114

**MUNICIPAL CONSTRUCTION EQUIPMENT
OPERATORS' LABOR COUNCIL**

PLAINTIFF-APPELLANT

vs.

CLEVELAND, OHIO

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-842778

BEFORE: Celebrezze, J., McCormack, P.J., and Laster Mays, J.

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FRANK D. CELEBREZZE, JR., J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶2} Appellant, the Municipal Construction Equipment Operators' Labor Council (the "Union"), brings this appeal challenging the dismissal of their complaint filed against appellee, the city of Cleveland (the "City"). The Union argues that the common pleas court had jurisdiction to entertain this case that sought declaratory judgment and damages from the City for its failure to fulfill the obligations in a settlement agreement that arose from grievances filed by the Union on behalf of two of its members. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶3} Two of the Union's members, Martin Heberling and Stacy Sulima, were employees of the City's water department. The City alleged that each violated the City's time-keeping policy. On July 1, 2014, the City sent letters to each terminating their employment. Through the Union, each challenged the City's termination decision. The City and the Union engaged in the grievance process as set forth in the Collective Bargaining Agreement ("CBA") that governed their employment relationship. The matter progressed to the final step of binding arbitration. Before the arbitration hearing began, the parties tentatively reached an agreement on March 15, 2015, and the arbitrator was advised that the hearing scheduled for March 16, 2015, would not go forward. The general terms of the agreement were fleshed out by the parties: Heberling and Sulima

would be returned to employment in the City's water department without back pay or benefits. Sulima was to be returned to work immediately, and Heberling would be returned to work starting on May 10, 2015. However, disputes arose about the verbiage of various provisions in the draft settlement agreements. As a result, no formal documents were executed at that time. The City advised the arbitrator that no settlement was reached and that a hearing would be required.

{¶4} On March 25, 2015, the Union filed a declaratory judgment and breach of contract action. The Union sought a declaration that the City had entered into agreements to rehire its two members and the City breached those agreements. In May,¹ the parties formally executed settlement and "last chance" agreements. The settlements called for the immediate reinstatement of Sulima, and reinstatement of Heberling on May 10, 2015, a date that had already passed when the agreements were executed. The agreements also required the Union to dismiss its declaratory judgment and breach of contract action, and for Sulima and Heberling to sign last chance agreements. Ultimately, the two employees were returned to work on June 1, 2015.

{¶5} After the City did not immediately return Sulima and Heberling to work, on July 16, 2015, the Union filed an amended complaint seeking back pay and benefits from the dates that they were supposed to be returned to work.²

¹ Although there are various dates of execution on the settlement and last chance agreements, the City admitted in its responses to the Union's discovery requests that the settlement agreements were fully executed as of May 12, 2015.

² The Union sought back pay for Heberling from May 10, 2015 to June 1, 2015, even though

{¶6} In response to a second motion to dismiss filed by the City, the trial court dismissed the complaint. It found that the settlement agreements were governed by the terms of the CBA, which required disputes to be resolved through arbitration.

{¶7} The Union then filed the instant appeal assigning one error for review:

I. The trial court erred in its dismissal of this case based on its purported lack of subject matter jurisdiction. The trial court has jurisdiction over this case.

II. Law and Analysis

{¶8} The Union's complaint was dismissed based on a lack of subject matter jurisdiction pursuant to Civ.R. 12(B)(1). "Appellate review of a trial court's decision to dismiss a case pursuant to Civ.R. 12(B)(1) and (B)(6) is de novo." *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936, 746 N.E.2d 222 (10th Dist.2000). This court independently reviews the record and arrives at its own conclusions without deference to the trial court's decision. The standard for determining a Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction is "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989), citing *Avco Fin. Servs. Loan, Inc. v. Hale*, 36 Ohio App.3d 65, 67, 520 N.E.2d 1378 (10th Dist.1987).

{¶9} The Union argues that because the settlement agreements contain very broad merger clauses, the CBA's exclusive dispute-resolution provisions do not apply and the Union may seek resolution of this dispute in the common pleas court. For the sake of

the agreement was not executed until May 12, 2015.

the Union's argument, this court will ignore that the Union never complied with the settlement agreements by dismissing the lower court case.

{¶10} The settlement agreements were reached to resolve a grievance brought under the CBA. Those grievances wound their way through the dispute-resolution process set forth in the CBA, all the way to binding arbitration. The arbitration did not go forward because it was resolved by settlement.

{¶11} “The Ohio Supreme Court has said that R.C. Chapter 4117 contains a ‘comprehensive framework for the resolution of public sector labor disputes,’ and does not allow for a private right of action in the common pleas court.” *Carter v. Trotwood-Madison City Bd. of Edn.*, 181 Ohio App.3d 764, 2009-Ohio-1769, 910 N.E.2d 1088, ¶ 51 (2d Dist.), quoting *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 169-170, 572 N.E.2d 87 (1991). “It must also be noted that any claim that is independent of R.C. Chapter 4117, such as a breach of contract or enforcement, still falls solely within the jurisdiction of [the State Employment Relations Board (“SERB”)] if the asserted claim arises from or is dependant on the collective bargaining rights created by R.C. Chapter 4117.” *State ex rel. Cleveland City School Dist. Bd. of Edn. v. Pokorny*, 105 Ohio App.3d 108, 110, 663 N.E.2d 719 (8th Dist.1995), citing *Franklin Cty. Law Enforcement Assn.* at paragraph two of the syllabus.

{¶12} Further, R.C. 4117.10(A) provides that where a collective bargaining agreement contains a grievance process that includes final binding arbitration, a civil

service commission or state personnel board does not have jurisdiction to hear an appeal from that decision. *See also Oglesby v. Columbus*, 10th Dist. Franklin No. 00AP-544, 2001 Ohio App. LEXIS 438, 9 (Feb. 8, 2001).

{¶13} The Union relies on *Townsend v. Antioch Univ.*, 2d Dist. Greene No. 2008 CA 103, 2009-Ohio-2552, for the proposition that a common pleas court has jurisdiction to decide claims for breach of contract and injunctive relief. That decision does not address R.C. Chapter 4117, and specifically indicates, “the common pleas courts have subject-matter jurisdiction in all civil and criminal actions on claims for relief that arise in the county in which the court sits, *except for those actions in which subject-matter jurisdiction is conferred by statute on another court exclusively.*” (Emphasis added.) *Townsend* at ¶ 27, quoting *Acclaim Sys. v. Lohutko*, 2d Dist. Montgomery No. 22569, 2009-Ohio-1405, ¶ 9. Indeed, Antioch is a private institute of higher learning not covered under the definition of “public employer” in R.C. 4117.01(B). This is why the case dealt with individual contracts of tenured professors found in a “Faculty Personnel Policies and Procedures” manual, and the *Townsend* court recognized that the dispute was between private parties. *Id.* at ¶ 27. Further, the contract at issue in *Townsend* does not appear to have a binding arbitration dispute-resolution procedure governing the employment relationship.

{¶14} Based on these distinctions, *Townsend* is inapplicable to the present case. With limited exception, the Ohio Revised Code bestows exclusive jurisdiction on SERB for the resolution of disputes between public employers and employees where those

disputes arise from the employment relationship. R.C. 4117.10(A) removes subject-matter jurisdiction from SERB and gives exclusive jurisdiction to an arbitrator when the applicable collective bargaining agreement specifies binding arbitration as the exclusive form of dispute resolution. The common pleas court only has jurisdiction to confirm, modify, or vacate the arbitration award that is the final result of the grievance process. R.C. 2711.09; *Ohio Council 8 v. Cleveland*, 8th Dist. Cuyahoga No. 103354, 2016-Ohio-1128, ¶ 9.

{¶15} The Tenth District has addressed the question presently before this court in *Bailey v. Beasley*, 10th Dist. Franklin No. 09AP-682, 2010-Ohio-1146. There, a public employee was terminated by his employer, and the employee, through his representative union, engaged in the grievance procedures outlined in the governing collective bargaining agreement. *Id.* at ¶ 2. The grievance was scheduled for arbitration, but the parties reached a settlement before an arbitration hearing began. *Id.* Later, the employee filed a breach of contract action in common pleas court alleging that the employer breached the collective bargaining agreement. *Id.* at ¶ 5. The trial court granted summary judgment in favor of the employer after finding that the court lacked subject-matter jurisdiction. *Id.* at ¶ 6.

{¶16} The employee argued that the trial court erred in finding that it lacked jurisdiction because he also asserted a breach of contract claim for breach of the settlement agreement. *Id.* at ¶ 17. The Tenth District rejected that claim, in part, because “[a] settlement agreement ‘arising out of a collective bargaining agreement

between public employees and employers in the state of Ohio, pursuant to R.C. 4117, continue[s] to be subject to the grievance procedure. A common pleas court does not have subject-matter jurisdiction over [it].” *Id.* at ¶ 18, quoting *Bryant v. Witkosky*, 11th Dist. Portage No. 2001-P-0047, 2002 Ohio App. LEXIS 1499, 11 (Mar. 29, 2002); *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106, 2003-Ohio-2506, 789 N.E.2d 203, ¶ 21.

{¶17} This holding by the Tenth District is in agreement with the view shared by the trial court in the present case. Just like the *Beasley* court, the trial court cited to *Bryant* in support of its decision. In *Bryant*, after analyzing similar federal law, the court held,

a settlement agreement, entered into to resolve a dispute covered under a collective bargaining agreement, is also covered under that collective bargaining agreement. This concept is consistent with the overriding theme that a party must exhaust their administrative remedies before turning to a court of law. We believe it was the intent of the Ohio State Legislature, when it drafted Chapter 4117, to keep these disputes between public employees and employers out of Ohio’s courthouses. Labor disputes are best resolved through a grievance procedure which [culminates] in final and binding arbitration.

Id. at 10.

{¶18} The Union’s claim that the language of the merger clause in the settlement agreements removes it from the grievance procedures set forth in the CBA is unavailing.

There is a statutory framework developed for the resolution of labor issues for public employees. Where the governing collective bargaining agreement specifies final arbitration, with limited exception, that remains the sole means of litigating claims related to the employment relationship unless otherwise provided for by statute.

{¶19} Here, the Union's claim arises from alleged breaches of settlement agreements, so it does not directly arise from the CBA. However, the claims certainly are dependent on the CBA and the rights created by it. Therefore, the trial court properly dismissed the Union's complaint.

III. Conclusion

{¶20} The trial court properly dismissed the Union's complaint because the dispute between the parties was governed by the grievance process set forth in the CBA. The Union was required to bring its dispute to an arbitrator as set forth therein. The Union's cause of action for breach of settlement agreements that arose under and relied on the CBA is still the proper subject matter for an arbitrator under the terms of the CBA, despite the broad merger clauses contained within the settlement agreements.

{¶21} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

TIM McCORMACK, P.J., and
ANITA LASTER MAYS, J., CONCUR