

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE BULEY,

Plaintiff-Appellant,

v

WEST SHORE COMMUNITY COLLEGE and
BOARD OF TRUSTEES OF WEST SHORE
COMMUNITY COLLEGE,

Defendants-Appellees.

UNPUBLISHED

January 27, 1998

No. 190773

Mason Circuit Court

LC No. 95-010643-CL

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). Summary disposition was granted on the basis that plaintiff's exclusive remedy was that afforded by the contractual grievance procedure, precluding the pursuit of this claim in the circuit court. We affirm.

We review a trial court's grant or denial of summary disposition de novo. *Guerra v Garrat*, 222 Mich App 285, 288; 564 NW2d 121 (1997). In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court must accept the plaintiff's well pleaded allegations as true, *Phinney v Perlmutter*, 222 Mich App 513, 543; 564 NW2d 532 (1997), and examine any pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the nonmovant. MCR 2.116(G)(5); *Skotak v Vic Tanny International, Inc*, 203 Mich App 616, 617; 513 NW2d 428 (1994). A motion under MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery. *Smith v YMCA of Benton Harbor*, 216 Mich App 552, 555; 550 NW2d 262 (1996), quoting *Skotak*, *supra* at 617.

Plaintiff first argues that the board of trustees of defendant West Shore Community College (WSCC) could not be an impartial decisionmaker with regard to the decision to discharge plaintiff. As a community college authorized pursuant to Mich Const 1963, art 8, §7, WSCC is subject to the Community College Act, MCL 389.1 *et seq.*; MSA 15.615(101) *et seq.* Under Mich Const 1963,

art 8, § 7, and MCL 389.124(b); MSA 15.615(1124)(b), the final decision to discharge plaintiff was the responsibility of the board of trustees, and this power could not be delegated. See, e.g., *Blanchard v Lansing Community College*, 142 Mich App 446, 449; 370 NW2d 23 (1985), and OAG 1981-1982, No. 5843, p 23 (January 20, 1981). The question that this leads to is whether the board could be considered an impartial decisionmaker when it reviewed the decision on plaintiff's grievance of his discharge. A similar issue was addressed by the Sixth Circuit in *Lake Michigan College Federation of Teachers v Lake Michigan Community College*, 518 F2d 1091 (CA 6, 1975), a case that the trial court found instructive, in which the board had to decide whether a particular employee had in fact participated in a strike. Under such circumstances, the Sixth Circuit found that the board of trustees could be an impartial decisionmaker. Similarly, in *Hortonville Joint School Dist No 1 v Hortonville Ed Ass'n*, 426 US 482, 491-492; 96 S Ct 2308; 49 L Ed 2d 1 (1976), the United States Supreme Court held that a school board, as an employer, could be an impartial decisionmaker regarding the striking teachers' discharge, absent a showing that board members had a personal or financial stake in the decision that might have created a conflict of interest, personal animosity or vindictiveness, or antiunion animus. Further, although the school board was involved in the negotiations that preceded and precipitated, the Court held that

mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not disqualify a decisionmaker. . . . Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not 'capable of judging a particular controversy fairly on the basis of its own circumstances'. *United States v Morgan*, 313 US 409, 421[]; 61 S Ct 999; 85 L Ed 1429] (1941). [*Hortonville, supra* at 493.]

Here, unlike the teachers in *Hortonville*, plaintiff had not stipulated to the facts and the board of trustees had to make crucial findings of fact such as whether plaintiff was allowed an input regarding his revised job responsibilities, whether plaintiff received training for his new position, and whether there was just cause for plaintiff's discharge. The nature of these factual decisions posed a greater risk of erroneous factual findings than in *Hortonville*. Despite this risk, plaintiff failed to demonstrate that the decision to terminate his employment was infected by any factors that would show unacceptable bias on the part of the board of trustees. Plaintiff claims that the board had a financial interest in the outcome of the proceedings and stood to benefit from a reduction in personnel costs. However, no evidence was provided to show that there were economic grounds, rather than disciplinary grounds, for the decision to discharge plaintiff. Plaintiff's argument that the board of trustees could not be an impartial decisionmaker rested mainly on the proposition that the board, while being the ultimate authority, is also the employer. The trial court dealt with this proposition in the following way:

There is logic to [p]laintiff's contention that a [b]oard of [t]rustees may be loyal to administrators such as a College President, Department Head and other administrators for the reason that a [b]oard often relies upon input from such persons in making policy decisions. However it is also true that the Board of Trustees is elected

by the public at large and thus owes no particular allegiance to administrators over and superior to College employees.

We agree. Moreover, instead of showing bias, the evidence shows that, on two previous occasions, the board upheld the administration's disciplinary action against plaintiff but reduced the penalty. Because there are no factors indicating bias, even if the evidence is viewed in a light most favorable to the nonmovant, MCR 2.116(G)(5); *Skotak, supra* at 617, no factual development could provide a basis for recovery. *Smith, supra* at 555.

Plaintiff's next argument follows from the first. It asserts that since defendant board of trustees could not impartially decide the complicated facts of this case, the requirement of fairness was not satisfied. If a procedure is lacking in fairness, a decision of a board is not final or binding and allows for judicial review. *Breish v Ring Screw Works*, 397 Mich 586, 603; 248 NW2d 526 (1976); *Renny v Port Huron Hospital*, 427 Mich 415; 398 NW2d 326 (1986). Here, due to the fact that the negotiated grievance procedure¹ did provide for final decisionmaking by defendant board of trustees, who could be regarded as an impartial decisionmaker, the requirement of fairness was satisfied.

Plaintiff next argues that he was deprived of his constitutionally guaranteed procedural due process protections when defendant board of trustees served as the final arbiter of his grievance. Although plaintiff did not expressly raise this issue below, the only logical way to view plaintiff's allegations concerning impartiality and fairness is in the context of a violation of due process. Accordingly, we conclude that the issue is preserved. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992). Here, the just-cause relationship that plaintiff enjoyed with defendants distinguished his relationship as one providing a property right in continued employment that could only be taken away in accordance with due process. *Garner v Michigan State University*, 185 Mich App 750, 759; 462 NW2d 832 (1990). In *Hortonville, supra* at 494, the Court accepted that a determination of what process is due in a given setting required the Court to take into account the individual's stake in the decision at issue as well as the state's interest in a particular procedure for making it. See *Mathews v Eldridge*, 424 US 319; 96 SCt 893; 47 LEd 2d 18 (1976). Here, plaintiff's interest in the proceedings leading to his discharge is self-evident. The terms of the collective bargaining agreement gave him a property right to continued employment in the absence of just cause for discharge. On the other hand, state law vested the board of trustees with the overall responsibility for the governance of the community college. By electing them the constituents declared the board members qualified to deal with problems that arose on a day-to-day basis in the college, and members were accountable to voters for the way in which they performed. Moreover, the Legislature gave the board of trustees the power to employ and dismiss teachers, and to bargain collectively with employees. Permitting the board to make the final decision regarding plaintiff's discharge assures that the decision to discharge him was made by the body responsible for that decision under state law. Accordingly, in the absence of any clear showing of bias, we conclude that the Due Process Clause of the Fourteenth Amendment did not guarantee plaintiff that the decision to terminate his employment would be made or reviewed by a body other than the board of trustees.

Plaintiff next argues that, having exhausted the contractual grievance procedures available for the resolution of his claim without satisfaction, he could pursue his claim in the circuit court. Deference

should be accorded to the method for dispute resolution provided in the collective bargaining agreement that was negotiated between the employees' association and the college. The agreed-upon grievance procedure that was invoked by plaintiff allowed the board of trustees to determine that plaintiff's discharge was for cause, and precludes a redetermination of the wrongfulness of plaintiff's discharge by a court. See *Fulghum v United Parcel Service*, 424 Mich 89, 107; 378 NW2d 472 (1985), and *Renny, supra*. In *Vander Toorn v Grand Rapids*, 132 Mich App 590, 601; 348 NW2d 697 (1984), the Court held that an employer's final decision upholding the plaintiff's discharge was not that of an impartial arbiter so as to preclude judicial review on the merits. However, since we have come to the conclusion that the negotiated grievance procedure did provide for final decisionmaking by defendant board of trustees, who could be regarded as an impartial decisionmaker, review on the merits of plaintiff's discharge is precluded.

Affirmed.

/s/ Roman S. Gribbs

/s/ William B. Murphy

/s/ Hilda R. Gage

¹ The grievance procedure consists of a six-step process. First, an earnest effort must be made to reach a verbal and informal settlement. Second, if an informal settlement is not reached, the appropriate supervisor must provide the aggrieved employee with a written decision respecting the complaint. Third, if the grievance is still not resolved, the aggrieved employee must file an intent to appeal the supervisor's decision with the Dean of Business Services' Secretary. Fourth, the Dean of Business Services must hold a conference regarding the grievance and, following the conference, notify the parties of his decision in writing. Fifth, if the aggrieved employee is not satisfied with the decision of the Dean of Business Services, the aggrieved employee is entitled to a hearing with the College President, who, following the hearing, must render a written decision on the complaint. Finally, if the grievance is still not resolved, the aggrieved employee is entitled to a hearing before and a decision by the board of trustees on the complaint. Plaintiff participated, without objection, to each stage of this process.