

STATE OF MICHIGAN  
COURT OF APPEALS

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DANIEL CURTIS MATHEA,

Plaintiff-Appellant,

v

TECHNICAL, PROFESSIONAL &  
OFFICEWORKERS ASSOCIATION OF  
MICHIGAN, REDFORD TOWNSHIP  
TECHNICAL, PROFESSIONAL &  
OFFICEWORKERS ASSOCIATION, and  
REDFORD CHARTER TOWNSHIP,

Defendants-Appellees.

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UNPUBLISHED

March 24, 1998

No. 193161

Wayne Circuit Court

LC No. 94-404923-CZ

Before: O’Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants, Technical, Professional, & Officeworkers Association of Michigan (“TPOAM”) and Redford Township Technical, Professional & Officeworkers Association (“RTTPOA”) (“the Union” collectively). We affirm.

Plaintiff first argues that the trial court erred in holding that Redford Township did not violate the collective bargaining agreement when it discharged plaintiff for pleading guilty to attempted possession with intent to deliver marijuana. We disagree.

The collective bargaining agreement between Redford Township and the Union covered plaintiff’s employment. Since the language of the collective bargaining agreement is unambiguous, this issue is a question of law which we review de novo. *Port Huron Education Ass’n v Port Huron Area School District*, 452 Mich 309, 323; 550 NW2d 228 (1996); *Brucker v McKinlay Transport, Inc.*, (On Remand), 225 Mich App 442, 448; 571 NW2d 548 (1997).

Specifically, plaintiff argues that the trial court erred in applying the Redford Township civil service rules because plaintiff’s misconduct was governed by the collective bargaining agreement.

Plaintiff's argument is without merit. Article VIII of the collective bargaining agreement governs discharge and discipline. Section 8.1 of Article VIII states:

The intent and purpose of the following is to provide a progressive disciplinary system where appropriate. The parties recognize that certain cases may require the imposition of non-progressive discipline based upon the severity of the offense while on duty (such as, but not limited to dishonesty, lewd or obscene behavior, acts of physical violence, absence from work without notice for three consecutive days, or being incapacitated or intoxicated on beverages or drugs). The parties recognize that discipline will not be imposed without just cause. Nothing in this article shall prevent the employer from taking immediate and appropriate disciplinary action should it be required under the circumstances, with proper written notice to the union after the time such action is taken.

Article IX of the collective bargaining agreement states:

The Civil Service Act and Rules established by the Township Commission, including any amendments thereto, shall apply unless specifically overruled or in conflict with the terms of this Agreement.

Section 3(l) of the Redford Township civil service rules provides that anyone arrested or convicted of a high misdemeanor or felony offense may be subject to immediate suspension or possible discharge.

The trial court correctly decided that plaintiff's discharge was not a violation of the collective bargaining agreement as a matter of law. *Port Huron Education Ass'n, supra*, 452 Mich 323. Section 8.1 unambiguously states that a progressive disciplinary system is provided for "where appropriate." Section 8.1 further provides that nothing in the article prevents Redford Township from taking immediate and appropriate disciplinary action if circumstances require it. Plaintiff's construction of Article VIII would render all of this language in Article VIII unnecessary and meaningless. The collective bargaining agreement does not mandate progressive discipline in plaintiff's case. Accordingly, the civil service rule which provides for discharge because of an arrest or conviction of a high misdemeanor or felony does not conflict with Article VIII of the collective bargaining agreement. Therefore, the trial court correctly ruled that section 3(l) of the Redford Township civil service rules applied to plaintiff through the collective bargaining agreement. Because the contract language is unambiguous, no further factual development is necessary and summary disposition was appropriate. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997).

Plaintiff next argues that the trial court erred in granting defendants' motion for summary disposition because the issue of just cause is always a question for the jury. We disagree. We review a lower court's grant of summary disposition de novo to determine if a defendant was entitled to judgment as a matter of law. *Portelli v I R Construction Products Co*, 218 Mich App 591, 596; 554 NW2d 591 (1996).

The trial court did not err in granting summary disposition because of its decision that plaintiff had been discharged for just cause in accordance with the collective bargaining agreement. The

collective bargaining agreement incorporates the Redford Township civil service rules and Section 3(1) of the civil service rules provides that anyone arrested or convicted of a high misdemeanor or felony offense may be subject to immediate suspension or possible discharge. Plaintiff violated that section as he was charged with possession with intent to deliver marijuana and pleaded no contest to attempted possession with intent to deliver marijuana. Even giving the benefit of doubt to plaintiff, summary disposition was properly granted because it is impossible for reasonable minds to differ upon whether plaintiff's violation of the civil service rules provided just cause for his discharge. *Portelli, supra*, 218 Mich App 596.

Finally, plaintiff argues that the trial court erred in granting the Union's motion for summary disposition. We disagree. We review a lower court's grant of summary disposition de novo to determine if a defendant was entitled to judgment as a matter of law. *Portelli, supra*, 218 Mich App 596.

Plaintiff argues that the Union breached its duty of fair representation when it refused to take plaintiff's grievance to arbitration. To prevail on a claim of unfair representation, the employee must establish not only a breach of the duty of fair representation but also a breach of the collective bargaining agreement. Because plaintiff has not established a breach of the collective bargaining agreement, he cannot prevail on his claim of unfair representation against the Union. *Knoke v East Jackson Public School District*, 201 Mich App 480, 488; 506 NW2d 878 (1993); *Martin v East Lansing School District*, 193 Mich App 166, 181; 483 NW2d 656 (1992).

Affirmed.

/s/ Peter D. O'Connell  
/s/ Roman S. Gibbs  
/s/ Michael R. Smolenski