STATE OF MICHIGAN

COURT OF APPEALS

CHRISTY THEODORE, RICHARD RAMAGE, LEONARD NATKOWSKI, EARL CHANSFORD BRYANT, BARRY BASEL, DOUGLAS LUCAS, ELIZABETH NEWTON, ROSEMARY LUCAS, and JULIE WOLCOTT,

Plaintiffs-Appellees,

v

WAYNE-WESTLAND COMMUNITY SCHOOLS,

Defendant-Appellant.

UNPUBLISHED
January 12, 2001

No. 208151
Wayne Circuit Court
LC Nos. 94-428095-CK
94-428096-CK
94-428097-CK
94-428098-CK
94-428100-CK
94-428101-CK
94-428102-CK
94-428103-CK
94-428104-CK

Before: Meter, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant appeals by leave granted from judgments for each plaintiff entered after a jury trial. We reverse.

The facts are largely undisputed. In 1992, defendant offered an early retirement incentive plan (ERIP) to its teacher-employees. The plan consisted, *inter alia*, of a "letter of understanding" signed by the Wayne-Westland Education Association (the Union) and defendant. This "letter of understanding" contained the terms and conditions of the 1992 ERIP (such as eligibility requirements and payment options). Moreover, paragraph 8 of the "letter of understanding" stated as follows:

> 8. The ERIP is a one-time opportunity and shall exist only during the time periods specified above. The Wayne-Westland Community School District does not plan to offer the ERIP in any subsequent years.

The "letter of understanding" was incorporated by reference into the "acceptance of [ERIP]" documents that were signed by each individual plaintiff and defendant.

Each of the nine plaintiffs contended that he read paragraph 8 to mean that defendant would not offer ERIPs in subsequent years and that he therefore chose to retire in 1992. However, defendant offered a similar, although slightly different, ERIP in 1993. Each plaintiff alleged that had he known that ERIPs would be offered in subsequent years, he would not have retired in 1992. Accordingly, plaintiffs sued defendants, alleging promissory estoppel and breach of contract,[1] and the jury found for plaintiffs on both of these theories. Based on each plaintiff's testimony regarding the number of years he would have worked if he had known the 1992 ERIP was not a "one-shot deal," the jury awarded a total of $1,114,420.13 in damages.

Defendant, along with the Union, which filed an *amicus curiae* brief aligned with defendant's position, contends that the trial court should have granted defendant's motion for summary disposition, motion for directed verdict, or judgment notwithstanding the verdict because, contrary to plaintiffs' claims, the 1992 ERIP was part of the parties' collective bargaining agreement (CBA) and plaintiffs, in order to obtain relief, were therefore required to exhaust their administrative remedies under the CBA or timely demonstrate that the Union breached its duty of fair representation. See, e.g., *Martin v Metropolitan Life Ins Co*, 140 Mich App 441, 446-447; 364 NW2d 348 (1985), *O'Keefe v Dep't of Social Services*, 162 Mich App 498, 508-509; 413 NW2d 32 (1987), and *Leider v Fitzgerald Education Ass'n*, 167 Mich App 210, 214-217; 421 NW2d 635 (1988). Defendant and the Union contend that because plaintiffs did not exhaust their administrative remedies or timely allege that the Union breached its duty of fair representation, their claim was not viable as a matter of law. Plaintiffs, on the other hand, contend that the 1992 ERIP was not part of the CBA but instead was comprised of individual employment contracts between each plaintiff and defendant. Accordingly, plaintiffs believe that collective bargaining procedures did not apply to this case.

We agree with defendants that the 1992 ERIP was part of the CBA and that plaintiffs were required to exhaust their administrative remedies or timely demonstrate that the Union breached its duty of fair representation. Because plaintiffs did not do so, the trial court should have granted defendant's motion for summary disposition, motion for directed verdict, or motion for judgment notwithstanding the verdict.

First, the 1992 ERIP was a mandatory subject of bargaining. Indeed, MCL 423.209(15); MSA 17.455(15) indicates that the bargaining agent for public sector employees must bargain over "wages, hours, and other terms and conditions of employment." An ERIP is a mandatory subject of bargaining when it affects the terms and conditions of employment of an active employee. *West Ottawa Ed Ass'n v West Ottawa Public Schools Board of Ed*, 126 Mich App 306, 329; 337 NW2d 533 (1983). Here, because the 1992 ERIP altered the retirement benefits that active teachers would receive, it was a mandatory subject of bargaining. *Id*. at 326-330.

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[1] Plaintiffs also brought a misrepresentation claim against defendant, but the trial court dismissed this claim.

Moreover, the "letter of understanding," in which the operative "one-time opportunity" language existed, was signed (as was the main CBA) by defendant and the Union, but not by the individual plaintiffs. Although the "letter of understanding" was incorporated by reference into the "acceptance of early retirement incentive plan" documents signed by defendant and each plaintiff, the fact remains that the Union, and not the individual plaintiffs, negotiated and signed for the "one-time opportunity" language contained in the "letter of understanding," which expressly applied *only to members of the Union*. In *Martin, supra* at 446-447, this Court addressed the following claim:

> Plaintiffs' first claim is that the trial court erred in ruling that plaintiffs must exhaust their remedies for the review of denied claims as contained in the supplemental bargaining agreement before plaintiffs could bring this suit. Plaintiffs argue that they are seeking redress for breach of an insurance contract and not for breach of a collective bargaining agreement.

Martin, therefore, involved an issue somewhat analogous to that contained in the instant case. In resolving the question in the defendant's favor, the *Martin* Court cited *Rhodes v Aetna Life Ins Co*, 135 Mich App 735, 739-740; 356 NW2d 247 (1984), a case in which the Court concluded that the plaintiff was required to use the grievance procedures set forth in the CBA:

> Plaintiff is not a primary party to the insurance contract under which she seeks benefits. She did not individually purchase an insurance policy from the defendant. The sole parties to the contract are the insurer, defendant, and the policyholder, Chrysler. *Any rights that plaintiff may have to collect benefits under the insurance contract are created solely by virtue of her membership in the UAW* and by virtue of the collective-bargaining agreement entered into between the UAW and Chrysler. [*Martin, supra* at 450-451, citing *Rhodes, supra* at 739-740 (emphasis added).]

In the instant case, plaintiffs' rights to the ERIP were "created solely by virtue of [their] membership" in the Union. Indeed, the Union negotiated for the ERIP and signed the "letter of understanding" containing the operative "one-time opportunity" language. The "letter of understanding" expressly applied only to members of the Union. While the "acceptance" documents were signed solely by defendant and by the individual plaintiffs, plaintiffs, by signing, were "accepting" *a benefit negotiated and signed for solely by the Union*. This fact, along with the fact that the 1992 ERIP was a mandatory subject of bargaining, indicates that the 1992 ERIP was part of the CBA between the parties, and because plaintiffs neither exhausted their administrative remedies nor timely alleged a breach of the Union's duty of fair representation, the trial court should have granted defendant's motion for summary disposition, directed verdict, or judgment notwithstanding the verdict.

Plaintiffs argue that the 1992 ERIP was not part of the CBA because amendments to the CBA required certain procedures that were not followed in this case. For example, Article XV of the Union's constitution indicated that all amendments to existing contracts were to be submitted to the membership and that the proposed amendments were to be discussed at a meeting. There was no evidence in this case that such submission or such a meeting occurred with regard to the 1992 ERIP. However, plaintiffs provide no case law or other authority in their appellate brief to

indicate that a union's failure to strictly abide by the procedural requirements of its constitution precludes the effectuation of an amendment. A party may not merely announce a position and leave it up to this Court to search for authority. *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998); *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 151-152; 577 NW2d 200 (1998); *Mann v Mann*, 190 Mich App 526, 536-537; 476 NW2d 439 (1991). Nevertheless, the apparent failure by the Union to strictly abide by its constitution does not change the facts that the 1992 ERIP (1) was a mandatory subject of bargaining, and (2) granted plaintiffs' certain rights "solely by virtue of [their] membership" in the Union. See *West Ottawa, supra* at 326-330, and *Martin, supra* at 450-451. Accordingly, plaintiffs were required to pursue their claim using collective bargaining procedures.

Plaintiffs contend that even assuming, arguendo, that the 1992 ERIP was part of the CBA, their lawsuit remained viable because the ERIP indicated that they had not waived "the rights to any cause of action that may arise after the date [of signing]." Plaintiffs contend that "any cause of action" included the instant lawsuit. We disagree. This language, standing alone, did not exempt plaintiffs from the requirements of the CBA. Indeed, merely because plaintiffs had a cause of action did not mean that they could *pursue* this cause of action in any way or forum that they chose. As stated earlier, they were required to pursue administrative avenues or timely allege that the Union breached its duty of fair representation.

Plaintiffs additionally contend that they were not subject to the grievance procedures dictated by the CBA because their causes of action did not arise until after they had retired and because the CBA applied only to actual teachers and not to retirees. Again, we disagree. Since plaintiffs' rights to the benefits of the 1992 ERIP accrued while they were still teachers and members of the Union, they were obligated to address any issues relating to these benefits using the procedures of the CBA. In *Ottawa County v Jaklinksi*, 423 Mich 1, 23, 29-30; 377 NW2d 668 (1985), the Supreme Court held that rights that accrued or vested during the existence of a CBA are subject to arbitration even after the CBA expires. Although the issue here is not the expiration of the CBA, like in *Ottawa County*, but rather the cessation of plaintiffs' employment with defendant, we nonetheless find *Ottawa County's* emphasis on accrued or vested rights persuasive. Retirees seeking to redress a breach of a collectively-bargained agreement involving rights that accrued while the retirees were active employees are obligated to use the procedures outlined in the CBA.[2]

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[2] Representatives of defendant testified to the contrary at trial and indicated that a retired individual would likely *not* have access to the grievance procedures under the CBA. These representatives were mistaken, as indicated by the reasoning of *Ottawa County*.

Additionally, we note that the CBA allowed the Union to file grievances and did not specify that such grievances must relate only to currently-employed teachers.

In light of our resolution of this case, we need not address the additional arguments raised by the parties.

Reversed.

/s/ Patrick M. Meter
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin